09-02-2022
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WPA No. 1284 of 2021
Jagabandhu Mondal
-Versus-
The State of West Bengal & Ors.
(Via Video Conference)

Mr. Uday Sankar Chattopadhyay,
Mr. Santanu Maji,
Mr. Snigdha Saha,
Mr. Pronay Basak,
Mr. Debdipto Banerjee,
Mr. Anindya Sundar Das,
Mr. Soumen Bandyopadhyay
…for the petitioner

Mr. Jahar Dutta,
Mr. Bipin Ghosh
…for the State

Mr. S.S.. Koley
…for the WBSEDCL

Learned counsel for the petitioner submits that the petitioner is a poor cultivator and is unable to clear further dues in respect of delayed payment surcharge as levied by the Distribution Licensee.

It is submitted by learned counsel for the petitioner that, upon the petitioner's electric connection being disconnected, a provisional assessment bill was raised on June 25, 2016 to the tune of Rs. 2,78,285/-. Subsequently, upon the petitioner filing a written objection thereto, the final assessment was made by the Assessing

Officer on July 22, 2016, thereby fixing an amount of Rs. 1,69,486/- as dues of the petitioner. In the meantime, a criminal proceeding had been initiated against the petitioner on the ground of theft. Upon approaching this Court by way of a writ petition bearing WP 6925 (W) of 2019, a Co-ordinate bench of this Court had, by its order dated April 4, 2019, directed payment of 50% of the assessed amount within seven days, subject to which the electric connection of the petitioner was to be restored. The balance was directed to be cleared off by three equal monthly instalments, which was complied with, the last instalment being paid on September 2, 2019.

Thereafter, the matter reached the Lok Adalat and ultimately the criminal complaint against the petitioner was compounded at Rs. 6,000/-.

Accordingly, the criminal proceeding was also compounded in full and final settlement of the claim before the Lok Adalat and the petitioner was acquitted.

It is argued that since the amount payable by the petitioner became first due on June 25, 2016 and July 22, 2016 respectively, when the full and final assessments were made, the Distribution Licensee is debarred by Section 56(2) of the

Electricity Act, 2003 from claiming delayed payment surcharge, since the moratorium of two years have elapsed.

It is further submitted that, in view of the entire amount being settled fully and finally before the Lok Adalat, no further charges could be claimed from the petitioner in that regard.

Learned counsel for the petitioner places reliance on a Division Bench judgment of this Court rendered in *CESC Limited vs. Shiva Glass Company Limited & Ors.,* reported at *2011 SCC Online Cal 3860 = (2012) 5 CHN 213.* It is argued on the basis of the said report that Section 56(2) of the 2003 Act comes in the way of claiming any delayed payment surcharge after the expiry of two years.

In controverting such submissions, learned counsel for the Distribution Licensee places reliance on another Division Bench judgment of this Court rendered in *FMA 1963 of 2018 (WBSEDCL & Ors. vs. Abdul Hamid & Anr.) dated March 4, 2020.* It was elaborated in the said judgment that despite the dictum of *Shiva Glass Company Limited (supra)*, it would not detract from the fact that once the relationship between the licensee and the consumer is severed and no bills are required to be raised on the erstwhile consumer, there is no possible manner in which any sum due from the erstwhile consumer to the licensee may be "shown continuously as recoverable". It is further submitted, by placing reliance on *Kanoria Chemicals and Industries Ltd. and others vs. U.P. State Electricity Board and others*, reported at *(1997) 5 SCC 772*, that the Supreme Court clearly dealt with the issue and it was observed that the licensee is entitled to delayed payment surcharge even during the period when appeals were pending, if there was no specific stay order in respect of the operation of the assessment.

By placing reliance on the language of Section 56(2) of the 2003 Act, it is submitted that the first due date in respect of delayed payment surcharge can arise only upon the payment being made by the consumer.

In the present case, it is evident that although the petitioner had deposited some amount much prior to the compounding of criminal case, such payment was only *ad hoc* and tentative in nature and not in terms of the claim of the Distribution Licensee.

As such, the said payment cannot be taken into consideration for the purpose of operation of Section 56(2) of the 2003 Act.

Moreover, the first due in respect of the delayed payment surcharge, as held by the Supreme Court in the reported judgment cited by the Distribution Licensee, arose only upon the payment being made by the petitioner. The first of such payments, that is 50% of the amount then due, pursuant to the High Court's order, was made on April 11, 2019.

Ultimately, the criminal complaint was compounded before the Lok Adalat on September 14, 2019 and on October 3, 2019, the compounded amount was paid. Although the criminal Court acquitted the petitioner upon such charge being compounded, such consequential acquittal cannot have any direct bearing on the liability of the petitioner to pay delayed payment surcharge, since the entire exercise of compounding related to the allegation of theft, neither more nor less. It was not, and could not also be, recorded in the order of either the criminal court or the Lok Adalat that the licensee's right to claim delayed payment surcharge was also waived in full and final settlement.

Hence, even if April 11, 2019 is taken to be the first date of payment (when 50% of the assessed amount was paid by the petitioner in terms of the High Court's order), the demand for late payment surcharge was made on January 10, 2021 which fell within the limitation of two years from the date of such payment.

The expression “delayed payment surcharge” consists of three components, one of which is “payment” (the other two being “delayed” and “surcharge”, of course). As such, payment is a pre-requisite for the commencement of the limitation period vis-à-vis delayed payment surcharge.

Such proposition is also strengthened by the unreported Division Bench judgment cited by the Distribution Licensee.

As such, in the present case, this Court cannot find any illegality or irregularity in the delayed payment surcharge being levied by way of the demand dated January 10, 2021, when the limitation stipulated in Section 56(2) of the 2003 Act had not yet expired.

In such view of the matter, no relief can be granted to the petitioner, despite having sympathy for the plight of the petitioner, who is a cultivator by profession and is of meager means, there is no option for the Court to interfere in the present matter, since such interference would be in gross violation of the existing law.

As such, WPA No. 1284 of 2021 is dismissed without, however, any order as to costs.

It will be open to the petitioner to approach the Distribution Licensee further for grant of instalments, keeping in view the distressed financial condition of the petitioner. If so approached, the Distribution Licensee will consider the same in its own discretion and grant such instalments, if so deemed fit, without being prejudiced by any of the observations made herein.

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

(Sabyasachi Bhattacharyya, J.)