In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side

The Hon'ble Justice Sabyasachi Bhattacharyya

R.V.W.O. No.7 of 2022
In
W.P.O. No. 94 of 2021

Pearl Corporation
Vs.
Calcutta Electric Supply Company Ltd. and others

For the petitioner	:	Mr. Tapas Dutta, Mr. Mrityunjoy halder
For the CESC	:	Mr. Suman Ghosh, Mr. Debanjan Kukherjee
Hearing concluded on	:	21.06.2022
Judgment on	:	28.06.2022

Sabyasachi Bhattacharyya, J:-

1. The present application has been filed by the writ petitioner in WPO No.94 of 2021 for review of an order dated April 4, 2022, whereby the writ petition was dismissed on contest without costs.

2. The first ground of review is lack of authority of the CESC Limited under the Electricity Act, 2003 (for short "the 2003 Act") to make any provisional/final assessment against a non-consumer. A plain reading of Section 126 of the 2003 Act, however, reveals that the issuance of assessment by the Distribution Licensee is extended to "any other person benefited by" unauthorised use of electricity.

3. Sub-section (2) of Section 126 provides that the order of provisional assessment shall be served upon the person in occupation or in charge of the place or premises in such manner as may be prescribed. The CESC Limited has pleaded that the consumer had entrusted electrical work on the petitioner and the theft committed by the petitioner was beyond the authority given by the consumer to the petitioner.

4. The review applicant next contends that it has been erroneously recorded in Paragraph No.19 of the order under review that the service cut-out of the CESC Limited was located at the petitioner's premises, whereas the petitioner has no existence in respect of the subject premises and is not a consumer but a stranger.

5. Although such observation does appear in Paragraph No.15 of the order under review, the same does not have a direct bearing on the outcome of the writ petition since, under the purview of Section 126, any person in occupation, possession or in charge of the location may be served with an order of provisional assessment.

6. The petitioner has further contended that *Vakalatnama* was given by the petitioner only in respect of the proceeding under Section 135 of the 2003 Act and not in respect of the assessment proceedings under Section 126 of the said Act and that the signature of Sujit Singh, Advocate made in the *Vakalatnama* and the signature in the letter dated October 15, 2020 enclosed with the Supplementary Affidavit are completely different and forged.

7. However, such factual assertion is being made for the first time in the review application. It is well-settled that, following the principle of Order VI Rule 4 of the Code of Civil Procedure, the particulars of an alleged act of fraud or forgery have to be given in the pleadings; however, such particulars are missing in the writ petition itself.

8. Moreover, no review application lies on such factual question, since such a consideration amounts to neither a discovery of new matter nor an error apparent on the face of record or anything akin thereto.

9. Insofar as the other ground taken in the review application is concerned, to the effect that proceedings under Section 126 or Section 135 of the 2003 Act can be initiated only against the consumer who tampered the meter or allowed tampering of the meter, such contention is also being made for the first time in the review application. In any event, the said submission has no reasonable basis, since Section 126(4) provides that “any person” served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee.

10. Sub-section (3) stipulates that the person on whom an order has been served under sub-section (2) shall be entitled to file objections and sub-section (2) stipulates that the order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed. Sub-section (1) of Section 126, on the other hand, includes the expression “any other person benefited by such use”. Again, Section 135 of the 2003 Act, in no uncertain terms, provides that “whoever” dishonestly does any of the acts as provided in the said Section shall be punishable with imprisonment for a term as provided in the said Section.

11. The entire tenor of Sections 126 and 135 clearly reveal that the liability under the said provisions is not restricted to the consumer only but any person who is liable for the theft.

12. Even Section 127 of the 2003 Act makes it evident that "any person aggrieved" by a final order may prefer an appeal thereunder.

13. The expression "any person" is wide enough to include persons other than the consumer.

14. As regards the alleged violation of principles of natural justice, it was elaborately recorded in several places of the order under review that, in view of the petitioner having admitted the amount provisionally assessed, there was no scope for variance between the amounts as per the final order and the provisional order of assessment. As such, no further right of hearing needs to have been given to the petitioner. Also, such question was raised in the writ petition itself and dealt with categorically in the order under review.

15. Insofar as the excuse for non-filing of a statutory appeal is concerned, the allegation of the petitioner that the final order of assessment was never served and the petitioner for the first time came to know about the final order after receiving the Affidavit-in-Opposition on March 23, 2021 does not hold water in view of the observations made in the order under review itself. It was clearly recorded in the said order that, from Annexure R-4 of the Affidavit-in-Opposition filed by the

CESC Limited in the writ petition, it was evident that the petitioner's agent confirmed full and final acceptance of the order of provisional assessment under Section 126 of the 2003 Act; hence, the final order of assessment was rendered only an empty formality.

16. Apart from the above finding in paragraph 18 of the order under review, it was observed in paragraph 19 thereof that a *Vakalatnama* was also filed on behalf of the petitioner by an advocate in connection with the matter which was annexed at page 34 (Annexure R-5) of the Affidavit-in-Opposition. Nothing has been disclosed in the review application to justify the conclusion that fraud was practised or signature of the advocate was forged.

17. As stated earlier, in view of the acceptance of the provisional order by the petitioner having been found by this Court, there is no further scope of reopening the issue of non-availability of the final order and/or absence of opportunity of hearing being given to the petitioner in respect of the provisional assessment at the stage of review. In any event, the option of filing a challenge under Section 127 of the 2003 Act could be exercised by the petitioner even after purportedly learning of the final order from the affidavit-in-opposition. However, no such challenge has been claimed to have been preferred.

18. Hence, the present review application does not satisfy the tests of review as laid down in Order XLVII of the Code of Civil Procedure, since no discovery of new matter, error apparent on the face of the record (for discovering which a detailed hearing and/or reappreciation of evidence is not necessary) and/or anything akin to the above reasons has been made out by the review applicant.

19. In such view of the matter, RVWO 7 of 2022 fails and is, consequentially dismissed on contest.

20. There will be no order as to costs.

21. Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)