16th November, 2022
(AK)
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W.P.A 23949 of 2022

Aktar Hossain
Vs.
CESC Limited and others

Mr. Bidyut Kr. Halder
Mr. Indranil Halder
...for the petitioner.

Dr. Madhusudan Saha Ray
...for the CESC Limited.

The petitioner contends that despite a previous order by this court directing restoration of the electricity connection of the petitioner, the same was given but subsequently again disconnected.

It is submitted that, as per the direction of the appellate authority, a reassessment was conducted but the amount ultimately arrived at upon such reassessment, was the same as that found previously.

It is submitted that although the appellate forum had been approached, the said forum washed off its hands on the premise that it had no power to review its own decision.

Learned counsel for the CESC Limited submits that, in compliance of the direction of this court, the electricity supply of the petitioner had been restored on the very next date.

Subsequently, an opportunity was given by the Assessing Officer on reassessment, for the petitioner to furnish documents indicating their alleged working hours etc.

However, since no such document was produced, apart from merely an advocate's letter, the assessment had to be done in accordance with law and ultimately the amount arrived at was the same.

Thereafter on August 26, 2022, the Distribution Licensee had given a notice to the petitioner to pay up the amount assessed.

However, the petitioner having failed to do so within September 26, 2022, which was the due date of payment of the bill, another notice was issued and subsequently the electricity supply had to be disconnected on non-payment by the petitioner.

Hence, it is contended that it was well within the authority and powers of the CESC Limited to so disconnect.

A perusal of the order of the Appellate Authority, directing reassessment, indicates that the Appellate Authority clearly observed that the provisional assessment was made as per Clause 5.1(a) of the notification no.55/WBERC dated August 7, 2013.

The appellant did not file any written objection or appear before the Assessing Officer and thus the respondent had passed final assessment equal to the amount of the provisional assessment.

It was further observed by the Appellate Authority that the Assessing Officer had the opportunity to apply his judicial mind to pass the final assessment on the grounds that all electronic gadgets could not run twenty four hours across twelve months, but it has not been done.

Therefore, it was held, there was a scope to make a reassessment in this case.

On receiving certain bills from the appellant, a letter bearing memo no. 86 dated June 28, 2022 was sent, in which it was observed that the same was issued to the appellant asking for a few clarifications and it was delivered through speed post but the petitioner refused to accept the letter.

Accordingly, the bills so submitted to the forum were not given cognizance.

Based on such observations, it was ordered that the Assessing Officer shall make a reassessment keeping in mind the average running hours of the electrical gadgets found during inspection at the appellant's premises over a period of twelve months immediately preceding the date of inspection, that is, August 11, 2016.

At the stage of reassessment, a hearing was given to the petitioner, who was also accompanied by his learned Advocate.

It was observed, inter-alia, that that the petitioner was to furnish a document regarding actual working hours per day and the number of working days within August 1, 2022.

However, on August 1, 2022, only a letter was submitted by the learned Advocate for the petitioner indicating that the factory usually runs for eight hours including one hour recess and the number of days of operation of the said factory is 260 days, which includes one day off in a week and off on different dates for National and State Holidays.

However, as observed by the Assessing Officer, no cogent documents/records were submitted to substantiate such statement.

In the absence of any such document being produced by the petitioner, despite being given an opportunity to do so, the Assessing Officer was well within his authority to comply with the extant regulation, that is, Regulation 5.1 of Regulation no.55 of 2013 and the provisions of Section 126(5) of the Electricity Act, 2003.

Upon such a consideration, the Assessing Officer arrived at the finding that the assessed charges were Rs.10,85,970/-.

In view of the aforesaid events, it cannot be said that opportunity was not given to the petitioner to produce relevant documents to substantiate their claim as regards the working hours and working days of the factory.

However, no such document having been produced and the authorities having proceeded in accordance with law otherwise, there cannot be any question of further restoration of the electricity connection of the petitioner unless the petitioner complies with due formalities in that regard for getting a new connection upon payment of outstanding dues.

Hence, there is no scope of interference.

WPA 23949 of 2022 is dismissed without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)