

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.28564 OF 2007

ORDER :

An order passed by the Superintending Engineer (Assessment), APCPDCL, Hyderabad-2nd respondent herein vide Lr.No.SEA/HYD/SAP.NO:6406/D.NO:809/2007, dated 28.12.2007 in Appeal SAP 6406 of December, 2007, confirming the final assessment order bearing No.DEA-III/HYD/DAT.4083 D.No.4776, dated 22.01.2004, passed by the Divisional Engineer/Assessments-3, Hyderabad-3rd respondent herein, fixing the liability of Rs.15,988/- in respect of petitioner's service connection No.22013-284, L.T.Category-I, Kukatpally, Ranga Reddy District, is under challenge in the present writ petition.

Heard Sri K.S.Murthy, learned counsel for the petitioner and Sri R.Vinod Reddy, learned Standing counsel for the respondents, apart from perusing the material available before this Court.

Initially the petitioner herein filed W.P.No.6145 of 2007 before this Court, with a complaint that the respondents were demanding the arrears to a tune of Rs.15,969/- without serving show cause notice, provisional assessment and final assessment order. This Court by way of an order, dated 05.11.2007, disposed of the said writ petition, permitting the petitioner to prefer an Appeal against the order dated 22.01.2004. Thereafter, the petitioner herein filed an appeal before the 2nd respondent on 05.12.2007, after paying half of the amount demanded vide final assessment order. With a complaint that despite the request made by the petitioner on 27.12.2007 to supply certain

documents, the appellate authority was proceeding with the adjudication of the appeal, without furnishing the said documents, initially the present writ petition came to be filed before this Court. This Court while ordering Rule nisi on 31.12.2007 in WPMP.No.37323 of 2007 passed an interim order, directing the respondents not to disconnect the power supply to petitioner's service connection. On 28.12.2007 the 2nd respondent-appellate authority dismissed the appeal filed by the petitioner. Therefore, the petitioner herein filed W.P.M.P.No.2336 of 2008, seeking amendment of the writ prayer, so as to enable him to question the appellate authority's order dated 28.12.2007. This Court, allowed the said application on 15.02.2008. Therefore, ultimately the final assessment order dated 22.01.2004 and the order of the appellate authority-2nd respondent dated 28.12.2007, are under challenge in the present writ petition.

In response to the Rule nisi issued by this Court, the respondents herein filed a counter affidavit, denying the averments made in the affidavit filed in support of the writ petition and in a direction of justifying the impugned action.

It is contended by the learned counsel for the petitioner that the questioned orders, are highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India and are in patent violation of principles of natural justice. It is submitted by the learned counsel that the impugned action on the part of the respondents herein in fixing the liability without furnishing the necessary documents, sought by the petitioner, by way of representation dated 27.12.2007, cannot be sustained in the eye

of law. It is further submitted that though the petitioner raised a number of grounds in the appeal filed before the 2nd respondent, the 2nd respondent did not consider the said aspects from proper perspective.

On the contrary, it is strenuously contended by the learned Standing counsel for the respondents that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action, as such, the impugned orders are not amenable for any judicial review under Article 226 of the Constitution of India. It is also argued by the learned Standing counsel that strictly adhering to the principles of natural justice, after completely giving opportunity to the petitioner and after supplying the necessary documents, the respondent authorities passed orders under challenge, as such, no interference of this Court under Article 14 of the Constitution of India is warranted.

In the above background, now the issue that emerges for consideration of this Court is:

“Whether the questioned orders passed by the primary and the appellate authorities are sustainable and tenable or whether the same require any interference of this Court under Article 226 of the Constitution of India?

The information available before this Court manifestly discloses that when the petitioner herein initially approached this Court by way of filing W.P.No.6145 of 2007, this Court disposed of the said writ petition, by way of an order dated 05.11.2007, permitting the petitioner to file an appeal against the order of final assessment dated 22.01.2004, passed by the 3rd respondent while

categorically taking note of the fact that there was no proof of service of the said order of assessment on the consumer. There is also no dispute as regards the fact that the petitioner paid half of the amount covered by the order of assessment. A perusal of the order of the appellate authority clearly discloses that the petitioner categorically stated before the appellate authority that the whole proceedings were based on alleged faults in the meter bearing No.6060127 whereas, the petitioner's meter number is 606927 and petitioner also categorically stated before the appellate authority that the original provisional assessment and subsequent re-examination were behind his back and were without any notice. The petitioner also raised an obligation touching the aspect of meter testing. The submission of letter dated 27.12.2007, before the appellate authority-2nd respondent with a request to furnish certain documents is not disputed in the counter affidavit. On the other hand, it is stated that all the documents were furnished to the petitioner herein. Reply affidavit filed by the petitioner denies the same. In the absence of any material to show that the said documents sought by the petitioner were furnished to him, the statement made in the counter affidavit cannot be taken into consideration.

A perusal of the order under appeal makes it vivid that the appellate authority did not consider any one of the grounds raised by the petitioner as extracted at page No.2 of the appellate authority's order. The action of non furnishing the documents, sought by the petitioner, in the considered opinion of this Court, is a patent violation of principles of natural justice. It is a settled

and well established proposition of law that the orders of the Quasi judicial authorities should necessarily be supported by the reasons and it is obligatory on the part of the Quasi judicial authorities to consider all the points raised. In the instant case, the said principles are followed in breach by the appellate authority. Therefore, this Court has absolutely no scintilla of hesitation nor any shadow of doubt to hold that order of the 2nd respondent in the appeal, confirming the order of the 3rd respondent, cannot be sustained in the eye of law.

For the aforesaid reasons, the writ petition is allowed, setting aside the order passed by the 2nd respondent in Lr.No.SEA/HYD/SAP.NO:6406/D.NO:809/2007, dated 28.12.2007 in Appeal SAP 6406 of December, 2007 and the matter is remanded to the 2nd respondent for fresh consideration of the issue, after issuing notice and giving opportunity to the petitioner and after furnishing relevant documents including the documents sought by him vide letter dated 27.12.2007. Till the said exercise attains finality, the interim order granted by this Court on 31.12.2007 in WPMP.No.37323 of 2007 shall continue to operate. No order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

12.07.2017
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