

D/L. 6.
December 12, 2022.
MNS.

WPA No. 7165 of 2021

Sk. Sofikul Islam
Vs.
The West Bengal State Electricity
Distribution Company Limited and others

Mr. Prasanta Kumar Banerjee,
Mr. Indrani Nandi

...for the petitioner.

Mr. Srijan Nayak

...for the WBSEDCL.

Learned counsel for the petitioner seeks for an adjournment *sine die* when the matter is called for hearing.

It is submitted that no certified copy of an acquittal order, as per previous direction of this Court dated December 6, 2022, has yet been obtained by the petitioner. However, despite the specific query of court, learned counsel for the petitioner fails to show anything for the *prima facie* satisfaction of the court that any application for certified copy of the acquittal order has at all been made.

It was recorded in the order dated December 6, 2022, that this was a last chance for production of the acquittal order, upon non production of which, no opportunity could be given to the petitioner to

inordinately delay the matter on the pretext of production of the entire copy of the acquittal order. As such, the prayer for adjournment *sine die* is refused.

Learned counsel for the petitioner, upon being invited to argue on merits, contends that the petitioner was acquitted in a proceeding under Section 135 of the Electricity Act, 2003 (2003 Act) on the allegation of pilferage. As such, it is argued, the order of assessment, provisional or final, should automatically stand negated and the petitioner absolved from making such payments.

Learned counsel for the West Bengal State Electricity Distribution Company Limited (WBSEDCL), however, controverts such contention and submits that it is well-settled that Sections 126 and 135 of the 2003 Act operate in distinct and different fields and are parallelly maintainable.

Hence, acquittal in a criminal proceeding does not *ipso facto* entitle the petitioner to be absolved from the civil liability accrued under Section 126 of the 2003 Act.

Learned counsel cites an unreported judgment of *West Bengal State Electricity Distribution Company Limited & Ors. Vs. M/s. Orion*

Metal Pvt. Ltd. & Anr. , in which the Supreme Court, vide order dated August 21, 2019, held as much.

In any event, the specific provisions of Sections 126 and 135 of the 2003 Act delineate separate proceedings, one of a criminal nature and the other a civil proceeding. Since the yardsticks are different in adjudication of the two, in criminal matters the yardstick being 'beyond reasonable doubt' and in civil matters 'preponderance of probabilities', it cannot be said that the acquittal simpliciter would absolve the petitioner from his liability to pay under Section 126 of the 2003 Act. Moreover, Section 127 of the 2003 Act clearly provides an alternative remedy by way of an appeal before the appellate authority upon payment of 50% of the assessed dues. Having not taken recourse to such remedy, the petitioner cannot be permitted to assail the final order of assessment under Article 226 of the Constitution of India without any patent or gross miscarriage of justice or illegality having been made out.

In such view of the matter, WPA No. 7165 of 2021 is dismissed on contest without any order as to costs.

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.)