

AD. 34.
June 29, 2022.
MNS.

WPA No. 10766 of 2022

Sk. Sahajahan Mondal
Vs.
The State of West Bengal and others

Mr. M. A. Samad,
Mr. M. Zahedi
...for the petitioner.

Dr. Madhusudan Saha Roy,
Mr. Debanjan Mukherjee
...for the WBSEDCL.

Learned counsel for the petitioner contends that although the electricity connection to the petitioner's meter for operating a submersible pump was disconnected as long back as on February 18, 2015, which, according to the petitioner, was on the request made by the petitioner himself, an allegation of theft was subsequently levelled against the petitioner and a provisional assessment made on such premise.

It is submitted that the allegation of theft has no leg to stand upon, since the disconnection, according to learned counsel for the petitioner, could not be effected in respect of the petitioner's meter, which stood disconnected as per the petitioner's own volition long back.

Learned counsel further submits that it is evident from the First Information Report registered against the petitioner itself that the allegation of theft

against the petitioner is concocted. It has been stated in the complaint supporting the First Information Report, annexed at pages 104 and 105 of the writ petitioner, that during inspection, stealing of electricity under Section 135(1)(b) and (d) of the Electricity Act, 2003 (2003 Act) was detected. Electricity was allegedly stolen directly from the nearby LTOH line of the West Bengal State Electricity Distribution Company Limited (WBSEDCL). It is submitted that the said allegation *ipso facto* is sufficient for the Court to disbelieve the allegation of theft levelled against the petitioner. That apart, since the provisional assessment order does not stand any further, in view of the authorities having missed the time-line of 30 days from the date of service of order of provisional assessment in assessing the dues finally within the contemplation of Section 126(3) of the 2003 Act, the said assessment, along with the connected disconnection, goes.

Learned counsel appearing for the WBSEDCL, on the other hand, controverts such submissions of the petitioner and submits that the instance when the petitioner's electricity connection, at the meter of the petitioner, was disconnected on February 18, 2015, is distinct and different from the subsequent disconnection of the service connection on March 10, 2022, as mentioned in the First Information Report.

It is submitted that Section 126(3) contemplates that a final order of assessment has to be passed within 30 days from the date of service of the order of provisional assessment; however, there is no penalty for non compliance of such time-line within the four corners of the Statute.

That apart, learned counsel distinguishes between the assessment made for unauthorised use under Section 126 of the 2003 Act and a disconnection effected within the contemplation of Section 135(1-A) of the 2003 Act.

Learned counsel for the WBSEDCL also places reliance on a Division Bench judgment of this Court in *Talat Sahmid Vs. W.B.S.E. Distribution Co. Ltd.* reported at 2015 (5) CHN (CAL) 165 in support of the proposition that Sections 126 and 135 of the 2003 Act operate in different spheres.

Upon consideration of the submissions of learned counsel for the parties and perusal of the materials on record, it is evident that there is a clear distinction between disconnection effected admittedly on February 18, 2015, which pertains to the metered connection of the petitioner to his submersible pump and the instance of disconnection on March 10, 2022 on the allegation of theft, which was effected in respect of the service connection of the petitioner.

Hence, it cannot be said that the subsequent disconnection is mutually exclusive with the

disconnection made in the year 2015, since the two disconnections were on separate scores, one for unauthorised use, effected in respect of the meter of the petitioner and the other (in the year 2022) on the allegation of direct hooking, from a nearby LTOH line of the WBSEDCL, in respect of the service connection of the petitioner.

Hence, it cannot be said that the allegation of subsequent theft can be brushed aside merely due to previous disconnection on February 18, 2015. Although learned counsel for the petitioner seeks to rely on Regulations framed by the West Bengal Electricity Regulatory Commission under the 2003 Act, Section 126(5) specifically stipulates that if the assessing Officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection.

In the present case, such procedure was followed and I cannot find direct nexus between the allegation of theft levelled subsequently against the petitioner and the previous disconnection of the

electricity connection to the meter of the petitioner in the year 2015.

However, since it has been fairly submitted by learned counsel for the WBSEDCL on the basis of the materials on record that the provisional assessment notice was dated March 14, 2022 but the same could not be followed up within 30 days by way of final order of assessment, the prayer of the WBSEDCL in respect of permitting the WBSEDCL to have a final hearing upon granting opportunity to the petitioner to file an objection to the lapsed provisional assessment and passing final order subsequently, cannot be entertained.

Since the provisional assessment notice dated March 14, 2022 was not followed up by any final order of assessment as contemplated within the purview of Section 126 of the 2003 Act, the said provisional assessment notice has lapsed and is accordingly quashed.

However, no direct connection being *prima facie* established, on the basis of the allegation made against the petitioner, between the disconnection effected in respect of the meter in the year 2015 and subsequent severance of service connection in the year 2022, the restoration of the electricity connection, as prayed for by the petitioner, cannot be ordered.

This is for the simple reason that Section 135 of the Electricity Act, 2003 clearly stipulates that in the event the consumer deposits the assessed amount of electricity charges under the provision of the 2003 Act, the licensee shall, without prejudice to the obligation to lodge complaint, restore the supply line within 48 hours of such deposit or payment. In the present case, since the service connection was disconnected pursuant to the allegation of theft in the year 2022, the same is not automatically rendered infructuous by virtue of quashing of the provisional assessment order.

As such, since, without restoring the electricity connection to the petitioner's service connection, no further connection can be given to the electricity meter of the petitioner, even if the service connection is restored, the severance of the metered connection in the year 2015, still remains.

Be that as it may, in view of the above observations, WPA No. 10766 of 2022 is disposed of by quashing the provisional assessment order and notice dated March 14, 2022 issued by the WBSEDCL to the petitioner. However, this order shall not preclude the WBSEDCL from raising a fresh provisional assessment in respect of the alleged unauthorised use of electricity by the petitioner. If so raised, the petitioner will be at liberty to file objection

thereto and, upon hearing the petitioner, a final order of assessment shall be passed by the WBSEDCL.

It is further clarified that the above observations shall not in any way prejudice any of the parties to the proceeding under Section 135 of the 2003 Act, which will be decided on its one merits independently of the observations made herein.

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.)