

(2010) 08 AP CK 0044

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 18380 of 2004 and 26062 of 2006

The Chief Electrical Inspector to Government of Andhra Pradesh, Mint compound and The Pay and Accounts Officer

APPELLANT

Vs

Sri. M. Veereswara Rao, Retired Deputy Chief Electrical Inspector to Government
 M. Veereswara Rao Vs The Chief Electrical Inspector to Government and The pay and Accounts Officer, Government of Andhra Pradesh

RESPONDENT

Date of Decision : 27-08-2010

Acts Referred:

Andhra Pradesh House Building Advance Rules — Rule 11, 11(2), 12

Citation : (2010) 08 AP CK 0044

Hon'ble Judges : R. Kantha Rao, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : G.P. for Services I in W.P. No. 26062 of 2006 and Y. Venkat Sastry, in W.P. No. 18380 of 2004, for the Appellant; Y. Venkat Sastry in W.P. No. 26062 of 2006 and G.P. for Services I in W.P. No. 18380 of 2004, for the Respondent

Judgement

R. Kantha Rao, J.—These two writ petitions arise out of the order dated 15.09.2004 passed by the A.P. Administrative Tribunal in O.A. No. 5706 of 2003 between the same parties and common questions of fact and law would arise for consideration. Thus, they are being disposed of by the following common order.

2. The factual matrix relevant for consideration in these writ petitions is that M. Veereshwara Rao, the writ Petitioner in W.P. No. 18380 of 2004 worked as the Deputy Chief Electrical Inspector, Government of Andhra Pradesh, Mint Compound, Hyderabad. While Mr. M. Veereshwara Rao was working as Junior Engineer in the office of the Electrical Inspector, Nizamabad, house building advance of an amount of Rs. 1,00,000/- was sanctioned to him through G.O. Ms. No. 134 EFST Department, dated 13.11.1987 for the purchase of ready built house flat bearing No. 5 from M/s Swagruha Developers Pvt. Ltd, Ameerpet, Hyderabad. Subsequently balance amount of Rs. 50,000/- was released through memo No. 109/OP/88-1 EFST dated 21.03.1988 and the said amount was paid to

the developers through demand draft. According to Mr. M. Veereshwara Rao, the entire house building advance was recovered together with interest in installments by May, 2001. But, to his surprise, on 04.01.2002 a show cause notice was issued to him by the department stating therein that why penal interest should not be imposed against him under Rule 11 of the A.P. House Building Advance Rules for not fulfilling the formality of mortgaging and insuring the property purchased by applying loan for which he submitted a detailed reply stating inter alia, that since the entire loan amount was cleared, it is not open for the department to charge any penal interest. In spite of the reply sent by him, the department issued a memo dated 25.02.2003 directing him to fulfill the formality as required and again the applicant submitted a detailed reply on 04.03.2003. Again Anr. memo, dated 25.03.2003 was sent directing the applicant to submit the original sale deed.

3. G.O. Ms. No. 134 EFST Department, dated 13.11.1987 relating to the house building advance Rules provides that acquisition of the house must be completed and the house shall be mortgaged to Government within three months of the drawl of the advance, failing which the entire advance together with interest thereon shall be refunded to Government forthwith. Therefore, according to the applicant M. Veereshwara Rao, the House building Advance Rules reissued on 06.11.1996 came into force only from the date of their issuance wherein penal clause was introduced. Thus, according to him no penal clause was in existence at the time of sanctioning of house building advance to him. However, in spite of the above stated several explanations sent by the applicant, the first Respondent passed the following impugned order:

Whereas, orders imposing penal interest @ 1 1/2 times to the normal interest were issued vide reference 4th cited, to Sri M. Veereshwara Rao, Deputy Chief Electrical Inspector to Government/Hyderabad for House Building Advance of Rs. 1,00,000/- sanctioned to him vide reference 1st cited.

Whereas, in spite of notices issued to Sri M. Veereswara Rao, Deputy Chief Electrical Inspector to Government/Hyderabad to fulfill the formalities, he has failed to fulfill the same, thereby attracting provisions of 11(2) of A.P. House Building Advance Rules and to effect the penal interest from the date of drawal of advance to the date of fulfillment of the formalities, already ordered.

Sri M. Veereswara Rao, Deputy Chief Electrical Inspector to Government/Hyderabad has cleared the principal as well as interest amount of House Building Advance, which is subject to verification of Accountant General//Andhra Pradesh, Hyderabad and the formalities so required remained unfulfilled.

Further, as per clarification issued by the Government vide reference 8th cited, and by which as per Rule 11(2) of A.P. House Building Advance Rules, penal interest amounting to Rs. 83,406/- which is however subject to verification again by Accountant General, A.P., Hyderabad is hereby ordered from the date of drawal of advance to the date of payment of principal. The above amount which

will be recovered from his salary under the provisions of Rule 12(b)(ii) of A.P. House Building Advance Rules in 10 monthly equal installments @ Rs. 8,341/- commencing from the month of August, 2003 payable on September 1st, 2003.

4. Aggrieved by the said order, the applicant M. Veereswara Rao filed O.A. No. 5706 of 2003 before the Andhra Pradesh Administrative Tribunal, Hyderabad. The learned Tribunal by the impugned order held that the applicant violated G.O. Ms. No. 134 by not mortgaging the property purchased and not insuring the same and he is bound to do so as per the House Building Advance Rules and that the Respondents are entitled to charge and recover penal interest from the applicant. Despite holding that the applicant cannot be exempted in terms of the rules, the learned Tribunal considering that the penal interest of an amount of Rs. 83,406/- is more or less equivalent to the principal amount of Rs. 1,00,000/- and also taking into account the inordinate delay on the part of the Respondents, who obviously woke up to the situation at the time when the applicant attained the age of superannuation, directed the Respondents to recover only 50% of the penal interest indicated in their memo.

5. Against the said order of the learned Tribunal, the applicant filed writ petition No. 18380 of 2004 seeking issuance of a proper writ, order or direction especially one in the nature of writ of mandamus declaring the proceedings of the first Respondent in Memo No. CEIG/AAO(Accts)/S1/AC3/03/DAO:1979, dated 06.08.2003 which was partly confirmed by the A.P. Administrative Tribunal in O.A. No. 5706 of 2003 dated 15.09.2004 as being arbitrary, illegal, unconstitutional, without jurisdiction and null and void. Whereas, Respondents 1 and 2 filed Writ Petition No. 26062 of 2006 seeking issuance of an appropriate writ or direction, more particularly, one in the nature of writ of certiorari calling for the records relating to and connected with order dated 15.09.2004 in O.A. No. 5706 of 2003 on the file of the A.P. Administrative Tribunal, Hyderabad and to quash or set aside the same as erroneous and contrary to law.

6. As per the G.O. Ms. No. 134, dated 13.11.1987 the house shall be mortgaged to the government within three months of the drawal of house building advance and on failure by the applicant, the entire advance together with interest shall be refunded to the government forthwith.

7. It further provides that the applicant immediately after purchase shall insure the house on his own cost for a sum not less than the amount of advance with interest thereon and shall keep it so insured against the damage by fire, lightening, cyclone and floods year after year till the advance with interest thereon is fully repaid to Government and deposit the policy with the Government.

8. From the terms of the G.O. the object underlying the above mentioned conditions appears to be only to secure the repayment of the loan. The department obviously did not issue any show cause notice to the applicant for complying the above mentioned conditions till the entire amount together with

interest which he took as house building advance was repaid. It was only after the entire amount was repaid, a show cause notice was issued to the applicant and despite the prompt explanations offered by the applicant in writing, the Respondents issued proceedings to recover the penal interest calculated at Rs. 83,406/- from the applicant by which time the applicant attained the age of superannuation.

9. It is true that the applicant did not take any steps to mortgage the house to the government and also to insure the same as required by the G.O. Ms. No. 134. But, the time stipulated for complying with the said conditions is only three months from the date of the drawal of the advance within the period of three months or at least within a reasonable time. Even after the lapse of the said three months period, the Respondents did not issue any directions to the applicant to comply with the said conditions.

10. Since the object underlying in G.O. Ms. No. 134 is only to secure the repayment of the loan without any default by the applicant, absolutely there is no rationale in initiating the action against the applicant who repaid the entire house building advance together with interest. There is no dispute about the fact that the applicant has been paying the instalments regularly and no notice was issued to him by the Respondents calling upon him to comply with the conditions of the said G.O. Further the conditions enable the Respondents to direct the applicant to refund the entire advance to the government. But no such steps have been taken by the Respondents till the entire amount of HBA was repaid by the applicant.

11. Issuing the impugned proceedings directing the recovery of penal interest of huge amount of Rs. 83,406/- nearly equivalent to the HBA itself just before the applicant attaining the age of superannuation, in our opinion is arbitrary and illegal. The conduct of the Respondents in not initiating any action directing the applicant to comply with the aforesaid conditions in the G.O., in our view, amounts to acquiescence on the part of the Respondents and owing to their conduct in sleeping over the matter for a period of several years till the entire amount together with interest was repaid, disentitles them from initiating any action in this regard because the HBA was repaid together with interest.

12. Therefore, we are not in agreement with the learned A.P. Administrative Tribunal in holding that the Respondents are justified in initiating the action against the applicant to recover the penal interest of Rs. 83,406/-, strictly in accordance with the said G.O. and the rules relating to the scheme of H.B.A. The learned A.P. Administrative Tribunal is not supposed to reduce the penal interest to 50%, as absolutely there is no basis for passing such orders. The said issue, though erroneously decided by the learned Tribunal, we do not want to lay much emphasis on the said issue, since totally we disapprove action initiated by the Respondents against the applicant because levying the penal interest and taking steps to recover the same is arbitrary and illegal.

13. Thus, we are inclined to hold that there is absolutely no merit in the appeal filed by the Respondents seeking issuance of a writ of certiorari to quash the order passed by the learned A.P. Administrative Tribunal in O.A. No. 5706 of 2003, dated 15.09.2004. However, while dealing with W.P. No. 18380 of 2004 wherein the applicant sought for issuance of a writ of mandamus, we have no hesitation to hold that the proceedings of the first Respondent in Memo No. CEIG/AAO(Accts)/S1/AC3/03, DAO: 1979, dated 06.08.2003 which are partly confirmed by the A.P. Administrative Tribunal in O.A. No. 5706 of 2003 are arbitrary, illegal and unconstitutional and in excess of the jurisdiction conferred on the Respondents and therefore, a writ of mandamus is hereby issued declaring the proceedings as null and void and we further direct the Respondents not to initiate any proceedings against the applicant/writ Petitioner in W.P. No. 18380 of 2004 for the purpose of recovery of penal interest in terms of G.O. Ms. No. 134 and the conditions attached to it and rules relating to house building advance.

14. In the result, W.P. No. 26062 of 2006 is dismissed with costs and W.P. No. 18380 of 2004 is allowed with costs.

W.P. No. 26062 of 2006:

MEMORANDUM OF COSTS

Respondents costs Rs. Ps Stamp for Vakalatnama 5 = 00 Advocate's Fee Not filed Translation and Printing Charges Nil ----- Total 5 = 00 -----
To be paid by the petitions to the Respondent herein as costs of the petition. (To be attached to the order, dated 27-08-2010 and made in W.P. No. 26062 of 2006 and dispatched on)

W.P. No. 18380 of 2004:

MEMORANDUM OF COSTS

Petitioner's costs Rs. Ps Stamp for Vakalatnama 5 = 00 Do used for the Memo 100 = 00 Do for judgment of the lower Court Do for decree of the Lower Court Value, of Copy Stamp paper used for enclosures Advocate's fee on Rupees Not filed Batta and Postage 50 = 00 Translation and Printing Charges Nil -----
Total 155 = 00 ----- The Respondents herein do pay a sum of Rs. 155/- to the Petitioner herein as costs of this petition as per the orders of their costs in W.P. No. 18380 of 2004 dt. 27-08-2010.