

ML-52&53
Ct No.09
08.09.2022
TN

WPA No. 13662 of 2004

M/s Lite Metal Industries
Vs.
CESC Limited and others

With

WPA No. 15570 of 2004

CESC limited and another
Vs.
The Appellate Authority and others

Mr. Bidyut Kr. Halder,
Mr. Indranil Halder

.... for the petitioner in
WPA No.13662 of 2004 and
respondent in WPA No.15570 of 2004

Mr. Subir Sanyal,
Ms. Sumouli Sarkar

.... for the CESC Limited
in both the matters

The two writ petitions have been filed respectively, one by the consumer for implementation of an order of the appellate authority under the Electricity Act, 1910 and the other challenging the same order of the appellate authority at the behest of the Distribution Licensee.

Learned counsel for the consumer submits that as per the order of the appellate authority, the petitioner was exonerated of the charge of pilferage, which was held by the Chief Electrical Inspector and

affirmed by the appellate authority and, as such, the *ad hoc* payment of Rs.40,000/- made by the petitioner ought to have been refunded.

However, learned counsel for the CESC Limited contends that neither the Joint Chief Electrical Inspector in his order dated January 22, 2001 nor the appellate authority decided the issue as to whether the seal of the concerned meter was tampered or not, which was the basis of the allegation of pilferage. Hence, it is submitted that the appropriate course of action ought to have been for the Chief Electrical Inspector (CEI) to have an examination on the said aspect and finally to have decided the issue regarding pilferage, which was never undertaken by the Chief Electrical Inspector, nor directed by the appellate authority.

A perusal of the order of the Joint Chief Electrical Inspector (CEI) dated January 22, 2001 vide Memo No. PKR/260/1 shows that the CEI observed that there was no "*prima facie*" evidence as to the allegations framed by the CESC Limited, nor there was any legal steps framed so far by it. Under such circumstances, it was observed that the allegation of pilferage of electricity stood cancelled.

In the appeal preferred against the same by the CESC Limited, the appellate authority ultimately came

to the conclusion that though the CEI had stated that the consumption as reflected through the meter remained almost the same even after change of the meter, it was beyond the capacity and the jurisdiction of the Joint CEI to say anything about the seal. Accordingly, the case was disposed of by the appellate authority in a cursory manner by recording that the CESC may take up the matter in an appropriate court of law.

Upon a perusal of the legal provisions subsisting at the relevant juncture, it is clear that the CEI, that is, the Chief Electrical Inspector would be well within his jurisdiction to have the issue of tampering of seal examined, if necessary by an expert, and to come to a final conclusion on the same. Even the appellate authority left the next course of action vague by loosely observing that the CESC might take up the matter “in an appropriate court of law”, although it was within the domain of the CEI himself to decide such issue finally.

Be that as it may, as fairly submitted by learned counsel for the CESC Limited and agreed to ultimately by learned counsel for the consumer, there is no scope, after the expiry of about two decades in-between, to direct a fresh enquiry into the allegation of pilferage, since the meter-in-question and

its seal would have altered in the meantime by way of natural wear and tear and would not retain its original condition as on the relevant date of alleged pilferage.

Hence, learned counsel for the CESC Limited offers to appropriate the amount already paid by the petitioner pursuant to an ad-interim order of the coordinate Bench of this court, that is, Rs.40,000/-, in full and final settlement of the claim, since the petitioner has been enjoying electricity connection over the relevant period.

Hence, upon hearing learned counsel for the parties, it is evident that although there might have been certain discrepancies in the findings of the appellate authority inasmuch as it shirked its duty to direct the CEI to undertake an appropriate enquiry to ascertain whether the seal had actually been tampered or not, since the allegation of tampering was in no way reflected in proper perspective in the adjudication made by the appellate authority, in view of the fair stand taken by the parties, WPA No. 13662 of 2004 and WPA No. 15570 of 2004 are disposed of by treating the amount of Rs.40,000/-, already paid previously by the petitioner to the CESC Limited pursuant to an ad-interim order passed in a previous writ petition, to be in full and final settlement of all present and future claims of the CESC Limited with

regard to the allegation of pilferage. The said chapter of allegation of pilferage is closed and the parties shall not take any action on the said premise in future against each other.

However, it is made clear that this court has not entered into any other aspect of the matter, including the regular payment of electricity bills by the consumer, in any manner whatsoever.

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.)