

FMA 1026 of 2021

22.08.22
SI-04
Ct.32
(S.R.)

Commercial Executive of Calcutta Electric Supply Corporation Ltd. & Ors.
v.
Smt. Rupa Barman & Ors.

Mr. Dr. Madhusudan Saha Ray
Mr. Om Narayan Rai ... for the appellants.

Mr. Abhisek Banerjee
Ms. Sanchita Banerjee ... for the respondents.

The present appeal has been preferred by the functionaries of the Calcutta Electric Supply Corporation Limited (in short, CESC) challenging, *inter alia*, the following observations made by the learned Single Judge in the order dated 21st June, 2019:-

‘However, the law makes a provision by way of sub-section 5 & 6 to Section 154 whereby the Special Court where the criminal case is pending against the petitioner has the jurisdiction to adjudicate whether the civil liability, i.e. the assessed amount paid by the petitioner was correctly assessed or not.

AND

It is made clear that such payment and acceptance is subject to the final result in the proceeding pending before the Criminal Court.’

Records reveal that the subject matter of challenge in the writ petition was an order dated 7th February, 2018 passed by the appellate authority under Section 127 of the Electricity Act, 2003 (in short, the Act of 2003), in an appeal preferred by the writ petitioner/respondent no.1 herein against the final order of assessment under Section 126 of the Act of 2003.

Mr. Rai, learned advocate appearing for the appellants submits that though by the order dated 21st

June, 2019 the learned Single Judge has not interfered with the order passed by the appellate authority, the observations, as quoted above, would have the effect of granting the writ petitioner a forum to challenge the final determination made by the appellate authority under Section 127.

He argues that jurisdiction under Section 126 of the Act is for determination of assessment for unauthorised use of electricity whereas the jurisdiction under Section 154(5) and (6) is for determination of civil liability in terms of money for theft of energy. There is no scope for the Special Court to check the assessment done by the Assessing Officer. In view of the observations, in all cases of acquittal, the Special Court would be clothed with a blanket power to check the correctness of such assessment. In support of the arguments, Mr. Rai has placed reliance upon the judgments delivered in the cases of *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (Southco) & Another v. Sri Seetaram Rice Mill*, reported in (2012) 2 SCC 108; *Talat Sahmid v. W.B.S.E. Distribution Co. Ltd.* reported in 2015 SCC OnLine Cal 2527 and an unreported judgment delivered in M.A.T. 263 of 2015 (*Basudeb Paine v. W.B.S.E.D.C.L. & Ors.*).

Mr. Banerjee, learned advocate appearing for the respondents denies and disputes the contention of Mr.

Rai.

The provisions of Section 126 and the provisions of Section 154(5) and (6) operate in different fields and there is no dispute as regards the proposition of law as laid down in the judgments, as cited by Mr. Rai.

The contents of the order impugned in the present appeal need to be read as a whole and not in isolation. A particular clause cannot be taken up and highlighted. The learned Single Judge upon affirming the order passed by the competent authority under Section 127 has observed that there is a separate forum for determination of civil liability for theft of energy under Section 154(5) and (6) of the Act of 2003.

The arguments of Mr. Rai that in view of the observations, the consumer would be getting a forum to challenge the order of the appellate authority passed under Section 127 of the Act, 2003 and that in case of an acquittal, the Special Court would be clothed with a blanket power to check the correctness of the assessment determined under Section 126 of the Act, 2003, are misconceived and are not acceptable to this Court.

In view thereof, no interference is called for in the present appeal.

The appeal, being FMA 1026 of 2021, is, accordingly, dismissed.

There shall, however, be no order as to costs.

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible.

(Raja Basu Chowdhury, J.) (Tapabrata Chakraborty, J.)