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17.06.2022
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WPA No.21298 of 2021
IA No: CAN 1 of 2022

Ashok Kumar Maity
Vs.
The West Bengal State Electricity Board,
through Chairman, WBSEDCL and others

Mr. Amit Ranjan Pati,
Ms. Afreen Begum,
Mr. Ratikanta Pal

.... for the petitioner

Mr. Debjit Mukherjee

.... for the WBSEDCL

In Re: IA No: CAN 1 of 2022

The contention of learned counsel for the petitioner is that although it was held by this court that the acquittal of the petitioner in a criminal proceeding on the allegation of theft of electricity does not *ipso facto* absolve the petitioner from liability to pay the amount finally assessed under Section 126 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”), no liberty was granted to the petitioner to prefer an appeal against the said order of final assessment under Section 126 of the 2003 Act.

Learned counsel for the petitioner prays that such liberty may be incorporated in the order dated January 25, 2022.

Learned counsel appearing for the WBSEDCL submits that the present application is not maintainable in law in its present form. It is rightly pointed out by learned counsel for the WBSEDCL that, in the application, the petitioner has prayed for recall of the order dated January 25, 2022 passed in WPA No.21298 of 2021 as well as an opportunity to prefer an appeal against the order of final assessment dated June 18, 2012 under Section 127 of the 2003 Act.

Upon hearing learned counsel for the parties, it is evident that the prayer, as sought by the petitioner in the present application, cannot be granted in law.

Since a recall of the judgment at this stage, so long after the final disposal of the writ petition, would tantamount to an order of review and no ground for review as stipulated in law has been made out, there is no scope for recalling the said order.

Even the coordinate Bench order of this court passed in *Samir Kumar Naskar vs. Director of School Education & Ors.*, reported at (2006) 1 Cal LJ 110, does not come in aid of the petitioner's contention.

In the said matter, the learned coordinate Bench held that the scope of review as contained in Order XLVII of the Code of Civil Procedure may not be strictly applicable in writ jurisdiction; however, this court, being a court of record, is also entitled to correct its own mistake as and when attention is drawn in that regard. The said case, it was observed, was a glaring example of mistakes galore committed by the petitioner's own advocate. He could not present the petitioner's case properly before the court. He did not draw the attention of the court about the relevant Circular applicable therefor, which resulted in miscarriage of justice in the said case, as observed by the learned Single Judge.

However, such factual scenario is not applicable to or germane for the present case since, in the present case, a pure question of law was argued by counsel for the parties and was decided on.

In any event, vide order dated January 25, 2022, this court has not precluded the petitioner from preferring any challenge, if so entitled under the law, to the final order of assessment. As such, no additional grant of liberty is required in the context or was even asked for at the relevant juncture.

Hence, there is no scope of allowing the present application.

Accordingly, IA No: CAN 1 of 2022 is disposed of.

However, it is made clear that in the event the petitioner has any right otherwise under the law, it will be open to the petitioner to take recourse to such remedy in accordance with law.

Since no affidavits have been invited in the matter, it is deemed that the allegations made in the application are denied by the respondents.

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.)