

AD-19
Ct No.09
15.12.2022
TN

WPA No. 29618 of 2015

Sri Badrinarayan Sarkar
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Atanu Biswas,
Mr. Bikram Basak

.... for the petitioner

Mr. Sumit Kr. Panja,
Mr. Sujit Sankar Koley

.... for the WBSEDCL

Learned counsel for the petitioner argues that a provisional order of assessment was made final by the impugned order. However, despite the petitioner having produced a medical certificate inasmuch as the petitioner's ailment on the relevant day was concerned, no adjournment was given and the final assessment was made.

That apart, it is argued that the objection taken by the petitioner to the provisional order of assessment was also not considered while passing the final order of assessment.

Learned counsel further argues that the allegation made against the petitioner was on the basis of hooking of 125 KVA voltage, whereas the actual consumption of the petitioner was much less;

more so, since the electricity allegedly hooked was from a single phase meter.

Learned counsel for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) places reliance on a report filed today pursuant to previous direction of the court. The said report is kept on record. In the said report, the members of the concerned committee of engineers of the WBSEDCL have candidly indicated that it is not technically possible to hook 125 KVA power for the purpose of the operation of a rice mill from the LT OH line having single phase, which was used by the present petitioner.

However, it has been reiterated in the said report that the provisional and final assessments were made on the basis of contractual demand of 125 KVA as per the provisions of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”) and the rules framed thereunder. In particular, Regulation 5.1(a) of Notification 55/WBERC dated December 07, 2013 has been relied on.

Learned counsel for the WBSEDCL also places reliance on the said Regulation to support the calculations made by the authorities.

It is seen from the records and from the language of Clause 5.1(a) of Regulation 55 of the West

Bengal Electricity Regulatory Commission (WBERC) that the stand taken by the WBERC with regard to calculations is justified, inasmuch as the procedure for arriving at the assessment, as clearly laid down in the said clause of the Regulation, was adhered to. Even as per the Clause of the Regulation, the calculations reflected in the provisional order of assessment, which were reproduced in the final order of assessment, were perfectly justified.

Since the contractual demand of the line-in-question was 125 KVA and the same was allegedly hooked, it cannot be said that there is any irregularity, absurdity or arbitrariness in the calculation or the reasoning process of arriving at the provisional order of assessment and thereafter the final order of assessment.

Inasmuch as the refusal of adjournment sought by the petitioner is concerned, the same was done within the discretion of the authorities and there is nothing so perverse therein as to justify setting it aside under Article 226 of the Constitution of India.

Even giving the benefit of doubt to the petitioner, the objection of the petitioner itself indicates that there was a hooking but by somebody else than the petitioner and the said hooking was merely for lighting up a single bulb.

However, the actual user of the hooked connection at the relevant juncture cannot be a determinant even as per the provisions of law as stipulated in Clause 5.1(a) of Regulation 55 of the WBERC, which have been discussed above.

As such, even taking into consideration the purport of the objection of the petitioner, nothing would have swayed in favour of the petitioner if the same was considered by the authorities while arriving at the final order of assessment. As such, the present challenge is not tenable in the eye of law.

In such view of the matter, WPA No. 29618 of 2015 is dismissed on contest without any order as to costs.

However, in view of the pendency of the writ petition till now, it can be deemed that the petitioner had proceeded *bona fide* before a wrong forum as contemplated in Section 14 of the Limitation Act, 1963. Keeping such factor in view, the limitation for preferring an appeal under Section 127 of the 2003 Act has to start from this date, that is, the date of disposal of the present writ petition.

In the event any appeal is preferred under the said provision by the petitioner against the final order of assessment before the appellate authority as contemplated in Section 127 of the 2003 Act, nothing

in this order shall preclude or influence the appellate authority in deciding the said appeal independently on its own merits in accordance with law.

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.)