

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE MS JUSTICE J.UMA DEVI

Writ Appeal No.850 of 2018

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in I.A.No.1 of 2018 in W.P.No.17721 of 2018 dated 17.05.2018. The appellant herein invoked the jurisdiction of this Court, filing W.P.No.17721 of 2018, seeking a mandamus to declare the action of the Superintending Engineer, Southern Power Distribution Company of Telangana Limited in demanding, vide letter dated 07.05.2018, a sum of Rs.27,57,17,780/-, and the consequential action of the Superintending Engineer in disconnecting power supply on 11.05.2018, as illegal and arbitrary.

By the order under appeal, the Learned Single Judge suspended the order dated 07.05.2018 subject to the condition that the appellant-writ petitioner deposited Rs.10.00 crores with the respondents within a period of four weeks. The Learned Single Judge directed the respondents to restore power supply to the appellant-writ petitioner on condition of deposit of Rs.5.00 crores forthwith, and the balance Rs.5.00 crores in another two weeks.

Sri A.R.L.Sundareshan, learned Senior Counsel appearing on behalf of the appellant-writ petitioner, would submit, placing reliance on Section 56(2) of the Electricity Act, 2003 (for short "the Act"), that only sums recoverable for a period of two years, from the date on the which the sum became first due, could have been directed to be paid by the appellant herein; the respondents had, instead, sought to recover amounts allegedly due from the year

2012 onwards; even though the appellant-writ petitioner was called upon to pay the arrears by 25.05.2018, the respondents had disconnected power supply by 12.05.2018 itself; and since the appellant-writ petitioner had, perforce, to pay Rs.10.00 crores with a view to have their electricity connection restored, this Court may consider directing the respondents to adjust the amounts so paid towards the subsequent monthly electricity bills of the appellant herein.

On the other hand the learned Additional Advocate General appearing on behalf of the respondents, while seeking two weeks' time to file a counter-affidavit, would submit that the appellant-writ petitioner had played a fraud on the respondent-Corporation, in collusion with some of its employees; several hearings were held, with the officials of the appellant-writ petitioner, before determining the amounts due from them; Section 56(2) of the Act has no application in the case of fraud; and all these factual aspects would be detailed in a counter-affidavit to be filed by the respondents in the writ petition.

As against the sum allegedly due in excess of Rs.27.5 crores, the Learned Single Judge had exercised his discretion in calling upon the appellant-writ petitioner to pay Rs.10.00 crores (around 37% of the total amount due) as a condition for passing an interim order suspending the notice dated 07.05.2018. In an intra-Court appeal, under Clause 15 of the Letters Patent, interference with the exercise of discretion by the Learned Single Judge would be justified only if the order under appeal suffers from a patent illegality. Even if the Appellate Court were to be satisfied that the opposite view, canvassed on behalf of the appellant, was more

attractive, even then it would refrain from interference, if the view taken by the Learned Single Judge is also a possible view. While exercising jurisdiction, under Clause 15 of the Letters Patent, a Division Bench would always bear in mind that the Learned Single Judge is not a Court subordinate, an intra-court appeal is from the High Court to itself, and the order under appeal should not be interfered with as a matter of course.

The submission of Sri A.R.L.Sundareshan, learned Senior Counsel, that the amount be adjusted in the monthly bills of the appellant-writ petitioner would mean that the entire amount of Rs.10.00 crores would be adjusted in a span of around three months, since, even according to the appellant-writ petitioner, their monthly electricity bills exceed Rs.3.00 crores. That would mean that, after three months from the date on which the order under appeal was passed, the appellant-writ petitioner would have the benefit of a blanket and unconditional stay thereafter. The main issue appears to revolve around the scope of Section 56(2) of the Act and, while the appellant-writ petitioner contends that the respondents lack jurisdiction to collect any amount from the appellant-petitioner beyond the said period of two years, the submission, urged on behalf of the respondents, is that the appellant-writ petitioner had played fraud and, consequently, Section 56(2) of the Act cannot come to their aid.

As all these matters necessitate an elaborate hearing, after the respondents file their counter-affidavit, we see no reason, in an intra-Court appeal, to interfere with the exercise of discretion by the Learned Single Judge. Suffice it to observe that the respondents shall file their counter-affidavit in the Writ Petition

within two weeks from today. It is open to the learned counsel, appearing on behalf of the appellant, to request the Learned Single Judge to take up the Writ Petition out of turn, any day after two weeks. We have no reason to doubt that, on such a request being made, the Learned Single Judge would give such a request its due consideration.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. We make it clear that we have not expressed any opinion on merits, and have merely noted the rival submissions, urged by learned Senior Counsel appearing on behalf of the appellant-writ petitioner and the learned Additional Advocate General for the State of Telangana appearing on behalf of the respondents, only for the limited purpose of examining whether or not the order under appeal necessitates interference.

Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

25th June, 2018
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Date:25.06.2018

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