

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Original Side)

APOT 115 of 2021
With
WPO 210 of 2021
IA No: GA 1 of 2021
GA 2 of 2021

Reserved on: 25.02.2022
Pronounced on: 13.05.2022

M/S. SEBI AND CO. AND ORS.

...Appellants

-Vs-

CESC LIMITED AND ORS.

...Respondents

Present:-

Mr. Arik Banerjee,
Mr. Shaunak Ghosh,
Mr. Rajib Mullick,
Mr. Rakesh Sarkar,
Mr. Aveek Bose, Advocates
... for the appellant

Mr. Madhusudan Saha Roy,
Mr. Debanjan Mukherjee, Advocates
... for CESC Limited

Mrs. Sipra Majumder,
Ms. Debarati Sen (Bose), Advocates
... for State of WB

Mr. Mukteswar Maity, Advocate
... for respondents 8 & 9

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. The appellant/writ petitioner is aggrieved with the order of the learned Single Judge dated 18th of June, 2021 whereby WPO 210 of 2021 has been dismissed.

2. The appellants had approached writ Court with the plea that the electricity meters in question were installed in their premises and they were regularly paying the bill but suddenly the respondent electricity authorities on 21st of October, 2020 had issued notice of inspection and thereafter the electricity supply was illegally disconnected and the provisional order of assessment was passed on 21st of October, 2020. Thereafter the notice of hearing dated 9th of November, 2020 was issued, hence the appellants had filed the writ petition challenging the communication dated 21st of October, 2020 (Annexure-“P/4”), provisional assessment order (Annexure-“P/3”) and the Inspection Report (Annexure-“P/8”).

3. Learned Single Judge has examined the arguments advanced by the learned Counsel for the appellants and has found that it was a case of theft of electricity and there was tampering of the body seals of the meter and the final order of assessment was passed on 17th of November, 2020 which was duly communicated to the appellants with acknowledgment on 21st of November, 2020 and learned Single Judge has also noted that the earlier two writ petitions filed by the appellants were dismissed as withdrawn and no leave to file a fresh petition was sought. Hence, the writ petition has been dismissed with cost.

4. Submission of the learned Counsel for the appellants is that it is a case of unauthorized use of electricity, therefore, no disconnection can be made and at the most monetary demand can be raised under Section 126 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) and that the factum of earlier writ petitions was already disclosed and that regulation 4.2.1 are not in consonance with the provisions of Section 126 of the Act and further that procedure prescribed under Section 56 of the Act was not followed at the time of disconnection.

5. As against this learned Counsel for the respondent has supported the order of the learned Single Judge and has submitted that theft of electricity is covered under wider term of unauthorized use of electricity and it is a clear case of tampering of meter and due compliance of the provisions of the Act has been done and regulation 4.2.1 is not under challenge.

6. We have heard the learned Counsel for the parties and perused the record.

7. The record reflects that on 21st of October, 2020 due notice of inspection of the premises was given to the appellants by the authorized officer of the respondent and during the inspection unauthorized use of electricity was found on both the meters. The inspection report on record clearly mentions that body seals of the meter were found tampered with and tang load was found to be much higher than the display on the meter. The respondent authority on 21st of October, 2020 had passed the provisional assessment order to the best of judgment and calculated charges of unauthorized use of electricity and by the same order had given 15 days time to the appellants to file the objection along with the document they wanted to rely upon and had fixed the matter for hearing on 5th of November, 2020. A separate written communication/order dated 21st of October, 2020 was sent relating to disconnection of supply of electricity. The issue which the appellant is raising, drawing the distinction between the theft of electricity and unauthorized use of electricity, has already been considered in the judgment in the matter of **West Bengal State Electricity Distribution Company Ltd. vs. M/s. Orion Metal Pvt. Ltd.** reported in **2019(5) CHN (SC) 72** wherein in similar circumstances, where the inspecting team had found theft of energy by tampering the meter, the Hon'ble Supreme Court after considering Sections 126 and 135 of the Act

had held that all the instances of unauthorized use of energy may not amount to theft of electricity within the meaning of Section 135 of the Act, but at the same time, the theft of electricity which is covered by Section 135 of the Act, will fall within the definition of unauthorized use of electricity. It has further been held that as per Section 135 (1A) of the Act, without prejudice to other provisions of the Act, the licensee or supplier, upon detection of theft of electricity, is empowered to disconnect the power supply immediately and that the authorities under the Act are empowered to make provisional and final assessment by invoking power under Section 126(1) of the Act, even in cases where electricity is unauthorizedly used by way of theft. Judgment of the Hon'ble Supreme Court in the matter of **Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and Another vs. Sri Seetaram Rice Mill** reported in **(2012) 2 SCC 108** relied upon by the Counsel for the appellants, has already been considered by the Hon'ble Supreme Court in the matter of **M/s. Orion Metal Pvt. Ltd. (supra)**.

8. Regulation 4.2.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 has not been challenged by the appellants in the writ petition and this regulation in clear term provides for disconnection on theft or unauthorized use of electricity. So far as the argument relating to compliance of provisions of Section 56 of the Act is concerned, the said provision is attracted in case of disconnection of supply in default of payment but in the present case the disconnection is on account of theft and unauthorized use of electricity.

9. The appellants had earlier approached this Court by filing WPA 11031 of 2020 and WPA 10966 of 2020. During the course of arguments copies of writ petitions and the order passed by the Court have been placed

on record. Both the writ petitions were dismissed by orders dated 12.01.2021 for non-prosecution as it was submitted by the Counsel for the appellants before the Court that they did not want to proceed with the matter any further. In WPA 11031 of 2020, the provisional order of assessment was under challenge which is again subject matter of challenge in the present petition. This fact has been suppressed in paragraph 14 of the writ petition.

10. In the aforesaid circumstances of the case, we do not find any merit in this appeal and we are of the opinion that the learned Single Judge has not committed any error in dismissing the writ petition with cost.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
13.05.2022

PA(SS)

(A.F.R. / N.A.F.R.)