

D/L. 39.
February 17, 2023.
MNS.

WPA No. 3524 of 2023

Sunil Kumar Ray
Vs.
The State of West Bengal and others

Mr. Chinmoy Pal,
Ms. Archana Dutta

... for the petitioner.

Mr. Swapan Kumar Pal

...for the State.

Ms. Suvasree Ghose

...for the WBSEDCL.

Learned counsel for the petitioner has raised an interesting question as to whether this Court, under Article 226 of the Constitution of India, has the discretion to direct restoration of electricity connection to a consumer, against whom charges of pilferage have been brought, in the teeth of the language of Section 135(1A), third proviso of the Electricity Act, 2003 (2003 Act).

The said proviso indicates that upon a disconnection having been effected on the ground of pilferage or theft of electricity, the licensee or supplier, as the case may be, upon

deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the 2003 Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to the clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.

Learned counsel has placed reliance on an unreported judgement of a co-ordinate Bench dated December 16, 2020 passed in *WPA 479 of 2020 (Joydev Ghorai Vs. The West Bengal State Electricity Distribution Company Limited & Ors.)*.

In the said judgment, upon consideration of the provisions of Section 135(1A) of the 2003 Act and “various clauses” of Regulation 55, the learned Single Judge came to the conclusion that such discretion is available with the court to direct reconnection of electricity supply upon payment of a fraction of the amount assessed.

There are several contrary judgments on the issue. Keeping in view the language of the third proviso to Section 135 of the 2003 Act, there is a presumption that only upon deposit or payment of the entire assessed amount or electricity charges “in accordance with the provisions of this Act”, the licensee or supplier

shall, without prejudice to the obligation to lodge complaint, restore the supply line. In my humble opinion, it is somewhat doubtful as to whether the provisions of the 2003 Act, in particular, Sections 126 and 127 of the 2003 Act read with Section 135(1A) of the 2003 Act permit the court to exercise such discretion in the teeth of the contrary provision in the Statute.

However, in the present case, there are mitigating circumstances, inasmuch as the petitioner is a septuagenarian of about 77 years and his wife has been suffering from the dreaded disease of Cancer for some time now. Since the petitioner and his wife, who is a cancer patient, are suffering disconnection of electricity and the summer season is approaching, it will be an extreme torture on the petitioner and his wife to pass their days without electricity at their premises.

In view of such mitigating circumstances, there is a scope of rethinking and reinterpreting the third proviso to Section 135(1A) of the 2003 Act under certain exceptional circumstances.

Be that as it may, since, in the present case, the petitioner has already preferred an appeal under Section 127 of the 2003 Act against

the final order of assessment passed by the Distribution Licensee and the said appeal is pending for some time now, in the interest of justice, it would be expedient if such appeal is directed to be disposed of as expeditiously as possible and to grant liberty to the petitioner to approach the appellate forum for an interim order of reconnection, sine the appellate forum is in *seisin* on the merits of the appeal.

In such view of the matter, it would not be proper to unnecessarily refer the question as to whether this Court has discretion, as discussed above, to a larger Bench for resolution on reference, which would delay the litigation further, since the petitioner and his wife are in a precarious condition and are elderly people.

In the above context, WPA No. 3524 of 2023 is disposed of by directing the appellate forum to decide the appeal pending at the behest of the petitioner under Section 127 of the 2003 Act as expeditiously as possible, positively within three weeks from the date of communication of this order to the said forum.

The petitioner will be at liberty to approach the appellate forum with an interlocutory application for restoration of electricity connection

to the petitioner upon payment of a nominal amount on an *ad hoc* basis. If so approached, the appellate forum will decide the said application on an urgent basis, preferably within a week from filing of the same, and decide the matter in accordance with law, keeping in view the unfortunate plight of the petitioner and his wife.

It is, however, made clear that this Court has not gone into the merits of the allegations and counter allegations levelled in the appeal preferred by the petitioner, which will be decided by the appellate forum independently and in accordance with law.

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.)