

19th December,
2022
(AK)
08

W.P.A 26670 of 2022

Gokul Chandra Maji
Vs.
West Bengal State Electricity Distribution Company
Limited and others

Mr. Malay Bhattacharyya
Mr. Pradip Paul
Mr. Gourango Ghosh
...for the petitioner.

Mr. Debjit Mukherjee
...for the WBSEDCL.

Learned counsel for the petitioner contends that in view of the petitioner being absolved from civil liability under Section 154 of the Electricity Act, 2003 on the ground that the petitioner was acquitted in a proceeding on the allegation of theft under Section 135 of the said Act, the petitioner's liability to pay the finally assessed amount under Section 126 of the 2003 Act has also to be waived.

Learned counsel contends that the WBSEDCL itself had given an adjustment with the quantum of fifty per cent of the total dues, which was deposited by the petitioner as security for obtaining bail, upon raising a demand that the petitioner was to pay Rs. 73,181/- and assessed LPSC to the tune of Rs. 5,217/- for getting the electricity connection restored.

However, in view of the lapse of 180 days from the disconnection, the petitioner now has to apply for a new electricity connection upon depositing the requisite amounts therefor and putting in the outstanding dues as claimed by the WBSEDCL.

A point has been urged by learned counsel for the petitioner to the effect that since the criminal court, while deciding the proceeding under Section 135 of the Electricity Act, 2003, made an observation that although it is a duty of the special court to determine the civil liability of the accused under Section 154, in view of discharge of the petitioner from the criminal proceeding, there is no further scope for the determination of civil liability in this case.

Learned counsel for the petitioner makes an interesting argument that the observation was made in the context of Section 154 of the 2003 Act, which is on a parallel footing with a proceeding under Section 126 of the said Act since both operate in the field of civil liability.

The petitioner having thus been absolved from the civil liability as imposed under Section 154, the Distribution Licensee can no longer insist upon exacting the dues under Section 126 of the 2003 Act.

Learned counsel appearing for the WBSEDCL submits that it is well-settled that proceedings under Sections 126 and 135 of the Electricity Act, 2003 operate

in separate and distinct fields, inasmuch as the scope of adjudication in the two are dissimilar, to the extent that one applies the yardsticks of a civil adjudication and the other of a criminal decision.

Learned counsel cites a judgment of this court reported at (2022) SCC Online Cal 184 (*Ashok Kumar Maity vs. West Bengal State Electricity Board through Chairman, WBSEDCL and others*) in support of such proposition.

Upon hearing learned counsel for the parties and a scrutiny of the order passed by the criminal court under Section 135 of the 2003 Act, it transpires that the criminal court, without going into the merits of the civil liability adjudicable by the Special Court under Section 154 of the 2003 Act, merely made an observation that it is the duty of the Special Court to determine the civil liability of the accused to compensate the loss or damage suffered by the Distribution Licensee on account of commission of offence, inter-alia, punishable under Section 135 of the 2003 Act.

It was further observed by the criminal court that, in the present case, the prosecution has failed to prove the commission of offence under Section 135(1)(a) of the Electricity (Amendment) Act, 2007 against the accused and, therefore there is no scope for the determination of “civil liability” in this case.

However, it has to be noticed that the criminal court, while making such observation under Section 135 of the Code of Criminal Procedure, travelled beyond its jurisdiction in arriving at purported conclusions under Section 154 of the 2003 Act, that too in respect of the civil liability of the consumer, which was not even appearing for consideration before the criminal court.

That apart, the line of approach of the criminal court in that regard was patently erroneous to the extent that the civil liability of a consumer does not get absolved automatically by acquittal in a proceeding under Section 135 of the 2003 Act.

However, in the present case, the WBSEDCL itself, as fairly pointed out by learned counsel for the WBSEDCL, has given an adjustment to the fifty per cent deposited by the petitioner by way of security for bail and has claimed Rs.73,181/- as the remaining dues along with Rs. 5217/- as Late Payment Surcharge (LPSC).

Hence, there is no reason for imposing a more exorbitant payment on the petitioner for the purpose of getting restoration of electricity connection by way of a new electricity supply.

Hence, WPA 26670 of 2022 is disposed of by directing the petitioner to deposit the amount of Rs. 73,181/- in lieu of the balance due and Rs. 5217/- as LPSC till May 31, 2022, as well as any further liability,

which the WBSEDCL may calculate in its quotation, taking into account the subsequent period.

If such amount is deposited by the petitioner and the petitioner makes a fresh application for a new electricity connection, such connection shall be given to the petitioner upon payment of such amount as indicated above and upon compliance of due formalities in law.

However, it is made clear that the new connection shall ultimately be subject to the WBSEDCL being able to realize the balance of fifty per cent from the petitioner upon giving adequate installments, as the WBSEDCL deems fit.

There will be no 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.)