

AD. 24.
June 6, 2022.
MNS.

WPA No. 8959 of 2022

Aktar Hossain
Vs.
CESC Limited and another

Mr. Bidyut Kumar Halder,
Mr. Indranil Halder

...for the petitioner.

Dr. Madhusudan Saha Roy

...for the CESC Limited.

Learned counsel for the petitioner submits that initially the petitioner's electricity supply was disconnected by the CESC Limited but subsequently, pursuant to an order of this Court and upon deposit of an amount of money, the same was restored. Ultimately, a Division Bench of this Court, in MAT 225 of 2018, directed the petitioner to deposit the balance sum of Rs.2,42,985/- within a limited period, on which the CESC Limited was to restore the supply of electricity within 48 hours of the deposit.

Learned counsel submits that despite such specific rider and on deposit of the directed sum by the petitioner within the period as stipulated by the Division Bench, the CESC Limited, during pendency of the appeal, which had been taken on board duly in the meantime, sent further communications to the petitioner, insisting upon payment of the entire amount of the disputed bill.

Learned counsel appearing for the CESC Limited harps on the conduct of the petitioner which, according to learned counsel for the CESC Limited, inordinately delayed the appeal. The petitioner deliberately did not take any steps for early disposal of the appeal, which is apparent from several orders, it is submitted. As such, the CESC Limited sought a reply from the petitioner on what steps had been taken by the petitioner with regard to the appeal, even after the expiry of nine months from the date of the solemn order of the Division Bench.

In the communication dated October 19, 2020, which is annexed at pages 27 and 28 of the writ petition, it is pointed out that the CESC Limited clearly asked the petitioner to give the latest status of the appeal. It was further communicated that in the light of the above situation, it was presumed that the petitioner was no longer interested to pursue the appeal and, as such, fifteen days' time was given to the petitioner to settle and pay the balance amount of dues, failing which the CESC Limited warned that they shall reluctantly be compelled to apply for dismissal of the appeal without any further reference.

Learned counsel for the CESC Limited further insists that another communication, apart from the one referred to above, was also made by the CESC Limited in the same tune to the petitioner.

Learned counsel for the petitioner submits, further, that the CESC Limited has disconnected the electricity supply of the petitioner in the meantime due to non-payment of such balance amount.

Upon hearing learned counsel for the parties, there remains no iota of doubt that, by the last order of the Division Bench, which is still operational, the petitioner was directed to deposit the balance sum of Rs.2,42,985/- out of 50% of the disputed amount, within a limited period, which was complied with duly by the petitioner. It was clearly specified by the Division Bench, as admitted in the communication of the CESC Limited dated October 19, 2020, that the right to enjoy the electricity shall be subject to the decision of the appellate authority. In the event the deposit was not made, the appeal presently filed before the appellate authority was to stand dismissed.

Since, admittedly, the amount of RS.2,42,985/- was duly deposited by the petitioner within the time as stipulated by the Division Bench, there cannot arise any question of the appeal having been dismissed.

Hence, it was beyond the authority of the CESC Limited to presume on its own that the appellant was no longer interested to pursue the appeal and consequentially disconnect the electricity

supply for non-payment of the balance dues on the disputed bill, even during pendency of the appeal.

Since the disputed bill is the subject-matter of the appeal, it was premature on the part of the CESC Limited, in the teeth of the Division Bench order dated January 17, 2020 passed in MAT 225 of 2018, to disconnect the electricity supply of the petitioner during pendency of the appeal. Such action on the part of the CESC Limited, although might have been deemed necessary by the CESC Ltd. for the expedition of the appeal, was an unwarranted act *de hors* the authority of the CESC Limited in view of the specific restraint incorporated in the order of the Division Bench dated January 17, 2020. Hence, such act on the part of the CESC Limited is deprecated.

WPA No. 8959 of 2022 is, thus, allowed, thereby directing the CESC Limited to restore the electricity supply of the petitioner unconditionally, without prejudice to the rights and contentions of the parties in the pending appeal, within 24 hours from now, that is, from 4.04 pm. on June 6, 2022.

However, such restoration of connection, as indicated above, shall be without prejudice to the rights and contentions of the parties. Since the petitioner has apparently not taken any steps to expedite the appeal, the appellate authority is directed to dispose of the appeal, in accordance with

law, as expeditiously as possible, positively within two months from the date of communication of this order to the appellate authority.

The parties shall communicate this order to the appellate authority at the earliest for the purpose of implementation of the same.

The parties shall act on the written communication of the learned Advocates appearing for the parties, accompanied by server copies of this order, without insisting upon prior production of a certified copy thereof.

There will be no 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.)