IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12309 of 2022

Anubha Ray .... ***Petitioner***
Mr. Falguni Rajguru Mohapatra, Advocate

-versus-

SDO (Elect.) TPCODL, Bhubaneswar .... ***Opp. Party***
Mr. Bijaya Kumar Dash, Advocate

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER
23.09.2022

Order No.

3. 1. This matter is taken up through Hybrid mode.

2. Petitioner in this writ petition prays for a direction to drop the proceedings initiated under Sections 126 and 135 of the Electricity Act, 2003 (for short, 'the Act').

3. Mr. Mohapatra, learned counsel for the Petitioner vehemently argued that while making the provisional assessment, the Assessing Officer did not at all take into consideration the provision under Regulation 160(c) of the Odisha Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2019 (for short, 'the Code'). Regulation 160(c) of the Code provides that, if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to 12 months preceding to the date of inspection. The period of assessment may be arrived at after taking into consideration the actual period from the date of previous checking of installation

by the licensee/supplier's authorized personnel to the date of detection of unauthorized use along with other guidelines. It is submitted by Mr. Mohapatra, learned counsel for the Petitioner that the last inspection of Petitioner's premises was made on 10th December, 2021. Thus, the provisional assessment prior to 10th December, 2021 is not sustainable. Since provisional assessment is made in violation of the provisions of the Code the proceeding under Section 126 of the Act is not maintainable and is liable to be set aside.

3.1 Referring to counter affidavit filed by TPCODL, Mr. Mohapatra submits that the stand taken by the Opposite Parties that since inspection made on 10th December, 2021 was a routine one and the Petitioner accepting the provisional assessment has already paid Rs.34,536/- without any objection, the same is no more available to be the subject matter in the subsequent assessment in view of Regulation 160(c) of the Code. But the authorities have tried to over-reach the said assessment by taking a stand that the provisional assessment was not done by specialized enforcement team.

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4. It is further submitted by Mr. Mohapatra, learned counsel for the Petitioner that the authorities are creature of the statutes. They cannot act beyond the provisions of the statute. When the provisions under Section 126 of the Act read with provisions of the Code have set out the procedure for provisional assessment, the authorities cannot travel beyond the same and make fresh provisional assessment taking into consideration the period prior to 10th December, 2021. It is further submitted that since the final order has not yet been

passed and the Petitioner has filed his petition under Section 126 (3) of the Act, he shall raise all the issues both facts and law available to him, but the authority while passing the final assessment order, should not take into consideration any period prior to 10th December, 2021.

5. Mr. Dash, learned counsel for TPCODL vehemently objecting to the above submission, contended that in the counter affidavit the Opposite Party has specifically taken the stand that in a routine inspection of Petitioner's house made on 10.12.2021, it was noticed that a domestic connection was being used for office purposes. A Physical Verification Report (hereinafter referred to as 'PVR') dated 10.12.2021 was immediately prepared and the consumer/Petitioner was booked U/s. 126 of the Act, for using the supply for office purposes i.e., using the connection for the purposes other than the sanctioned purposes, as he was found using domestic load for office purposes. An amount of Rs.34,536/- was provisionally assessed. The Petitioner, without a murmur of protest paid the said provisional assessed amount on 31.12.2021. Further, as per the Rules and statutory provisions, a recommendation was made to change the supply category of the Petitioner to the category for which it was being used, i.e., GPS Category along with PVR dated 10.12.2021. The officers of the enforcement team, while analyzing the PVR, noticed that apart from the misuse, the consumption recorded in the meter was very less as compared to the load found during the routine inspection. Accordingly, the Opposite Party deputed a specialized team to conduct another verification of the premises and a detailed inspection of the

meter itself, to see as to why the consumption was so low. Accordingly, the specialized enforcement team re-visited the premises on 22.02.2022 and made the fresh provisional assessment. Thus, the provision under Regulation 160(c) of the Code is not applicable to the case at hand.

5.1 He thus submits that the provisional assessment has been made following the due procedure of law as mentioned in detail in the counter affidavit and thus, the writ petition warrants no interference.

6. Taking into consideration the rival contentions of the parties and on perusal of record, it appears that pursuant to Annexure-1, the team which inspected the premises of the Petitioner found functioning of the meter to be normal. Since the Petitioner was using domestic line for official purpose provisional assessment was made and the Petitioner paid the said amount on 31st December, 2021 without any objection. Thus, the matter with regard to the said inspection and assessment has been set at rest and is not available to be reopened. In view of provision of Regulation 160(c) of the Code, subsequent verification/inspection, if any, can be made for the period subsequent to the previous inspection/verification, i.e., 10th December, 2021. It is, however, submitted by Mr. Dash that the previous inspection made on 10th December, 2021 was a routine one and the subsequent verification was made by a specialized team; hence, Regulation 160(c) of the Code has no application to the instant case. Such a contention is not sustainable as the TPCODL acting upon the said report made provisional assessment and the Petitioner has already paid the amount

without any objection. It is however submitted by learned counsel for the Petitioner that the Petitioner has already submitted her reply pursuant to the show cause notice under Section 126 of the Act. Thus, the Assessing Authority shall consider its objection in accordance with law giving opportunity of hearing to the Petitioner keeping in mind the observation made herein above. Needless to mention that power supply to the premises of the Petitioner shall not be disconnected subject to payment of current dues by the Petitioner.

7. With the aforesaid observation and direction, the writ petition is disposed of.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge

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s.s.satapathy