

ML-98
Ct No.09
03.04.2023
TN

WPA No. 3602 of 2023

Shri Jaydeb Karan
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Susanta Pal,
Mr. Prabir Kumar Roy

.... for the petitioner

Mr. Sujit Sankar Koley

.... for the WBSEDCL

Heard learned counsel for the parties.

Learned counsel for the petitioner submits that the documents annexed to the affidavit-in-opposition of the West Bengal State Electricity Distribution Company Limited (WBSEDCL) are all manufactured.

It is contended that the petitioner's signature is not found in any of the relevant documents, including the seizure list. Insofar as the seizure list is concerned, it is argued that the law and criminal jurisprudence mandate that signatures of two local witnesses are to be taken. However, in the present case, two signatures were taken from persons who do not reside in the locality, without any explanation as to why no local people were available at the time of the alleged incident.

It is further argued that the WBSEDCL had visited the Husking mill of the petitioner on April 4, 2022 but it was indicated in the provisional order of assessment and the other documents that such inspection took place on April 06, 2022, on which date, there was no inspection by the WBSEDCL at all.

Learned counsel also indicates that the Assessing Officer himself drew up the final order of assessment, which cannot be lent credence to.

Learned counsel for the petitioner next contends that as per the documents annexed to the opposition itself, it is seen that in the year 2015, similar allegations were raised against the petitioner by the WBSEDCL, upon which the offences were compounded upon payment of an amount to the tune of around of Rs.1.5 lakh by the petitioner.

It is pointed out that the provisional order of assessment at that juncture was more than Rs.11 lakh, which was reduced at one go to around Rs. 1.5 lakh. It is submitted that there is no rhyme or reason for such assessments by the WBSEDCL.

Moreover, it is argued that there cannot be any reason why the same yardstick as adopted in 2015 could not be adopted by the WBSEDCL for assessing the final amount in the present case in 2022. By pointing out to the provisional assessment made on

the earlier occasion, it is argued that the WBSEDCL took into consideration the actual working hours of the husking mill and placing due reliance on the same, made assessment, which is entirely absent in the present case.

Learned counsel for the petitioner next contends that no documents or basis are reflected in either the provisional order of assessment or the final order of assessment arrived at by the WBSEDCL, nor any copy of any document was given to the petitioner for facilitating effective hearing.

Thus, it is argued that both the provisional and final orders of assessment are tainted by illegality and perversity.

Learned counsel further indicates that the WBSEDCL is in the habit of exploiting consumers in the rural areas by issuing threats of clamping criminal charges against them in the event they did not pay up.

Learned counsel appearing for the WBSEDCL places reliance on the several documents annexed to the affidavit-in-opposition and submits that there is nothing on record to show that those were manufactured.

It is seen from each of the documents that the same were undertaken in due process of law and, as such, there is no illegality or irregularity in the

process and mode of calculation adopted by the WBSEDCL.

It is further argued that by placing reliance on the calculations made in 2015, the petitioner virtually admits that on the previous occasion, the petitioner had committed theft.

That apart, it is argued that the petitioner's own representation as annexed to the affidavit-in-opposition of the WBSEDCL reflects that the petitioner virtually admitted the commission of theft and had sought for reduction of the amount provisionally assessed. As such, the petitioner cannot resile from such position now.

In the course of arguments, learned counsel appearing for the petitioner has also placed reliance on several Clauses of Regulation 55 of the West Bengal Electricity Regulatory Commission (WBERC), in particular, Clause 3.1.1, Clause 3.5.1, Clause 3.6.1, Clause 3.8.1 as well as Section 56 of the Electricity Act, 2003 (for short "the 2003 Act").

Learned counsel submits that there was no basis for calculation adopted by the WBSEDCL in the present case and, as such, there is no scope of applicability of Sections 126 and 127. Hence, this court ought to set aside the provisional and final orders of assessment.

A consideration of the documents annexed to the pleadings indicates that the WBSEDCL had resorted to due process of law while making the provisional order of assessment, final order of assessment as well as the seizure. There is nothing on record, nor any particulars of pleadings, as contemplated in Order VI Rule 4 of the Code of Civil Procedure, to plead specific fraud or forgery committed by the WBSEDCL in the pleadings of the petitioner.

It is seen from the annexures to the affidavit-in-opposition that a First Information Report was lodged on April 06, 2022 making all the relevant allegations against the petitioner, on the basis of which the provisional, and then final, orders of assessment were made.

The seizure list annexed at page-12 of the affidavit-in-opposition indicates that there were two witnesses. Although the said witnesses are apparently from a different post office and village than the petitioner, at least in case of one of the witnesses, being Dipak Kumar Kar, the police station is the same as the petitioner, which is Patashpur, as evident from the seizure list itself. Moreover, it cannot be said that the seizure list is palpably tainted by any irregularity

and presumption of correctness ought to be attached to the same.

The inspection note of the WBSEDCL also clearly indicates the offence committed by the petitioner and that the same two witnesses signed on the same.

The *jimmanama* annexed to the affidavit-in-opposition, which has been sought to be assailed by the petitioner, also indicates that the Station Manager/Assessing Officer took the custody of the relevant equipments used for the commission of the theft.

At page no.15 of the affidavit-in-opposition, a hand-written representation by the petitioner is annexed. On a *prima facie* perusal, no significant discrepancy is found between the signature of the petitioner in the affidavit portion of the writ petition and such representation.

It is seen from the said representation that the petitioner acquiesced to the charges levied by the WBSEDCL and sought for a reduction in the amount of provisional order of assessment on the ground that he is financially ill-equipped to pay the same.

After having given such representation, it does not lie in the mouth of the petitioner to say that the petitioner was not given any opportunity of hearing. In

fact, the final order of assessment was passed only after giving full-fledged opportunity of hearing to the petitioner. The Assessing Officer, in due exercise of his discretion as conferred by law, did not deem it fit or found any reason to reduce the amount of provisional order of assessment which is more than Rs.2 lakh.

It is seen from the provisional order of assessment annexed to the pleadings that, attached with the same, was a calculation sheet which clearly shows that the mode as prescribed in Section 126(5) of the 2003 Act was resorted to by the WBSEDCL.

In fact, the reliance placed by learned counsel for the petitioner on the clauses cited from Regulation 55 of the WBERC is entirely misplaced. Clause 3.1.1, in one portion, indicates that the person taking meter reading “may” also obtain the signature of the consumer or his representative “if any of them is available at the time of meter reading”.

The very next sentence in the said clause says that if, however, the consumer or his representative is not available at the time of meter reading or refuses to sign in the card or book or document, the meter reading taken by the meter reader shall be presumed to be correct.

There is nothing on record to indicate that the meter readings-in-question were not taken into

consideration by the WBSEDCL while making the considerations.

Be that as it may, since Section 126(5) has been complied with to the letter, I do not find any irregularity in the mode of calculations.

Insofar as Clause 3.5.1 of Regulation 55 is concerned, which is also cited by learned counsel for the petitioner, the same clearly stipulates that in case there is any dispute in respect of the billed amount, the consumer may lodge a complaint with the Grievance Redressal Officer or the Central Grievance Redressal Officer of the licensee and thereafter to the Ombudsman in appeal. In such case, under protest, the lesser amount out of the two options given therein is to be paid by the consumer. However, the said clause is not attracted in the present case at all, since there was no dispute referred to the Grievance Redressal Officer and the present case arises out of an assessment under Section 126 of the 2003 Act on the allegation of theft, pilferage and unauthorized use of electricity, which was also visited by a proceeding under Section 135 of the 2003 Act.

The next clause cited by the petitioner is Clause 3.6.1 of Regulation 55, which is all the more off-the-mark vis-à-vis the present case. It is seen therefrom that it stipulates that if, on inspection by the

distribution licensee on its own or on the basis of a complaint of a consumer, the meter of a consumer is found defective or defunct *“for a reason other than theft of electricity as provided in Section 135 of the Act and no theft of energy can be reasonably suspected”*, the consumer shall provisionally pay as per the provisions therein. However, contrary to the said provision, in the present case there is a specific allegation of theft, on which FIR was registered and subsequently a criminal proceeding was taken out against the petitioner.

The petitioner also seeks to rely on Clause 3.8.1 of the said Regulation, which deals with billing in case of unusual variation in meter reading. It provides that in case the meter reading of a consumer for a billing cycle shows unusual variation, the consumer shall be charged provisionally at the prevailing tariff on the basis of the following consumption amount as given therein. However, the said clause is also not attracted in the present case, since there was no case made out by the WBSEDCL of any previous unusual variation in the billing cycle or electricity charges.

Insofar as Section 56 of the 2003 Act is concerned, which is also cited by learned counsel for the petitioner, the same deals with a case where a person neglects to pay any charge of electricity or any

sum other than a charge for electricity due from him to a licensee, which pertains clearly to the non-payment of regular electricity bills, in which case there would be a disconnection of supply in default of such payment.

The proviso thereto merely supplements the main sub-section, that is, sub-section (1) of Section 56 and provides certain modalities of payment.

However, in the present case, the allegation is not of non-payment of regular electricity bills but of theft of electricity and unauthorized use of electricity. Hence, Section 56 is also not attracted at all in the present case.

The allegation, that all the documents annexed by the WBSEDCL in its opposition are manufactured, is a wild and bald allegation and is not substantiated by any material whatsoever.

The other point taken by the petitioner is that the WBSEDCL did not disclose any basis or document for making the provisional order of assessment and the final order thereafter.

It is well-settled that the procedure for drawing up a provisional order of assessment and a final order of assessment is summary in nature and cannot be equated with a judicial proceeding.

In fact, inasmuch as Section 126(1) of the 2003 Act is concerned, the inspection and enquiry of the Assessing Officer himself, “to the best of his judgment”, is what is the basis of calculation of the charges levied thereunder.

In the instant case, the assessing officer was a part of the inspection team, which is the most important component of an inspection in such a case. It is, under the law, the Assessing Officer himself or herself who has to make the provisional as well as the final orders of assessment. Precisely that has been done in the present case, that too, upon giving a hearing to the petitioner before final assessment.

The petitioner’s reliance on the previous charges levied under Section 126 by the WBSEDCL on a prior allegation of pilferage does not go on to bolster the case of the petitioner; rather, it weakens the petitioner’s case to the extent of proving that the petitioner was previously guilty of pilferage as well and conceded to the said decision by way of payment, for which the offences were compounded. In fact, in the present case, the petitioner has himself given a representation, thereby waiving any right to challenge the provisional assessment by claiming a reduction of the amount on the ground of his lack of financial means. Thereafter, the petitioner cannot resile from

such position and come up in challenge in a writ petition, grossly bypassing the specific provision of law of preferring an appeal under Section 127 of the 2003 Act, which also stipulates a pre-condition payment/deposit of fifty per cent of the amount assessed, which has also been sought to be evaded by preferring the present writ petition.

On the above considerations, it is clear that the present writ petition is palpably an attempt on the part of the petitioner to bypass the due process of law. Since no appeal was preferred under Section 127 of the 2003 Act, there is no further scope for the petitioner to challenge the impugned orders either of provisional assessment or final assessment.

In view of the above discussions, there is no merit in the present writ petition and the same merits only dismissal.

Accordingly, WPA No. 3602 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.)