

AD-03
Ct No.09
02.03.2023
TN

WPA No. 4434 of 2023

Debabrata Chowdhury

Vs.

West Bengal State Electricity Distribution Company
Limited and others

Mr. Koushik Gupta,
Mr. Sourav Chatterjee,
Mr. Soumya Nag

.... for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the WBSEDCL

Learned counsel for the petitioner contends that the assessments made, first provisionally and thereafter finally, against the petitioner on the allegation of theft of electricity were vitiated *ab initio*, since the Assessing Officer herself had lodged the complaint, on the basis of which a First Information Report (FIR) was drawn up against the petitioner in connection with a proceeding under Section 135 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”).

Learned counsel for the petitioner submits that all norms of fairness militate against the same person lodging an FIR and at the same time being the Assessing Officer herself. By placing reliance on the

provisions of Sections 126 and 135 of the 2003 Act, learned counsel argues that any Officer of the Distribution Licensee may lodge an FIR against the alleged accused person. However, the Assessing Officer need not be the same person in law. In such a situation, when there is no specific mandate upon the Assessing Officer herself to lodge the complaint, which leads to a proceeding under Section 135, the tenets of fairness and natural justice ought to have been complied with by the Assessing Officer-in-question and she should have desisted from lodging the complaint herself. The said scenario is somewhat akin to a person being the judge of her own cause, it is contended.

That apart, the Assessing Officer-in-question was not posted at the relevant juncture in the office under which the allegations were made and the inspection held. However, she was brought in from a different place for the purpose of conducting the inspection and lodging the FIR, which itself is suspect, according to learned counsel for the petitioner.

Learned counsel for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) vehemently opposes the submission of learned counsel for the petitioner.

Heard learned counsel for the parties.

The plinth of the submissions of the petitioner is that the complaint as well as the provisional assessment themselves are vitiated due to the identity of the person lodging the complaint and the Assessing Officer.

A careful perusal of Section 126 of the 2003 Act reveals that the Assessing Officer has to hold the inspection or at least has to be a party to the inspection team and has to come to a conclusion under Sub-Section (1) of the said Section that the person concerned is indulging in unauthorized use of electricity, of which theft is a species.

Sub-Section (3) of Section 126, again, provides that after service of the provisional assessment order on the person concerned, an opportunity would be afforded to the person to file objections which has to be heard by the Assessing Officer herself and after affording such reasonable opportunity of hearing, the same Assessing Officer shall pass a final order of assessment.

As such, the entire process has to have the presence of the same Assessing Officer throughout the course of the modalities prescribed in Section 126. On the other hand, as rightly contended by learned counsel for the petitioner, Sub-Section (2) of Section 135 contemplates that any Officer of the Licensee or

supplier, authorized in this behalf by the State Government, may enter, inspect, break open etc. the location where the alleged theft occurred and search, seize and remove all such devices etc. and take other necessary steps for the purpose of apprehending the theft.

As such, a mere perusal of the two Sections indicates that there is no conflict between the two. The same officer may very well be an authorized officer within the contemplation of Section 135 as well as the Assessing Officer as envisaged by Section 126.

That apart, the fact simpliciter that the person concerned in the present case was brought in from a different place itself does not vitiate the proceeding at all.

Learned counsel for the petitioner has also hinted that on a previous occasion, the same Assessing Officer, while posted elsewhere, had committed an irregularity which was set aside by a coordinate Bench of this court.

However, a scrutiny of the said order of the coordinate Bench, which has been annexed to the writ petition, shows that ultimately the same Assessing Officer, who was also an Assistant Engineer, was directed to complete the assessment by the coordinate Bench. Moreover, *ipso facto* the same person having

been held to have occasioned some irregularity in a different matter, does not itself vitiate her action in the capacity of an Assessing Officer in all subsequent cases, including the present case.

In such view of the matter, there is no scope of interference in the present writ petition and/or to quash the provisional and/or the final orders of assessment raised against the petitioner. In the event the petitioner has a grievance against the final order of assessment, on whatsoever ground, it would be open to the petitioner to challenge the same in appeal as provided under Section 127 of the 2003 Act, subject to compliance of due process of law and in accordance with law.

It is made clear that since the petitioner could very well take all points against the final order of assessment, including the question as to why the order was vitiated at the inception due to some irregularity on the part of the appointment of the particular Assessing Officer, the said contention has been negated in the present writ petition. However, on merits, it will be open to the petitioner to argue the same point before the appellate authority as well.

Accordingly, WPA No. 4434 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.)