In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 9969 of 2021

M/s. B. Choudhury & Co.
Vs.
CESC Limited and others

With

W.P.A. 11519 of 2021
Smt. Anamika Choudhury
Vs.
The CESC Limited and others

For the petitioner	:	Mr. Kushal Chatterjee, Mr. Aniruddha Chatterjee
For the CESC	:	Mr. Madhusudan Saha Roy
Hearing concluded on	:	10.11.2021
Judgment on	:	16.11.2021

Sabyasachi Bhattacharyya, J:-

1. In view of the disputes raised in the two writ petitions being inter-connected, the matters were heard together and are being disposed of by a common order.

2. An inspection was held by an Officer of the CESC Limited on January 28, 2021, upon which the Inspecting Officer, in the capacity of an

Assessing Officer, passed an order of provisional assessment in terms of Section 126(1) of the Electricity Act, 2003 (hereinafter referred to as "the 2003 Act") in view of having found unauthorised use of electricity by M/s. B. Choudhury & Co., the petitioner in W.P.A. No.9969 of 2021, represented by its sole proprietress, Smt. Anamika Choudhury.

3. *Vide* final order of assessment dated February 19, 2021, a different Assessing Officer assessed the amount of Rs.10.18,444/- to be payable by the consumer, that is, M/s. B. Choudhury & Co.

4. W.P.A. No. 9969 of 2021 has been filed, challenging the final order of assessment dated February 19, 2021.

5. Subsequently, on March 31, 2021, another Assessing Officer passed a provisional order of assessment under Section 126(1) of the 2003 Act in respect of the same premises, being situated at 27, Dr. Sundari Mohan Avenue, Kolkata – 700 014, in respect of a different electric meter in the name of Smt. Anamika Choudhury in her personal capacity. It is relevant to mention that, here too, the Inspecting Officer himself had passed such provisional order of assessment.

6. On April 28, 2021, a different Assessing Officer passed the final order of assessment in terms of Section 126(3) of the 2003 Act.

7. The final assessment regarding the meter of Smt. Anamika Choudhury, was to the tune of Rs.31,035/-. *Vide* a communication dated May 12, 2021, the consumer Smt. AnamikaChudhury was requested by the CESC Authorities to liquidate the assessed claim of Rs.31,035/-, along with the sum of Rs.10,18,444/-, as assessed in the name of M/s. B. Choudhury & Co. by the final order of assessment dated February 19, 2021 in respect of the same premises.

8. Learned counsel for the petitioner in both the matters contends that, in view of the language of Section 126 of the 2003 Act, the Assessing Officer has to be a part of the inspecting team himself. By placing particular reliance on the expression “the Assessing Officer”, used in sub-section (3) of Section 126, learned counsel contends that the statute contemplates the Assessing Officer to be the same as the Officer who inspected the premises for the purpose of passing the order of provisional assessment under Section 126(1).

9. Learned counsel places reliance on a Division Bench judgment of this Court, reported at *2008(1) CHN 495 [Narayan Chandra KunduVs. State of West Bengal & Ors.]*, in particular paragraph no.13 thereof,and contends that the Division Bench had categorically held that Section 126 of the 2003 Act contemplates the Assessing Officer to be the same person as the Inspecting Officer.

10. In both the cases at hand, the Inspecting Officer who passed the order of provisional assessment was different from the Assessing Officer who passed the final order, which vitiates both the final orders of assessment, it is argued.

11. Learned counsel appearing for the petitioner further contends that the CESC acted *de hors* its jurisdiction in claiming the additional amount of Rs.10,18,444/- at the second instance, from Smt. Anamika Choudhury for the electric meter in respect of which she was a consumer in her individual capacity, along with the sum of

Rs.31,035/- which was assessed for the said separate meter in the name of Smt. Choudhury.

12. Learned counsel appearing for the CESC Limited in both the matters contends that the Division Bench judgment cited by the petitioner was on a different factual matrix. The said judgment, it is argued, was decided in the context of a comparison between Sections 126 and 135 of the 2003 Act.

13. It is further pointed out by learned counsel for the CESC that, unlike Section 135(1-A) of the 2003 Act, Section 126 of the said Act does not contemplate that the same Officer who was authorised to disconnect the supply line of electricity is to lodge a complaint in writing relating to the alleged theft.

14. It is further submitted that, in terms of Regulation 3.4.2 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013, the licensee (here the CESC Limited) shall be eligible to recover from a new and subsequent consumer the dues of the previous and defaulting consumer in respect of the same premises if a nexusis proved between the previous defaulting consumer and the new consumer. In the present case, there is clear proof of such nexus, in view of the inspection having revealed that the personal electric meter in the name of Smt. Anamika Choudhury was subsequently used for the purpose of running the hotel business in the name of M/s. B. Choudhury & Co., the connection of whose electric meter had previously been disconnected due to unauthorised use at the same premises.

15. Upon considering the language of Section 126 and that of Section 135 respectively of the 2003 Act, it is evident that the scopes of operation of the two Sections are different.

16. Section 126 falls under Part-XII of the said Act, concerning 'Investigation and Enforcement'. The said Section pertains to assessment, provisional as well as final, in the case of unauthorised use of electricity. The instances of "unauthorised use of electricity" have been clearly defined in Explanation (b) of Section 126(6) of the 2003 Act.

17. On the other hand, Section 135 falls under Part-XIV of the 2003 Act, which relates to 'Offences and Penalties', and pertains to theft of electricity.

18. Although the species"theft" may fall within the genus "unauthorised use of electricity", the converse is not true, that is, all instances of unauthorised use of electricity do not necessarily mean theft.

19. Section 135 of the 2003 Act provides for disconnection of electrical supply and subsequent lodging of a complaint in writing within 24 hours from such disconnection and the connected assessment.

20. On the other hand, Section 126(1) of the Act contemplates an order of provisional assessment of the electricity charges payable by a person indulging in unauthorised use of electricity or any other person benefited by such use.

21. Sub-section (2) of Section 126 contemplates service of the order of provisional assessment upon the person in occupation or possession or in charge of the place or premises and sub-section (3) provides that the person on whom such service of provisional order is effected shall be entitled to file objections, if any, against the provisional assessment before the Assessing Officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment, all the electricity charges payable by such person.

22. Explanation (a) of sub-section (6) of Section 126 of the 2003 Act clarifies that, for the purposes of Section 126, an 'Assessing Officer' is an officer of a State Government or Board or Licensee, as the case may be, designated as such by the State Government.

23. Although Section 126(3) of the Actstipulates that "the Assessing Officer", who is authorised as perExplanation (a) to Section 126(6), shall pass a final order of assessment,sub-Section (1) of Section 126 also describes the person authorised to provisionally assess as "the Assessing Officer". As such, in terms of Explanation (a) to sub-section (6), for the purpose of both sub-sections (1) and (3) of Section 126, the Assessing Officer means an Officer of a State Government or Board or Licensee, as the case may be, designated as such by the State Government. Thus, there is no reason to infer that the article "the", preceding the term "authorized officer" in sub-section (3),refers specifically to the officer mentioned in sub-section (1); rather, the same article ("the") precedes "authorized officer" in both sub-sections (1) and (3), being on a common footing, both referring back to the definition of “the authorized officer” in Explanation (a) of sub-section (6).

24. A scrutiny of the Division Bench Judgment cited by the petitioner clearly reveals that the factual context of the same is different and distinct from the instant case. In the said case, the question which fell for consideration was, whether the same Officer who inspected and disconnected electricity to the meter where theft was taking place can lodge a complaint and himself assess the charges. The basis of such argumentwas the principal, “one cannot be a judge of his own cause”, as the complainant himself also assesses the charges.

25. While considering such question, the Division Bench compared the provisions contained in Sections 126 as well as 135 of the 2003 Act and arrived at the conclusion that the order of assessment was not vitiated in the event the complainant officer himself (who is also the inspecting officer) assessed the charges under Section 135 of the 2003 Act. The pivot of such consideration pertained to Section 135 and not Section 126 of the 2003 Act, as in the present case.

26. Although it was recorded by the Division Bench, in the passing, in the cited decision that the Assessing Officer must be a person who was actually a member of the inspection team at the time of detecting the pilferage or the unauthorised use of electricity so that he can pass the order of assessment not on the basis of papers placed before him but after actually visiting the site at the time of detection of the illegality, it was not held specifically by the Division Bench that the Assessing Officer who passed the provisional order has to be identical with the

Assessing Officer passing the final order under Section 126 of the 2003 Act.

27. Thus, the background and context of the cited Division Bench judgment was entirely different than the present case. Here, the question which arises is the converse of the issue that fell for consideration before the Division Bench, inasmuch as in the present case, the petitioner challenges the final assessment by a different Assessing Officer than the Officer who was a part of the inspection team and passed the provisional order of assessment under sub-section (1) of Section 126.

28. A mere glance at Sections 126 and 135 of the 2003 Act shows that the scopes of operation of the two are different in nature. Whereas Section 135 contemplates disconnection by an officer on the charge of theft, who has to file the complaint himself within 24 hours and to assess the charges, Section 126 provides a clear and distinct mechanism for provisional and final orders of assessment in the case of unauthorised use.

29. Apart from the fact that the Division Bench was considering in *Narayan Chandra Kundu* (supra), the question as to whether the Inspecting Officer who disconnected electricity and lodged complaint regarding such disconnection of electricity can himself assess the charges, which is entirely different from Section 126, there are other distinguishing features as well.

30. Section 126(1) clearly provides for an Assessing Officer to come to the conclusion that a person is indulging in unauthorised use of electricity and provisionally assessing to the best of his judgment, the electric charges payable by such person or by any other person benefiting from such use. As such, there is an obvious link between the inspection and the provisional assessment in view of the language used in sub-section (1) of Section 126, since the expression "to the best of his judgment" at the time of provisional assessment has to be done by the person who actually inspected the equipment/gadgets/machines/devices-in-question.

31. However, subsequent to a notice being served regarding the provisional assessment on the person in occupation, possession or charge of the place or premises, under sub-section (2) of Section 126, sub-section (3) thereof provides an opportunity to the noticee to file objections, if any, against the provisional assessment before the Assessing Officer and a reasonable opportunity of hearing being afforded to such person before passing a final order of assessment.

32. Hence, there is a clear distinction in the scopes of the provisional assessment and the final assessment. Whereas the former, by its very nature, has to be done by the Inspecting Officer, the final assessment is done only upon looking into the objections of the notice and after affording reasonable opportunity of hearing to such person, which is on a different footing altogether and does not require the involvement of the Inspecting Officer himself.

33. There is nothing in the language of Section 126 to indicate that the Assessing Officer passing the provisional order of assessment has to be the same person who passes the final order. The logic used in the cited report might, at best, be valid for arguing that the officer preparing initial (provisional) order under sub-section (1) of Section 126 has to be an officer who also inspected the premises, since an actual visit and inspection can reveal best the nature of use (unauthorised or not). However, the procedure for passing a final order is akin to a quasi-judicial proceeding, where the consumer's objection and arguments in support thereof are to be considered in conjunction with the provisional assessment order, which does not necessitate personal visit to the spot by the officer passing the final order of assessment. The principle, "One cannot be the judge of one's own cause" may be applicable to Section 135 of the 2003 Act, which envisages disconnection, complaint and subsequent assessment by the same person, but the same yardstick cannot be applied to a different paradigm, as in Section 126 of the Act, where there is no disconnection or complaint, but an initial provisional assessment by an officer who actually inspected the site of alleged unauthorised usage, following by a full-fledged opportunity of filing objection and hearing being given to the concerned consumer and an adjudication arrived at on such materials.

34. The scope of Section 135, which was being decided by the Division Bench, was entirely different from Section 126, since the language of Section 135(1-A) clearly contemplates that the same person who disconnected electricity has to file a complaint and assess the charges, whereas nothing corresponding finds place in Section 126.

35. That apart, it is clear from the materials available before the Court that the onus of proving a nexus between the previous and new consumers was clearly established by the CESC as required under Regulation 3.4.2 of the 2013 Regulations.

36. In the case of the personal meter in the name of Smt. Anamika Choudhury, it was clearly observed by the Officers who passed the provisional as well as thefinal orders of assessment regarding the nexus between Smt. Anamika Choudhury and M/s. B. Choudhury & Co. Not only is Smt. Anamika Choudhury the sole proprietress of the previous consumer M/s. B. Choudhury & Co., the assessment of which was on the basis of unauthorised usage, the personal meter in the name of Smt. Anamika Choudhury itself, as per the finding of both the Assessing Officers, was being used for providing electricity to the previous defaulter M/s. B. Choudhury & Co. subsequent to the final order of assessment against the said proprietorship.

37. Hence, the clear nexus between the previous and new consumers, being M/s. B. Choudhury & Co. and Smt. Anamika Choudhury respectively,was clearly established in the provisional and final orders of assessment passed against Smt. Anamika Choudhury regarding the meter in her own name.

38. Thus, there was no irregularity on the part of the respondent-Authorities in passing the final orders of assessment in respect of either of the meters.

39. As such, there is no scope of interference in either of the writ petitions. Accordingly, W.P.A. No. 9969 of 2021 and W.P.A. No.11519 of 2021 are dismissed on contest.

40. There will be no order as to costs.

41. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)