IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.01.2022

Pronounced on : 09.02.2022

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. No.13145 of 2020
and
WMP. Nos.16268 of 2020

M/s.Ascenders Technologies Pvt Ltd
Represented by its Director
Dr. K.Thirugnanam R/o Block No. 19
Flat No. 402, Bolineni Hills Side,
Perumbakkam Main Road,
Nookampalayam, Chennai-600 126. ...Petitioner

Vs.

1.The General Manager,
NSIC Software Technology Park, Sector B-24,
Guindy Industrial Estate, Ekkaduthangal,
Chennai 600 032.

2.The Estate officer,
Office of the Estate officer NSIC Ltd,
NSIC Bhavan, Okhla Industrial Estate,
New Delhi 20. ...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, Calling for the records of the 2nd respondent proceedings in EO / STP - Chennnai / 18 - 19/1 dated 01.03.19 and quash the same being illegal, invalid without jurisdiction and violating the principles of natural justice and contrary to the law or issue such other writ direction as this Honorable court deems fit and proper in the circumstances of the case.

For Petitioner : Mr.D.Selvam
For Mr.D.Vijayakumar

For Respondents : Mr.Ajoy Kumar Gnanam R1

ORDER

This Writ Petition has been filed seeking to quash the proceedings of the 2nd respondent in EO / STP - Chennnai / 18 – 19/1, dated 01.03.19.

2. The brief facts of the issue are as follows:

The petitioner is a private company, which is registered under the Companies Act, 1956 and the company comes under Micro Scale Industries and followed the guidelines of National Small Industries Corporation (NSIC). The petitioner company was situated at module No.202, First Floor, B-24, Guindy Industrial Estate, Chennai (1170 Sq.ft.) which was owned by the first respondent and they provide end-to-end solutions along with IT consulting and resources management services and also provides all types of business solutions to their clients. In the year 2011, the petitioner company occupied the modules 201, 202, 406, 409 & 410 and deposited a sum of Rs.9,38,700/- as security deposit to the first respondent. During the year 2012, the petitioner company surrendered module 201 and 202 to the first respondent and during the year 2014, the petitioner company surrendered module 410 to NSIC. Subsequently, during the year 2015, the petitioner company surrendered module 409 & 406 to NSIC. Thereafter, on 16.02.2015, the petitioner company repossessed and retained the module 201 and 202. Again on 02.03.2016, the petitioner company surrendered module 201 to NSIC. The petitioner company has paid a huge amount for diesel generator power, for which the first respondent charged an excess amount and collected huge money without any proper calculation.

3. It is the further case of the petitioner that as per the statement of charges, from the year 2011, the first respondent has collected huge amounts towards additional electricity charges for using the diesel generator power. Subsequently, the first respondent issued a legal notice dated 20.07.2017 calling upon the petitioner company to pay a sum of Rs.11,74,806/- as arrears of license fee and other maintenance charges. Aggrieved by the same, on 18.08.2017, the petitioner claimed refund of excess collection towards additional electricity charges and other charges and the petitioner company requested the first respondent to allow them to vacate the premises. But, the first respondent (NSIC) did not permit the petitioner to vacate the said premises and forced to occupy the premises for an additional 7 months. Therefore, the petitioner company is not liable to pay any license fee or other maintenance charges from the month of February 2018. Finally the petitioner was allowed to vacate the premises only on 21.07.2018. But the first respondent demanded rental and other charges for such period i.e., from February 2018 to July

2018 . The first respondent again issued a show cause notice under Section 7 of the Public Premises Act and directed the petitioner company to pay the outstanding due for a sum of Rs.20,43,160/- including the nil business period. The petitioner is a small entrepreneur and they were unable to pay such huge amount which was not in consonance with the agreement. Therefore, the first respondent filed the application for eviction and recovery of dues under Public Premises Act 1971 on the file of the second respondent. The second respondent issued notice to the petitioner to appear in person on 15.02.2018 at New Delhi. The petitioner, on 15.02.2018 appeared and filed their objection. Again the case was posted on 08.03.2018 and on that day, the petitioner company filed their objection and thereafter, the case was posted on 19.12.2018. Due to ill health, the Director of the company was absent. Without considering all the materials, the second respondent passed the impugned order dated 01.03.2019 directing the petitioner company to pay a sum of Rs.20,43,160/- with regard to the dues relating to module 202 occupied from 16.02.2015 to 21.07.2018 within the stipulated period. Challenging the same, the petitioner has filed the present writ petition before this Court seeking to quash the proceedings of the second respondent.

4. Learned counsel for the petitioner submitted that in the said complex, there are approximately 20 companies occupying the premises. Most of the companies were operating three shifts with full capacity of 30 persons in each module, but the petitioner operated only one shift with an average of 15 persons. The petitioner company, from the year 2011 onwards, occupied the module Nos.201, 202, 406, 409 & 410, for which the petitioner company deposited a sum of Rs.9,38,700/- as security deposit. The petitioner company surrendered all the modules, which was occupied by them, periodically and finally retained only one module No.202 for the purpose of their business from the year 2015. The first respondent provided house keeping and diesel generator power backup for the petitioner's company. As per the agreement, the petitioner company paid all the rental, house keeping and other charges regularly. The first respondent have collected exorbitant amount from the petitioner company towards additional electricity charges for using the diesel generator power by using wrong calculation method. The petitioner company made a representation to the first respondent to furnish the particulars of the electricity charges which was consumed by them. But the first respondent has sent the statement of charges with wrong calculation. The petitioner company has paid all the rent and other charges up to date. Learned counsel further submitted that the petitioner company has paid additional electricity charges alone for a sum of Rs.7,34,454/- and that petitioner company was overcharged for a sum of Rs.5,50,000/-. The petitioner claimed return of the excess amount which was paid earlier and the first respondent failed to produce proper calculation and issued legal notice

to the petitioner company on 20.07.2017, which is illegal and unsustainable. From the year 2011, the petitioner company raised queries on many occasions to the first respondent with regard to the additional electricity charges and continuously requested to fix separate meters to measure the consumption of electricity power. But the first respondent failed to do so. Without any proper calculation, the first respondent fixed an additional charges for a sum of Rs.20,43,160/- which was totally wrong. The second respondent, without considering all these said facts, passed the impugned order based on the legal notice issued by the first respondent and directed the petitioner company to pay the huge amount, which is unsustainable. Hence, the learned counsel prays to allow this petition.

5. Per contra, Learned counsel for the first respondent submitted that the petitioner company approached the first respondent and occupied the module No.202 (1170 Sq.ft.) for their business, for which, they have entered into an agreement on 24.05.2016. The first respondent have provided diesel generator power backup for the petitioner's company. As per the agreement, the first respondent has rightly calculated the the charges towards the diesel generator power and other charges and given statement of charges to the petitioner's company. As per the agreement, if the petitioner company failed to pay the license fee and other charges, the amount is recoverable with interest at the rate of 18% per annum for such default. The petitioner company was irregular in the payment of the license fee and other charges from April 2016. While that being the fact situation, the first respondent issued show cause notice to the petitioner's company dated 20.07.2017 to pay a sum of Rs.11,74,806/- along with arrears as on 20.07.2017. In reply, dated 18.08.2017, the petitioner company refused to pay the arrears and refused to vacate the premises. Again notice was issued by the first respondent dated 07.02.2018 under Section 4 of the Public Premises Act 1971 for eviction of the premises. Subsequently, on 21.07.2018, the petitioner's company vacated the premises and at the time of vacating the premises, the company did not clear all the outstanding dues with the first respondent. Therefore, the first respondent filed a petition before the second respondent viz., Estate Officer, New Delhi for the payment of outstanding dues by the petitioner company. The outstanding amount is Rs.20,43,160/- towards arrears of license fee and other utility charges upto 21.07.2018. The second respondent sent notice to appear the authorized person for the company to file his explanation for the Show Cause Notice issued. The Petitioner's company filed objections on 15.02.2018 & 03.12.2018. The second respondent, after verifying all the documents, rightly assessed the outstanding amount and directed the petitioner's company to pay a sum of Rs.20,43,160/- vide impugned order dated 01.03.2019. Since the Petitioner has no other efficacious remedy, he has approached this Court by filing the present Writ Petition praying for

passing of an order by this Court to call for the records of the impugned order dated 01.03.2019 passed by the second Respondent and to quash the same.

6. Heard the learned counsel for the petitioner and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.

7. The facts in the present case are not in dispute insofar as to the allotment of module to the petitioner and the deposit made by the petitioner towards the said allotment. The surrender of certain modules by the petitioner is also not disputed. However, it is the case of the respondents that the petitioner has failed to deposit the licence fees and other admissible charges with effect from April, 2016 and inspite of the legal notice sent by the respondent, no action was forth coming from the petitioners. It is the stand of the respondent that a sum of Rs.20,43,160/- is due and payable by the petitioner, and non-payment of the said amount, inspite of demand was the reason for the issuance of the show cause notice under the Public Premises (Eviction of Unauthorised Occupants) Act. Though the petitioner has sent his explanation, however, it is the case of the respondent that no material whatsoever has been placed to substantiate the payment. It is further evident from the show cause notice that the amount of Rs.20,43,160/- is the dues pertaining to licence fees, house keeping charges, DG and electricity charges along with admissible tax for the module 202 since April 2016 till 21.7.2018. It is the categorical stand of the respondent that the extra charges, which the petitioner claims to have paid would have no relevance to the payment towards the aforesaid dues and, therefore, they cannot be mingled so as to get the petitioner absolved.

8. From a careful perusal of the above show cause notice, it is clear that certain charges have been raised against the petitioner, which are due to the respondent, which have not been paid by the petitioner till date, thereby inviting the show cause notice. Though the petitioner claims to have paid amounts to the respondent, however, no material whatsoever has been placed before this Court to substantiate its case that the amount claimed has already been paid by the petitioner. The materials that are placed in the typed set of documents relate to the communications exchanged between the petitioner and the respondent and no document relatable to payments made by the petitioner to the respondent has been placed. Such being the case, there exists a dispute with regard to payment of amount between the petitioner and the respondent, this Court cannot interfere in the matter by exercising its jurisdiction under Article 226 of the Constitution as the Court cannot enter into disputed questions of fact.

9. For the reasons aforesaid, this Court is not inclined to quash the impugned order and, accordingly, this writ petition fails and the same is dismissed. Consequently, connected miscellaneous petitions are also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The General Manager,
NSIC Software Technology Park, Sector B-24,
Guindy Industrial Estate, Ekkaduthangal,
Chennai 600 032.

2.The Estate officer,
Office of the Estate officer NSIC Ltd,
NSIC Bhavan, Okhla Industrial Estate,
New Delhi – 20.

+1cc to Mr.Ajoy Kumar Gnanam, Advocate SR. No.8255
+1cc to Mr.D.Vijayakumar, Advocate SR. No.8800

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and
WMP. Nos.16268 of 2020

AKII (CO)
PR (15/02/2022)