

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 3595 of 2016

Union of India and Others

.....

Petitioners

Central Government Counsel

Vs.

Anirudha Mohapatra and Others

.....

Opposite Parties

None

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

28.06.2022

Order No.

07.

This matter is taken up through hybrid mode.

2. The Central Government and its functionaries have filed this Writ Petition challenging the order dated 07.05.2015 under Annexure-1 passed in O.A. No. 260/00847/2014, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack, while setting aside the orders dated 30.05.2013 and 12.06.2014 passed by the Superintendent of Post Offices, Mayurbhanj Division, Baripada, directed the Petitioners to refund the amount already recovered from the Opposite Parties.

3. Learned counsel appearing for the Petitioners contended that the Opposite Parties are not entitled to get the amount which has been recovered from them by complying the provisions of law.

4. As it appears, the Order of the Tribunal was passed on 07.05.2015 and this Writ Petition was filed on 25.02.2016. On 17.05.2016, when the matter was listed for the first time, none appeared on behalf of the Petitioners. Thereafter, on

21.07.2016, also none appeared on behalf of the Petitioners. Therefore, on 05.01.2022, this Court directed the Petitioners to place on record the provisions of the relevant Rules. On 29.04.2022, upon instructions, learned Central Government Counsel appearing for the Petitioners sought for time to point out from the Counter Affidavit filed before the Central Administrative Tribunal, where the Petitioners have pleaded with regard to the Rules, which are wanted to be incorporated by way of amendment. On 13.05.2022, the Application filed by the Petitioners for amendment was allowed.

5. On the basis of the pleadings available on record, it appears that Opposite Parties No. 1 to 10 approached the Tribunal by filing O.A. No. 260/00847/2014 to quash the Order dated 30.05.2013 issued by the Superintendent of Post Offices, Mayurbhanj Division, Baripada (Petitioner No. 4), instructing the Postmaster, Baripada Head Office (Petitioner No.5) to effect recovery of Rs.1,85,520.00 towards electricity consumption charges from the Opposite Parties for the period from 01/2008 to 8/2010, as per DGP&T letter Nos. NB-26/4/56-28-69-55/NB and 28/69/65/NB dated 10.06.1960, 12.01.1961 & 27.01.1961 respectively. It has been, in the circumstances, directed to recover the amounts indicated against each from the pay of the Opposite Parties, besides recovering the said amounts from the retired/deceased officials as per CCS (Pension) Rules. On a Representation dated 13.07.2013 filed by Opposite Party No. 1 to the Superintendent of Post Offices, Mayurbhanj Division (Petitioner No.4) followed by another Representation dated 18.12.2013 and further an Appeal dated 24.05.2014 being

made to the Director Postal Services, Bhubaneswar, the former was communicated vide Order dated 12.06.2014 by the Superintendent of Post Offices, Mayurbhanj Division. The Opposite Parties denied the same. Pursuant to notice issued therein, the Petitioners filed a detailed Counter Affidavit resisting the claims of the Opposite Parties by stating that there is no provision for supply of electricity directly to the postal Staff Quarters and that electric supply has been made directly from the master meter to each Quarter with a provision of sub-meter for individual quarters. It is further contended that the electricity consumption charge is being paid by the Petitioners to the Electricity Department as per the reading of the master meter. It is made clear by the Petitioners that the master meter reading includes the total electricity consumption of individual meters, electric consumption for submersible water pump, street lights and stair-cases of the postal colony. The Internal Audit Inspection Party working under the Office of the Director of Accounts (Postal), Cuttack, pointed out that the Department has paid an amount of Rs. 2,81,960/- to the NESCO authority towards electric charges of Postal Colony, Baripada, for the period from 1/2008 to 8/2020, whereas an amount of Rs.96,440/- has been recovered from the occupants/Opposite Parties as the Department sustained a loss of Rs.1,85,520/- for the interest of occupants of Postal Colony, Baripada. The stand taken by the Opposite Parties in their Counter is that the electric charges for submersible water-pump, street lights and stair-case lights also borne by the occupants of the Postal Colony and accordingly, Internal Audit issued instruction of

recovery to save the Department from financial loss, based on which Petitioner No. 4 has issued orders of recovery.

6. Learned Counsel for the Opposite Parties relied on the decision of the Tribunal in OA No. 174 of 2001 disposed of on 13.12.2002 (**R.N. Nahak and Ors. Vs. Union of India and Ors.** and O.A. No. 455 of 2009 disposed of on 24.02.2020 (**KulamaniGiri & Ors. Vs. Union of India and Ors.**)

7. On the other hand, learned counsel for the Petitioners relied upon SR-325(2)(b) of Swamy's Fundamental Rules regarding Allotment of Government Residence (General Pool in Delhi) Rules, 1963, wherein it has been provided that in case of electric energy and water, the supply of which is not regulated by meters, the charges recoverable shall be fixed at such rates as the competent authority may deem reasonable.

8. Considering the rival contention of the parties, the Tribunal has come to conclusion stating that the communication dated 30.05.2013 wherein the rejection of the claim of the Opposite Parties made by the Authority indicates that the whole structure of the order of recovery by the Internal Audit Party rests upon the DG P&T letter No. NB-26/4/56-28-69-55/NB and 28/69/65, NB dated 10.06.1960, 12.01.1961 and 27.01.1961 respectively. But the said documents have not been placed on record in the Counter Affidavit by the Petitioners. So far as claim made by the Authority for recovery of the amount towards the submersible water pump, street lights and stair-case lights, the very vital and significant point is that onus lies on the Petitioners to establish that the purported recovery of

electricity charge was one of an indispensable conditions while issuing allotment Orders of quarter to the Opposite Parties.

9. The Tribunal, after due adjudication, came to a conclusion that the orders dated 30.05.2012 and dated 12.06.2014 are not sustainable in the eye of law and set aside the same. More so, the reliance placed on SR 325(2)(b) of Swamy's Fundamental Rules regarding allotment of Government Residence (General Pool in Delhi) Rules has no nexus with the Opposite Parties. Therefore, the Tribunal has directed the Petitioners to refund the amount already recovered from the Opposite Parties within a period of sixty days from the date of receipt of the order.

10. Therefore, this Court does not find any error in the Order dated 07.05.2015 passed by the Tribunal in O.A. No.260/00847/2014. Accordingly, the Writ Petition merits no consideration and the same is dismissed.

Alok/Ananta

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE