

16.12.2020
D/L- 13
(PP)

**WPA 1644 of 2020
(Via video conference)**

**Niranjan Maity
Vs.
West Bengal State Electricity Distribution
Company Limited & Ors.**

Mr. Sudip Sarkar,
Mr. Aninda Bhattacharya
....for the petitioner.

Mr. R. M. Chattopadhyay
....for WBSEDCL.

Petitioner disputes the assessment of unauthorised use of electricity and seeks reconnection.

On behalf of West Bengal State electricity Distribution Company Limited (in short WBSEDCL), it is submitted that unauthorised use of electricity by the petitioner was detected on 23rd February, 2018 and as a consequence whereof, the petitioner's line was disconnected. A final assessment bill as to the unauthorised use of electricity was raised by WBSEDCL on 5th March, 2018 for a sum of Rs.1,03,082/-

The petitioner did not pay any money under the final assessment order dated 5th March, 2018. Surprisingly, WBSEDCL also took no step for realising the said money.

It is the further case of WBSEDCL that on an inspection held on 27th August, 2019 it was detected

that the petitioner was again making unauthorised use of electricity by connecting to the main supply even though the petitioner's supply stood disconnected. By this process the petitioner has made an unauthorised use of electricity which was provisionally assessed at Rs.1,48,265/-. WBSEDCL says that by the letter dated 29th August, 2019 (appearing at page 18 of the writ petition), the petitioner was called for a hearing on 2nd September, 2019 at 1.00 p.m. for final assessment of the provisional assessment made on 28th August, 2019. The petitioner did not object to the provisional assessment or appear before the Assessing Officer disputing the provisional assessment and as such, a final assessment order has been passed on 29th August, 2019. The final assessment made on 29th August, 2019 is for a sum of Rs.77,636/-. The petitioner has deposited a sum of Rs.38,820/- against such dues of Rs.77,636/-. It is further submitted by WBSEDCL that the supply can be restored only if the petitioner pays the entire sum of Rs.1,03,082/- under the final assessment dated 5th March, 2018 and balance portion under the final assessment dated 29th August, 2019. It is also submitted on behalf of WBSEDCL that despite the final assessment order dated 29th August, 2019 having been passed and served on the petitioner, the petitioner has not

disclosed the same in the writ petition which has been filed on or about 24th January, 2020.

On behalf of the petitioner, it is submitted that no final assessment order made on 28th August, 2019 pursuant to the provisional assessment has been made or served to the petitioner. The petitioner disputes the quantum of the provisional assessment. The petitioner also seeks restoration of electricity on the ground being out of electricity since 28th August, 2019.

Any dispute as to the quantum assessed under a final assessment order is open to challenge in appeal under Section 127 of the Electricity Act, 2003.

The petitioner says that since no final assessment order was served on the petitioner, the petitioner could not prefer an appeal disputing the assessed sum. The petitioner, therefor, seeks leave to prefer an appeal as against the final assessment order, if made against the provisional assessment order dated 28th August, 2019.

So far as the final assessment order dated 5th March, 2018 is concerned, the petitioner has been able to show any payment. The final assessment order dated 5th March, 2018 cannot also be assailed in appeal after expiry of more than two and a half years.

Considering the materials on record and the submissions made on behalf of the parties, I am of the view that justice will be sub-served if the petitioner is directed to make payment of the sum of Rs.1,03,082/-

in two instalments, the first of which is payable on 24th December, 2020 and the second by 22nd January, 2021.

WBSEDCL, within 48 hours from the petitioner making the payment of the first instalment, i. e., 50% of Rs.1,03,082, shall restore the petitioner's supply subject to the petitioner paying the regular electricity bills for the period subsequent to reconnection. WBSEDCL, however, shall be entitled to disconnect the supply and take any steps as may be available to it on the petitioner's failure to pay the second instalment by 22nd January, 2021 or of the regular bills that may be raised after reconnection.

So far as the provisional order dated 28th August, 2019 is concerned, without going into the dispute as to whether the final order said to have been passed on 29th August, 2019 in terms of the provisional order, WBSEDCL has been served or not, the petitioner will be free to prefer an appeal against the said final order taking all points as may be available to him to challenge both the provisional and final order within 30 days from date. WBSEDCL shall serve the final order dated 29th August, 2020 on the petitioner by 21st December, 2020.

The appellate authority, if approached, while computing 50% deposit under the provisions of Section

127(2), shall take into account the payment of Rs.38,820/- made by the petitioner.

In the event the petitioner fails to prefer an appeal within the time frame provided, WBSEDCL shall be free to take all steps available in law for realising of the balance sum of the final assessment made on 29th August, 2019.

I have not gone into the merits of the matter and as such, the appellate authority, if approached, shall decide the appeal without being influenced by this order.

Nothing further remains to be adjudicated in this writ petition. The same is disposed of accordingly without any order as to costs.

Since I have not called for any affidavits, allegations made in the writ petition are deemed to have not been admitted.

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

(Arindam Mukherjee, J.)