

16.12.2020
D/L- 04
(PP)

WPA 24293 of 2019

Hakibar Gazi
Vs.
West Bengal State Electricity Distribution
Company Limited & Ors.

Mr. Sukumar Ghosh
....for the petitioner.

Mr. S. S. Koley
....for WBSEDCL.

The petitioner is a consumer under West Bengal State Electricity Distribution Company Limited (in short WBSEDCL). The petitioner was hauled up for unauthorised use of electricity. An order of provisional assessment for a sum of Rs.1,12,899/- was made by WBSEDCL on 14th December, 2019. Admittedly, the order of provisional assessment was received by the petitioner and is annexed to the writ petition. In the order of provisional assessment, it was clearly stated that the petitioner is entitled to file written objection against the provisional assessment within a period of 15 days from the date of receipt of the said order of provisional assessment or appear before the Assessing Officer and Station Manager, Minakhan CCC, failing which the final order will be passed. The petitioner has filed this writ petition on 24th December, 2019 without either filing an objection or appearing before the Assessing Officer. The petitioner says that the

petitioner has challenged the provisional assessment in this writ petition on the ground that the same was passed without hearing the petitioner or issuing a notice of hearing prior to the provisional assessment was given to the petitioner. The petitioner refers to Section 126 of the Electricity Act, 2003 (hereinafter referred to as the 2003 Act) and a judgment reported in **2010(1) CHN (CAL) 645 (Arnab Ganguly & Anr. Vs. CESC Ltd. & Ors.)** in support of the contention that the petitioner should have been heard by the Assessing Officer prior to passing of the provisional assessment order.

On behalf of WBSEDCL, it is submitted that the final assessment has been made on 10th January, 2020, which has been duly served on the petitioner. The final assessment, according to WBSEDCL, was done in view of the statutory time frame and as the petitioner did not file any objection to the provisional assessment or appear before the Assessing Officer as mentioned in the provisional order.

The petitioner, however, disputes the service of the final assessment order.

After hearing the parties and considering the materials on record, I find that the grounds of challenge made out by the petitioner are unfounded for the following reasons:-

- (i) Sub-section (1) of Section 126 of the 2003 Act speaks of the Assessing Officer coming to conclusion as to a person indulging in unauthorised use of electricity upon inspection and provisional assessment to the best of the judgment by the Assessing Officer. The sub-section does not provide for any hearing prior to the Assessing Officer forming an opinion and making provisional assessment. It is also an admitted position that inspection was carried out and a complaint was lodged under the provisions of Section 135(1) (a) of the 2003 Act.
- (ii) Sub-section (2) of Section 126 speaks of service of the order upon the person in occupation or possession or in-charge of the place or premises.
- (iii) Sub-section (3) provides for objection to be raised against the provisional assessment before the Assessing Officer and the said officer to afford a reasonable opportunity of hearing to a person effected by the provisional assessment before passing a final order of assessment. The final order of assessment under the provisions of Section 126(3) has to be passed within 30 days from the date of service of the order of provisional assessment.
- (iv) On a conjoint reading of Sub-section (1), (2) and (3) of Section 126 clearly indicates that there is no scope of hearing or raising of objection prior to the provisional assessment being made by the Assessing Officer. The stage of objection comes only after the order of provisional assessment is served, which

was afforded to the petitioner in this case but was not availed.

- (v) Sub-section (4) of Section 126 further speaks of acceptance of the provisional assessment and payment of the amount provisionally assessed. This further clarifies that there is no scope of any hearing or procedure for any raising objection prior to the passing of the order of provisional assessment.
- (vi) In the instant case, the petitioner was called on by the order of provisional assessment to put in his objection and/or to appear before the Assessing Officer and object to the provisional assessment. The Assessing Officer, therefor, has afforded a reasonable opportunity of hearing to the petitioner. The petitioner instead of availing such opportunity as provided under the statute has filed this writ petition challenging the order of provisional assessment. The writ petition, therefor, is premature at the time when the same was filed without the petitioner exhausting the remedy available under the statute.
- (vii) The writ Court cannot lend assistance to the petitioner by giving a go-bye to the statutory provisions, particularly when a mandatory order is prayed for in exercise of writ of mandamus.
- (viii) The judgment referred to in Arnab Ganguly (supra) has no manner of application in the instant case. The said judgment was passed on a completely different factual background. In the instant case, the line of the petitioner has been disconnected and as such, there is

no apprehension of disconnection as in the case of Arnab Ganguly (*supra*).

- (ix) There was no stay on the Assessing Officer for passing of the final assessment though the writ petition may have been filed prior to passing of the final order of assessment. The Assessing Officer was, therefore, well within his jurisdiction owing to the statutory time limit to pass the final order of assessment.

Section 127 of the 2003 Act clearly provides for preferring of appeal by a person aggrieved by a final order made under Section 126. The petitioner's remedy, if any, therefor, lies in challenging the final order of assessment before the appellate authority in terms of the provisions of Section 127.

The appeal is required to be filed within a period of 30 days of the final order. In the instant case, the 30 days time period from 10th January, 2020, being the date on which the final order was made, has elapsed during the pendency of the writ petition.

The time to prefer the appeal is, therefor, extended by a period of 30 days from date. This extension is granted in view of the principles analogous to the provisions of Section 14 of the Limitation Act, 1963 and that the 30 days time period in preferring the appeal can be otherwise extended. Without going into the disputes as to service of the final order, WBSEDCL shall serve a copy of the final order of assessment

dated 10th January, 2020 by 21st December, 2020 to enable the petitioner to prefer the appeal.

The petitioner is without electricity. The petitioner will be entitled to reconnection if the petitioner pays 50% of the assessed amount under the final order of assessment. In the event the petitioner pays 50% of the assessed amount, WBSEDCL shall, within 48 hours from making of such payment, reconnect the petitioner's line.

The appellate authority shall consider the payment of 50% of the final assessment amount, if paid by the petitioner to compute the 50% of amount payable at the time of entertaining the appeal under the provisions of Sub-section (2) of Section 127 of the 2003 Act.

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.)