



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

W.P.No.40596 of 2015

And

M.P.Nos.1 to 3 of 2015

Hafiz Zafarul Haque Shakir
Publisher - "Fah-e-Eitidal"
Jamia Darussalam
Oomerabad
Vellore District
PIN- 635 808

...Petitioner

Vs.

The Superintendent of Post Offices
Office of the Superintendent of Post Offices
Tirupattur Division
Tirupattur - 635 601.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the respondent dated 04.09.2015 in No.L1/1-14/REE/Dlgs dated @ Tirupattur 635 601 and the consequential proceedings of the respondent dated 14.12.2015 in No.L1/1-14/REE/Dlgs dated @ Tirupattur 635 601 and quash the same.

For Petitioner : Mr. N.Murali Kumaran
for M/s. McGAN Law Firm

For Respondent : J.Madanagopal Rao
SCGPC

O R D E R

The demand notice dated 14.12.2015 issued by the Superintendent of Post office asking the petitioner to credit a sum of Rs.1,72,900/- in PO accounts enabling the post office to renew license as requested by the petitioner is under challenge in the present Writ Petition.

2.The learned counsel for the writ petitioner contended that the petitioner is a registered society and has obtained proper permission for availing the concessional rate for sent



theit magazine and based on the concession granted, they are utilising the services of the postal department. However, after a lapse of 10 years, the demand notice has been issued stating that the petitioner is liable to pay a sum of Rs.1,72,900/-. Regarding the proceedings dated 31.08.2005, the learned counsel for the petitioner reiterated that the permission granted was not revoked and therefore, the petitioner is entitled for the benefit and the audit objection raised behind the back of the petitioner cannot be a ground for issuing the demand notice. Thus, the Writ Petition is to be considered.

3.The learned Senior Central Government Standing Counsel raised serious objection with reference to the contentions raised on behalf of the petitioner. No doubt the benefit of concessional rate was extended in favour of the petitioner. However, the audit objection was raised in respect of the particular period i.e., September 2005 to October 2006, during which period no concession was granted by the postal department and the audit objection was raised for that particular period and accordingly, demand notice was issued.

4.The demand notice is to be treated akin to that of the show cause notice. Show cause notice has been issued by the competent authority setting out certain allegations and seek explanation or objections from the addressee concerned. Demand notices are issued determining certain facts by the competent authorities in accordance with the procedures and rules and asking the addressee either to comply with the demand or to file an appeal or objections in the manner known to law. Thus, the demand notice cannot be construed as a final proceedings. As far as the adjudicatory process is concerned, the demand notice has been sent by the competent authority with some proposal to pay or do something to pay the arrears or to perform certain obligations. On receipt of such demand notice, the person, who received has to comply with the demand or take a decision to object the same or approach the competent authority for redressal.

5.Contrarily, the demand notice may not provide a cause for an elaborate adjudication of disputed issues in a writ proceedings. Such original adjudication cannot be undertaken by a High Court in a Writ proceedings under Article 226 of the Constitution of India. Such adjudication requires scrutinisation of documents. Various disputed facts require examination of evidences in original. Thus, this Court is of an opinion that both the parties must be provided with an opportunity for of such an effective adjudication in order to form final opinion.

6.The power of judicial review of the High Court under Article 226 of the Constitution of India is to ensure the



process through which a decision is taken by the competent authority under the provisions of the Act and Rules. The demand notice is a proposed decision asking a person to comply with the provision or to raise objections if any before the competent authority or approach the appellate authorities as contemplated under the provisions of the statute or rules in so far as the scope of demand notice. These disputed facts are to be adjudicated by the competent authorities.

7.The impugned order does not provide the entire facts and circumstances and the High Court based on the affidavit filed by the parties cannot conduct such a roving enquiry and such an enquiry would result in miscarriage of justice or there is a possibility of omission, error or commission while dealing with the disputed facts.

8.Under these circumstances, the petitioner is at liberty to submit the objections, documents, evidences, etc., in respect of the demand notice impugned dated 14.12.2015 within a period of three weeks from the date of receipt of a copy of this order. On receipt of any such objection from the petitioner, the respondent is directed to conduct an enquiry with reference to the documents and evidences available and take a final decision and pass orders on merits and in accordance with law more specifically by passing a speaking order within the period of four months from the date of receipt of objections from the petitioner.

9.With these directions, this Writ Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

vsg

To
The Superintendent of Post Offices
Office of the Superintendent of Post Offices
Tirupattur Division, Tirupattur - 635 601.

+1cc to M/s.McGAN LAW FIRM, Advocate, S.R.No.68879

W.P.No. 40596 of 2015
And M.P.Nos. 1 to 3 of 2015

SSI(CO)
RGA(12/01/2022)