

30th March,
2023
(AK)
04

W.P.A 7315 of 2023

Braj Dhar Jha
Vs.
The CESC Limited and others

Mr. Prantick Ghosh
Mr. Prasad Bhattacharyya
...for the petitioner.

Dr. Madhusudan Saha Ray
...for the CESC Limited.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner argues that although no provisional assessment was made against the petitioner on the allegation of pilferage of electricity in respect of another meter standing in the premises where the petitioner lives, which does not belong to the petitioner, subsequently an allegation of theft was leveled against the petitioner among others.

Upon an FIR being registered, a criminal proceeding was sought to be started, for which the petitioner had to obtain anticipatory bail upon payment of fifty percent of the amount so assessed.

In the interregnum, a final order of assessment has also been made.

It is contended that since no provisional or final order of assessment was sent to the petitioner under Section 126 of the Electricity Act, 2003, the allegation against the petitioner for the purpose of disconnection of the petitioner's electricity supply is illegal.

Learned counsel appearing for the CESC Limited controverts such allegations and submits that it is within the provisions of the 2003 Act to charge the entire amount assessed for the purpose of giving reconnection in terms of the third proviso to Section 135(1-A) of the said Act.

A perusal of the third proviso of the said sub-Section indicates that the licensee or supplier, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso, restore the supply line of electricity within 48 hours of such deposit or payment.

Again, Section 126 of the said Act indicates that if on an inspection of any place or premises etc. unauthorized use of electricity is found to be indulged in by some person, the Assessing Officer shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

Hence, Section 126(1) is quite wide in its scope of application insofar as it includes any person not only indulging in unauthorized use of electricity but also any other person benefitted by such use.

In the present case, the allegation against the petitioner is also of theft under Section 135, which falls within a species of unauthorized use of electricity.

As such, there is no reason why the rigours of Section 135 of the 2003 Act, including its third proviso, will not be applied to the petitioner.

Since the petitioner has only deposited fifty percent of the amount, that too as a condition for getting anticipatory bail, the court does not have the discretion at the present moment to direct restoration of his electricity supply.

However, needless to say, in the event the petitioner deposits the entire amount assessed without prejudice to his rights and contentions in the criminal proceedings and/or any other proceedings instituted against him, the CESC Limited is duty bound to restore the electricity supply of the petitioner.

In addition, the petitioner is also at liberty to prefer a challenge under Section 127 of the 2003 Act against the final order of assessment as made by the CESC Limited.

In the light of the above observations and in the context of the liberty is given to the petitioner, WPA 7315 of 2023 stands disposed of without any order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)