D/L. 5.
June 12, 2023.
MNS.

WPA No. 68 of 2023

Ratan Kumar Das
Vs.
The State of West Bengal and others

Mr. Goutam Chakraborty,
Mr. J. N. Manna,
Mr. Kartik Kumar Ray

… for the petitioner.

Mr. Susanta Pal,
Ms. Ananya Neogi

…for the State.

Dr. Madhusudan Saha Roy

…for the WBSEDCL.

The petitioner has challenged a final order of assessment. It is argued that a copy of the final order of assessment passed under Section 126 of the Electricity Act, 2003 (in short “the 2003 Act”) was obtained by the petitioner only after filing of the writ petition, whereas the initial challenge had been preferred against a provisional order of assessment.

Learned counsel appearing for the petitioner places reliance on the corresponding provisions under Sections 126 and 135 of the 2003 Act and argues that the definition of unauthorised use of electricity in Explanation (b) of Sub-Section (6) of Section 126 of 2003 Act, in so far as the same pertains to usage of electricity through a tampered meter, is different from the definition of theft under Section 135, which involves a dishonest intention on the part of the perpetrator in committing such tampering.

In the present case, it is argued, a proceeding under Section 135 of the 2003 Act has been taken out and the petitioner is agreeable to have the offence compounded therein before the Special Court.

It is, however, argued that the provision of Section 126 of the 2003 Act is not maintainable in the same breath, if a licensee alleges that the tampering was done with a dishonest intention.

Learned counsel places reliance on the judgement rendered by the Supreme Court in *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another Vs. Sri Seetaram Rice Mill reported at (2012) 2 Supreme Court Cases 108*.

Placing particular reliance on paragraph 29 thereof, learned counsel seeks to stress upon the observations made by the Supreme Court therein to the effect that unauthorised use of electricity under Section 126 of the 2003 Act deals with cases of unauthorised use, even in the absence of intention, which would be different from cases where there is dishonest abstraction of electricity by any of the methods enlisted under Section 135 of the 2003 Act.

It was further observed by the Supreme Court that where a consumer, by any of the means and methods as specified under Section 135(a) to 135(e), has abstracted energy with dishonest intention and without authorisation, the case would fall under Section 135 of the 2003 Act.

It is further contended that a learned Single Judge of the Madras High Court, in the judgement of *Flem Industries Ltd. Vs. Tamil Nadu Generation and Distribution Corporation Ltd. reported at 2013 SCC OnLine Madras 3520,* distinguished between applicability of Sections 126 and 135 of the 2003 and considered the scope of interference in the writ jurisdiction in case of civil assessment made under the provisions of Section 135, read with Sections 154 and 153 of the 2003 Act.

It is argued that Clause 5.1 of Regulation 55 of West Bengal Electricity Regulatory Commission dated August 7, 2013 clearly stipulates the provisional assessment under Section 126(1) to be made as per the method given therein. By highlighting the said methodology, it is sought to be argued that there is a patent distinction between tampering within the contemplation of Sections 135 and 126 of the 2003 Act.

Learned counsel further contends that, in the supplementary affidavit filed by the petitioner, the petitioner has pointed out the discrepancies in calculation committed by the respondent authorities while making the provisional and final orders of assessment. It is contended that the petitioner was not given a proper hearing on the provisional assessment for the purpose of permitting the petitioner to point out the calculation errors.

Learned counsel appearing for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) controverts such submissions of the petitioner and argues that it is a well-settled position of law that Sections 126 and 135 operate parallely in so far as proceedings for provisional assessment and final assessment as well as theft of electricity are concerned. However, the act of tampering is a common ingredient of both the provisions and, as such, it may very well be that parallel proceedings under the two provisions mentioned above are maintained by the Distribution Licensee on the score of the same offence.

A perusal of the respective provisions of Sections 126 and 135 of the 2003 Act clearly indicates that usage of electricity through a tampered meter is a common factor between both. The same may be termed merely as unauthorised use of electricity in the event there is no dishonest intention alleged. However, the same act, upon attributing the colour of dishonest intention, acquires the nature of an offence of theft under Section 135 of the 2003 Act.

In the present case, the provisional and final orders of assessment in respect of the petitioner were made by the Assessing Officer on the premise of the allegation of tampering, which has been virtually admitted by the petitioner before the authorities.

On the other hand, the proceeding under Section 135 of the 2003 Act has been undertaken for the same act of tampering, where it is the incumbent duty of the authorities to establish beyond reasonable doubt, as befitting a criminal trial, that there is a dishonest intention on the part of the petitioner in committing such act of tampering.

The yardsticks and standards of proof in criminal and civil assessments respectively under Sections 135 and 126 of the 2003 Act, it is well-settled, are on different footings and are maintainable parallely.

In Sri Seetaram Rice Mill (supra), which has been cited by learned counsel for the petitioner, the Supreme Court, while distinguishing the features of the two provisions, cited certain examples in paragraph 29 thereof.

What was highlighted in the context of the cited judgment was that the two proceedings differed on the count of the allegation of dishonesty on the part of the perpetrator while tampering the meter-in-question.

However, on an ultimate analysis, the said observation did not culminate in a conclusion that proceedings under the provisions of Sections 126 and 135 of the 2003 Act are not maintainable on a parallel footing.

That apart, the learned Single Judge of the Madras High Court, while passing the cited judgment, took into consideration a perceived lacuna in the Tamil Nadu Regulations framed by the State Electricity Regulatory Authority of the said State, with regard to there being no forum of challenge against the civil assessment of liability under Sections 153 and 154 of the 2003 Act. However, the civil assessment made under Section 154 of the 2003 Act is attracted only when there is an allegation of theft under Section 135 of the 2003 Act. In fact, the opening sentence of Section 154 specifies that only in cases where there are allegations of offences under Sections 135 to 140 of the 2003 Act, the said section, that is, Section 154 comes into operation.

The said provision, thus, operates in the exclusive case of an offence under Sections 135 to 140 which is in contradistinction with the civil liability assessed under Section 126 of the 2003 Act.

That apart, since the petitioner has not yet preferred a challenge under Section 127 of the 2003 Act before the Appellate Authority designated under the said Act for taking up challenges against final order of assessment, the present challenge in the garb of this writ petition, on whatever ground, ought not to be entertained to bypass the statutory provision of prior deposit of 50% of the assessed dues before the appellate authority.

In any event, it will be open to the petitioner to approach the Special Court for having the offences compounded before the said Court and get the reliefs as stipulated in Section 154 and its sub-sections.

Nothing in this order shall prevent the petitioner from taking recourse to such remedy and/or from preferring an independent appeal, if the petitioner so chooses, under Section 127 of the 2003 Act against the final order of assessment.

It was open for the writ petitioner to challenge the alleged discrepancy of calculation before the Assessing Officer at the relevant juncture. However, such point can only be agitated now before the appellate authority, if such a challenge is preferred in terms of the liberty given above.

Be that as it may, in view of the above discussions, there is no scope of interference in the present writ petition.

In the light of the above observations, WPA No. 68 of 2023 is disposed of.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)