

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

**C.R.R. 1198 of 2012
Goutam Mandal
-Vs-
The State of West Bengal & Anr.**

For the Petitioner : Mr. Sambhunath De
Mr. B. K. Samanta

For the State : Mr. Provash Bhattacharya
Mr. Mirza Firoj Ahmed Begg

Heard on : 25.07.2023, 26.07.2023, 02.08.2023, 11.12.2023.

Judgment on : 12.12.2023.

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is filed by the petitioner for quashing of the proceedings of the Electricity Act Case No. 446 of 2011 arising out of G.R. Case No. 529/2011 corresponding to Ghatal P.S. Case No. 152/2011 dated 21.11.2011 under Section 136 (a & b) of Electricity Act, 2007 pending before the Learned Additional Sessions Judge, Special Court under Electricity Act, Paschim Medinipore.
2. Petitioner stated to have been falsely impleaded in the Ghatal P.S. Case No. 152/2011 dated 21.11.2011 (G.R. Case No. 529 of 2011) under Section 136 (a & b) of Electricity Act, 2007 by the opposite party no. 2.

3. Petitioner happened to be a bona fide consumer of Electricity under Ghatal Electric Supply (Now Ghatal Customer Case Centre) W.B.S.E.D.C.L. using such electricity for his submersible pump being service Connection No. R/STW 371, Consumer No. L – 011386, Meter No. RSX – 10581.
4. In the year 2009 due to 'Aila' storm certain P.C.C. poles including the P.C. Pole of petitioner were broken. The petitioner's Electric Meter was attached with one such Pole and as a result the petitioner was not receiving electric supply for the use of the said submersible pump affecting his cultivation and resulting in financial loss.
5. Petitioner repeatedly requested the opposite party no. 2 to take steps to replace such pole and supply electricity for his submersible pump. However, there were no steps to that effect to restore electricity. Finding no other alternative petitioner submitted representations on 05.08.2011 to the opposite party no. 2 and also to the Secretary, Circle Grievance Redressal Forum for redressal of his grievances and also for compensation for such negligency on the part of the opposite party no. 2 for failure to offer electric connectivity.
6. Petitioner stated since said forum did not take any steps to supply electricity, he lodged one complaint on 18.10.2011 before the Learned Ombudsman, W.B. Electricity Regularity Commission for providing electricity supply, cancellation of bills from such period of 'Aila' Storm and compensation for delay in not granting supply to his pump. The Learned Ombudsman, after receiving such complaint, on 25.10.2011 by Memo. No. OMBUD/W-1371K/11/8992 directed the Chief Engineer, CRM Cell &

Principal Grievance Redressal Officer, W.B.S.E.D.C.L., Bidyut Bhawan, Salt Lake, Kolkata – 700091 to furnish a report with all relevant details by 15.11.2011.

7. Petitioner stated that after receiving such notice dated 25.10.2011 of the Learned Ombudsman, the Distribution Company asked the opposite party no. 2 to provide necessary information. The opposite party no. 2 then on 14.11.2011 and 18.11.2011 accompanied by certain officials, visited the site and premises of the petitioner. One of the official carried Meters and all of them entered the premises of the petitioner. The said officials started agitating that most illegally the said meter was lying in the premises of the petitioner and they took photographs of one of such meter, carried by them. The opposite party no. 2 insisted petitioner to sign on the blank paper to effect supply immediately which the petitioner refused. Thereafter the opposite party forcibly and/or by misrepresentation took signature of certain neighbours for evidence of such inspection. On 16.11.2011 the said neighbours lodged one complaint at the Ghatal Police Station by stating that the opposite party no. 2 took such signature forcibly and/or by misleading them and requested them to take steps to cancel such paper.
8. Petitioner further stated that from the said F.I.R. it was to be noticed that the opposite party no. 2 sought Police help on 21.11.2011 for seizing the said Meter by lodging one complaint being F.I.R. No. 152/2011 dated 21.11.2011 but on 21.11.2011 they did not find anything as because on 14.11.2011 the villagers questioned them regarding such photograph of the Meter.

9. On 25.11.2011, Sri Rama Dubey, A.S.I. Ghatal Police Station made an enquiry and visited the site of the petitioner when the petitioner along with certain neighbours were present. On enquiry the said Police Officer found one Meter bearing No. RSX – 10581 was affixed with one of the P.C.C. Pole which was seized in the presence of the villagers. One of such seizure list was supplied to the petitioner.
10. As the petitioner lodged complaint before the Learned Ombudsman for effecting supply and/or for compensation for such delay in effecting supply as per Electricity Act and Regulations the opposite party no. 2 initiated all the above proceedings for his own safeguard so that the payment of compensation was not payable and the opposite party no. 2 wanted to take revenge against petitioner by falsely impleading him under Section 136 (a) and (b) of Electricity Act.
11. Petitioner stated that Section 136 (a) & (b) of the Electricity Act dealt with theft of electric lines and materials. The theft of meter did not arise at all since the said Meter got replaced on to another pole after the Storm of 'Aila'. The petitioner was concerned with the supply of electricity and not with any electric meter. The opposite party no. 2 totally misconstrued the facts of the case and out of grudge impleaded him under Section 136 (a) & (b) of the Electricity Act, 2007.
12. Petitioner stated that the said Section 136 (a)&(b) of the Electricity Act deals with theft of Electric Lines and materials. The complainant, nowhere in the said F.I.R. stated the quantum of theft as well as the loss suffered. As such

the said F.I.R. is fake and unlawful. Hence the said F.I.R. is liable to be set aside and/or quashed.

13. Learned Advocate for the petitioner submitted that –

- i. There are no ingredients of Section 136 (a & b) of the Electricity Act, in the said F.I.R. as such there cannot be any case under Section 136 (a & b) of the Electricity Act, against the petitioner.
- ii. The said F.I.R does not mention the quantum of theft as well as the loss of the opposite party.
- iii. From the enquiry report of the A.S.I. Ghatal Police Station dated 25.11.2011 it was found that the said Meter was affixed with the Pole as such as the said F.I.R. was completely false, fabricated and harassive to petitioner as such the said F.I.R. is liable to be set aside and/or quashed.
- iv. If such F.I.R. is not quashed and/or set aside petitioner will suffer irreparable loss and injury.

14. Heard the submissions of the Learned Advocate for State claiming that the instant proceedings should not be quashed at a preliminary stage pending trial.

15. It is pertinent to mention the below mentioned Sections of The Electricity Act, 2007.

Section 135. (Theft of Electricity): --- 1[(1) Whoever, dishonestly, --

(a) taps, makes or causes to be made any connection with overhead, underground or under water lines or cables, or service wires, or service facilities of a licensee or supplier as the case may be; or

(b) tampers a meter, installs or uses a tampered meter, current reversing transformer, loop connection or any other device or method which interferes with accurate or proper registration, calibration or metering of electric current or otherwise results in a manner whereby electricity is stolen or wasted; or

(c) damages or destroys an electric meter, apparatus, equipment, or wire or causes or allows any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electricity,

(d) uses electricity through a tampered meter; or

(e) uses electricity for the purpose other than for which the usage of electricity was authorised,

so as to abstract or consume or use electricity shall be punishable with imprisonment for a term which may extend to three years or with fine or with both:

Provided that in a case where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use -

(i) does not exceed 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction the fine imposed shall not be less than six times the financial gain on account of such theft of electricity;

(ii) exceeds 10 kilowatt, the fine imposed on first conviction shall not be less than three times the financial gain on account of such theft of electricity and in the event of second or subsequent conviction, the sentence shall be imprisonment for a term not less than six months, but which may extend to five years and with fine not less than six times the financial gain on account of such theft of electricity:

Provided further that in the event of second and subsequent conviction of a person where the load abstracted, consumed, or used or attempted abstraction or attempted consumption or attempted use exceeds 10 kilowatt, such person shall also be debarred from getting any supply of electricity for a period which shall not be less than three months but may extend to two years and shall also be debarred from getting supply of electricity for that period from any other source or generating station:

Provided also that if it is proved that any artificial means or means not authorized by the Board or licensee or supplier, as the case may be, exist for the abstraction, consumption or use of electricity by the consumer, it shall be presumed, until the contrary is proved, that any abstraction, consumption or use of electricity has been dishonestly caused by such consumer.

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second

proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.]

Section 136. (Theft of electric lines and materials):

(1) Whoever, dishonestly –

(a) cuts or removes or takes away or transfers any electric line, material or meter from a tower, pole, any other installation or place of installation or any other place, or site where it may be rightfully or lawfully stored, deposited, kept, stocked, situated or located including during transportation, without the consent of the licensee or the owner, as the case may be, whether or not the act is done for profit or gain; or

(b) stores, possesses or otherwise keeps in his premises, custody or control, any electric line, material or meter without the consent of the owner, whether or not the act is committed for profit or gain.

16. A complaint was lodged by A.E. and Station Manager, Ghatal Customer care center W.B.S.E.D.C.L. to the Officer-in-Charge, Ghatal Police Station, Paschim Medinipore inter alia stating that the P.C.C Pole fitted with 3 phase energy meter for the purpose of registration of energy, supplied to run the S.T.W. of one Sri Goutam Mondal was broken during norwester as 'Aila' in the year of 2009. Later the said pole was replaced but the meter could not be found against the said service connection bearing consumer No. L011368. Later the said consumer that is Sri Goutam Mondal had approached the Hon'ble Ombudsman, W.B alleging that the respective meter was removed by the W.B.S.E.D.C.L. Personal. A site inspection was carried on 14.11.2011 by the undersigned accompanying Sri Sankar Kumar Biswas, S.A.E. (E) and Sri Rabindranath Bag, Hg. T.S. In the presence of three neighbors who are Sri

Kalipada Salik, Sri Dhirendra Nath Dolui and Sri Dilip Dolui, it was found that the STW were shifted by the said consumer about 200 ft. from the initial position without having permission from the W.B.S.E.D.C.L. and the energy meter was also not traceable in the said position. The aforesaid neighbors stated the respective meter of the said Service Connection bearing Connection No. L1011386 had been preserved in the domicile house of Sri Gautam Mondal. Afterwards, A.E. and Station Manager, Ghatal Customer Care Center W.B.S.E.D.C.L. accompanying Sri Sankar Kumar Biswas, S.A.E.(E), Sri Manash Kumar Saha, S.A.E(E) to the premises of the consumer on 18.10.2011 at 4:10PM to seize the respective meter (Meter No. RSX 10581). When the A.E. and Station Manager, Ghatal Customer Care Center W.B.S.E.D.C.L. tried to snap a number of photographs of the meter as a proof and tried to take the white color open meter from the premise, they met strong resistance from the family members of the consumer. Thus, A.E. and Station Manager, Ghatal Customer Care Center W.B.S.E.D.C.L. accompanying Sri Sankar Kumar Biswas, S.A.E.(E), Sri Manash Kumar Saha, S.A.E(E) left the place without collecting the meter. The A.E. and Station Manager, Ghatal Customer Care Center W.B.S.E.D.C.L. had communicated the Officer-in-Charge, Ghatal Police Station, Paschim Medinipore for sparing police personnel for that day. However, they could not be spared due to busy schedule. The A.E. and Station Manager, Ghatal Customer Care Center W.B.S.E.D.C.L. also sent a letter for police personnel on 21.22.2011 at 10:30. Accordingly on 21.22.2011, the A.E. and Station Manager, Ghatal Customer Care Center W.B.S.E.D.C.L. along with S.A.E.(E)

and police personnel of Ghatal police station visited the premise of Sri Goutam Mondal at 12:10 pm to seize the meter. Surprisingly they could not find the meter at the consumer's premise. When the members of the family were questioned, they expressed ignorance. The A.E. and Station Manager, Ghatal Customer Care Center W.B.S.E.D.C.L. filed an FIR on 11.04.2011 stating that this was a malpractice which is a cognizable offence under Section 136 (a) and (b) of the Electricity Act, 2007.

17. The seizure of one white color open meter with inscription RSX-10581 was accomplished from one electric pole of the northern side of the village from the field of Udaypur P.S. Ghatal Paschim Mednipur.
18. The complaint filed by the Assistant Engineer of W.B.S.E.D.C.L. did not mention the mode and manner in which there was a theft of electricity. Rather the allegations were based on the seizure of an electric meter from the residence of the complaint contrary to the materials in the case diary which denoted the seizure of the disputed electric meter to have been conducted from an open field. The complaint itself did not reveal any commission of theft constituting as an offence under Section 136 of the Electricity Act, 2007 and as such the FIR is not sustained in view of the above discussion.
19. In view of the above discussions, the Electricity Act Case No. 446 of 2011 arising out of G.R. Case No. 529/2011 corresponding to Ghatal P.S. Case No. 152/2011 dated 21.11.2011 under Section 136 (a) & (b) of Electricity Act, 2007 pending before the Learned Additional Sessions Judge, Special Court under Electricity Act, Paschim Medinipore is quashed.

20. The criminal revisional application being CRR 1198 of 2012 is allowed.

21. Accordingly, CRR 1198 of 2012 stands disposed of. Connected application, if there be any, also stands disposed of.

22. There is no order as to cost.

23. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

24. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)