

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 18448 of 2021

**Santosh Agarwal
Vs.
The CESC Limited and others**

For the petitioner	:	Mr. Bidyut Kr. Halder, Mr. Indranil Halder
For the CESC	:	Mr. Madhusudan Saha Roy
For the respondent-State	:	Mr. Debjit Mukherjee, Ms. Susmita Chatterjee
Hearing concluded on	:	26.11.2021
Judgment on	:	09.12.2021

Sabyasachi Bhattacharyya, J:-

1. The petitioner has preferred the instant writ petition challenging a provisional assessment made by the CESC Limited on the ground of unauthorised usage of the electric connection by the petitioner.
2. However, during pendency of the writ petition, the provisional assessment order merged into a final assessment order, which was passed subsequently. Since the provisions of Section 127 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”) clearly stipulate that a remedy lies in an appeal against such order of

provisional assessment, the learned advocate for the petitioner restricts his prayer to a re-connection being given upon payment by the petitioner of 50 per cent of the assessed final dues, during pendency of such appeal.

3. Learned counsel appearing for the CESC Limited opposes such contention and submits that, within the purview of the law, more specifically, Section 127 (2) of the 2003 Act, it is stipulated that no appeal against an order of assessment under sub-Section (1) of the said Section shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal. It is argued that the writ petitioner, in the garb of a limited prayer, is seeking more than the final relief which could be granted in the writ petition itself.
4. Learned counsel for the petitioner places reliance on certain unreported co-ordinate Bench judgments as listed below:
 - (i) *W.P. No. 11240(W) of 2003 (In Re: Abdul Rashid), dated July 14, 2003;*
 - (ii) *W.P. No. 3317(W) of 2013 (Joynal Abedin Vs. WBSEDCL & Anr.), dated February 6, 2013;*
 - (iii) *W.P.A. No. 4974 of 2021 (Indranil Bhattacharya Vs. CESC Limited & Ors.), dated February 24, 2021;*
 - (iv) *W.P. No. 16933(W) of 2018 (Asit Ghosh Vs. The WBSEDCL & Anr.), dated October 10, 2018;*

(v) *W.P.A. No. 10296 of 2020 (Khitish Chandra Biswas Vs. CESC Limited & Ors.), dated February 15, 2021;*

(vi) *W.P.A. No. 514 of 2021 (Imtiyaj Ahammad Vs. CESC Limited & Anr.), dated February 23, 2021.*

5. Learned counsel for the CESC Limited, on the other hand, relies on the following judgments of co-ordinate benches of this Court:

(i) *(2012) 3 Cal LJ 587 [Graviour Printing Industries Vs. CESC Limited & Ors.];*

(ii) *2011 (2) CHN (Cal) 571 [Tarun Pal Vs. West Bengal State Electricity];*

(iii) *(2019) 5 CHN (SC) 72 [West Bengal State Electricity Distribution Co. Ltd. & Ors. Vs. M/s. Orion Metal Pvt. Ltd. & Anr.]*

6. Upon considering the arguments of the parties and the materials on record, I come to the following conclusions:

7. The moot question which arises in the present case is, whether a consumer is entitled to reconnection of electric supply in the event of the supply being disconnected under Section 135 of the Electricity Act, 2003, upon payment of only a portion of the assessed dues.

8. As far as Section 135 is concerned, the third proviso of Sub-Section (1-A) thereof provides that such reconnection will be on deposit or payment of the assessed amount or electricity charges in connection with the provisions of the Act, that too, without prejudice to the obligations to lodge the complaint as referred to in the second proviso to the said clause.

- 9.** Section 126(4) of the 2003 Act provides that any person served with an order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.
- 10.** As such, both the two provisions which come into prominence in respect of restoration of electric supply, as discussed above, stipulate the deposit of the entire amount.
- 11.** That apart, Section 127(2) of the Act provides that no appeal against an order of assessment under Sub-Section (1) of Section 127 shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal. Sub-Section (1) of Section 127 provides that any person aggrieved by a final order made under Section 126 of the Act may, within thirty days of the said order, prefer an appeal to an appellate authority as may be prescribed.
- 12.** Hence, the maximum remedy provided to the consumers under the purview of the 2003 Act, on deposit of half of the assessed amount, is the right to prefer an appeal against a final order of assessment
- 13.** As indicated above, a specific time period of thirty days has been stipulated for preferring such an appeal under Section 127. Section 126(4) also limits the right of the consumers to deposit the entire assessed amount with the licensee within seven days of service of such provisional assessment order upon him, in which case the

provisional assessment has to be accepted and not challenged by the defaulting consumer.

14. In the present case, the petitioner seeks to bypass such provisions and to ask for a relief greater than that provided in the statute itself. An order of reconnection can, at best, be given either upon disposal of an appeal, in the event the appellate decision goes in favour of the consumer, or upon deposit of the total assessed amount. The minimum prerequisite of preferring an appeal is deposit of half of the assessed amount. Thus, the writ petitioner's prayer for reconnection upon payment of half of the assessed amount, which is the precondition of merely filing the appeal, is virtually the final relief which can be granted in an appeal by the appellate forum. By no stretch of imagination, such relief can be granted in a writ petition, that too, before the consumer actually prefers an appeal.
15. An appeal, where questions of both fact and law can be raised, provides a more efficacious alternative remedy for the petitioner than the writ court, but is fettered by certain restrictions, one being the deposit of half of the assessed amount and the other the limitation of thirty days from the final order of assessment.
16. Even under Section 126(4), a consumer can only have her/his connection restored upon deposit of the entire amount which has been provisionally assessed. In such a case, the consumer is deemed to accept such assessment and cannot go on to challenge the same.

17. Hence, in any event, the clear scheme of the 2003 Act signifies that there is no scope of the consumer getting a restoration of electric supply upon payment of merely a fraction of the assessed amount.
18. As far as the decisions of co-ordinate Benches cited by the petitioner are concerned, only in *Asit Ghosh* (supra), the learned Single Judge directed to deposit of 60 per cent of the final assessment bill with restoration charges. In all the others, 50 per cent of the assessed amount was directed to be deposited as a pre-condition of reconnection being given.
19. However, in none of the judgments cited by the petitioner, the respective Benches laid down any clear proposition or consider the effect of Sections 126, 127 and 135, which creates specific bar to such reconnection without paying the entire assessed amount. As such, the said judgments cannot be deemed to be binding precedents in that regard, as the question never fell for consideration before the learned Single Judges.
20. On the other hand, the co-ordinate Bench judgments in *Tarun Pal* (supra) and *Graviour Printing Industries*(supra), cited by the CESC Limited, squarely decide the issue against the contention of the petitioner and are binding precedents. The effect of the aforesaid three Sections were considered at length in the judgments cited by the CESC Limited. However, *West Bengal State Electricity Distribution Co. Ltd. & Ors. Vs. M/s. Orion Metal Pvt. Ltd. & Anr.*(supra), is not a binding precedent on the question which has fallen for consideration in the instant case. In the said judgment, the Supreme Court was

considering, primarily, the question as to whether the tampering of a meter falls within the purview of 'unauthorised use' as envisaged in Section 126 of the 2003 Act. In such context, the Supreme Court clearly elaborated the respective scopes of operation of Sections 126, 127 and 135 of the 2003 Act, but did not adjudicate upon the issue at hand. Hence, the said citation is not relevant for deciding the present matter.

- 21.** In the light of the above discussions, the question raised in the present writ petition is decided in the negative and against the petitioner, holding that a consumer is not entitled to get restoration of connection upon payment of 50 per cent, or any other fraction of the total assessed amount.
- 22.** Hence, the writ petitioner's prayer for restoration of electric supply on payment of fifty per cent of the assessed amount is refused.
- 23.** Since the final assessment has been completed in the present case, an appeal lies under Section 127 of the 2003 Act before the appropriate appellate authority.
- 24.** Accordingly, W.P.A. No.18448 of 2021 is dismissed on contest, with liberty to the petitioner to approach the appropriate appellate authority in accordance with law with a challenge against the final order of assessment.
- 25.** If such an approach is made, the appellate authority shall decide the matter independently on its own merits, without being unnecessarily influenced in any matter by any of the observations made above.

- 26.** There will be no order as to costs.
- 27.** 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.)