

ML-21
Ct No.09
03.04.2023
TN

WPA No. 7851 of 2023

Sk. Golam Murshed
Vs.
West Bengal State Electricity Distribution Company
Limited and another

Mr. S.N. Mukherjee,
Mr. Niraj Gupta,
Mr. Afroja Nusrat

.... for the petitioner

Dr. Madhusudan Saha Roy

.... for the WBSEDCL

Learned counsel for the petitioner submits that the minimum statutory period of fifteen days was not given for the purpose of hearing the petitioner on a provisional order of assessment on the allegation of unauthorized use of electricity.

It is submitted that initially on the same date, that is, on March 15, 2023, a provisional order of assessment was sent to the petitioner and a notice of hearing for final assessment was given separately to the petitioner indicating that the date of hearing was fixed on March 20, 2023, that is, about five days thereafter.

Since the petitioner did not have reasonable opportunity to appear on such date; more so, since the petitioner's wife was in hospital, the petitioner

made a prayer for adjournment vide communication dated March 17, 2023, which is also annexed to the writ petition.

Upon such application, the West Bengal State Electricity Distribution Company Limited (WBSEDCL) adjourned the matter but only till March 24, 2023. It is submitted that the petitioner did not get ample opportunity to file a written objection, although the statute provides that the final order has to be passed within a period of fifteen days.

It is further argued that the petitioner is not in a position to pay the entire amount for which assessment was made. It is submitted that reconnection may be given upon deposit of fifty per cent of the assessed amount.

Learned counsel for the WBSEDCL controverts such submissions and argues that reasonable opportunity was given to the petitioner to appear and be heard and the petitioner had actually appeared on the date when the final order of assessment was made, that is, on March 24, 2023.

It is further submitted that the period of fifteen days is the outer limit for passing the final order of assessment and not the minimum. Hence, ample time was given to the petitioner by acceding to his initial prayer for adjournment, even upon which the

petitioner prefers the present challenge without taking out an appeal as envisaged under Section 127 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”).

In view of the materials annexed to the writ petition itself, it is clear that although initially March 20, 2023 was fixed as the date of hearing on the provisional order of assessment for the purpose of passing the final order, the same was adjourned by the WBSEDCL on the petitioner’s request and the hearing was ultimately done on March 24, 2023. The petitioner was actually represented on the said date and in presence of the petitioner, the final order of assessment was passed on March 24, 2023.

Insofar as the prayer of the petitioner for reconnection upon deposit of fifty per cent of the assessed amount is concerned, the same is not merely within the discretion of the court since the third proviso to Section 135(1A) of the 2003 Act, clearly stipulates that restoration of electricity connection can be given only upon the consumer depositing the entire assessed amount provisionally without prejudice to his rights.

Moreover, fifty per cent of the claimed assessed amount is the amount which is to be deposited as a

pre-condition merely for preferring an appeal under Section 127 of the 2003 Act.

Such liberty cannot be extended by the court by granting a greater relief than provided by the statute, on a conjoint reading of Section 127 and the third proviso to Section 135(1A) of the 2003 Act.

Hence, the court is unable to accede to the request of the petitioner.

WPA No. 7851 of 2023 is disposed of by granting liberty to the petitioner to prefer a challenge against the final order of assessment before the appellate authority in accordance with law, upon deposit of the statutory prerequisite.

If such an appeal is preferred, the same will be decided in accordance with law and subject to limitation by the appellate authority upon giving adequate opportunity of hearing to all concerned.

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.)