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**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

W.P.A. No. 19409 of 2021

Nisha Ruia

-vs.-

CESC Limited & Ors.

Mr. Bidyut Halder,
Mr. Indranil Halder
...for the petitioner

Dr. Madhusudan Saha Roy
...for the CESC Limited

Mr. Swapan Kumar Pal,
Ms. Mohuya Datta (Biswas)
...for the State-respondent

Learned counsel for the petitioner contends that the CESC Limited, by violating Clause 8.3.3 of Regulation No. 55 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013, disconnected the electric supply to the petitioner's premises and, only thereafter, handed over a notice in that regard in terms of the aforesaid clause.

Learned counsel places reliance on Annexure P-3 at page 12 of the writ petition, which is a copy of the said notice. It is argued that such disconnection was in violation of the said clause and, as such, was illegal.

Learned counsel appearing for the CESC Limited by placing reliance on Clause 8.3.3 indicates that the said clause merely provides that before the employees of the licensee entered the premises, they have to serve a written communication addressed to the concerned consumer as regards such entering into the premises. As such, in the present case also, disconnection was done only in compliance of such provision and the notice, annexed at page 12 of the writ petition, was given at 1 P.M., that is, prior to the act of disconnection.

Learned counsel for the CESC Limited further contends that a provisional assessment has already been sent to the petitioner but the petitioner missed the first opportunity on December 08, 2021 to address the same. The date of hearing has further been extended by the CESC Limited. As such, it is contended that the petitioner is attempting to by-pass the said procedure, as provided in law, to pay up the provisional assessment, by way of filing the writ petition.

Although a relevant question has been raised by the writ petitioner in the present case as regards the exact connotation of the term “before” as appearing in Clause 8.3.3 of the Regulation No. 55, in the present case, the interpretation of the same has to go against the petitioner in view of the following observations.

The parent Section of the Indian Electricity Act, 2003, dealing with theft of electricity, that is, Section 135, specifically provides in sub-section (2)(a) thereof that the authorised personnel of the Distribution Company may, inter alia, enter, inspect, break open and search any place or premises in which the personnel have reason to believe that electricity has been or is being used unauthorisedly.

Clause 8.3.3, in all fairness, has added the component of the term “before” as a qualification of such sub-section in order to give a minimum opportunity to the consumer to permit the Distribution Company personnel to enter the disputed premises.

However, if a notice is given sufficiently prior for the consumer to become alert of the proposed or intended disconnection by the Distribution Company/licensee, it is obvious that the surprise element will be lost and the consumer, even if guilty, will take all necessary precautions to cover up the allegation as to theft. In such view of the matter, we have to take a pragmatic approach in the interpretation of Clause 8.3.3, read with Section 135 of the 2003 Act, which clearly indicates that the notice has to be given immediately before entry of the distribution company/licensee personnel to the premises.

In the present case, the allegations and counter-allegations as regards the notice having been served

prior or subsequent to the disconnection is rendered merely academic, since on averments made oath versus oath the court cannot come to the definite conclusion as to the exact time of disconnection, whether it was prior or post the notice dated November 25, 2021.

Be that as it may, a presumption under Section 114 of the Evidence Act is raised as to the official and statutory acts of the CESC being duly done; moreover, the said dispute does not go to the root of the act of disconnection so far so as to render such disconnection illegal or contrary to law. As such, the writ petition fails.

W.P.A. No. 19409 of 2021 is dismissed with liberty to the petitioner to agitate all grievances in respect of the allegation of theft before the appropriate authorities. It is further clarified that this Court has not entered into the merits of the respective contentions of the parties in respect of the assessment and/or veracity of the allegation of theft at all. It will be open to all competent authorities to examine such issues independently in accordance with law, without being prejudiced in any manner by any of the observations made herein.

The report filed by the learned counsel appearing for the State-respondent be kept on record.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)