

ORDER SHEET

WPO/1177/2021

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

RINKU SAHA
Versus
CESC LIMITED AND ANOTHER

BEFORE:

The Hon'ble JUSTICE SABYASACHI BHATTACHARYYA

Date : 6th December, 2021.

Appearance:

Ms. Manju Agarwal, Adv.

Mr. Bajrang Manot, Adv.

Ms. Geetika Agarwal, Adv.

Dr. Madhusudan Saha Roy, Adv.

The Court: The present challenge has been mounted against a notice dated October 26, 2021 given to the petitioner by the CESC authorities which indicates that, in view of having furnished wrong details as regards the address of the petitioner in the petitioner's original application, the said connection would be severed.

Learned Counsel for the petitioner contends that subsequently, a notice of provisional assessment was given to the petitioner, which is brought on record by way of filing a supplementary affidavit today, liberty for which is granted by Court. It is submitted that, even as per the provisional assessment, which took place subsequent to the impugned notice, the dues of the petitioner provisionally comes to Rs.20,942/-. As such, it is contended that the notice given on October 26, 2021 was *de hors*

the law and without there being any legal provision to justify the authority of the CESC to give such notice.

Learned Counsel for the CESC authorities points out that the notice impugned in the present writ petition was issued under Regulation 4.5.2 of the Regulation No.55/WBERC dated August 7, 2013. Under the said provision, a notice in writing should be given to the consumer stating the reasons for proposed disconnection on grounds as given therein, which, in case of the impugned notice, was furnishing wrong address allegedly by the petitioner.

As such, it is argued by learned Counsel for the CESC Limited that there is no nexus between the impugned notice and the provisional order of assessment.

It has been submitted on behalf of the CESC and is also apparent from the records that the provisional assessment was raised on the ground that the petitioner has permitted previously disconnected consumers to use electricity from the petitioner's meter. However, the premise of the impugned notice dated October 26, 2021 was different, being one issued under the authority of Regulation 4.5.2 of Regulation No.55.

As such, there is no bar in the petitioner approaching the CESC authorities and complying with the provisions of Section 126(4) of the Electricity Act, 2003 by accepting the provisional assessment and depositing the assessed amount with the licensee. Although the stipulated seven days from service of provisional assessment has been given a go-bye, the pendency of the writ petition would justify such delay.

However, this Court cannot find any irregularity in the impugned notice, which was duly issued under Regulation 4.5.2 as indicated above. Accordingly, WPO/1177/2021 is disposed of without interfering with the impugned notice dated October 26, 2021. However, the petitioner is given the liberty to comply with the requirement of Section 126(4), taking the commencement of the seven days as stipulated in the said provision to be the date of this order i.e., today, in view of the applicability of Section 14 of the Limitation Act. In view of the pendency of the writ petition, the right of the petitioner is treated to have been inchoate till now and ripened by virtue of this order.

The petitioner is permitted to deposit, within seven days from this date, the full amount as per the order of provisional assessment, by accepting such assessment and depositing the assessed amount. However, such deposit will be without prejudice to the rights and contentions of the parties in respect of the notice impugned in the present writ petition and it will be open to the CESC Limited to take further action, in accordance with law, pursuant to the impugned notice dated October 26, 2021 which will be independent and irrespective of the present order of provisional assessment.

Upon deposit of the said amount of Rs.20,942/- along with other requisite fees within December 8, 2021, the CESC Limited shall give reconnection to the writ petitioner within December 10, 2021. Such restoration of connection will be without prejudice to the rights and contentions of the parties in respect of any future proceeding which may be initiated pursuant to the notice dated October 26, 2021.

The parties shall act on the server copy of this order, coupled with a communication of the learned Advocates for the parties, without insisting upon prior production of a certified copy thereof.

No order as to costs.

(SABYASACHI BHATTACHARYYA, J.)

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