

S/L. 12 to 14.
September 28, 2022.
MNS.

WPA No. 2293 of 2022
with
WPA No. 2391 of 2022
+
CAN 1 of 2022
with
WPA No. 13022 of 2021

Sahadat Hossain
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Arindam Chattopadhyay,
Ms. Lipika Chatterjee,
Mr. Souvik Dey

...for the petitioner.

Mr. Sumit Ray

...for the WBSEDCL in
WPA No. 2293 of 2022
&
WPA No. 2391 of 2022.

Mr. Sumit Kumar Panja,
Ms. Bandana Basu

...for the WBSEDCL in
WPA No. 13022 of 2021.

Re: WPA No. 2293 of 2022

Learned counsel for the petitioner argues
that despite deposit of the full amount of alleged
dues, as per the final assessment made by the
West Bengal State Electricity Distribution
Company Limited (WBSEDCL) subsequent to
disconnection on the ground of unauthorized use

and pilferage, the petitioner was not given restoration of his connection of electricity supply, in gross violation of Section 135(1A) of the Electricity Act, 2003 (2003 Act).

Learned counsel for the petitioner submits that in paragraph 4(f) of the affidavit-in-opposition filed by the WBSEDCL, it was admitted that the final assessment was made and paid by the petitioner. As such, it is submitted that the restoration of electricity connection should have been given by now.

Learned counsel further submits that, in the interregnum, a challenge had been preferred by the petitioner before this Court against the provisional order of assessment, in connection with which, in the month of August, 2018, a co-ordinate Bench of this Court disposed of the writ petition by granting liberty to the petitioner to file a written objection to the provisional order of assessment and thereafter for the final assessment to be made.

Upon such final assessment being made, it is submitted, the payment was duly made, as admitted in the affidavit-in-opposition and, as such, in respect of restoration of the electricity connection with regard to the meter, which is the

subject matter of the present writ petition, that is, pertaining to Consumer ID 302134244, the WBSEDCL ought to be directed to restore such connection to the petitioner.

Learned counsel appearing for the WBSEDCL places reliance first on Clause- 4.6 of Regulation 56 of the West Bengal Electricity Regulatory Commission (WBERC) which stipulates that, after expiry of 180 days subsequent to a disconnection, there will be a deemed termination of agreement by operation of law.

In the present case, as such, after six months subsequent to November 8, 2017, on which date the connection was severed, it will be deemed that the agreement between the parties was terminated.

Upon such termination, as disclosed in the affidavit-in-opposition as well, the petitioner failed to deposit the money assessed finally or provisionally, as such, the contract automatically terminated in the month of May, 2018. It is submitted that the principle of sub judice cannot be applicable since the order of the co-ordinate Bench was passed even after the expiry of six months from disconnection. It is submitted that

Clause- 13.9 of Regulation 46 of the WBERC clearly stipulates that the WBSEDCL may insist upon clearance of all outstanding dues in the name of the consumer to be paid as a precondition for giving a new connection. The said clause is applicable in the present case, since the termination of the previous agreement would automatically entail that the present application, for all practical purposes, is to be treated as one for a new connection.

Upon hearing learned counsel for the parties and perusing the materials on record, it is apparent that the petitioner seeks to take shelter under the principle of sub judice, in view of the then pendency of a writ petition before this Court. However, the scope of applicability of the said principle is very limited in the present case, since the order of the co-ordinate Bench was passed only in the month of August, 2018, that is, at least three months after the deemed termination of the agreement.

That apart, it is seen that the “admission” of the WBSEDCL in its opposition, with regard to the final assessment amount being paid, does not *ipso facto* imply that the payment was made

within due time as contemplated in Section 126 of the 2003 Act.

In any event, the previous agreement stood terminated / deemed to be terminated in the month of May, 2018, that is, after the expiry of six months from the date of disconnection, that is, November 8, 2017. Thus, it cannot be deemed that the principle of sub judice would be applicable to a matter in which the order was passed subsequent to the expiry of the termination.

That apart, despite the factual scenario of termination of the agreement by operation of law having intruded in the meantime, the order of the co-ordinate Bench did not leave any window of relaxation on such score.

Mere permission to the petitioner to file an objection to the provisional order of assessment and subsequent preference of appeal under Section 127 of the 2003 Act cannot be implied to explain away the prior termination of the agreement in terms of the period stipulated in Clause- 4.6 of the Regulation 55 of the WBERC.

In so far as Section 135(1A) is concerned, the last proviso to the said sub-section clearly subjects it to the provisions of the 2003 Act,

which is explicit from the use of the expression “in accordance with the provisions of this Act” to supplement the language of the proviso.

In the present case, the disconnection was within the ambit of Section 126 of the 2003 Act. Section 126(4) clearly mentions that any person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the WBSEDCL *within seven days* of service of such provisional assessment order upon him.

Moreover, the deposit “admitted” by the WBSEDCL was a condition precedent of the petitioner getting interim bail, in connection with which 50% of the assessed dues had been deposited by the petitioner. Such amount, however, even in conjunction with the deposit of 50% as a pre-condition of preferring an appeal under Section 127 of the Act, cannot be automatically deemed to be a deposit of the entire amount within the contemplation of Section 126(4) of the 2003 Act. In view of the operation of Section 126, the deposit of the petitioner could not be governed by the provisions of Section 135(1A) in terms of the language of the proviso thereto.

In so far as the claim of outstanding dues is concerned, in view of the deemed termination of the previous agreement, learned counsel appearing for the WBSEDCL is justified in arguing that the present application, made by the petitioner for getting back the connection, has to be treated as an application for new connection regarding which Regulation 46 (Clause- 13.9) applies. Hence, unless the petitioner clears all outstanding dues as indicated by the WBSEDCL in its affidavit-in-opposition, there is no scope of directing the WBSEDCL to restore the electricity connection of the petitioner, the relevant contract in respect of which had long since been deemed to be terminated. Hence, there is no scope of granting any relief to the petitioner in the present writ petition.

In the light of the above observations, WPA No. 2293 of 2022 is dismissed.

However, this order will not prevent the petitioner from applying for a new connection at the premises-in-question. If so applied and upon payment of outstanding dues by the petitioner, the WBSEDCL shall give such electricity connection to the petitioner, subject to compliance of all other due formalities in law,

without being prejudiced in any manner by any of the observations made herein.

There will be no order as to costs.

Re : **WPA No. 2391 of 2022**

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CAN 1 of 2022

with

WPA No. 13022 of 2021

These matters shall next be enlisted for further hearing tomorrow (29.09.2022).

(Sabyasachi Bhattacharyya, J.)