

18.12.2020
D/L- 03
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 24199 of 2019

Mira Rani Pachal
Vs.
Calcutta Electricity Supply Company Ltd. & Ors.

Mr. Haradhan Banerjee,
Mr. Amitava Pain,
Mr. Partha Pratim Mukhopadhyay
....for the petitioner.

Mr. Om Narayan Rai,
Mr. Prashant Agarwal
...for CESC Limited.

Mr. Jahar Dutta,
Mr. Jaladhi Das
....for the State.

Affidavit of service filed in Court today be taken on record.

The petitioner says that the petitioner's electric connection has been disconnected on the allegation of unauthorised use of electricity. Petitioner seeks reconnection and also says that the provisional assessment order has not been served on the petitioner and as such, the petitioner could not object to the provisional assessment at the time of passing of the final order of assessment. The final order of assessment was passed on 5th November, 2019, which is annexed at page 46 of the writ petition. The petitioner, therefore, has been served with the final assessment order. The final assessment is of Rs.1,68,531/- which less than the provisional

assessment. The petitioner in other words is challenging the final assessment which includes the passing of the final assessment order without affording reasonable opportunity of hearing.

On behalf of CESC Limited, it is submitted that the provisional assessment order was served and only thereafter the final assessment has been made as required under Section 126 of the Electricity Act, 2003 (hereinafter referred to as the 2003 Act). It is further submitted on behalf of CESC Limited that the remedy of the petitioner lies in preferring an appeal under Section 127 of the 2003 Act when the petitioner is disputing the assessment.

After hearing the parties and considering the materials on record, two issues surface for consideration which are as follows:-

- (i) What is the remedy of the writ petitioner in a case where he is disputing the final assessment?
- (ii) What is the amount the petitioner is required to pay in case of restoration?

On the first issue, the provisions of Sections 126 and 127 of the 2003 Act is absolutely clear. The petitioner's remedy when the petitioner is disputing the final assessment, be it the quantum or being passed without affording reasonable opportunity of hearing lies in appeal. The petitioner has to file an appeal

within 30 days from the date of final order. On a reading of the provisions of Section 127 of the 2003 Act, it, however, appears that the period of 30 days can be extended.

In the instant case, the final order was passed on 5th November, 2019 and as such, the 30 days' time period expired on 4th December, 2019. The petitioner has filed the writ petition on 24th December, 2019, that is after the 30 days' time period had expired. The time to prefer an appeal is, therefore, required to be extended to allow the petitioner to challenge the final assessment order on all grounds.

Considering the present situation and that for a considerable period of time there was national lockdown as also lockdown in the State, the time to prefer an appeal by the petitioner is extended. The petitioner will be entitled to file the appeal as against the final order of assessment dated 5th November, 2019 within 31st December, 2020 taking all points available to him. In the event the petitioner approaches the appellate authority within the time frame, the appellate authority shall decide the petitioner's appeal within a period of 3 months from the date of being approached, subject to the petitioner complying with the provisions of Section 127(2) of the 2003 Act.

On the issue of reconnection, on reading the provisions of Section 135(1A) along with the various

clauses of Regulation 55, it appears that the petitioner has to either pay the provisional amount or the assessed sum. The discretion of the Court in directing a lesser sum than the provisional or assessed sum on a reading of such provisions appear to have not been taken away and an order can be passed directing the petitioner to pay a lesser sum for reconnection.

The writ Court while hearing a petition with a prayer for reconnection like one in hand is not deciding the quantum of the amount required to be paid by the petitioner for unauthorised use of electricity. The final assessment has to be by the appellate authority upon deciding the appeal that may be filed by the petitioner. The arrangement for reconnection is, therefore, an ad hoc arrangement to give the petitioner a temporary respite from being without electricity till the amount payable by the petitioner for unauthorised use of electricity is finally decided.

The discretion available to Court for directing reconnection, however, has to be on sound principles. Section 127(2) of the 2003 Act speaks of deposit of 50% of the assessed amount with the licensee for the purpose of entertaining the appeal. This can be a yardstick for the money that the petitioner is required to pay or deposit for the purpose of reconnection.

Considering the matter from these aspects, the electricity connection of the petitioner shall be restored

by CESC Limited within 48 hours from the date of payment of 50% of Rs.1,68,531/-, being the amount assessed under the final order dated 5th November, 2019 along with meter replacement charges and reconnection charges. The payment has to be made by 27th December, 2020.

The appellate authority while exercising jurisdiction under Section 127(2) of the 2003 Act shall take into consideration the amount paid by the petitioner for reconnection for the purpose of entertaining the appeal. In the event the petitioner fails to prefer an appeal within the time frame provided, CESC Limited will be free to take all legal steps including disconnection of electricity, if the same is reconnected, for realising the amount assessed under the final order of assessment dated 5th November, 2019.

It is made clear that the petitioner will have to pay the regular electricity bills for the period subsequent to the reconnection and it will be open to CESC Limited to take all legal steps as permissible in the event the petitioner makes default in payment of the regular electricity bills that may be raised by CESC Limited from time to time. CESC Limited will also be free to take all such steps as permissible in law for realising the balance sum of the assessed amount after the appeal is finally decided.

I have not gone into the merits of the case and the appellate authority shall decide the petitioner's case without being influenced by any observation made in 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.)