
(2011) 05 AHC CK 0420
In the Allahabad High Court
Case No : C.M.W.P. No. 15788 of 2011

Suresh Kumar

APPELLANT

Vs

U.P. Power Corporation, Lucknow and others

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Citation : (2011) 05 AHC CK 0420

Hon'ble Judges : Satya Poot Mehrotra, J;Rajesh Chandra, J

Bench : Division Bench

Advocate : V.S. Rajpoot, for the Appellant; Pankaj Kumar Shukla, Raj Kumar Sharma . Raj Narayan Gupta and C.S.C, for the Respondent

Judgement

Satya Poot Mehrotra and Rajesh Chandra, JJ.—Counter-affidavit and rejoinder-affidavit have been exchanged between the parties. The writ petition is being disposed of at this stage with the consent of the learned counsel for the parties. The present writ petition has been filed, inter alia, praying for quashing the citation dated 20th December, 2010 (Annexure-8 to the writ petition) and the Assessment (described as "Provisional Assessment") dated 1.5.2008 (Annexure-6 to the writ petition). It appears that checking was made in the premises of the petitioner on 10th January, 2008. Theft of electricity was allegedly detected. Copy of the Checking Report has been filed as Annexure-CA-1 to the counter-affidavit filed on behalf of the respondent No. 2.

2. Shri Pankaj Kumar Shukla learned counsel for the respondent Nos. 1 and 2, on the basis of instructions received by him, has stated that pursuant to the said checking. Provisional Assessment dated 29.2.2008 was made in respect of the petitioner. A photostat copy of the Communication No. 191 dated 29th February, 2008 has been produced by Shri Pankaj Kumar Shukla stating the same to be the Provisional Assessment in respect of the petitioner. Let the said document be placed on record.

3. A perusal of the said document shows that the same does not contain any

calculation in regard to the Provisional Assessment as per the relevant provisions of law. Even the amount provisionally assessed against the petitioner on account of the alleged theft of electricity, has not been mentioned in the said document. In our opinion, the said document cannot be said to be Provisional Assessment as contemplated under the relevant provisions of the Electricity Act, 2003 and the U.P. Electricity Supply Code, 2005.

4. It is further stated by Shri Pankaj Kumar Shukla, learned counsel for the respondent Nos. 1 and 2 that as no objections were received from the petitioner against the Provisional Assessment dated 29th February, 2008, Final Assessment Order dated 1.5.2008 was issued in respect of the petitioner. Copy of the said Assessment Order dated 1.5.2008 has been filed as Annexure-CA-2 to the counter-affidavit.

5. Shri V.S. Rajpoot, learned counsel for the petitioner states that no Provisional Assessment dated 29th February, 2008 was received by the petitioner. What was received by the petitioner, was the aforesaid Assessment Order dated 1.5.2008, copy whereof has also been filed as Annexure-6 to the writ petition. Treating the said Assessment Order dated 1.5.2008 to be Provisional Assessment, the petitioner submitted his Objections dated 22nd May, 2008 (Annexure-7 to the writ petition). Copy of the said objections has also been filed as Annexure-RA-2 to the Rejoinder Affidavit filed on behalf of the petitioner. It is submitted by Shri V.S. Rajpoot, learned counsel for the petitioner that the said objections have not so far been decided by the respondent No. 2.

6. Shri Pankaj Kumar Shukla learned counsel for the respondent Nos. 1 and 2 states that no objections dated 22nd May, 2008 were received by the respondent No. 2. In any case it is submitted by Shri Shukla the Assessment Order dated 1.5.2008 was Final Assessment Order and therefore, there was no occasion for filing any objections in respect of the same.

7. We have considered the submissions made by the learned counsel for the parties.

8. As noted above, even if the version of the respondent Nos. 1 and 2 regarding Provisional Assessment having been made on 29th February, 2008 were to be accepted, the said Provisional Assessment was not in accordance with law, as the same did not contain any calculation regarding the Provisional Assessment nor did it mention any amount in regard to the Provisional Assessment. In the circumstances, we are of the opinion that the interest of justice would be subserved by disposing of the writ petition with the following directions:

(1) Within four weeks from today, the petitioner will submit an application before the Executive Engineer concerned (respondent No. 2) alongwith copy of his aforesaid objections dated 22nd May, 2008 and a certified copy of this order.

(2) After receipt of the documents mentioned above, the Executive Engineer concerned (respondent No. 2) will proceed to consider the aforesaid objections of

the petitioner treating the aforementioned Assessment Order dated 1.5.2008 as Provisional Assessment, and dispose of the said objections by passing speaking order after giving reasonable opportunity of being heard to the petitioner in accordance with law.

(3) Till 16th August, 2011 or till the disposal of the objections by the Executive Engineer concerned (respondent No. 2). whichever is earlier, the recovery proceedings against the petitioner pursuant to the Citation dated 20th December, 2010 (Annexure-8 to the writ petition) will remain stayed.

(4) The recovery proceedings against the petitioner will abide by the decision of the Executive Engineer concerned (respondent No. 2) on the objections of the petitioner.

(5) In the event of failure on the part of the petitioner in complying with the requirements of Condition No. 1 above, this order shall stand automatically vacated.

The writ petition is accordingly disposed of with the aforesaid directions.