

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 22724 OF 2022

M/s. Binayak Coir Industry, Puri **Petitioner**
Mr. Falguni Rajguru Mohapatra,
Advocate

-versus-

Manager-cum-Assessing Officer, **Opp. Parties**
TPCODL, Puri

CORAM:
JUSTICE K.R. MOHAPATRA

ORDER

Order No.

23.09.2022

01. 1. This matter is taken up through hybrid mode.
2. The Petitioner in this writ petition prays for a direction to set aside the final assessment order passed by the Assessing Officer pursuant to the Letter No. 9198 dated 27th November, 2019 (Annexure-1).
3. Mr. Mohapatra, learned counsel submits that the Petitioner is a coir industry. During cyclone "FANNY" in 2019, the Petitioner-Unit was severely affected and electricity was disconnected. However, the Assessing Officer issued notice dated 27th November, 2019 under Annexure-1 making a provisional assessment of Rs.5,49,448.00/-. Assailing the same, the Petitioner had moved this Court in W.P.(C) No.28841 of 2019, which was disposed of on 7th January, 2020 with the following direction:

"The Petitioner has effective remedy under Section 126 of the Electricity Act, 2003. The writ petition is permitted to be withdrawn with liberty to the petitioner that in the event any application under Section 126 of the Electricity Act, 2003 along with delay condonation application is made within ten days, delay shall be

condoned and the application will be decided on its own merit. Any interim application filed therein shall also be considered and disposed of within two weeks thereafter.”

But, the Petitioner could not comply with the said direction. By that time, final assessment order was not passed. Hence, the Petitioner again moved this Court in W.P.(C) No.10483 of 2020, which was disposed of on 2nd July, 2020 with the following direction:

“The writ petition is permitted to be withdrawn with liberty to the Petitioner to move under the provision of Section 126(3) of the Electricity Act, 2003. In the event any such application is made by the petitioner, the same shall be considered in accordance with law.”

Accordingly, the Petitioner filed his objection under Section 126(3) of the Electricity Act, 2003 (for short ‘the Act’) on 10th August, 2020 under Annexure-4.

4. It is submitted by learned counsel for the Petitioner that without affording any opportunity of hearing to the Petitioner as provided under Section 126 (3) of the Act, the Authority has already passed the final assessment order. Hence, this writ petition has been filed.

5. It is further submitted by Mr. Mohapatra, learned counsel for the Petitioner that Section 126(3) of the Act provides that before passing any final assessment order, the consumer should be given an opportunity of hearing. In the instant case, although the Petitioner has filed his objection under Section 126(3) of the Act pursuant to the direction of this Court, but no notice whatsoever was issued to it to appear and place the matter. Final assessment order has also not yet been communicated to the Petitioner. In that view of the matter, he prays for setting aside

the final assessment order, if any, passed in respect of the Petitioner's Unit and to give an opportunity hearing to the Petitioner-Unit.

6. Taking into consideration the submission made by learned counsel for the Petitioner, this Court is of the considered opinion that the Petitioner has remedy of appeal under Section 127 of the Act against the final assessment order. Since it is alleged that final assessment has not yet been communicated to the Petitioner, the writ petition is disposed of with a direction that final assessment order, if any, passed in respect of the Petitioner-Unit shall be supplied to it within a period of two weeks from the date of production of certified copy of this order. In the event, no final assessment order has yet been passed, the Petitioner-Unit should be given an opportunity of hearing before any final assessment is made in respect of the Petitioner-Unit.

7. Needless to say that upon communication of the final assessment order, the Petitioner has right of appeal against the said order, if it feels aggrieved.

8. In the meantime, power supply to the Petitioner-Unit shall be restored on payment of Rs.2,00,000/- (Rupees two lakh) within a period of fifteen days hence observing the formalities, which shall be subject to result of the final assessment order/appeal.

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

(K.R. Mohapatra)
Judge