

21-22
02.02.2022
TN

WPA No.1871 of 2020

Smt. Soma Sardar
Vs.
The State of West Bengal and others

With

WPA No.23285 of 2019

Chandrakanta Sardar
Vs.
The State of West Bengal and others

(Via Video Conference)

Mr. Asit Kumar Bhattacharyya,
Mrs. Swagata Datta

.... for the petitioners
in the both the matters

Mr. Debjit Mukherjee

.... for the WBSEDCL

WPA No.23285 of 2019 has been preferred by one Chandrakanta Sardar, the husband of Smt. Soma Sardar, the latter being a consumer in respect of an electric meter at the premises-in-question.

WPA No.1871 of 2020 has been filed by Smt. Soma Sardar, challenging an alleged disconnection of the electric supply of the said Soma Sardar on

November 20, 2019, allegedly without any notice being given to her.

The challenge preferred by the husband of Smt. Soma Sardar pertains to a provisional assessment bill, which was raised on November 22, 2019 on the allegation of hooking by the said Chandrakanta Sardar (mentioned in the provisional assessment order as Chandranath Sardar).

No dispute has been raised by either of the parties regarding the identity of “Chandrakanta” and “Chandranath” in the present case.

However, learned counsel appearing for the Distribution Company submits that a final order of assessment has subsequently been passed by the distribution licensee, allegedly upon adequate right of hearing being given to the petitioner in WPA No.23285 of 2019, who was the recipient of the provisional assessment bill.

However, learned counsel for the writ petitioners in both the matters specifically contends that the final order of assessment was passed without any hearing being given on the specific written objection filed by the said Chandrakanta Sardar, subsequent to the provisional assessment.

Learned counsel appearing for the Distribution Company candidly submits that he is not equipped

with any document to prove the service of any notice of hearing on Chandrakanta/Chandranath prior to the final assessment order being passed.

Be that as it may, a photocopy of the purported final assessment order dated December 19, 2019, a copy of which is also lying with the learned Advocate for the petitioners, has been filed in court by the learned Advocate for the distribution licensee, which indicates that a reasonable opportunity of being heard was given to Chandrakanta @ Chandranath at least prior to arriving at the final assessment.

Upon hearing learned counsel for the parties, it is not established by cogent evidence as to whether any notice of hearing regarding the order of final assessment was given to the said Chandrakanta Sardar. However, since it has been specifically recorded in the final order of assessment dated December 19, 2019 (a copy of which is kept on record) that such opportunity of hearing was given to the accused, it is beyond the jurisdiction of the writ court to assess the veracity of such allegation on merits upon a factual appraisal of the materials on record.

Since law provides for an alternative remedy more adequate than the writ petition by way of an appeal before the appellate authority, as contemplated under Section 127 of the Electricity Act, 2003, the

purpose of justice would be sufficiently subserved in the event the petitioner in WPA No.23285 of 2019 is granted an opportunity to challenge the final order of assessment, taking all objections, including the objection regarding the purported non-grant of opportunity of hearing.

As far as the writ petition of Soma Sardar is concerned, it is evident from the materials annexed with the other writ petition, that is, WPA No. 23285 of 2019 that the order of provisional assessment was indeed served on the husband of the said Soma Sardar, on the allegation that he had been hooking electricity from the electric meter of Soma Sardar.

In such view of the matter, until and unless Chandrakanta Sardar deposits the amount assessed finally on December 19, 2019, in the alternative challenge the same before the appropriate authority successfully, there is no scope of reconnection of the electric supply being given, in view of the pending allegation of pilferage.

Accordingly, WPA No.23285 of 2019 and WPA No.1871 of 2020 are disposed of by granting liberty to the petitioner in the first writ petition, that is, Chandrakanta Sardar, to prefer an appeal before the appropriate appellate authority against the final order of assessment dated December 19, 2019, by

considering today, that is, February 2, 2022 as the starting point of limitation, subject to compliance of all legal preconditions and formalities by the said appellant. In view of the pendency of the writ petitions, the limitation is deemed to start from today.

If such an appeal is preferred within the limitation period starting from this day by Chandrakanta Sardar @ Chandranath Sardar before the appellate authority, the said authority shall decide the same in accordance with law and by giving adequate opportunity of hearing to the interested parties, without being influenced in any manner by any of the observations made herein.

It is further clarified that all questions shall be kept open to be agitated by Chandrakanta Sardar in appeal, including the question as to whether any opportunity of hearing was given to him prior to the final assessment being made.

The appellate authority shall expedite the disposal of the appeal, if preferred by Chandrakanta Sardar, and decide the same preferably within four weeks after such appeal being preferred.

In the event it is found in the final analysis that the final assessment was done erroneously, it will be open to the appellate tribunal to set aside the same and to pass appropriate directions regarding the fresh

assessment in that regard, upon giving an opportunity of hearing to Chandrakanta Sardar.

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.)