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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No.8782 of 2023

Goutam Paul
Vs.
The Calcutta Electric Supply
Corporation Limited & Ors.

Mr. Chittapriya Ghosh,
Mr. Kuntal Ray,
Ms. Priyanka Saha
...for the petitioner

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

The petitioner has challenged an order passed by the appellate authority under Section 127 of the Electricity Act, 2003.

Learned counsel appearing for the petitioner contends that it will be evident from the First Information Report lodged on behalf of the Distribution Licensee, that is, the CESC Limited, which has been annexed to the present writ petition, that the name of the assessing officer does not transpire as a member of the inspecting party. Hence, the very premise of the provisional order of assessment and the subsequent final order is vitiated due to absence of the assessing officer at the locale.

Secondly, it is argued that even in the month of August, 2021, immediately prior to disconnection, the electricity charges were calculated and a regular bill was raised by the CESC Limited without making any allegation of unauthorized use of electricity. However, in the very next month of September, when the complaint was lodged and the provisional assessment was made, it was given out by the CESC Limited that the meter was tampered. The calculation made thereafter has been on the premise that the period during which unauthorized use was taking place could not be ascertained, for which the methodology provided in Section 126(5) of the 2003 Act was adopted.

Learned counsel appearing for the petitioner contends that such methodology could not have been adopted, taking the basis for calculation to be twelve months immediately preceding the date of inspection, since in the very preceding month before disconnection, regular meter reading was taken.

Learned counsel, moreover, submits that the order of the appellate authority is extremely cryptic. Although the appellate authority has narrated the submissions of both sides, the ordering portion is as brief as possible and does not reflect any proper reasons behind such order being passed.

Learned counsel appearing for the CESC Limited controverts such allegations. It is submitted by the

CESC Limited that Section 135(1A) of the 2003 Act does not envisage that the assessing officer himself has to lodge the complaint or be instrumental in registering the First Information Report. By placing reliance on such provision, it is argued that any officer of the licensee, authorised for the purpose by the Appropriate Commission or any other officer of the licensee, of a rank higher than the rank so authorised shall disconnect the supply line of electricity and, thereafter, shall lodge a complaint in writing relating to the commission of offence.

In the present case, it is argued that the complaint lodged on behalf of the CESC Limited was made by the authorised officer, as is reflected from the complaint itself. Hence, there is no irregularity on the part of the CESC Limited on such score.

Inasmuch as the previous month's meter reading is concerned, learned counsel for the CESC Limited submits that the persons taking the regular meter reading are not experts in detecting theft, pilferage and/or unauthorized use of electricity. However, the inspecting team comprised of the experts in the field, including the assessing officer as well as the authorised officer, detected the unauthorized use/theft of electricity. Since the exact period of such unauthorized use/theft could not be ascertained, the modality as contemplated in Section 126(5) of the 2003 Act was adopted.

That apart, learned counsel submits that the elaborate order of the appellate authority records the submissions of both parties and also narrates the documents produced on behalf of the CESC Limited. The order was passed on the basis of examination of such documents and, as such, cannot be faulted.

Learned counsel further submits that numerous documents, including photographs of the site of pilferage as well as written complaint, inspection report along with various other documents were produced before the appellate authority on behalf of the CESC Limited, as is evident from the list given in the communication dated February 09, 2023, which is annexed as annexure P-4 at page 46 of the instant writ petition.

A bare perusal of annexure P-4 clearly shows that the CESC Limited, that is, the Licensee produced several documents, which were also adverted to by the appellate authority while passing the order. The appellate authority, after narrating the submissions made by parties, discussed the facts of the case as well.

It is seen from such consideration that the documents which were produced before the appellate authority as well as the assessing officer were looked into and assessed by the appellate authority as well.

Such consideration is reflected from the impugned order itself.

Moreover, no rebuttal evidence was presented by the petitioner to disbelieve the correctness of the report of the inspection made by the concerned officer of the CESC Limited. Although the petitioner has hinted that the report was made at the Park Street office of the CESC Limited, whereas the alleged pilferage took place at Dum Dum, which is far away from Park Street, the presumption of validity of such exercise by the authority cannot be ruled out merely on the basis of the distance between the two places. It is the petitioner who admitted that the inspection was held around 2.00 p.m. in the afternoon, whereas the First Information Report was registered around 4.30 p.m.

Hence, there is nothing palpable in the time-gap between the two incidents to unerringly indicate that there was a mala fide exercise of authority by the officers of the CESC Limited.

The appellate authority, in the ordering portion of the impugned order, clearly mentions that the said authority has considered and examined the available documents and the arguments of both sides, from which it is revealed that the CESC Limited found 12 KW load during inspection. It is also reflected in the ordering portion of the impugned order that the two parameters, that is, load and period of commencement, seemed justified.

That apart, the provisional order of assessment also reflects sufficient consideration of the appropriate modes as stipulated under Section 126(5) of the 2003 Act and that due considerations were reflected in the same.

Moreover, as rightly pointed out by learned counsel for the CESC Limited, the list of documents indicates that all relevant papers were before the assessing officer as well as the appellate authority. It is well-settled that an order passed by an appellate authority shall not be upset merely in view of the possibility of a second opinion.

Going by such principle and taking into consideration that preponderance of probabilities is the yardstick to be followed as standard proof in an appeal under Section 127 of the 2003 Act, I do not find any patent illegality and/or irregularity or abuse of process of law in the appellate order, which is impugned in the present writ petition.

In such view of the matter, W.P.A. No.8782 of 2023 is dismissed on contest without, however, any order as to costs, thereby affirming the impugned order of the appellate authority.

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.)