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08.07.2022
TN

WPA No. 11193 of 2022

Srikanta Bhunia
Vs.
The West Bengal State Electricity Distribution
Company Limited (WBSEDCL) and others

Mr. Sukumar Ghosh,
Ms. Moumita Ghosh

.... for the petitioner

Mr. Debjit Mukherjee

.... for the WBSEDCL

Learned counsel for the petitioner contends that the petitioner was not given any hearing on the provisional assessment order of the Distribution Licensee under Section 126 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”).

Without doing so, the final assessment order was made, which is contrary to law, it is submitted.

Learned counsel contends that a composite notice was given to the petitioner clubbing Section 126 of the 2003 Act with Section 135 of the said Act, which compoundment, it is contended, is not tenable in the eye of law.

As such, learned counsel seeks that the orders of provisional and final assessment be set aside.

Learned counsel places reliance on a coordinate Bench judgment in *Arnab Ganguly & Anr. vs. CESC Ltd. & Ors.*, reported at 2010 (1) CHN (CAL) 645, for the proposition that for passing either a provisional or final order of assessment within the contemplation of Section 126 of the 2003 Act, a notice of prior hearing has to be given to the consumer.

Learned counsel appearing for the Distribution Licensee hands over a copy of a purported notice of hearing which allegedly contains the signature of the petitioner as well. In the said notice, apparently the date of hearing on the provisional assessment, for the purpose of drawing final assessment, was given. Such date of hearing was fixed on May 30, 2022 at 13:40 hours.

It is submitted that the allegations levelled in paragraph nos.11 and 13 of the writ petition, to the effect that no notice was given to the petitioner even prior to the final order of assessment, is patently incorrect.

Learned counsel also controverts the proposition that a notice has to be given even prior to passing a provisional order of assessment.

A perusal of Section 126 of the 2003 Act clearly elucidates that no prior notice has to be given before the Licensee arrives at a provisional assessment, although an opportunity of hearing has to be given prior to finalizing such assessment by way of a final order of assessment.

Insofar as the cited judgment is concerned, the question which fell for consideration before the learned Single Judge is enumerated in paragraph no.7 of the citation. Such question was whether, on the allegation that the writ petitioners were the actual users of the meter, which was involved in the alleged theft even after sale of the premises in their favour, the meters of the writ petitioners obtained in September, 2008 and 26th December, 2008 could be disconnected?

Upon considering the effect of Section 126 of the 2003 Act and Regulation 5 of the West Bengal Electricity Regulatory Commission (WBERC) Notification No.24 dated October 18, 2005, the learned Single Judge arrived at the finding that, in the said case, the provisional assessment and the final assessment were made without any notice to the petitioners. Proper proceeding, it was observed, ought to have been drawn up against them, and they be

given an opportunity to contest the same before any unauthorized use may be assessed as against them.

Upon considering the relevant provisions of the concerned Regulations of the WBERC, the learned Single Judge further went on to hold that the rules do not preclude an assessment order to be passed against the petitioners or any of them, but that particular assessment order cannot be enforced against them as it was passed without notice to them or hearing them.

It is obvious from the tenor of the said judgment that the final order of assessment had also been passed in the said case, which was challenged in a composite manner with the provisional order. Needless to say, within the contemplation of Section 126 of the 2003 Act, the provisional order of assessment merges with the final order of assessment once the latter is passed. Of course, Section 126 clearly contemplates a notice being given to the consumer concerned for hearing on the provisional assessment, prior to passing a final order of assessment. However, no prior hearing has to be given before issuing a provisional order of assessment.

Contrary to the allegations made in the present writ petition, the document handed over by learned

counsel for the WBSEDCL indicates that a notice of hearing was actually given to the petitioner.

Although learned counsel for the petitioner contends that even before a provisional order of assessment, a notice of hearing need be given to the petitioner, such proposition cannot be supported either on the strength of the cited judgment or the relevant provision, that is, Section 126 itself.

Hence, in the present case, the final order passed by the WBSEDCL was well within the authority of the WBSEDCL to pass.

That apart, it is well-settled that Sections 126 and 135 of the 2003 Act operate in separate spheres – one giving rise to a civil liability and the other criminal – and, as such, there arose no question of “compounding” the said two provisions in the notice-in-question. As per the notice of provisional assessment, it was merely mentioned by the Distribution Licensee for the information of the petitioner that proceedings under Section 126 as well as Section 135 of the 2003 Act had been levied against the petitioner. There is no question of compounding of offences as sought to be argued by the petitioner in the instant case.

It is further provided in Section 127 of the 2003 Act that an order of final assessment is appealable

before the competent appellate authority upon deposit of fifty per cent of the claimed amount.

In the present case, the petitioner having not done so, there is no scope of entertaining the writ petition at the behest of the petitioner which, *inter alia*, challenges such final order of assessment as well.

Hence, WPA No.11193 of 2022 is dismissed without any order as to costs.

However, it is made clear that in the event the petitioner prefers an appeal within the contemplation of Section 127 of the 2003 Act, the appellate authority shall consider the same independently, subject to statutory limitation and in accordance with law, and decide the same on its own merits without being influenced in any manner on merits by any 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.)