

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE
(Via Video Conference)

WPA 10083 of 2020

Aslema Khatun (Begum)
Vs.
The West Bengal State Electricity Distribution
Company Limited & Ors.

Mr. Bhaskar Chandra Manna
... For the petitioner

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

The petitioner says that the petitioner enjoyed an electric connection for operating his submersible pump. The petitioner's connection was disconnected. A provisional assessment order was made on 20th February, 2019. The petitioner paid the said sum of Rs.22,792/- on 22nd February, 2019. The petitioner says that the petitioner's case was referred to Lok Adalat Arambagh, Hooghly. By an order dated 8th February, 2020 against the total dues of Rs.22,792/-, the petitioner was permitted to pay Rs.6,000/-. The petitioner says that despite of the fact that the petitioner had paid the entire sum of Rs.22,792/-, the petitioner's connection was not restored. The petitioner says that though the supply was not restored, the petitioner has been again accused of unauthorised use of electricity. A provisional assessment bill dated 17th March, 2020 has been served to the petitioner for a sum of Rs.4,22,681/-. The petitioner refers to the provisional bill

at page 20 of the writ petition and says that admittedly the supply has remained disconnected since 12th January, 2019 and, as such, the question of the petitioner being charged of a further sum cannot and does not arise. The petitioner has challenged the provisional assessment bill dated 17th March, 2020.

On behalf of West Bengal State Electricity Distribution Company Limited (in short “WBSEDCL”), it is submitted that the petitioner was found to enjoy electricity in an unauthorised manner despite the petitioner’s supply having remained disconnected. WBSEDCL says that use of electricity by direct hooking method found during inspection amounts to theft of electricity and, as such, the provisional assessment bill dated 17th March, 2020 was raised. WBSEDCL has also lodged a complaint before Khanakul Police Station as against the petitioner on 16th March, 2020 and a police case has been registered on the basis of such complaint.

After hearing the parties and considering the materials on record, it appears that the petitioner is entitled to a refund and/or adjustment of a sum of Rs.16,792/- (Rs.22,792/- – Rs.6,000/-) being the difference of the amount deposited on 22nd February, 2019 and the amount payable under the order of the Lok Adalat dated 8th February, 2020. It further appears that WBSEDCL has made a provisional assessment under Section 126(1) of the Electricity Act, 2003 (hereinafter referred to as “the Act of 2003”). The provisions of Section

126 clearly say that after the provisional assessment is made, a final assessment should follow after giving the petitioner an opportunity of objecting to the provisional assessment.

In the instant case, despite 30 days having elapsed from the date of the provisional assessment, no final assessment has been made. WBSEDCL says that the final assessment could not be made in view of the pendency of the writ petition.

In the absence of any stay, there was no embargo on the assessing officer in passing the final assessment particularly in view of the statutory time frame.

Considering the matter, I direct the petitioner to file an objection as against the provisional assessment order dated 17th March, 2020. After giving the petitioner a reasonable opportunity of hearing, the assessing officer shall pass a final order. The petitioner's objection has to be filed within 20th January, 2021 and the assessing officer shall pass the final order after considering such objection and granting the petitioner an opportunity of hearing by 20th February, 2021.

It is made clear that the final order shall be served on the petitioner within seven days from the date of passing of the same. In the event, the petitioner is aggrieved by the final order, the petitioner will be entitled to prefer an appeal under the provisions of Section 127 of the Act of 2003.

In the event, the petitioner wants a reconnection, the petitioner will have to pay the entire amount provisionally assessed less a sum of Rs.16,792/- as stated hereinabove without prejudice to the petitioner's rights and contentions. In the alternative, the petitioner shall have to pay 50 per cent of the finally assessed amount less Rs.16,792/-.

Any payment made for reconnection shall be without prejudice to the petitioner's rights and contentions and will be accepted by WBSEDCL also without prejudice to its rights and contentions.

It is clarified that in the event the petitioner pays any sum for the purpose of reconnection, the appellate authority assessing the payment under the provisions of Section 127(2) of the Act of 2003 shall take into consideration such payment.

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.)