

11th March,
2022
(AK)
04

W.P.A 4107 of 2022

Manabendra Mondal
Vs.
The State of West Bengal and others

Mr. Tarun Jyoti Tewari
Mr. Aniruddha Tewari
...for the petitioner.

Ms. Sangahmitra Nandi
Mr. Subhabrata Das
...for the State.

Mr. Srijan Nayak
Mrs. Rituparna Maitra
...for the WBSEDCL.

Affidavit-of-service filed in court today be kept on record.

The grievance of the petitioner is that, without complying with Section 126(5) of the Electricity Act, 2003, the WBSEDCL has issued a provisional assessment bill initially against the petitioner.

Subsequently, when the petitioner categorically pointed out the specific objections of the petitioner at the hearing, such objection was glossed over and a final assessment bill was raised, which is allegedly *de hors* the law.

As such, since there is patent procedural irregularity and gross illegality, learned counsel for the petitioner submits that the power of this court under

Article 226 of the Constitution of India ought to be invoked despite availability of an alternative remedy.

Learned counsel for the Distribution Licensee specifically makes several factual allegations against the petitioner on the score of the petitioner purportedly using electricity in an unauthorized manner.

However, the merits of such allegations ought not to be gone into by this court, since the appellate forum provided in law is more comprehensive and competent to decide questions of fact, upon taking *prima facie* materials as evidence, than the writ court.

Since Section 127 of the Electricity Act clearly provides for an appeal against the final assessment bill, this court is not inclined to interfere in the present matter.

Accordingly, WPA 4107 of 2022 is disposed of by granting liberty to the petitioner to approach the appellate authority challenging the final assessment order passed against the petitioner.

Since the writ petition was itself filed within the stipulated limitation period prescribed for preferring an appeal, in view of the *bona fide* proceeding of the petitioner before this court under the writ jurisdiction under the mistaken impression that there might have been interference by this court in the matter, it may be recorded that the petitioner has further liberty to pray that the petitioner's appeal be taken up despite the

limitation stipulated in law, on the said ground of such bona fides.

If such an appeal is preferred, the appellate authority shall endeavour to decide the appeal as expeditiously as possible in accordance with law, upon hearing all concerned parties, preferably within two months from the date of filing of the appeal.

It is further clarified that the petitioner shall prefer the appeal, as indicated above, positively within a week from date to get advantage of this order.

In default, this order shall be deemed to automatically stand recalled without any further reference to court.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)