

January 5, 2022
Sl. No.5 & 11
Court No.1
SG/s.biswas

MAT 1100 of 2021

With

CAN 1 of 2021

+

CAN 2 of 2021

+

CAN 3 of 2021

Sisir Kanti Biswas

vs.

CESC Limited and another

AND

FMA 1318 of 2021

With

CAN 1 of 2021

+

CAN 2 of 2021

Sisir Kanti Biswas

vs.

CESC Limited and others

(Through Video Conference)

Ms. Kakali Samajpaty,

Ms. Sudipa samanta,

Mr. Pramit Chakraborty, Advocates

... for the appellant

Mr. Om Narayan Rai, Advocate

... for the CESC Ltd.

These two appeals are at the instance of Sisir Kanti Biswas, son of Khitish Chandra Biswas challenging the two orders of learned Single Judge arising out of the same cause of action.

In MAT 1100 of 2021 the appellant has challenged the order dated 15.02.2021 passed in WPA 10296 of 2020 whereby learned Single Judge while disposing of the writ petition at the instance of the appellant's father Khitish Chandra Biswas has directed that subject to payment of

50 per cent of the assessed amount, the electricity supply will be restored to the said writ petitioner but the appellant has been deprived the benefit of that order.

Since the appellant was not a party in WPA 10296 of 2020, he has filed CAN 2 of 2021 seeking leave to appeal against the order passed in WPA 10296 of 2020. There is a delay in filing this appeal. Hence, CAN 1 of 2021 has been filed seeking condonation of delay. Having regard to the circumstance of the case, CAN 1 of 2021 and CAN 2 of 2021 are allowed, leave is granted and delay in filing the appeal is condoned.

In FMA 1318 of 2021 the appellant has challenged the order dated 21.04.2021 whereby WPA 9780 of 2021 has been dismissed as not maintainable in view of the availability of alternative remedy of the appeal.

Facts in a nutshell are that the present appellant and his father Khitish Chandra Biswas are having two separate electric meters. There was allegation of unauthorized use of electricity therefore their electricity was disconnected. The final order of assessment dated 17.11.2020 in terms of Section 126 of the Electricity Act was passed fixing the liability of ₹2,29,793/-. Initially, Khitish Chandra Biswas had filed WPA 10296 of 2020 and learned Single Judge after taking note of the fact that against the final order of assessment there is a remedy of appeal under Section 127 of the said Act and also taking note of the fact of electricity disconnection has directed

restoration of electricity connection of Khitish Chandra Biswas subject to deposit of 50 per cent of the demand with liberty to the said petitioner to prefer an appeal against the order of assessment in terms of Section 127(2) of the said Act.

Since the electricity of the present appellant was also disconnected, the appellant had subsequently filed WPA 9780 of 2021, which has been dismissed by learned Single Judge by the order dated 21.04.2021 on account of availability of alternative remedy.

Submission of learned counsel for the appellant is that since the case of the appellant also stands on the same footing as that of his father therefore the appellant is also entitled for similar order and that 50 per cent of the amount has already been deposited by the appellant's father Khitish Chandra Biswas, therefore the appellant may not be required to deposit any further amount now and the electricity be restored.

Learned counsel for the respondents has submitted that the appeal lies against the final order of assessment, therefore no error has been committed by learned Single Judge in dismissing the writ petition filed by the appellant. He has further submitted that in terms of the order of the Division Bench of this Court dated 23.07.2019 in MAT 915 of 2019 in the case of *Sushil Kumar Panday vs. CESC Limited and another*, it is a case of unauthorized use of electricity after bypassing the

electric meter, therefore the liability is joint and several. Hence, the appellant is required to deposit 50 per cent of the payment separately if he wants same order as passed in the case of his father.

Having examined the record, we have noticed that the inspection report dated 06.11.2020 clearly mentioned that it was a case of bypassing electrical meter and unauthorized use of electricity for electric vehicles charging as well as for domestic purpose. The order of assessment dated 17.11.2020 is in respect of both the consumers namely the present appellant and Khitish Chandra Biswas.

The Division Bench of this Court in the case of *Sushil Kumar Panday* (supra) has already held that in such cases the liability is joint and several. So far as Section 127(2) of the Electricity Act, 2003 is concerned, the deposit of 50 per cent of assessed amount is only for the purpose of maintaining the appeal.

A submission has been raised by learned counsel for the appellant that the criminal case has been registered only against the appellant's father Khitish Chandra Biswas but that alone will not absolve the appellant of his liability to deposit the assessed amount as the proceedings under Section 135 of the said Act are different from the proceedings under Sections 126 and 127 of the said Act.

In these circumstances, we are of the opinion that if the appellant wants the same benefit as has been extended by learned Single Judge to Khitish Chandra Biswas in WPA 10296 of 2020, he is required to separately deposit 50 per cent of assessed amount to get the electricity restored.

Learned counsel for the respondents has also fairly submitted that if the appellant makes such a deposit of 50 per cent of the amount along with restoration charges, his electric connection will be restored.

Since case of the appellant stands on the same footing as that of his father therefore he is entitled to the same benefit which has been extended to his father Khitish Chandra Biswas in WPA 12096 of 2020.

The order passed by learned Single Judge dated 15.02.2021 in WPA 12096 of 2020 does not suffer from any error. As the present appellant was not a party in that petition therefore no relief was granted to him in that case.

The objection of learned counsel for the respondents to the order of learned Single Judge is also not unsustainable because there is no absolute bar in entertaining the petition in spite of availability of the alternative remedy and learned Single Judge has not adjudicated the issue on merit while passing the order in WPA 12096 of 2020 but has relegated the petitioner therein to avail the remedy to appeal and only in the

meanwhile directed the restoration of electricity subject of certain conditions.

Hence we do not find any reason to interfere in the order dated 15.02.2021 in WPA 12096 of 2020, therefore MAT 1100 of 2021 is dismissed along with the connected applications.

So far as FMA 1318 of 2021 is concerned, for the reasons assigned above, the appeal is disposed of by directing that subject to the appellant depositing 50 per cent of the amount of ₹2,29,793/- and the restoration charges, the respondents will restore the electricity connection within 3 working days of making of the payment. The deposit of the amount as permitted by this Court will be subject to the order passed in appeal.

The appellant will be at liberty to challenge the order of assessment in appeal in terms of Section 127 of the said Act. If such an appeal is preferred within 2 weeks from today, the same will be decided in accordance with law without raising any objection relating to the limitation.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on usual undertaking.

[Prakash Shrivastava, C.J.]

[Kesang Doma Bhutia, J.]