

7th February,
2022
(AK)
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WPA 20261 of 2021

Santosh Kumar Laya
Vs.
The West Bengal State Electricity Distribution Company
Limited and others

(Via Video Conference)

Mr. Kaustav Chandra Das
...for the petitioner.

Mr. Sujit Sankar Koley
...for WBSEDCL.

The grievance of the petitioner is that, despite the Distribution Licensee having disconnected electric supply to the petitioner on the allegation of theft as contemplated under Section 135(1)(b) of the electricity Act 2003, the meter-in-question has not yet been seized by the Distribution Licensee and is still intact and sealed as it was originally.

It is submitted that the allegations of theft against the petitioner are entirely frivolous and misplaced and as such, the entire illegal action of the Distribution Licensee ought to be quashed and set aside by this court.

Learned counsel for the Distribution Licensee, however, points out from the complaint accompanying the FIR, which is annexed at page-21 of the writ petition, that there was categorical allegation of unauthorised hooking

of electricity against the petitioner in respect of the electric meter-in-question.

As such, it is argued that the petitioner ought to have approached the appropriate criminal authority if the petitioner wants to contest the criminal case.

That apart, it is submitted that final assessment has already been made by the Distribution Licensee on the dues payable by the petitioner, which as yet stands unchallenged by the petitioner before the competent appellate authority.

Under the provisions of Section 135(1)(b), as quoted in the FIR, tampering a meter or installing or using a tampered meter etc. is sufficient ground for clamping a case of theft against the petitioner.

In the present case, an FIR was duly lodged by the Distribution Licensee on the basis of the allegation of hooking for meter by-passing. Such criminal proceeding is still pending.

On the other hand, a provisional order of assessment was passed initially, then a final order of assessment within the contemplation of Section 126 of the Electricity Act 2003 was duly passed, by the Distribution Licensee.

The petitioner, although obtained anticipatory bail upon payment of 50 per cent of the amount, has not yet filed any appeal under Section 127 of the 2003 Act against the final order of assessment.

The law is very clear as regards the appellate forum being available as a forum of remedy before an aggrieved consumer in the event a final assessment is made against the petitioner, with which the petitioner is dissatisfied.

Having given a go-by to such remedy within the limitation stipulated for preferring such an appeal, it does not now lie in the mouth of the petitioner to come by way of a writ petition challenging the “action of the Distribution Licensee”.

As far as the other component of such ‘action’ is concerned, if the petitioner has any grievance regarding the initiation of the criminal case and the continuance thereof on the basis of the existing FIR against the petitioner, it is, in any event, open to the petitioner to approach the appropriate Bench having criminal determination to quash such proceeding.

If so approached, the appropriate Bench will decide the said issue.

It is made clear that this court has not entered into the merits of the respective contentions of the parties regarding the criminal case and/or the final order of assessment in any manner whatsoever.

Accordingly, WPA 20261 of 2021 is dismissed in the light of the above observations.

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.)