

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 514 of 2021

Imtiyaj Ahammad
Vs.
CESC Limited & Anr.

Mr. Indranil Halder
... For the petitioner

Dr. Madhusudan Saha Roy
... For CESC Limited

The petitioner was hauled up for unauthorised use of electricity during inspection carried out by the official of CESC Limited on 29th September, 2020. A provisional assessment was made on 29th September, 2020 and a bill for Rs.2,03,731/- was raised on the petitioner in terms of the provisions of Section 126 of the Electricity Act, 2003 (hereinafter referred to as the “said Act”). Subsequently, a final bill has been raised on 28th October, 2020 for a sum of Rs.2,03,731/-. The final order dated 28th October, 2020, according to CESC Limited, has been served on the petitioner on 2nd November, 2020.

So far as the final assessment order is concerned, the petitioner’s remedy lies under the provisions of Section 127 of the said Act in preferring an appeal against such final order before the Appellate Authority. The appeal has to be filed under the provisions of Section 127 of the said Act within 30 days of the said order.

On behalf of CESC Limited, it is submitted that the 30 days time limit provided in Section 127(1) of the said Act is a mandatory provision and cannot be extended under any circumstances. It is further submitted on behalf of CESC Limited that the order is dated 28th October, 2020. The 30 days time period has to be calculated from such date which expires on the expiry of 27th November, 2020. Even if the date of receipt of the said order i.e., 2nd November, 2020 is taken to be the starting point of the limitation, then also the appeal was required to be filed within 1st December, 2020. According to CESC Limited, the petitioner has admittedly received the final order dated 28th October, 2020 but has not challenged it even by 1st December, 2020. In such circumstances, the time period for preferring the appeal cannot be extended. The petitioner has to pay the entire amount under the final order to get reconnection of his electricity.

CESC Limited relies upon a judgment of this Court rendered in **Cal. Electric Supply Corpn. Ltd. & Anr. v. Kalavanti Doshi Trust & Ors.** reported in **2011 (1) CHN (Cal) 182** and an order dated **22nd December, 2015** passed in **MAT 1875 of 2015 with CAN 11971 of 2014 (The West Bengal State Electricity Distribution Company Ltd. & Ors. v. Pranab Kr. Sarkar)**.

In these two judgments and/or orders, the Division Benches of this Court have declined the relaxation granted by the learned Single Judge in allowing the party to prefer an appeal under Section 127 before the Appellate Tribunal.

It is also submitted on behalf of CESC Limited that the petitioner cannot be allowed to prefer an appeal by giving extension of time in view of the two Division Bench judgments cited by CESC Limited.

The propositions laid down in **Kalavanti Doshi Trust** (supra) and **Pranab Kr. Sarkar** (supra) having passed by the Division Benches of this Court are binding on a Single Bench unless the ratio laid down therein is overturned by a higher forum.

The situation as of now has, however, changed owing to the pandemic. The Hon'ble Supreme Court in its order dated **23rd March, 2020** passed in **Suo Motu Writ Petition (Civil) No.3 of 2020 (In re: Cognizance for Extension of Limitation)** has held as follows:-

“This Court has taken *Suo Motu* cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/application/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether

condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks.”

By a further order dated **6th May, 2020** passed in the same **Suo Motu Writ Petition (Civil) No.3 of 2020 (In re: Cognizance for Extension of Limitation)**, the Hon’ble Supreme court has held as follows:-

“IA No.48411/2020 – FOR DIRECTIONS

By way of filing this application for directions, the applicant has made the following prayer:

“To issue appropriate directions qua (i) arbitration proceedings in relation to section 29A of the Arbitration and Conciliation Act, 1996 and (ii) initiation of proceedings under section 138 of the Negotiable Instruments Act, 1881;”

In view of this Court’s earlier order dated 23.03.2020 passed in **Suo Motu Writ Petition (Civil) No.3/2020** and taking into consideration the effect of the Corona Virus (Covid 19) and resultant difficulties being faced by the lawyers and litigants

and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it is hereby ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

In case the limitation has expired after 15.03.2020 then the period from 15.03.2020 till the date on which the lockdown is lifted in the jurisdictional area where the dispute lies or where the cause of action arises shall be extended for a period of 15 days after the lifting of lockdown.

In view of the above, the instant interlocutory application is disposed of.”

These two orders are still in force and, as such, the limitation period prescribed under Section 127(1) of the said Act can be extended at the present even if **Kalavanti Doshi Trust** (supra) and **Pranab Kr. Sarkar** (supra) hold the fort.

In the facts and circumstances as aforesaid, the petitioner is permitted to approach the Appellate Authority within 5th March, 2021.

In the event, the petitioner approaches the Appellate Authority within the time-frame provided, the Appellate Authority shall hear out the appeal and pass a reasoned order within a period of three months from the date of being approached by the petitioner.

So far as the issue of reconnection is concerned, the petitioner is directed to pay a sum of Rs.1,03,731/- along with the reconnection charges and other cost and expenses as may be required for the purpose of reconnection within 4th March, 2021.

Subject to the petitioner paying such sum of Rs.1,03,731/- along with the reconnection charges and other cost and expenses as may be required for the purpose of reconnection, CESC Limited shall, within 48 hours from the date of the petitioner making such payment, reconnect the supply of the petitioner. The petitioner on the supply being reconnected shall continue to go on paying the regular bills that may be raised by CESC Limited from time to time. The payment of the balance sum of the bill in terms of the final order dated 28th October, 2020 will arise after disposal of the appeal.

The Appellate Authority while entertaining the appeal in terms of the provisions of Section 127(2) of the said Act shall take into account any amount that may be paid by the petitioner in terms of 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, is to be given to the parties, upon compliance of necessary formalities.

(Arindam Mukherjee, J.)