

AD-11
Ct No.09
16.01.2023
TN

WPA No. 77 of 2023

Jaheda Khatun and others
Vs.
The State of West Bengal and others

Mr. Hemonta Coomer Mitter,
Mr. Md. Nauroz Rahber

.... for the petitioners

Mr. Asish Kumar Guha,
Mr. Jayak Kumar Gupta

.... for the State

Mr. Sumon Ghosh,
Mr. Manoj Kr. Mondal

.... for the CESC Limited

The envelope containing the service on the Authorized Officer of the Licensee Loss Control Cell, Eastern Building (Burra Bazar) of the CESC Limited has returned with an endorsement that the addressee has moved.

However, since the CESC Limited is represented by learned counsel, there is no scope of adjourning the matter unnecessarily for further service.

Learned counsel for the petitioners contends that the petitioners have been enjoying the property-in-question as tenants for over forty years. The existing system and arrangement with the private respondent/landlord has all along been that the

electricity meter room is under lock and key within the control of respondent no.8, the landlord, although the petitioners are the consumers with regard to the electric meter.

However, subsequently the petitioners were intimated that there was an alleged pilferage with regard to the said electricity connection and, as such, the connection was severed.

It is submitted that since the electric meter room was all along within the control of the private respondent/landlord, there could not have been any occasion for the petitioners/consumers to commit pilferage.

Learned counsel appearing for the CESC Limited contends that when the provisional assessment was made, the petitioner no. 1 was represented through her son, who had sought for reduction in the amount, upon which the same was done. Ultimately, the final order of assessment was also drawn up on July 15, 2022 which is annexed at page-35 of the writ petition. No appeal, however, was preferred against such final order of assessment at any point of time.

Learned counsel for the petitioners, at this juncture, controverts the last allegation of learned counsel for the CESC Limited placing reliance on a

representation given by the petitioners annexed at page-44 of the writ petition.

However, it is evident from the said annexure at page-44 of the writ petition that the same purports to be a mere representation to the Regional Manager Appellate Authority West Bengal State Electricity Distribution Co. Ltd., Howrah Region and not an appeal in proper format. However, Section 127 of the Electricity Act, 2003 provides for preferring an appeal with a prerequisite deposit of fifty per cent of the claim. In the absence of any appeal having been registered at the behest of the petitioners and/or any proof of such deposit, it cannot be accepted that a mere representation would operate as an appeal. As such, since there has been no appeal against the final order of assessment, the same has attained finality. Inasmuch as the petitioners' allegation that the meter was all along under the control of the private respondent/landlord and it was not possible for the petitioners or their men and agents to commit the act of pilferage, such allegation cannot be accepted *per se*, since the nature of the allegation made by the CESC Limited is that a direct connection was found from cut-outs bypassing the metering arrangement.

Irrespective of whether such allegations are correct or incorrect, which question is not entered into

herein, since the allegation is of such nature that the entire metering arrangement was bypassed for commission of the pilferage, the stand of the petitioners that it was not possible for the petitioners to have access, does not have any relevance or bearing on the issue at hand.

Moreover, since the petitioners have failed to avail the scope of any appeal before the appropriate designated forum, there is no scope of interference at this stage with the final assessment order.

Learned counsel for the State files a report indicating that steps have already been taken on the ground of pilferage. The report filed today be kept on record.

In view of the above discussions, WPA No. 77 of 2023 is dismissed on contest without any 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.)