

OD-1

ORDER SHEET

WPO 27 of 2021

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

SYED AZIZ AHMED
Versus
CESC LIMITED AND OTHERS

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date : 21st January, 2021.

[Via Video Conference]

Appearance

Mr. Siddhartha Banerjee, Adv.

Mr. Shaunak Ghosh, Adv.

Mr. Rajib Mullick, Adv.

Mr. Aveek Bose, Adv.

Mr. Rakesh Sarkar, Adv.

...for the petitioner

Dr. Madhusudan Saha Roy, Adv.

Mr. Debanjan Mukherjee, Adv.

...for the respondents

The Court: The petitioner has filed the instant writ petition challenging the disconnection of electric supply at the petitioner's premises situated at 22/A, Syed Amir Ali Avenue, Suite No.6, Kolkata 700017 (hereinafter referred to as 'the said premises') by CESC Limited, the licensee all on a sudden on 13th January, 2021. The petitioner seeks reconnection of electricity.

On behalf of CESC Limited it is submitted that the writ petitioner apart from the supply enjoyed at the said premises which has been disconnected also has a supply as under Consumer No.20009168005 against Meter No.5848022 in a different portion of the said premises No. 22/A, Syed Amir Ali Avenue, Kolkata 700017. The supply to the said meter was disconnected on 21st October, 2020. It is further submitted that the other supply under Consumer No.20009168005 has been disconnected on 21st October, 2020. Electricity bypassing the meter being the subject matter of this writ petition was drawn and/or allowed to be drawn to the premises wherein supply was enjoyed through the meter which was disconnected on 21st October, 2020. The petitioner, therefore, has made unauthorised use of electricity as a consequence whereof the supply was disconnected on 13th January, 2021.

Challenging the disconnection that took place on 21st October, 2020 the petitioner had filed a writ petition being WPA 10966 of 2020. The said writ petition was withdrawn on 12th January, 2021. The petitioner, has not stated this fact in the instant writ petition and as such has suppressed material facts. The provisional assessment according to CESC Limited against the meter disconnected on 13th January, 2021 has been made on 13th January, 2021 but was sought to be served at a time when the writ petition had already been filed but was not received by the petitioner probably in view of the pendency of

the writ petition. The writ petition has been filed on 15th January, 2021. The CESC further submits that a hearing has been scheduled on 25th January, 2021 at 12.00 noon at the office of the Assessing Officer situated at 2, Park Lane, 3rd Floor, Kolkata 700016 for passing of the final order against the provisional assessment.

The provisional assessment order has been made over to the Court and taken on record with a copy served to the petitioner's advocate. On a perusal of the same it appears that the amount provisionally assessed is Rs.8811/-.

Once CESC Limited has alleged about unauthorised use of electricity for which a provisional assessment has been made, the petitioner's remedy lies in objecting to the said provisional assessment under Section 126 of the Electricity Act, 2003 (hereinafter referred to as 'the said Act') and then to challenge the final order that may be passed under the provisions of Section 127 of the said Act.

In that view of the matter, by consent of parties, the hearing scheduled on 25th January, 2021 at 12.00 noon for passing of the final order against the provisional order dated 13th January, 2021 is rescheduled and the petitioner shall appear before Partha Sarathi Roy, the Assessing Officer on 2nd February, 2021 at 12.00 noon at his office situated at No.2, Park Lane, 3rd Floor, Kolkata-700016. The petitioner shall be entitled to take all points available to the petitioner to challenge the provisional order. The Assessing Officer shall pass a final

order after giving the petitioner a reasonable opportunity of hearing. The final order shall be communicated immediately but not beyond four days from the date of passing of the order. In the event the petitioner does not turn up in the hearing scheduled on 2nd February, 2021, the Assessing Officer shall be free to pass the final order.

The petitioner shall be free to challenge the final order under the provisions of Section 127 of the said Act.

So far as the issue of reconnection is concerned, since the final order has not yet been passed, the petitioner is entitled to reconnection in terms of Section 135 (1) (A) of the said Act by paying Rs.8811/- without prejudice to his rights being the assessed amount under the provisional assessment. CESC Limited within 24 hours from the date of deposit of the said sum of Rs.8811/- by the petitioner, shall reconnect the Meter bearing No.4551364 against Consumer No.20009169002.

On the issue of suppression of fact as contended by the CESC Limited, it was the duty of the petitioner to state about the other writ petition in the instant writ petition. Since the amount involved is very less and that the writ petition was affirmed on 15th January, 2021 and that the matter is left for adjudication by the Assessing Officer, I am not inclined to dismiss the writ petition on the ground of suppression.

Since nothing further remains to be adjudicated in the writ petition, WPO No.27 of 2021 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.

(ARINDAM MUKHERJEE, J.)