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V.R. Radhakrishnan Vs. the Executive Engineer

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Court : Chennai

Decided On : Feb-10-2012

Judge : R.Sudhakar, J.

Acts : Constitution of India - Articles 226

Appeal No. : W.P.No. 40828 of 2002

Appellant : V.R. Radhakrishnan

Respondent : The Executive Engineer

Advocate for Def. : Mr.N.Srinivasan, Adv.

Advocate for Pet/Ap. : Mr. C. Prakasam, Adv

Judgement :

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the entire records insofar relates to the proceedings of the first respondents in his proceedings in letter No.EE/W/MDU/AE/I ER/AA No. 09/02-03/D.No.1129/02, dated 30.10.2002 and quash the same.

ORDER

1. This writ petition is filed praying to issue a writ of Certiorari to call for the entire records insofar it relates to the proceedings of the first respondents in his

proceedings in letter No.EE/W/MDU/AE/I ER/AA No. 09/02-03/D.No.1129/02, dated 30.10.2002 and quash the same.

2. The petitioner is a company by name Sri Valli Rubbers and is a consumer of power in Service No.1541 TF III B. On 23.8.2002 at 11.10 hours, Anti Power Theft squad made a surprise inspection of the petitioner industry in the presence of one Selvaraj, representative of the petitioner industry and they found a hole on the top of the meter and it was found that through the hole, the meter was tampered, the recording mechanism was altered, the security seal was also tampered and thereby, the authorities concluded that there was theft of energy. A police complaint was lodged in Cr.No. 941 of 2002 on 23.8.2002 before the Subramaniapuram Police Station. An observation mahazer was prepared on the same day and a show cause notice dated 21.9.2002 was issued for which, the petitioner gave a reply on 10.10.2002. Based on the show cause notice, reply and other material records, an order came to be passed by the Executive Engineer, determining certain amount as due and payable towards theft of energy. The sum determined was at Rs.1,91,736/- of which, Rs.63,920/- was already paid leaving a balance amount of Rs.1,07,816/-. Though the order states that an appeal can be filed against the said order before the Superintending Engineer, Madurai, the petitioner chose to file the writ petition and the following interim order was passed on 11.12.2002. The petitioner seeks to modify the order passed by this Court dated 12.11.2002 in WP.M.P.No.63157 of 2002. By the said order, this Court directed the petitioner to pay instalments up to the end of 5th instalment namely 15.3.2003.

2. Learned counsel for the petitioner states that the petitioner has already paid more than Rs.60,000/- and that has not been mentioned before this Court when the interim order was passed. As on date, the petitioner states as against a sum of Rs.1,91,000/- he has paid Rs.75,000/-

3. Considering the same, the order dated 12.11.2002 in WP.M.P.No.60477 of 2002 is modified to the following extent.

The petitioner is directed to deposit a sum of Rs.20,000/- (Rupees twenty thousand only) within a period of four weeks. Interim stay is granted subject to the

said condition. Notice.

3. The various grounds raised in the writ petition relate to a dispute that the petitioner raised with regard to the manner of inspection, the mahazer report etc. These are all factual disputes raised by the petitioner. The respondents have filed a counter affidavit specifically objecting to the filing of the writ petition stating that an appeal remedy is available and since the same has not been exhausted, the writ petition has to be dismissed. Para 9 of the counter affidavit reads as follows:-

The respondents respectfully submit that the petitioner has not preferred an appeal before the Appellate Authority as per clause 12.00 of the terms and conditions of supply of Electricity. The petitioner without exhausting the appeal remedy before the Superintending Engineer, who is the Appellate Authority and straightawy filed the above writ petition before this Hon'ble Court. On the short ground itself, the above writ petition may be dismissed.

4. In such view of the matter, considering the disputed issue raised by the writ petitioner and in view of the alternative remedy available by way of appeal, this Court is not inclined to go into the merits of the claim except to direct the petitioner to approach the appellate authority or any other forum as mentioned in the impugned order, if so advised. This writ petition is disposed of accordingly. No costs.

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