

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 12864 OF 2022

Ramesh Chandra Behera ***Petitioner***

Mr. Alok Kumar Panda, Advocate

-versus-

State of Odisha and others ***Opp. Parties***

Mr. Debaranjan Ray, Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
14.11.2022**

Order No.

7. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for a direction to the Opposite Party Nos.3 to 5, namely, Authorities under the TPCODL to revise the energy bill of the Petitioner (Consumer No.04338504).
3. Mr. Panda, learned counsel for the Petitioner submits that pursuant to a verification report, a provisional assessment was made by the then Central Electricity Supply Utility (CESU). Assailing the said provisional assessment, the Petitioner had moved this Court in W.P.(C) No.18391 of 2015, which was disposed of on 19th January, 2016 with the following direction:

“Considering the contention raised by learned counsel for the parties and after going through the records, it appears that the petitioner is a consumer of the electricity, who has availed the power supply to his premises. Pursuant to the provisional assessment made, an amount of Rs.87,857/- has been determined. But while determining such amount, no opportunity

has been given to the petitioner. The petitioner has filed his show cause in Annexure-6, which is pending for consideration. More so, since principles of natural justice has not been followed by the opposite parties, the provisional assessment made by the authority cannot sustain in the eye of law. Apart from the same, it is urged that out of provisional assessment of Rs.87,857/- the petitioner has already deposited Rs.50,000/-. Therefore, the action taken by the opposite parties in the name of provisional assessment without affording opportunity of hearing to the petitioner is contrary to the provisions of law. Accordingly, the demand of Rs.87,857/- towards provisional assessment is hereby quashed and the opposite parties are directed to afford an opportunity of hearing to the petitioner while proceeding with the provisional assessment taking into consideration the show cause filed by the petitioner in Annexure-6. Needless to say that the final assessment order passed by the authority being an appealable one, if the order goes against him, he may approach the appellate forum. Further, during pendency of the final assessment, the opposite parties may not coerce the petitioner to pay any further amount outstanding against him as an amount of Rs.50,000/- has already been collected from the petitioner.

With the above observation and direction, the writ petition stands disposed of.”

Accordingly, CESU was required to adjudicate upon the provisional assessment made against the Petitioner. But, to the utter surprise, no step was taken by the CESU in spite of direction of this Court. In the meantime, CESU has been taken over by the TPCODL. Before taking over, the staff of the CESU had made a physical verification of the Petitioner's premise and suggested for revision of bill raised vide report dated 3rd March, 2021 under Annexure-5. But, without considering the same, the Petitioner has been issued with an

erroneous bill under Annexure-6 amounting to Rs.33,587.00/-, which includes an arrear of Rs. 32,934.00/-. It is his submission that due to inaction of the Authorities pursuant to the direction of this Court passed in W.P.(C) No.18391 of 2015, such an erroneous bill has been raised, which is not sustainable and is liable to be quashed.

4. Mr. Ray, learned counsel appearing for the TPCODL submits that at the relevant time, FEDCO, a franchise company was working under the CESU. The State Government in the department of Energy had notified Officers of FEDCO as Assessing Officers. Since the order in W.P.(C) No.18391 of 2015 has been passed on 19th January, 2016, the FEDCO would have taken appropriate step to work out the said order. The Petitioner has suppressed materials fact and has not impleaded the Officers of FEDCO as parties to the previous writ petition. Hence, the order of this Court could not be worked out. TPCODL took over the power supply in the year, 2020. He, further submits that after receipt of the order of this Court in W.P.(C) No.18391 of 2015, the same was forwarded to the Sub-Divisional Officer (Electrical), FEDCO, Jatni, by the Sub-Divisional Officer (Elect.), Distribution Sub-Division, Jatni-Opposite Party No.4 for consideration. As such, the TPCODL is not responsible for any inaction or omission and the Petitioner is liable to pay the amount as per Annexure-6. Hence, he submits that the writ petition being not maintainable is liable to be dismissed.

5. Upon hearing learned counsel for the parties and on perusal of the record, it appears that the Petitioner had already submitted his show cause reply to the provisional bill (assessment) before filing of W.P.(C) No.18391 of 2015. Hence, the assessing Officer was under legal obligation as per Section 126(3) of Electricity Act, 2003 to take a final decision on such show cause reply within thirty days. Admittedly, as yet no final assessment has been made pursuant to the direction of this Court in W.P.(C) No.18391 of 2015. Regulation 165 of the Odisha Electricity Regulatory Commissioner Distribution (Conditions of Supply) Code, 2019 reads as under:

“165. The person, on whom a provisional assessment order has been served shall be entitled to file objections, if any, against the provisional assessment before the assessing officer within seven days, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the electricity charges payable by such person. During the hearing, the Assessing Officer shall give due consideration to the facts submitted by the consumer and pass, a speaking final order as to whether the case of unauthorized use of electricity is established or not. The order shall contain the detail of inspection report, submissions made by consumer in his written reply and oral submissions during hearing and reasons for acceptance or rejections of the same. If no final order is passed and served on the person whose electricity consumption has been provisionally assessed within 30 days of service of provisional assessment order, then such order shall be null & void.”

(emphasis supplied)

On perusal of the provision, as aforesaid, it is apparent that if no final order is passed and served on the person, whose

electricity consumption has been provisionally assessed, within thirty days of service of provisional assessment, then such order shall be null and void.

6. Mr. Ray, learned counsel for the TPCODL raised an objection to the effect that the said provision came into force in the year, 2019 only. Thus, the same cannot be made applicable retrospectively. Such a submission is not acceptable, in as much as, even after TPCODL took over power supply, it has not made any endeavour to make the final assessment. Be that as it may, since no final order of assessment has yet been passed, the provisional assessment made has become *non-est* in the eye of law. In that view of the matter, the writ petition succeeds. Opposite Party Nos.3 to 5, namely, Authorities under TPCODL are directed to revise the bill without insisting upon the arrear amount of Rs.32,934/- as reflected under Annexure-6.

7. It is made clear that the Petitioner shall go on paying the current bill regularly.

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

Urgent certified copy of this order be granted on proper application.

(K.R. Mohapatra)
Judge

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