

AD-05
Ct No.09
03.05.2023
TN

WPA No. 10097 of 2023

Mir Baruddin Ali
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Sk. Sahjahan Ali

.... for the petitioner

Mr. Debjit Mukherjee

.... for the WBSEDCL

The short question which has arisen for consideration in the present case is, whether a final order of assessment passed by the Assessing Officer under Section 126 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”) can be challenged in an appeal under Section 127 of the same Act beyond the period of limitation and, if not, whether the appellate court has the discretion to condone the delay in filing such appeal in appropriate cases.

Learned counsel for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) cites several judgments in support of the proposition that such appeal cannot be entertained beyond the period of limitation as stipulated in Section 127 of the

2003 Act. Learned counsel first places reliance on a Division Bench judgment of this court reported at *(2011) 1 CHN 182 (Cal. Electric Supply Corpn. Ltd. & Anr. vs. Kalavanti Doshi Trust & Ors.)*, where it was observed that a Writ Court should not, by invoking jurisdiction under Article 226 of the Constitution of India, revive a time-barred remedy.

The next judgment cited on behalf of the WBSEDCL is also a Division Bench judgment of this court, where it was held that this Court cannot meddle with the statutory period of limitation provided under the statute by extending the period of limitation which would amount to rewriting the words of the statute.

The third judgment cited on behalf of the WBSEDCL is that of a learned Single Judge of this court reported at *(2013) 4 Cal LT 486 (M/s. Polymac Thermoformers Pvt. Ltd. & Anr. vs. The State of West Bengal & Ors.)*. In the said judgment as well, the High Court was of the opinion that the writ court cannot condone the delay in case there is a statutory bar of limitation.

Learned counsel for the WBSEDCL further cites a judgment of another coordinate Bench of this court reported at *2020 SCC OnLine Cal 3083 (Murad Ali Mondal vs. West Bengal State Electricity Distribution*

Company Ltd. and Others) to the effect that the provision for deposit and/or payment under Section 127(2) of the 2003 Act for the purpose of the appeal being entertained is a mandatory provision and cannot be relaxed and/or waived.

A Division Bench judgment is also cited by learned counsel for the WBSEDCL, in his usual fairness, where, however, the Division Bench was of the opinion that when the remedy of appeal has become time-barred, the writ court can grant leave to the consumer to avail the appellate remedy and direct the appellate authority to hear the appeal on merits.

In another judgment of a different coordinate Bench, it was observed by the court that the petitioner therein was permitted to prefer an appeal within two weeks from the date of disposal of the writ petition, despite the appeal being time-barred by then.

As regards the Division Bench judgments as well as the judgments of the coordinate Benches which say that the writ court cannot condone a delay if the relief itself is time-barred, there is no quarrel with such proposition and the same is too well-settled to be questioned at this stage.

With regard to the judgment of the Division Bench in *Sudipta Koley vs. Smt. M. Bhowmick and anr.*, where the Division Bench was of the opinion that

the writ court could grant leave to the consumer to avail appellate remedy even after the time-bar came into force, with utmost respect, the same did not take into consideration the previous Division Bench judgment of this court, which held to the contrary.

Insofar as the judgment of the coordinate Bench which observed that the petitioner in the said writ petition was permitted to prefer an appeal, the question whether the appellate authority is required to or can go into the question of condonation of delay in preferring appeal was never argued or considered.

In fact, in the judgment of *Murad Ali Mondal* (supra), where the learned Single Judge was pleased to hold that the appeal under Section 127 can only be heard upon payment or deposit in terms of the provision of Section 127(2), the Court did not take into consideration the question which has come up for consideration in the present instance.

The issue here is whether the appellate authority has the power to condone the delay after expiry of the limitation within the contemplation of Section 127(1). The said question has not been specifically answered in any of the judgments cited by the WBSEDCL.

Even a cursory perusal of Section 127(1) shows that the same stipulates that any person aggrieved by

the final order made under Section 126 may, within thirty days of the said order, prefer an appeal under the said provision.

It is to be noted that such restriction of thirty days is not couched in a negative language so as to clearly mandate the operation of the same. In view of the provision being one which is extremely restrictive and would tantamount to being draconian since in such case, even legitimate consumers who are entitled to prefer appeal at a belated stage due to some unforeseeable or unavoidable circumstances will also be precluded from preferring the appeal; more importantly, even the appellate authority would be powerless to condone such delay at all. Such proposition would border on absurdity and could not have been the legislative intent of Section 127 of the 2003 Act.

Inasmuch as Sub-Section (2) of Section 127 of the 2003 Act is concerned, however, the same, as opposed to Sub-Section (1), is couched actually in a negative language and reads as follows:

“127(2): No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to half of the assessed amount is deposited in cash or by way of bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.”

Hence, the coordinate Bench, in *Murad Ali Mondal* (supra), rightly observed that the provision for deposit of fifty per cent is mandatory and cannot be waived.

Thus, there is no question or necessity for distinguishing the judgment of the learned Single Judge in *Murad Ali Mondal* (supra).

However, in the light of the above discussions, the stipulation or time-bar of thirty days within the contemplation of Section 127(1) of the 2003 Act is found to be directory and not mandatory. As such, it is open and within the discretion of the appellate authority, upon appropriate cause being shown by the appellant, to consider the condonation of the delay, if reasonable, in preferring the appeal.

In the light of such discussions, in the present case, the petitioner is also entitled to have a second lease of life by approaching the appellate authority, since the writ petition had been filed only about four months after the final order of assessment.

Accordingly, WPA No. 10097 of 2023 is disposed of by granting liberty to the petitioner to prefer an appeal against the final order of assessment, which has been passed by the WBSEDCL in the meantime, within a fortnight from date.

If such appeal is filed within a fortnight, accompanied by an appropriate application or grounds in the appeal itself, indicating sufficient reasons for the delay in preferring the writ petition beyond the period of thirty days from the final order of assessment, it will be open to the appellate authority to condone the delay in preferring the appeal and entertain the appeal, and thereafter to decide the same in accordance with law upon hearing all concerned.

However, it is made clear that such liberty is being given to the petitioner with the rider and being subject to the condition that the petitioner, while filing the appeal, shall also deposit the mandatory amount of fifty per cent of the claim as envisaged under Section 127(2) of the 2003 Act, to enable the appellate court to entertain such appeal, in the event the delay is condoned.

Parties as well as all concerned shall act on the server copy of this order without insisting upon prior production of a certified copy thereof.

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.)