

D/L. 52.
November 21, 2022.
MNS.

WPA No. 16954 of 2022

Abdul Alim Molla
Vs.
The State of West Bengal and others

Mr. Indradeep Pal,
Sk. Mustafi Rahaman

... for the petitioner.

Ms. Piyali Sengupta,
Mr. R. Das

...for the State.

Mr. Sumit Ray

...for the WBSEDCL.

Learned counsel for the petitioner submits that in view of the petitioner having been acquitted subsequently in a criminal proceeding under Section 135 of the Electricity Act, 2003 (2003 Act), the petitioner's liability to pay in terms of the final assessment order made under Section 126 of the 2003 Act, subsequently affirmed by the appellate authority under Section 127 of the 2003 Act, stands automatically absolved.

It is contended that although the appellate authority held the petitioner to be liable to pay the assessed amount in view of alleged unauthorised usage of electricity by means of direct hooking by

drawal of cable from nearest LTOH line and creating a separate loop line to bypass the proper registration of unit in installed energy meter for domestic purpose, the same facts were in contention before the criminal court, where the criminal court clearly acquitted the petitioner and dropped the proceeding under Section 135 of the 2003 Act against the petitioner.

Learned counsel appearing for the WBSEDCL contends that there was a previous challenge to the assessment order of the WBSEDCL authorities, which ultimately went up to a Division Bench, which observed that the proceeding under Section 135 of the 2003 Act, which was then pending, was independent of the proceeding under Section 126 of the 2003 Act. It is submitted that the appellate authority's order has never been challenged by the petitioner before any forum.

The moot question which has arisen herein is whether the acquittal of the petitioner in a criminal proceeding under Section 135 of the 2003 Act by the criminal court can *per se* operate to absolve the liability of the petitioner to pay the amount assessed under Section 126 of the 2003 Act.

In the circumstances of the present case, the said assessment order was affirmed by the appellate authority under the contemplation of Section 127 of the 2003 Act, which was never challenged before any competent forum. Such adjudication by the appellate authority happened prior to the petitioner being acquitted in the criminal proceeding.

It is well-settled that a criminal proceeding is decided on different yardsticks and standards of proof than a civil proceeding. Moreover, in the present case, the conclusion by the appellate authority against the petitioner, inasmuch as the liability to pay the final order of assessment is concerned, attained finality even prior to the acquittal of the petitioner in the criminal case. Such subsequent acquittal, that too in a criminal proceeding, cannot by itself operate retrospectively to negate the final order of assessment as affirmed by the appellate authority under the 2003 Act.

That apart, it is questionable as to whether such acquittal would, in any event, have afforded the opportunity to the civil forum to revisit its orders, since the observations by the criminal court, as evident from the order of the criminal

court annexed to the present writ petition, were primarily arrived at on the standard of proof of beyond reasonable doubt, as opposed to preponderance of probabilities, which is the touchstone in civil matters.

The criminal court, *inter alia*, has come to the conclusion that the allegation must be specific in a criminal case and there is no evidence before the said court that the accused persons were consuming electricity illegally. The three accused persons, as per the finding of the criminal court and also from the evidence of the PW1, were not in the premises at the relevant juncture.

It has further been observed by the criminal court that the evidence, which has come before the said court, is totally ambiguous.

The criminal court went on to hold that to convict being an accused, the prosecution must prove the quantum of electric energy the accused has used as well as how much financial gain has been derived by the accused by such act.

In such circumstances and considering the same, the criminal court arrived at the conclusion that the prosecution has failed to prove that the accused persons were consuming

electricity by direct hooking bypassing the electricity meter.

As such, the standards and yardsticks applied by the criminal court would defeat a criminal proceeding, but are different from the yardsticks applicable to a civil liability. More so, since such liability has already attained finality, as discussed above, there is no scope to reopen the same at this belated juncture.

Hence, WPA No. 16954 of 2022 fails and is dismissed without any order as to costs.

In view of the peculiar circumstances of the case, keeping in mind the occupation of the petitioner, who is a cultivator, and the advanced age of the petitioner, an octogenarian, the petitioner is permitted to deposit his dues as per the order of the appellate authority under the 2003 Act in four equal monthly installments. The first of such installments shall commence by December 10, 2022 and each of the next installments shall be paid by tenth day of each succeeding month. Any remaining dues, after payment of the first three approximated equal monthly amounts, shall be rounded off and cleared with the last installment. Subject to the first installment being paid by the petitioner, the

WBSEDCL shall not disconnect the connection unless the petitioner commences any further default in paying the installments as indicated above.

However, in default of payment of even one of the installments, the WBSEDCL will be at liberty to disconnect the electricity of the petitioner for non-payment of such dues without further reference to this Court.

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.)