

M/L. 46.  
November 10, 2022.  
MNS.

WPA No. 12039 of 2021

Esrafil Molla alias Easrafil Molla  
Vs.  
The West Bengal State Electricity  
Distribution Company Limited and others

Ms. Manali Biswas

... for the petitioner.

Mr. Srijan Nayak,  
Mrs. Rituparna Maitra

...for the WBSEDCL.

Learned counsel for the petitioner contends that the petitioner had already left his premises, in connection with which subsequent theft has been alleged.

According to the petitioner, the petitioner had verbally asked the West Bengal State Electricity Distribution Company Limited (WBSEDCL) to disconnect the electricity supply, but the same was not done.

By way of explanation, learned counsel for the petitioner submits that the petitioner is a poor cultivator and as such, was not aware as to the necessity of filing a proper application for disconnection.

It is submitted that subsequently no provisional assessment order was served on the petitioner, but the petitioner learnt that apparently a final order of assessment had been passed. After becoming so aware, the petitioner has challenged the provisional as well as the final order of assessment on the ground that the petitioner had not been given an opportunity of hearing.

Learned counsel appearing for the petitioner further contends that the provisional assessment bill purportedly annexed to the affidavit-in-opposition of the WBSEDCL indicates that the dates given therein do not corroborate with each other.

It is submitted that the date of signature by the office of the S.S. is December 1, 2016, as appearing from the purported provisional assessment bill. However, the due date was November 22, 2016, as given therein.

Moreover, it is submitted that the petitioner had never given any communication to the WBSEDCL or its functionaries, as annexed to the affidavit-in-opposition. It is alleged that the purported LTI of the petitioner was never given by

the petitioner. Hence, it is submitted that the entire process of assessment be set aside.

Upon hearing learned counsel for the parties, it is seen that the purported provisional assessment bill annexed to the affidavit-in-opposition does not clearly indicate as to whether the same was served in due time on the petitioner.

That apart, in view of the inability of the writ court to delve into a detailed enquiry, upon taking evidence, as to the veracity of the LTI alleged to be of the petitioner, the matter cannot be decided upon a final conclusion being arrived at with regard to such allegations.

Although learned counsel for the WBSEDCL might otherwise have been justified in pointing out that the appellate authority ought to have been approached by the petitioner against the final order of assessment, such contention cannot be accepted in the circumstances of the present case because specific allegations have been made by the petitioner that the provisional order of assessment was never served on the petitioner.

In the absence of concrete proof of such service, the final order of assessment is also

vitiated in law in view of non-compliance of the provisions of Section 126 of the Electricity Act, 2003 (2003 Act). In the absence of any hearing being given to the concerned consumer, no final order of assessment could have been passed. As the facts with regard to the veracity of the petitioner's presence at the hearing being clouded, it would not be prudent to come to a final decision with regard to such allegations and counter allegations.

However, in the absence of any concrete proof, as indicated above, of service of the provisional order of assessment on the petitioner and extending the benefit of doubt to the petitioner, it would be well within the scope of law to direct the WBSEDCL to issue a further provisional order of assessment and to give an opportunity of hearing to the petitioner prior to coming to a final assessment.

Hence, WPA No. 12039 of 2021 is disposed of by setting aside the provisional and final orders of assessment passed by the WBSEDCL, which were vitiated due to non-compliance of Section 126 of the 2003 Act, and directing the WBSEDCL to raise a fresh provisional assessment bill and serve the same

upon the petitioner to enable the petitioner to appear at the hearing of the same and contest the same.

It will be open to the parties to take all points as taken in the writ petition in such hearing. Upon such hearing, the WBSEDCL will arrive at a final order of assessment accordingly.

It is made clear that in view of the pendency of the writ petition and the attending circumstances of the case, the WBSEDCL raising a fresh provisional assessment at this belated juncture shall be treated not to be time-barred.

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.)