IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Before:
The Hon'ble Mr. Acting Chief Justice T. S. Sivagnanam
and
The Hon'ble Justice Hiranmay Bhattacharyya

MAT 739 of 2023
with
IA No. CAN 1 of 2023
Caesar Sen
Vs.
The Calcutta Electric Supply Corporation Limited & Ors.

For the Appellant : Mr. Rupak Ghosh
Mr. Ayan Dutta
Mr. Abhik Chitta Kundu........advocates

For Private Respondent no. 3 : Mr. Subir Sanyal
Mr. Debanjan Mukherjee
Mr. Shuvajit Bose ....advocates

For the CESC Ltd. : Dr. Madhusudan Saha Roy ...advocate

Reserved on : 03.05.2023

Judgment on : 10.05.2023

Hiranmay Bhattacharyya, J.:-

1. This intra court mandamus appeal is at the instance of the writ petitioner and is directed against an order dated April 11, 2023 passed by a learned Single Judge in WPA 7401 of 2023 dismissing the writ petition with cost.

2. The writ petitioner/ appellant claims to be the owner of premises no. 66/1 Chowringhee Road, Kolkata- 700020 and in a portion of such premises the 3rd respondent is running an eatery under the name and style of "Tibetan Delight". The appellant alleges that 3rd respondent has been drawing electricity illegally from premises no. 67 Chowringhee Road to the premises no. 66/1 Chowringhee Road wherefrom the business of eatery is being carried on. The appellant approached the writ court praying for issuance of a writ of mandamus to direct the respondent licensing company to immediately disconnect the new metered connection effected in favour of the 3rd respondent. The appellant also challenged the assessment made by the Assessing Officer under the provisions of Section 126 read with 135 of the Electricity Act 2003 (for short "the 2003 Act") alleging that there has been an under assessment of unauthorised use of electricity.

3. The learned Single Judge dismissed the writ petition on the ground that the appellant had no locus standi to challenge the final order of assessment passed against the private respondent no. 3. Being aggrieved, the writ petitioner has approached this Court.

4. After perusing the impugned order, this Court was of the prima facie view that the learned Single Judge was right in dismissing the writ petition for the reasons that the appellant had no locus standi to maintain the writ petition. However, on a closer scrutiny of the materials on record, this Court was persuaded to take a different view and for which the learned counsels of the respective parties were invited to submit on the maintainability as well as the merits of the case.

5. The learned advocate representing the appellant attacked the order passed by the learned Single Judge on the ground that the said writ petition was dismissed without calling for any

affidavits. He further contended that there are errors apparent on the face of the record in as much as the finding of the learned Single judge that the writ petitioner filed the writ petition in the capacity of being a land lord of the adjacent premises is concerned. He further contended that there has been gross under assessment of unauthorised use of electricity in the final order of assessment made by the concerned authority.

6. The learned advocate representing the licensing company submitted that assessment of electricity charges payable under Section 126 of the 2003 Act has been made in terms of regulation 5.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations 2013 (for short "the 2013 Regulations") and therefore the submission of the learned advocate of the petitioner that there has been an under assessment is without any basis.

7. Mr. Sanyal learned advocate representing the 3rd respondent supported the finding of the learned Single Judge that the petitioner has no locus standi to challenge the final order of assessment passed under Section 126 of the 2003 Act. He submitted that the private respondent is residing at premises no. 67 Chowringhee Road and enjoying electricity through a commercial meter installed thereat. He further submitted that since the tariff for commercial consumption is higher than that for domestic purpose and also that the consumption of electricity has been duly recorded through the said meter, there cannot be said to be any under assessment as alleged by the appellant.

8. This Court has elaborately heard the learned advocates for the parties and perused the materials placed.

9. From the final order of assessment dated February 22, 2023 it appears that the meter installed at premises no. 67 in the name of one Mr. Uday Mukhiya was the subject matter of such assessment. It further appears therefrom that an inspection of the service installation and the metering system installed at the said premises was held on 20.02.2023 and the Assessing Officer found that the private respondent who is the present beneficiary of the meter being no. 6015050 standing in the name of her late husband Mr. Uday Mukhiya was found extending the service in an unauthorised manner from her premises at 67 Chowringhee Road, Kolkata- 20 to run her eatery under the name and style of "Tibetan Delight" at premises no. 66/1, Chowringhee Road, Kolkata-20.

10. Ordinarily the owner of a premises who claims to be the landlord of a person in occupation of such premises as a tenant thereof may not be considered to be a person aggrieved against an adjudication made under Section 126 in respect of a meter installed at a different premises and in respect of which such owner/ landlord has no interest therein. It is also well settled that an objection at the instance of the landlord may not also be relevant for the purpose of effecting supply of electricity to an occupier of such premises as a tenant thereof.

11. In the case on hand it is not in dispute that the 3rd respondent was found to have extended the supply of electricity from a different premises for the purpose of running his eatery at the premises which is alleged to be owned by the appellant.

12. Section 126 of the 2003 Act deals with assessment for unauthorised use of electricity. Explanation (b) to Section 126 defines "unauthorised use of electricity" to mean the usage of electricity by any artificial means or by a means not authorised by the concerned person or authority or licensee, or through a tampered meter or for the purpose other than for

which the usage of electricity was authorised or for the premises or areas other than those for which the supply of electricity was authorised. Therefore, such extension of supply of electricity by the 3rd respondent, however, falls within the Explanation (b) to Section 126 of the 2013 Act. Such act of the 3rd respondent is an offence under Section 135 of the 2013 Act and the same is punishable with imprisonment for a term which may extend to 3 years or with fine or with both.

13. Section 126(5) of the 2013 Act states that if the Assessing Officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceeding the date of inspection.

14. From the materials on record it is evident that such illegal act of extension of supply of electricity from a different premises was detected as far back as in the month of March 2020 which will be evident from the letter issued by the licensing company dated 03.03.2020. This Court was astonished when it came to its notice that the Assessing Officer passed the Provisional Order of Assessment as well as the Final Order of Assessment on the basis of the period of unauthorised use of electricity to be only for 55 days on the basis of the date of inspection on 28.03.2023. This Court, however, fails to understand as to why the assessing officer did not take into consideration the earlier inspection when it was found that the 3rd respondent was using electricity unauthorisedly as the veracity of the letter dated 03.03.2020 is not in dispute and the same was very much available in the records. If the date of the earlier inspection is taken into consideration, the period of

unauthorised use of electricity would be more than three years.

15. From Regulation 5.1 of the 2013 Regulations this Court finds that the period of unauthorised use of electricity is an important factor for making an assessment under Section 126.

16. Regulation 5.1(b) provides the manner of assessment under Section 126 of the 2013 Act where the unauthorised use is not covered by Clause (a),(b),(c) and (d) of Sub-section 1 of Section 135 of Electricity Act 2003 but such unauthorised use is for the purpose other than for which the usage of electricity was authorised and/or, such unauthorised use is for the premises or areas other than those for which the supply of electricity was authorised which also speaks of the period of unauthorised use.

17. If the detection of unauthorised use of electricity as per the earlier inspection is taken into consideration then the very basis of the assessment under Section 126 is completely shaken and for such reason the impugned assessment cannot be sustained in the eye of law.

18. That apart the Assessing Officer passed an order of provisional assessment on 20.02.2023 giving liberty to the private respondent to file written objection within a period of 15 days from the date of the order of provisional assessment. The Assessing Officer in the order of provisional assessment fixed the date of hearing on 06.03.2023 at 10 AM. However, it appears that within two days of the passing of the passing of the provisional order of assessment, the final order of assessment was passed on 22.02.2023.

19. This court also fails to understand as to how the final order of assessment could have been passed only after two days of

passing of the provisional order of assessment and that too long prior to the date fixed for hearing which was on 06.03.2023. The final order of assessment is also silent in that regard. The period of unauthorised use of electricity which was the basis of passing of the final order of assessment, in the considered view of this Court is in violation of the provisions of Section 126(5) of the 2013 Act and, therefore, the final order of assessment is liable to be set aside.

20. The assessing officer while performing his functions under 2013 Act has to act strictly in accordance with the provisions of the relevant statute and the regulations framed therein. However, such officer has failed to perform his duties in accordance with the provisions laid down under the 2013 Act in the case on hand as would be evident from the observations made hereinbefore. Thus, there is also infirmity in the decision making process.

21. This Court accordingly holds that the Assessment Order passed under Section 126 of the 2013 Act is ex facie bad in law. Furthermore, unauthorised use of electricity is an offence punishable under the 2013 Act. Considering the larger public interest involved, the period of unauthorised use of electricity, the manner in which the assessment was made and the gravity of the offence, this Court is of the considered view that it would not be proper for this Court to allow such Assessment Order to remain operative strictly on the ground of locus standi.

22. For the reasons as aforesaid, this Court holds that the basis of assessment of unauthorised use in the order of Provisional Assessment, the Final order of Assessment and the impugned order passed by the learned Single Judge call for interference.

23. The appeal stands allowed and the impugned order as well as the Final Order of Assessment dated 22.02.2023 are accordingly set aside and quashed. Without interfering with the observation made during the inspection of the premises on 20.02.2023 as recorded in the provisional Assessment Order, this Court directs the Assessing Officer to revisit the order of provisional assessment dated 20.02.2023 with regard to the basis of assessment of unauthorised use and the ultimate assessment made by passing a fresh provisional assessment order in the light of the observations made hereinbefore and in accordance with law positively within a period of two weeks from the date of receipt of the server copy of this order and to conclude the proceedings under Section 126 of the 2013 Act in accordance with the provisions of the 2013 Act and the regulations framed thereunder. The payments, if any, made by the 3rd respondent in terms of the final order of assessment dated 22.02.2023 shall abide by the final decision of the authority in terms of the order passed by this court.

24. The writ petition thus, stands allowed in part with the observations and directions passed hereinbefore. The application in connection with the appeal stands disposed of accordingly. There shall be, however, no order as to costs.

25. The appellant shall be kept informed about the steps taken by the Assessing Officer from time to time as well as the ultimate outcome of the adjudication in terms of this order. However, the appellant cannot use this order to claim a right to participate in the assessment proceedings under Section 126 of the 2013 Act.

26. Before parting, this Court makes it clear that this judgment and order should not be construed to have laid down a broad proposition that a stranger or a busybody can challenge an assessment made under Section 126 of the 2013 Act as this

judgment has been passed considering the peculiar facts of the case on hand.

27. Urgent photostat certified copies, if applied for, be supplied to the parties upon compliance of all formalities.

I agree.

(T.S. Sivagnanam, ACJ.) **(Hiranmay Bhattacharyya, J.)**

(P.A.-Sanchita)