

D/L. 40.
November 11, 2022.
MNS.

WPA No. 24067 of 2022

Bablu Laskar @ Sahabuddin Laskar
Vs.
State of West Bengal and others

Mr. Sushanta Kumar Laha

... for the petitioner.

Dr. Madhusudan Saha Roy

...for the WBSEDCL.

Mr. Sandip Mandal

...for the State.

Heard learned counsel for the parties.

Learned counsel for the petitioner argues that the petitioner has been consuming meagre amounts of electricity all along and the electricity charges for each billing period of three months were coming approximately to Rs.1,000/- for three months.

However, on August 30, 2022, on an inspection, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) found alleged pilferage from the electricity meter of the petitioner and subsequently raised a provisional assessment bill. Although the provisionally assessed amount was somewhat reduced to in

the final order of assessment, it is submitted that there has been a cardinal misapprehension of law on the part of the WBSEDCL. Although Section 126(5) of the Electricity Act, 2003 (2003 Act) stipulates that in the event the period of unauthorised use of electricity cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection, in the present case, the last meter reading previous to the alleged pilferage was taken about thirty-four days previously.

As such, at the worst, the alleged pilferage could have occurred during this thirty-four days and not longer, since the previous inspection did not reveal any pilferage.

It is further submitted that the petitioner is a daily labour and is not in a position to pay exorbitant amounts. In any event, the provisional and final orders of assessment are inflated, as per the submission of the petitioner.

Learned counsel appearing for the WBSEDCL points out that the meter reading and inspection for the purpose of Section 126 of the 2003 Act are done by different officials having different technical acumen. As per Section 126 of

the 2003 Act, the Assessing Officer is himself the inspecting officer and as such, it may very well be that when the previous meter reading was taken by another official, the pilferage was not detected. As such, by applying Section 126(5) of the 2003 Act, the Assessing Officer assessed the final order of assessment on the basis of electricity consuming for fourteen hours each day for the entire period of twelve months and has finally arrived at the amount of final assessment upon such exercise.

Upon hearing learned counsel for the parties and perusing the materials on record, as well as the relevant law, it is seen that the petitioner, in the hearing dated September 26, 2022 on the provisional assessment order, had apparently acknowledged that he was consuming electricity at his premises dishonestly, bypassing the meter, by tampering of service cable for a few days. It was stated that it was the petitioner's first mistake and would not be repeated in future and that due to poor financial condition of the petitioner and serious ailment of his wife, the provisional bill might be reconsidered by considering the running of AC machine, heater and submersible pump.

In view of the said recording in the minutes of hearing, particularly in the absence of any specific challenge thereto, it has to be presumed that the petitioner admitted the allegation of pilferage.

Inasmuch as the arguments of the petitioner regarding the hours of calculation are concerned, it is well within the discretion of the Assessing Officer to arrive at a conclusion within the perimeters of Section 126(5) of the 2003 Act. Since the said provision stipulates that in the event the unauthorised use period cannot be ascertained, the same shall be limited to twelve months immediately preceding the date of inspection, I do not find any variation from the said norm in calculating the present final order of assessment.

Inasmuch as the allegation of the pilferage period being limited to thirty-four days or less is concerned, as rightly contended by the WBSEDCL, since the Officers taking the meter reading and assessing and inspecting for the purpose of Section 126 of the 2003 Act are different persons, may be with different technical expertise, it cannot be automatically presumed that pilferage was restricted to the period

between the last meter reading and the relevant meter reading on August 30, 2022.

Hence, applying the yardsticks as provided in Section 126(5) of the 2003 Act, there cannot be said to be any error in principle in claiming the final assessment amount from the petitioner. However, it may very well be that the petitioner has a valid challenge against the quantum of the said final order of assessment on other grounds than indicated above.

In such event, the petitioner is at liberty to move before the appellate authority as stipulated under Section 127 of the 2003 Act.

Although learned counsel for the WBSEDCL contends that the limitation period for preferring such an appeal has already become time-barred, in view of the pendency of the writ petition and considering the vocation of the petitioner, who is a daily labour and might not be aware of the governing law or attending legal circumstances, it is deemed that the limitation for preferring the appeal shall commence from today, that is, the date of disposal of the present writ petition.

Accordingly, WPA No. 24067 of 2022 is disposed of without interfering with the final order

of assessment, but granting liberty to the petitioner to prefer an appeal within thirty days from today against the final order of assessment, if so aggrieved, under Section 127 of the 2003 Act before the appropriate appellate authority.

If so approached in accordance with law and upon deposit of the legally required amount of 50%, the appellate authority shall decide the appeal in accordance with law, upon giving adequate opportunity of hearing to all concerned, construing the limitation for such appeal to commence from today and shall come to a decision in the appeal as expeditiously as possible.

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.)