

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.25527 of 2013

and

M.P.No.1 of 2013

J. Madhavan

.. Petitioner

-vs-

The Executive Engineer (O & M) North,
Tamil Nadu Electricity Board,
Kancheepuram.

.. Respondent

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the entire records in connection with the impugned order of the respondent in KA.NO.EE/O & M/VA/KA/P.I/Ko/Madhavan/A.No. 022/13 dated 07.08.2013 and quash the same and consequently direct the respondent to conduct an enquiry enabling the petitioner to cross examine the witness and examine witnesses on his side.

For Petitioner : Mr.M.Sriram

For Respondent : Mr.P.Gunaraj

ORDER

Heard Mr.M.Sriram, learned counsel appearing for the petitioner and Mr.P.Gunaraj, learned counsel appearing for the respondent.

2. With consent of learned counsel on either side, this writ petition itself is taken up for final disposal.

3. This writ petition has been filed by a person, who owned a rice mill in Kancheepuram District. The allegations against the writ petitioner is that there is a theft of electricity, which resulted in a show cause notice dated 01.03.1999.

4. The petitioner's reply was not found to be satisfactory, resulting in an order of assessment dated 22.04.1999 demanding a sum of Rs.16,19,553/- (Rupees Sixteen lakhs nineteen thousand five hundred and fifty three only). This was put to challenge by the petitioner by filing a writ petition in W.P.No.8121 of 1999. The petitioner being aggrieved by that portion of the order in W.P.No.8121 of 1999 directing the petitioner to pay a sum of Rs. 2 lakhs so as to keep his service connection alive, a writ appeal in W.A.No.910 of 2001 was filed, and the writ appeal was disposed of by judgment dated 20.07.2001 by reducing the amount payable to 1 lakh in two installments. The petitioner has complied with the same. Subsequently the petitioner submitted a representation dated 18.03.2003 and 10.04.2003 and participated in the enquiry and deposition of witnesses were recorded on 29.04.2003, pursuant to which, the assessment order was passed on 26.05.2003. This was once again put to challenge. This assessment order was challenged by the petitioner by filing a writ petition in W.P.No.16011 of 2003, which was disposed of by order dated 17.04.2013. Pursuant to the directions issued by this Court, a show cause notice was issued, the reply was received and ultimately the impugned assessment order has been passed.

5. In the interregnum, the petitioner had filed a writ appeal in W.A.No.1463 of 2013 against the direction issued in W.P.No.16011 of 2013. The said appeal was dismissed as withdrawn by judgment dated 17.07.2013. It is not in dispute that the entire amount, which is demanded as consumption charges, has been paid and what is now pending to be paid by the petitioner is Belated Payment Surcharge (BPSC). Admittedly, if the payments are not effected within the cut off date fixed in the relevant statute or Regulation surcharge will be levied. Surcharge is in the nature of compulsory extrications and there is no discretion vested with the authorities, who levied surcharge rather it is statutory imposition and unlike penalty, where discretion is given to the authority adjudicating the case.

6. Therefore, the payment of surcharge is automatic. Hence, the petitioner cannot run away from the penalty to pay surcharge. The question would be what is the date of liability arose in the instant case.

7. The petitioner's case is that the order of assessment stood quashed as early as in the year 2001 and subsequent proceedings were also interfered by this Court in the year 2013. In the interregnum period, the petitioner had the benefit of an interim order, subject to certain condition. Therefore, the petitioner's claim is that surcharge is not payable. This argument cannot be accepted for more than one reason. Firstly, there is delay in payment of charges. The assessment order was

quashed by the Court on 17.04.2001. Probably, the petitioner can be given partial relief only in respect of the period prior to passing of the assessment order. Pursuant to the order in W.P.No.8121 of 1999 in respect of subsequent order passed in W.P.No.16011 of 2003, the Court did not quash the assessment order dated 26.05.2003, but only directed fresh notice to be issued and the matter to be heard afresh. Therefore, no benefit will enure in favour of the petitioner to escape the liability to pay surcharge. With regard to the effect of the interim orders in the writ petitions and the writ appeals, it is settled legal principle that all the interim orders terminated on conclusion of the main proceedings. Therefore, the effect of the interim orders will be only suspension of the liability from being payable till a decision is taken in the matter. Therefore, the petitioner is liable to pay BPSC from the date of the fresh assessment order dated 26.05.2003.

8. In the result, the writ petition is partly allowed and the impugned order is quashed insofar as it demand BPSC on 07.08.2013 from the year 2001 and it is modified that the petitioner is liable to pay BPSC from the year 2003 i.e., after the assessment order dated 26.05.2003. The respondent is directed to make a revised computation and sent a demand notice to the petitioner giving reasonable time to settle the amount, failing which, the respondent is entitled to recover the same by resorting the power under the relevant Regulations. No costs. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Executive Engineer (O & M) North,
Tamil Nadu Electricity Board,
Kancheepuram.

+1cc to Mr.P.Gunaraj, Advocate, S.R.No.103754
+1cc to Mr.M.Sriram, Advocate, S.R.No.103763

W.P.No.25527 of 2013
and M.P.No.1 of 2013

SR(CO)
CS/04/02/2020