

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 7820 of 2023

Sunil Sarkar
Vs.
The State of West Bengal & Ors.

Mr. Jyoti Prakash Chatterjee,
Ms. Shilpa Thapa,
Mr. Debottam Das
...for the petitioner

Mr. Raj Kumar Basu
...for the WBSEDCL

Learned counsel appearing for the petitioner challenges an order of provisional assessment raised by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) on two counts.

First, the petitioner's father was a consumer in respect of an electricity connection at his shop room, with which the petitioner has no nexus whatsoever. On the allegation of tampering of meter in respect of the father's connection, who is since deceased, the WBSEDCL has raised a provisional assessment bill against the petitioner. Thus, it is argued that the petitioner cannot be saddled with such cost.

Secondly, learned counsel submits that the father of the petitioner had several heirs, including the petitioner. If charges are to be levelled with regard to tampering of meter, the assessed amount should be

equally apportioned between all the heirs of the petitioner's father.

Learned counsel appearing for the WBSEDCL submits that specific charge of theft has been levelled against the petitioner for his involvement in the act of pilferage. In fact, on query of Court, it is submitted that a proceeding for theft of electricity under Section 135 of the Electricity Act, 2003 has already been levied against the petitioner.

It is well-settled that the WBSEDCL is required to show the involvement of the accused person for levelling the charge of unauthorized use of electricity, of which one species is theft. The outcome of the proceeding under Section 135 of the 2003 Act will decide whether the petitioner is guilty or not. However, at the instant juncture, if this Court decides the issues raised by the parties, the same will amount to prejudging the issues involved, for which the petitioner has a right of hearing before the Assessing Officer on the provisional order of assessment, before a final order of assessment is drawn up.

In fact, under Section 127 of the 2003 Act, an appeal has been provided against the final assessment order as well. If this Court interferes at this juncture, the same will tantamount to usurping the jurisdiction of the said two forums, that is, the Assessing Officer

and the appellate authority. Hence, it would not be prudent to finally decide the issues at this stage.

Accordingly, W.P.A. No. 7840 of 2023 is disposed of by granting liberty to the petitioner to appear before the WBSEDCL authorities on the date fixed for hearing on the provisional order of assessment and canvas all the points taken here before the said authority.

Upon such hearing being given to the petitioner, the Assessing Officer shall decide the issue in accordance with law.

It is made clear that the merits of the contentions of the parties have not been gone into by this Court and it will be open to the authorities, designated in law, to decide the issues independently, without being influenced in any manner by any of the observations made herein.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)