



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU
and
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD) No.105 of 2018

and

C.M.P.(MD) Nos. 529 and 2839 of 2018

The Assistant Executive Engineer,
Distribution / Kovil,
TANGEDCO, Subramaniamapuram,
Madurai.

... Appellant /Respondent

-vs-

Sri Venkatagiri Modern Rice Mill,
A Partnership Firm Represented by one of its
Partner S.Baskaran,
NO.37A, Pillayarpalayam Road,
Therkkuvasal, Madurai - 625 001.

... Respondent / Writ
Petitioner

Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order, dated 13.11.2017, made in W.P.(MD) No.13625 of 2015.

Prayer in WP(MD)No.13625 of 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records of the Respondent in respect of the impugned Final Assessment order under proceedings No.Ka.No.U.Se.Po./Pa/Ko/Va.Aa/Ko/Minthiruttu/A.No.062/2014-15, dated 06/06/2014, quash the same as illegal, ultra virus, arbitrary, malafide and not valid in law and in consequence directing the respondent to repay a sum of Rs.10,60,000/- to the petitioner within a time frame as may be fixed by this Court.

For Appellant : Mr.Rajendran
for Mrs.S.Srimathy

<https://hcservices.ecourts.gov.in/hcservices/> : Mr.M.Ponniah

**JUDGMENT****[Judgment of the Court by K.RAVICHANDRABAABU, J.]**

WEB COPY This Writ Appeal is filed against the order made in W.P. (MD) No.13625 of 2015 dated 13.11.2017. The respondent in the writ petition is the appellant. The writ petitioner challenged the final assessment order dated 06.06.2014 and consequently, for a direction to the respondent to repay the sum of Rs.10,60,000/- to the writ petitioner.

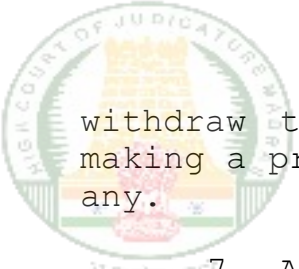
2. The dispute between the parties is arising out of alleged energy theft. The writ court, after hearing both sides, found that no proper opportunity of hearing was provided to the writ petitioner before passing the impugned final assessment order. Therefore, the writ court set aside the impugned order and remitted the matter back to the concerned competent authority for fresh consideration with a further direction to the said authority to pass appropriate orders on its own merit and in accordance with law, after affording due opportunity of hearing to the petitioner. The writ court also issued a direction to the respondent to deposit the amount already deposited by the petitioner in an interest bearing account in any one of the nationalized banks and thereafter to take a appropriate decision based on the decision rendered in the appeal.

3. Challenging the said order, the present Writ Appeal is filed before this Court. Though the present Writ Appeal is filed against the impugned order passed by the writ court, it is admitted by both sides that, pursuant to the said order of the writ court, fresh order has been passed by the authority and the said order is also put to challenge before this Court by the respondent herein in W.P. (MD) Nos. 4017 of 2018 and 4018 of 2018. It is stated that both writ petitions are still pending.

4. When that being the factual position, we do not think anything survives in this Writ Appeal for further adjudication, since the order passed by the writ court has been worked out and consequently fresh order has been passed by the said authority. Since the correctness or otherwise of the order passed by the authority is a matter which has to be gone into in the said writ petitions, we are not expressing any view on the contentions raised by the appellant.

5. However, as rightly pointed out by the learned counsel for the appellant, the amount deposited by the respondent to the credit of this writ appeal as directed by the writ court can be withdrawn by the appellant, since fresh order is passed by the authority as stated supra, in pursuant to the order passed in the writ petition.

6. Therefore, the appellant is permitted to withdraw the said deposited amount. However, this order permitting the appellant to



withdraw the amount will not preclude the respondent herein for making a prayer before the writ court seeking appropriate remedy, if any.

7. Accordingly, this Writ Appeal is disposed of. No costs. Consequently, C.M.P.(MD) Nos.529 of 2018, 2839 of 2018 are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar

To

The Assistant Executive Engineer,
Distribution / Kovil,
TANGEDCO, Subramaniamapuram,
Madurai.

+ 1 CC TO Mr.S.M.S.JOHNNY BASHA, ADVOCATE IN SR No. 71163
+ 1 CC TO Mr.M.PONNIAH, ADVOCATE IN SR No. 71072

CM

TE/SKN-RSK/SAR-2 : 17/07/2018 : 3P/4C

W.A.(MD) No.105 of 2018 and
C.M.P.(MD) Nos. 529 and 2839 of 2018
04.07.2018