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MAT 414 OF 2022
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BISWAJIT BOSE AND ANR.
VS
CESC LIMITED AND ORS.
Mr. Bidyut Kr. Halder,
Mr. Indranil Halder
..for the Appellants

Dr. Madhusudan Saha Ray
..for CESC

This appeal is directed against the order of the learned Single Judge dated 19th January, 2022 whereby WPA 138 of 2022 filed by the appellants (writ petitioners) has been dismissed.

The appellants have the electricity connection with the Meter Nos.2637602 and 2209182 respectively. On 09.12.2021, the inspection of service installation and metering system was done wherein unauthorised use of electricity was found and the provisional assessment order dated 09.12.2021 assessing a sum of Rs.6,20,973/- was passed towards the unauthorised use of electricity including the electricity duty. The appellants had approached the writ Court by filing the petition and questioning the provisional assessment order on account of unauthorised use of the electricity. Since the electricity connection was disconnected, hence, the prayer was also made for restoration of the electricity connection. Before the learned Single Judge the appellants had advanced the argument that they had deposited 50% of the assessed amount, therefore, the

appellants were entitled to restoration of the electricity. The said prayer has been rejected by the learned Single Judge taking note of the provisions contained in Section 135(1A) of the Electricity Act, 2003 as also Regulation 6.4 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013.

Submission of learned counsel for the appellants is that the appellants have already deposited 50% of the assessed amount and they have filed an appeal against the order of assessment, therefore, now the electricity should be restored and that if they are required to deposit 100% amount, then there is no purpose of filing the appeal.

Opposing the prayer, learned counsel for the respondent/Electricity Company has submitted that the order has been passed by the learned Single Judge keeping in view the statutory provisions.

We have heard the learned counsel for the parties and perused the record. During the course of argument learned counsel for the respondent/Electricity Company has produced the final order of assessment dated 24.12.2021 which mentions that against the provisional order of assessment no objection was preferred by the appellants, on the contrary, the provisional order of assessment was accepted by the appellants through an application dated 24.12.2021 in the prescribed form in

terms of the provisions of Section 126(4) of the Electricity Act, 2003. A copy of the acceptance letter signed by one of the appellants has been placed on record. In the final order of assessment the demand to the tune of Rs.6,20,973/- towards the electricity charges and electricity duty for the unauthorised use of electricity has been assessed.

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.

So far as the submission of counsel for the appellants that if the 100% of the amount is deposited, then the appeal will have no relevance. We are of the view that deposit of such 100% of the assessed amount is always subject to the final outcome of the appeal. Hence, on succeeding in appeal, the appellants will be entitled to the appropriate adjustment.

In these circumstances, we find no reason to interfere in the order of the learned Single Judge. The appeal is, accordingly, dismissed.

(Prakash Shrivastava, C.J.)

(Rajarshi Bharadwaj, J.)

