

16.12.2020
D/L-9,
Ct-23
(AD)

(Via Video Conference)

WPA 479 of 2020

Joydev Ghorai

Vs.

The West Bengal State Electricity Distribution Company Ltd. & Ors.

Mr. Robiul Islam,

Mr. Sk. Jayeel Hossain,

.....For the petitioner.

Mr. Srijan Nayak,

Mrs. Rituparna Mitra,

..... For the WBSEDCL.

The petitioner says that on 10th March, 2012 the petitioner was given connection at his residence at Sabang, Paschim Medinipur, (hereinafter referred to as “the said premises”). The meter installed at the said premises for recording the consumption was defective inasmuch as the display was not functioning. The petitioner refers to the photocopies of the reading card at page 21 & 22 of the writ petition to refer to the endorsement by West Bengal State Electricity Distribution Company Ltd. (in short “WBSEDCL). It, however, appears from page 22 of the writ petition that 427 units were recorded on 24th July, 2019. The petitioner further stays that all of a sudden on 1st August, 2020 the Assessing Officer visited the petitioner’s premises and allegedly found unauthorized use of electricity by the petitioner. The petitioner’s supply was disconnected on the same day itself. A police complaint was also lodged by the Assessing Officer with Sabang Police Station being Case No.334 of 2019

dated 2nd August, 2019. The complaint was registered under Sections 135(1)(a) and (b) of the Electricity Act, 2003 (hereinafter referred to as 'the said Act'). The Assessing Officer made a provisional assessment of the unauthorized consumption under the provisions of Section 126 of the 2003 Act and thereafter a final assessment has also been made on 24th August, 2019. The final order has been duly communicated to the petitioner.

The petitioner has two-fold grievance – disconnection on the ground of alleged detection of unauthorized use of electricity and - to the quantum assessed as unauthorized use of electricity. The petitioner prays for reconnection of electricity and challenges the quantum assessed as unauthorized use of electricity.

On behalf of WBSEDCL it is submitted that so far as the dispute as to the assessed amount under the final order of assessment is concerned the petitioner's remedy lies in preferring an appeal within 30 days from the date of the final order under the provisions of Section 127 of the 2003 Act. With regard to reconnection it is submitted by WBSEDCL that the petitioner is required to pay the entire assessed amount in view of the provisions of Section 135(1A) of 2003 Act and Clause 4.2.1 read with Clause 5.1 (b), 5.6, 5.7 and 6.3 of Regulation 55 published by the West Bengal Electricity

Regulation Commission on 7th August, 2013. WBSEDCL further submits that after a complaint having been lodged the scope of adjudicating the offences committed by the petitioner while using electricity in an unauthorized manner is within the domain of the Criminal Court trying the case.

The petitioner disputes the submission made on behalf of WBSEDCL so far as it relates to deposit or payment of the entire amount as assessed by the Assessing Officer for the purpose of the reconnection. The petitioner says that the Court has the discretion to fix an amount less than the entire assessed sum to be deposited or paid to get reconnection and such discretion should be exercised in the petitioner's case.

After hearing the parties and considering the materials on record two issues surface for consideration of this Court in the instant writ petition which are as follows:

- (1) Whether the petitioner can be granted any relief in his petition when the petitioner has disputed the quantum assessed under the final order of assessment dated 24th August, 2019;
- (2) Is the petitioner required to deposit or pay the entire assessed amount for the purpose of reconnection, if reconnection is ultimately ordered ?

So far as the first issue is concerned the Statute is very clear. On a conjoint reading of Sub-Sections 1,2 and 3 of Section 126, it is clear that the Assessing Officer has to first arrive at a provisional assessment on forming an opinion as to unauthorized use of electricity. The provisional assessment has to be served upon the person concerned which gives the said person a right to object to the provisional assessment either by filing a written objection or by appearing before the Assessing Officer. The final order is thereafter passed considering the objections that may be raised by the person concerned or in absence of such objection, within a period of 30 days from the date of service of the order of provisional assessment under the provisions of Section 126(3) of the 2003 Act. Section 127 gives a right to prefer an appeal against the said final order within 30 days from the date of the said order. Sub-Section 2 of Section 127 provides for a deposit of 50% of the assessed amount with the licensee for the purpose of entertaining an appeal.

The appeal has to be filed within a period of 30 days but considering the language of Sub-Section 1 of Section 127, I am of the opinion that the time to prefer an appeal can be extended. In the instant case, since the petitioner has challenged the quantum of the assessed amount the petitioner's remedy lies in preferring an appeal under the provisions of Section 127

of the 2003 Act. The petitioner in order to have the appeal entertained is required to deposit 50% of the assessed amount as per Statute.

Petitioner's case so far as it relates to the challenge to the assessed amount, therefore, has to go before the appellate authority. Since the petitioner has filed this writ petition on 9th January, 2020, i.e., much after expiry of 30 days from 24th August, 2019 being the date of the final order, the time to prefer an appeal is extended upto 24th December, 2020. The petitioner if approaches the appropriate appellate authority within 24th December, 2020 against the quantum assessed under the final assessment order dated 24th August, 2019 the said authority without going into the issue of limitation or the delay aspect in preferring the appeal shall decide the same on merits.

On the second issue on a reading of the third proviso of Sub-Section IA of Section 135 it appears that on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, the licensee or the supplier shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within 48 hours of such deposit or payment. The petitioner says that to prefer an appeal the petitioner is required to deposit 50% of the assessed amount. The disconnection of electricity

according to the petitioner is permissible in law and is a consequence of detection of unauthorized use of electricity in the instant case.

On the second issue the petitioner says that there is every possibility of change in the amount assessed under the final assessment order in appeal. If it is construed that the petitioner has to mandatorily deposit the entire money for the purpose of reconnection then the filing of appeal becomes otiose. After paying the full amount and getting reconnection preferring of appeal will be meaningless and for that reason 50% of the assessed amount has to be deposited for an appeal being entertained as per provision of Section 127(2) of the 2003 Act. That apart, if, the amount finally assessed is reduced in appeal the petitioner may not receive the benefit of the reduction. The petitioner's submission that the Court, therefore, has the discretion to direct reconnection on deposit or payment of an amount less than the entire amount assessed by the Assessing Officer in the final order of assessment has some acceptability. Petitioner has relied upon few orders of different Co-ordinate bench to demonstrate that the Court is empowered to exercise the discretion and the same has been exercised time and again.

On behalf of WBSEDCL it is submitted that preferring an appeal against the final order of assessment is different from reconnection. The petitioner

further says that the provision of payment of the entire amount for reconnection apart from Section 135(1A) is further clarified in the proviso to Clause 4.2.1 of Regulation 55. Referring to the said proviso it is submitted that the undertaking is to pay the provisionally assessed amount which means the entire amount provisionally assessed. By referring to Clause 6.3 of Regulation 55, it is further submitted by WBSEDCL that supply can be restored and/or reconnected on payment of the assessed amount. The wording of Section 135(1A), Clause 4.2.1 and Clause 6.3 of Regulation 55 therefore, leaves no doubt according to WBSEDCL that the petitioner has to pay the entire amount either provisionally assessed or the amount finally assessed for getting the disconnected supply restored. By referring to Clause 5.6 of Regulation 55 it is submitted on behalf of WBSEDCL that the provision for filing appeal and the 50% deposit for entertaining an appeal is different from the amount required to be deposited for restoring the supply which has been disconnected on detection of theft or unauthorized use of electricity. Separate provisions has, therefore, been made under Sections 126, 127 and 135 of the 2003 Act in this regard.

After considering the submissions advanced by the parties on this issue and the relevant provisions referred to hereinabove, I am of the view that the right to prefer

an appeal and deposit of the 50% assessed amount for the appeal being entertained are different from the restoration of a disconnected supply as a consequence of detecting theft or unauthorized use of electricity. The legislative intent according to me is to provide a consumer whose supply has been disconnected a respite from being without electricity till the amount for unauthorized use of electricity reaches finality. A considerable time may pass between the date of disconnection, provisional assessment, final assessment and the assessed amount reaching a finality in an appeal. To provide for an avenue to the consumer so that a consumer whose supply is disconnected does not stay without electricity during the period a mechanism for reconnection has been devised by the legislature and the regulatory commission while framing the regulation independent of the final adjudication of the assessed amount. The language of Section 135(1A) of 2003 Act and various clauses of regulation 55 speaks of payment or deposit of assessed amount thereby giving an indication that the entire amount assessed has to be paid but at the same time the language is such that it does not mean "shall" i.e. mandatory and cannot be interpreted as "may" i.e. discretionary. After going through the various provisions referred to above and the legislative intent to curl out the real intention, I am of the view that the provisions do not take away the

jurisdiction of this Court to exercise its discretion to direct reconnection without deposit or payment of the entire amount assessed either under the provisional order or under the final order. The exercise of the discretion, however, has to be sound and should be based on the principle of granting an ad hoc relief to a person whose line has been disconnected upon deposit or payment of not the entire amount till the assessed amount reaches finality. A person who is accused of theft is exposed to two-fold punishment - one under the criminal law in the criminal case which is instituted at the instance of the licensee and the other is by compensating the monetary loss that may have been suffered by the licensee due to unauthorized use of electricity. The Writ Court in the case like that in hand is exercising its discretion on a ad hoc basis by keeping the issue of final adjudication of the monetary compensation claimed by the licensee to be decided in the appeal and an interim deposit or payment for the purpose of reconnection of the disconnected supply till such final adjudication.

The deposit for entertaining an appeal is 50% of the assessed amount. This statutory provision can be a yardstick of the interim arrangement that may be made for restoration of supply till the amount required to be paid for unauthorized use of electricity reaches finality.

Considering all these aspects, I am inclined to

exercise the discretion in the case of the petitioner for the purpose of interim arrangement to enable the petitioner to enjoy electricity upon reconnection. Subject to the petitioner paying 50% of the amount assessed under the final assessment order dated 24th August, 2019 within 21st December, 2020, WBSEDCL shall restore the supply within 48 hours from the receipt of such payment. The petitioner, however, shall be liable to pay the regular bills that may be raised from time to time to enjoy the supply apart from the 50% of the disputed assessed amount. It will be open to the WBSEDCL to take any step as has been permissible in law for default in making payment of the regular bills. The Appellate Authority shall take into consideration the amounts already paid by the petitioner while realizing the 50% of the assessed amount on account of unauthorized use of electricity for the purpose of entertaining an appeal. It is also made clear that in the event the petitioner fails to prefer an appeal within the time frame provided, WBSEDCL will be at liberty to take all steps as permissible in law for realizing the amount under the final assessment order dated 24th August, 2019.

Nothing further remains to be adjudicated in the writ petition, the same is accordingly disposed of.

Since I have not called for affidavits, the allegations contained in the writ petition are deemed to

have not been admitted.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon usual undertakings.

(Arindam Mukherjee, J.)

