

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 21584 of 2019

Nowasad Sk
Vs.
The State of West Bengal & Ors.

Mr. Suman Banerjee
... For the petitioner

Mr. S.S. Koley
... For WBSEDCL

The affidavit of service filed in Court is taken on record.

The petitioner was held to have made unauthorised use of electricity on three occasions by the West Bengal State Electricity Distribution Company Limited (hereinafter referred to as “WBSEDCL”). Complaints were made to the police authority under Section 135 of the Electricity Act, 2003 (hereinafter referred to as the “said Act”). Three criminal cases were registered on basis of the three complaints made by WBSEDCL. The petitioner says that in all three criminal cases, the petitioner has been acquitted. The petitioner, therefor, says that the petitioner is not entitled to pay any money for unauthorised use of electricity as claimed by WBSEDCL. The petitioner had made representation to WBSEDCL on this ground but WBSEDCL has taken a clear stand that acquittal from

criminal proceedings does not amount to exoneration from paying the charges for unauthorised use of electricity.

On behalf of WBSEDCL, it is submitted that the criminal case and the claim for unauthorised use of electricity rest in two different prongs. Acquittal does not mean that the petitioner is not required to pay any amount on account of unauthorised use of electricity. The final order had been made long back in respect of all the three incidents. The last final order is dated 5th November, 2011. The petitioner's remedy after passing of the final order in respect of the claim for unauthorised use of electricity lies in preferring the appeal. The petitioner has not preferred any appeal and no appeal can be filed as on date since they are long long time-barred.

To rebut the submissions made on behalf of WBSEDCL, the petitioner submits that the petitioner was prosecuting the criminal case with due diligence as the petitioner was confident to succeed therein having not made unauthorised use of electricity. The petitioner did not do so and was also not advised to file appeal under Section 127 of the said Act against the final order made under the provisions of Section 126 of the said Act. The petitioner, therefor, submits that the time to prefer appeal may be extended and the petitioner be allowed to file appeal challenging the three final assessment orders.

Considering the facts and circumstances of the instant case, I find that the appeal under Section 127 of

the said Act is required to be filed within 30 days from passing of the final order. The last of the final order is dated 5th November, 2011. The 30 days period has expired long back. The appeal is required to be filed as the petitioner challenges the final assessment order on the ground of being not liable to pay any amount on account of unauthorised use of electricity having been acquitted from the charge of theft of electricity. The final order of assessment is a demand for the electricity cost which has remained unrealised due to unauthorised use and detected on inspection. The power to make a complaint by a licensee (in this case WBSEDCL) is in addition to the authority to realise the unauthorised consumption.

Limitation is a mixed question of fact and law. On the basis of the averments made in the writ petition, it is not possible for this Court to extend the time. The petitioner is, however, free to approach the Appellate Authority by filing appeals despite disposal of this writ petition.

The Appellate Authority, if approached, shall consider the issue of limitation as a preliminary issue and then proceed to decide the same on merits. The Appellate Authority, if approached, shall decide the matter without being influenced in any manner by the instant order since I have not gone into the issue of limitation and the merits of the case.

Nothing remains further to be adjudicated in the writ petition and the same is accordingly disposed of without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

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.)