

10th August,
2022
(AK)
02

W.P.A 13652 of 2022

Sri Pradip Ghosh
Vs.
State of West Bengal and others

Mr. Arijit Sarkar
...for the petitioner.

Dr. Madhusudan Saha Ray
...for the WBSEDCL.

Learned counsel for the petitioner submits that an allegation of theft of electricity was made against the petitioner.

However, subsequently a criminal proceeding, lodged against the petitioner under Section 135 of the Electricity Act, 2003, was disposed of on acquittal of the petitioner.

It is submitted that under Section 154(4) of the 2003 Act, it is the jurisdiction of the Special Court to assess the civil liability in cases of alleged theft. However, in the present case, a provisional assessment was made under Section 126 which was subsequently made final by way of a final assessment.

It is submitted that in view of acquittal of the petitioner in the criminal proceeding, no further assessment under Section 126 or Section 154 of the 2003 Act can remain valid.

Learned counsel appearing for the Distribution Licensee contends that it has been well-settled by this court and the Supreme Court that Sections 126 and 135 of the 2003 Act operate in different fields.

Learned counsel cites an unreported Division Bench judgment of this court (*Basudeb Paine vs. WBSEDCL & ors.*), that is, MAT 263 of 2015, where the Division Bench held that two parallel proceedings, one under Section 126 and another Section 135 of the 2003 Act, can proceed parallelly.

It was clearly held by the Division Bench that under Section 135, the proceeding is a penal one to punish the person accused of the theft of energy, whereas Section 126 involves a civil determination.

Learned counsel next cites the judgment rendered by the Supreme Court in *West Bengal State Electricity Distribution Company Ltd. Vs. M/s. Orion Metal Pvt. Ltd.* Reported at 2019 (5) CHN (SC) 72, wherein it was held, inter-alia, that a civil determination under Section 154 is different and distinct from a determination under Section 126 of the 2003 Act.

Whereas Section 154 liability arises in the context of an offence under Sections 135 to 140 and 150 of the 2003 Act, the same rider is not applicable to Section 126, which is independent in nature.

Upon hearing learned counsel for the parties, it transpires from the record that the WBSEDCL levelled the

allegations of unauthorized use of electricity and theft against the petitioner.

Upon such allegation, a provisional assessment was made and thereafter, a final order of assessment was passed on October 4, 2016.

Despite the limitation period for preferring an appeal against such order having long passed, no appeal under Section 127 of the 2003 Act has been preferred till date by the petitioner.

The acquittal of the petitioner in the criminal proceeding, as it appears from the copy of judgment of the criminal court annexed to the writ petition, was on the ground of benefit of doubt.

That apart, as held by the Division Bench and the Supreme Court, Section 126 on the one hand and Sections 135 and 154 of the 2003 Act on the other operate in several fields.

Although the unauthorized use of electricity in the present case might have been connected with the allegation of theft, the acquittal of the petitioner before the criminal court does not *ipso facto* negate the liability of the petitioner to pay the amount assessed under Section 126.

As well-settled by the Supreme Court and this court, Section 126 operates in respect of a civil liability whereas Section 135 and consequentially the liability under Section 154 arise from a proceeding of criminal nature.

Whereas in a civil proceeding, the yardstick of deciding the weight of evidence is preponderance of probabilities, in a criminal case the standard is, beyond all reasonable doubt.

In view of the standard of proof being distinct and different in respect of the two sections, it cannot be said that acquittal under Section 135 by itself relieves the petitioner from the liability to pay the final order of assessment.

Since Section 154, that is, either the civil liability or the criminal liability therein, arises directly out of the allegation under Section 135 to 140 and 150, an acquittal before the criminal court might lead to dropping any proceeding under Section 154, whereas the proceeding under Section 126 has no nexus with either of the two.

Thus, in the present case, the argument of the petitioner cannot be accepted.

Hence, WPA 13652 of 2022 is dismissed without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)