

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.12796 of 2019

Sri Banshidhar Acharya

....

Petitioner

Mr. D.P. Mahapatra, Advocate

-versus-

***S.D.O., Electrical, CESU, Kujanga,
Dist.-Jagatsinghpur and others***

....

Opposite Parties

Mr. S.C. Dash, Advocate

CORAM:

JUSTICE S. TALAPATRA

JUSTICE B. P. ROUTRAY

ORDER

07.07.2022

Order No.

06.

1. The matter is taken up through Hybrid mode.
2. Heard Mr. D.P. Mahapatra, learned counsel appearing for the Petitioner and also heard Mr. S.C. Dash, learned counsel appearing for the Opposite Parties.
3. By means of this petition, the Petitioner urges that the verification report and the provisional assessment order under Annexure-3 series be set aside with a direction on the Opposite Parties to reassess the load factors of the electricity installation in the premises of the Petitioner in his presence and to re-do the arrear and current electricity bill as per meter reading. The further direction as sought is to change the name of consumer from late

Mayadhar Acharya (father of the Petitioner) to the name of the Petitioner.

4. It is an admitted position that the Petitioner is not the registered consumer. It is his father, who was the registered consumer. Therefore the Petitioner is, at best, an user. Despite that the Petitioner has shown as the assessee. Thus, the Petitioner acquires *locus standi* to file this petition on the cause before noted. The dispute as raised in this petition is that the inspection that has been carried out under Section 126 of the Electricity Act, 2003 is illegal for non-compliance of the provisions of Section 163 of the Electricity Act, 2003, inasmuch as the Petitioner was not given any intimation before such inspection. In this background, the provisional assessment based on the impugned verification report has been challenged. But, from the preliminary counter affidavit filed by the Opposite Parties, it appears that the final assessment order under Section 126(3) of the Electricity Act, 2003 has been made on 30.07.2016 by affirming the order of the Assessing Officer, the Opposite Party No.2.

5. According to the counsel of the Petitioner, since no intimation was given and he was not present at the time of inspection, the observation made on such inspection is untenable.

6. Per contra, Mr. S.C. Dash, learned counsel appearing for the Opposite Parties has stated that the assessment report has been signed by one of the inmate of the Petitioner's family and the provisional assessment report has been served on the Petitioner. The Petitioner has also filed the objection. On consideration of the objection, the final assessment order has been passed. There cannot be any amount of dispute that the final assessment order is amenable to appeal under Section 127 of the Electricity Act, 2003. But the Petitioner did not prefer that recourse. Initially, he filed a complaint before the Consumer Redressal Forum and thereafter, he had carried out an appeal to the State Consumer Redressal Commissioner. Finally, he withdrew the complaint and approached this Court for the above redress.

7. We have given our serious consideration to the adverted facts and circumstances and also to the provisions of Section 163 of the Electricity Act, 2003 in respect of pre-requisites of inspections. It has been therein, that licensee may enter into the premises, remove fittings or other apparatus of licensee. The Licensee or any person, authorized by him, may enter in the premises at any reasonable time on informing the occupier of his intention. Sub-

section (2) of Section 163 of the Electricity Act, as referred by the counsel for the Petitioner, in the course of his submission, provides that, licensee or any person authorized, as aforesaid, may also, in pursuance of a special order in this behalf made by an Executive Magistrate and after giving not less than twenty-four hours notice in writing may enter the premises. In the present context, in our considered view, sub-section (2) of Section 163 does not have any relevance and so far as Section 163 is concerned, it provides that at any reasonable time, the licensee or the persons, who are authorized by him may enter into the premises only intimating the intention. No time-frame etc. is not provided, as provided under sub-section (2) of Section 163 of the Electricity Act, 2003.

8. Be that as it may, the Opposite Parties have raised serious jurisprudential objection as to maintainability of the writ petition.

9. Having regard to the dispute what has surfaced to us is that the Petitioner has not challenged the final assessment order despite his knowledge. The provisional assessment order has merged in the final assessment order. The final assessment order is amenable to challenge under Section 127 of the Electricity Act,

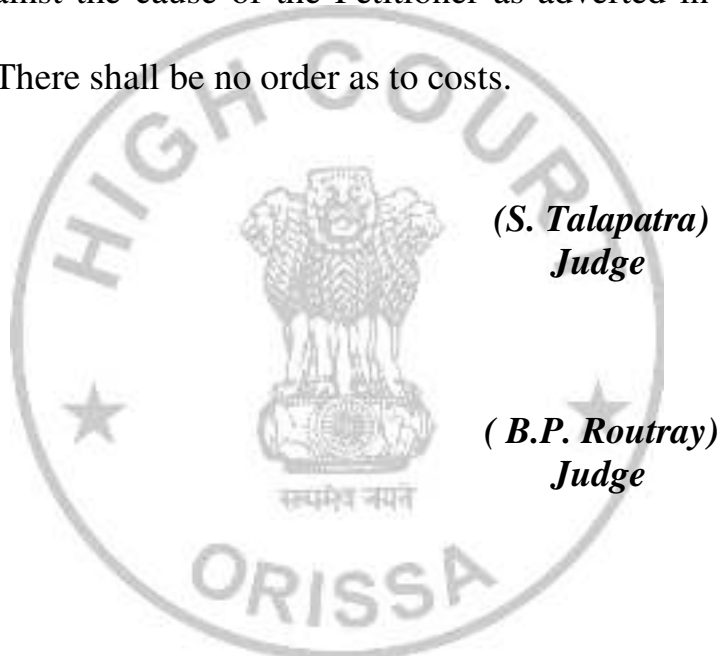
2003 subject to the condition of payment of 50% of the assessed due out of the consumption.

10. We are of the view that the appellate provision is exhaustive, efficacious and structured to challenge any illegality or material irregularity that might occur in the way of inspection or drawing up the provisional assessment. When the provisional assessment order is challenged, this Court should not lay its hand. Even the challenge, based on mode of inspection, is found to fail as *prima facie* there is no infraction of authorities. The only remedy as available to the Petitioner is to file the appeal under Section 127 of the Electricity Act, 2003.

11. In view of the above observations, we refrain from making further observations on the challenge made in this writ petition. Those challenge or objections will be available to the Petitioner to raise in the appeal, as contemplated to be filed. To make it abundantly clear, it is observed that our observations will not impede the Petitioner to take all the objections as raised in the writ petition.

12. Having observed thus, we are of the view that the Petitioner has chosen a wrong forum again and accordingly, this writ petition stands dismissed.

13. Before parting with the records, we would observe that if the appeal under Section 127 of the Electricity Act, 2003 is filed within thirty days from today, scourge of limitation shall not apply against the cause of the Petitioner as adverted in this writ petition. There shall be no order as to costs.



(S. Talapatra)
Judge

(B.P. Routray)
Judge