

(2013) 10 MAD CK 0137

In the Madras High Court

Case No : W.A. No. 1913 of 2011 and M.P. No. 1 of 2011

The Chief Engineer, Coimbatore and The Superintending
Engineer, Udumalpet

APPELLANT

Vs

M/s. Best Cotton Mills

RESPONDENT

Date of Decision : 22-10-2013

Acts Referred:

Citation : (2013) 10 MAD CK 0137

Hon'ble Judges : N. Paul Vasanthakumar, J;K. Ravichandrabaabu, J

Bench : Division Bench

Advocate : S.K. Rameshwar, TNEB, for the Appellant; R.S. Pandiyaraj, for the Respondent

Final Decision : Disposed Off

Judgement

N. Paul Vasanthakumar, J.—The present writ appeal is filed against the order dated 06.07.2011 made in W.P. No. 4142 of 2011. Learned counsel appearing for the respondent submitted that during the pendency of the writ appeal, the respondent has paid the amount of Rs. 62,30,286/- under protest and a letter for paying the said amount remitted by the respondent dated 07.02.2013, is also produced before us.

2. Even if the amount is not paid by the respondent, as the injunction order granted against the demand in W.P. No. 18789/2010 dated 25.08.2010 is in force, the Electricity Board cannot deny the consideration of the application seeking additional load on that ground i.e., the respondent is having arrears. The Division Bench of this Court in W.A. No. 1283 of 2013 dated 01.07.2013 also took the same view. The Madurai Division Bench of this Court in W.A. (MD) Nos. 246 and 247 of 2013 dated 26.06.2013 wherein one of us N. PAUL VASANTHAKUMAR, J. as a party also took the same view. In the said Judgment in paragraph Nos. 8 to 13, it is held thus:

8. The only reason stated in the rejection order dated 1.11.2012 is that the

respondent factory was in arrears to the Board and therefore its request cannot be considered until the arrears are cleared. As the demand of arrears is stayed and the stay order is still in force, rejection of application of the respondent seeking enhancement of additional load is not proper. In the impugned order of rejection dated 1.11.2012 the interim stay granted by this Court was not considered and referred.

9. It is well settled proposition of law that if an authority passes an order, inspite of grant of interim injunction or stay granted by the Court, operating against the authority, the decision taken without considering the interim injunction/stay is a nullity. The Hon''ble Supreme Court laid down the said proposition of law in the decision reported in 2010(4) Supreme 519 (Manohar Lal (D) by Lrs. v. Ugrasen (D) by LRs.) by following the earlier decisions reported in *Mulraj Vs. Murti Raghonathji Maharaj*, ; *Surjit and others Vs. Harbans Singh and others etc.* etc., ; *Delhi Development Authority Vs. Skiper Construction Company (P) Ltd.* and another, ; and *All Bengal Excise Licensees Association Vs. Raghabendra Singh and Others*, .

10. In the decision reported in *Nava Bharat Ferro Alloys Ltd. Vs. Transmission Corporation of A.P. Ltd. and Another*, it is held that a party, who fails in the main proceedings, cannot benefit from the interim order issued during pendency of the said proceedings. In the said case, the demand for payment of additional charges having been upheld, the appellant therein was directed to pay additional charges as interim order merges with the final order.

11. In this case, the interim stay is still in operation and the writ petition filed by the respondent is yet to be disposed of. Hence the submission of the learned counsel for the respondent that the respondent will abide by the final decision to be rendered in the writ petition challenging peak hour charges is bound to be accepted.

12. Applying the above said decision to the facts of the cases on hand, the direction given by the learned Single Judge is just and proper. As rightly contended by the learned counsel for the respondent, the claim of the appellants seeking arrear amount will depend upon the decision in the pending writ petition.

13. In the result, the writ appeals are dismissed and the orders of the learned single Judge dated 26.11.2012 and 8.1.2013 are confirmed. The third appellant is directed to consider the application of the respondent herein/writ petitioner dated 23.07.2012 seeking additional load from 400KVA to 830KVA within a period of four weeks from the date of receipt of copy of this order. No costs. Connected miscellaneous petitions are closed.

3. Applying the said decision to the facts of this case, the writ appeal is dismissed. If the amount is paid already by the respondent, there may not be any impediment to consider the application for additional load in accordance with the direction given by the learned Single Judge. Even if the amount is not paid by the respondent, the appellants cannot deny consideration of providing additional

load on that ground. However, it is made clear that if any amount is payable to the Electricity Board, which is under challenge, the respondent is directed to give an undertaking before the appropriate Officer stating that in case, if the challenge made by the appellants is ultimately decided against the respondent, the amount so payable will be paid. The writ appeal is disposed of with the above observations. The appellants are directed to consider the application of the respondent herein and pass orders within a period of four weeks from the date of receipt of copy of this order. No costs. The connected miscellaneous petition is closed.