

21 05.05.2022

PA(SS)

FMA 197 of 2022
IA NO: CAN/1/2022
Santosh Agarwal
Vs.
CESC Limited and Ors.

Mr. Sandip Kr. Bhattacharyya,
Mr. Vijay Agarwal, Advocates
...for the appellant
Dr. Madhusudan Saha Roy, Advocate
...for the respondent Nos. 1 and 2
Mr. D. Mukherjee,
Ms. S. Chatterjee, Advocates
...for the respondent No. 3

By this appeal the writ petitioner has challenged the order of the learned Single Judge dated 09.12.2021 whereby W.P.A. No. 18448 of 2021 has been dismissed on contest.

The appellant was having the electricity connection for domestic purpose and it was alleged that he was regularly paying the electricity bill yet on 10.11.2021 the supply was suddenly disconnected. The appellant was served with the provisional order of assessment dated 10.11.2021. Aggrieved with the same he had filed the writ petition.

During the pendency of the writ petition, final order of assessment was passed. Hence, the learned Single Judge took the view that the appellant had remedy of filing the appeal under Section 127 of the Electricity Act, 2003. The prayer made by the learned Counsel for the appellant to grant reconnection on

payment of 50% of the amount has duly been examined by the learned Single Judge in the light of the provision contained under Sections 135, 127(2) and 126(4) of the Act and it has been found that the appellant can seek restoration of connection on deposit of the entire assessed amount though he can prefer an appeal only by depositing 50% of the amount.

Submission of the learned Counsel for the appellant before this Court is that he was regularly paying electricity charges therefore the assessment of the electricity charges ought to have been made as per clause 5.1(b) of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 and it is not a case covered by Section 135 of the Electricity Act.

Submission of the learned Counsel for the respondent electricity company is that the appellant had not approached the Court with a clean hand and that it is a case of theft of electricity and in this regard he has referred to the inspection report dated 10.11.2021 which records the finding that “direct connection found bypassing the metering arrangement”. He has further submitted that against the final order of assessment the appellant has remedy of appeal and the case is squarely covered by Section 135 of the Electricity Act relating to theft of electricity and in such a case the appellant is

required to pay full assessed amount for seeking reconnection.

Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that learned Single Judge has not committed any error in reaching to the conclusion that against the final order of assessment the appellant should avail the remedy of appeal under Section 127 of the Electricity Act, 2003. Since, an alternative efficacious remedy of appeal is available, therefore, no ground was made out to entertain the writ petition. So far as the issue on grant of reconnection on payment of 50% of the assessed amount is concerned though under Section 127(2) of the Act an appeal is maintainable on deposit of half of the assessed amount but that is not enough for restoration of the electricity connection in a case of theft of electricity. In view of the contents of inspection report appellant cannot contend that the case is not covered by Section 135. Learned Single Judge has rightly taken note of the provisions of the Sections 126, 127 and 135 of the Act while reaching to the conclusion that the appellant is not entitled to reconnection merely on deposit of 50% of the amount.

This Court also in the matter of Biswajit Bose and Anr. vs. CESC Limited and Ors. by order dated 06.04.2022 passed in MAT 414 of 2022 considering the similar issue had held that:

“So far as the issue of right to file an appeal and its hearing is concerned, under Section 127 of the Electricity Act, appeal becomes maintainable against an order of assessment if the appellants deposit half of the assessed amount in terms of sub-section (2) of Section 127 subject to the other provisions of the Act. But the issue which has been raised in the matter is about restoration of electricity connection on deposit of 50% of the amount. Third proviso of Section 135(1A) of the Act provides for restoration of electricity on deposit of payment of assessed amount which reads as under:

“135(1A) – Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity;

Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity;

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect;

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or

electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.”

Regulations have also been framed in exercise of the powers conferred by the Electricity Act, namely, the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 and Regulation 6 relates to reconnection of supply and Regulation 6.4 which is relevant, reads as under:

“6.4. Where a consumer served with the order of provisional assessment under regulation 5.2 or the order of final assessment under regulation 5.4 accepts such assessment and wishes to pay the assessed amount, he may submit an application to the licensee in the format as in Annexure – 2 within two working days from the date of receipt of the order of provisional assessment or final assessment, as the case may be, and the licensee shall provide him/serve upon him bill(s) for the purpose within forty eight hours of receipt of such application to enable the consumer to pay the amount provisionally or finally assessed. On payment against such provisional or final bill by the consumer, the reconnection shall be done within 48 hours.”

The above regulation also provides that on payment of provisional or final bill by the

consumer the reconnection will be done within 48 hours.

Having perused the order of the learned Single Judge, we find that the learned Single Judge has refused to direct reconnection of electricity on deposit of 50% of the assessed amount having due regard to the provision of contained in Section 135(1A) of the Act and Regulation 6.4.

Hence, we are of the view that the learned Single Judge has not committed any error in not accepting the prayer of the appellants for restoration of the electricity only on deposit of 50% of the assessed amount.”

The above order clearly concludes the issue against the appellant.

The issue relating to the assessment of the electricity charges in accordance with regulation 5.1(b) can very well be raised by the appellant in appeal. Hence, we are of the opinion that no error has been committed by the learned Single Judge in dismissing the writ petition and no case for interference in this appeal is made out which is accordingly dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)