

15th May,
2023
(AK)
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W.P.A 11160 of 2023

Subrata Kumar Pal
Vs.
West Bengal State Electricity Distribution Company
Limited and others

Ms. Gopa Biswas
Ms. Mousumi Hazra

...for the petitioner.

Mr. Debjit Mukherjee

...for the WBSEDCL.

Mr. Sudipto Panda
Mrs. Munmun Tewary

...for the State.

Affidavit-of-service filed in court today be kept on record.

The petitioner claims that the petitioner is a security guard and earns a meager amount of livelihood.

It is submitted that the petitioner was initially assessed as an unauthorized user of electricity and a provisional order of assessment was raised.

Subsequently, without hearing the petitioner, a final order of assessment was passed.

Thereafter, the petitioner had obtained bail in a connected proceeding under Section 135 of the Electricity Act, 2003 and was subsequently discharged from the said criminal case.

It is submitted that the petitioner is entitled to restoration of his electricity connection in view of such acquittal on similar charges.

It is further submitted that the person signing the provisional order of assessment was the same as the one who signed the final order of assessment.

Learned counsel for the petitioner also contends that the petitioner's wife is extremely ill and his son is a student. As such, severe difficulties are being faced by the petitioner due to the disconnection of electricity.

Learned counsel for the WBSEDCL contends that the assessments were made in the year 2016.

Despite service of notice of the provisional assessment order, the petitioner chose not to appear at the hearing for the final order of assessment.

Even the final order of assessment attained finality in the year 2016, when no appeal was preferred against the same by the petitioner under the provisions of Section 127 of the Electricity Act, 2003.

In fact, in the year 2019 itself, the petitioner had obtained bail in the criminal proceeding upon deposit of fifty percent of the assessed amount.

Waiting for so long for the petitioner's acquittal, the petitioner did not take any step thereafter against the final order of assessment and has now come up with the present writ petition only in the year 2023, seeking to take advantage of such acquittal.

A consideration of the submissions of the parties reveals that a challenge under Section 127 of the petitioner is hopelessly time-barred.

Even if the petitioner were to be justified in arguing that the petitioner was not heard before passing the final order of assessment, the said plea is negated by the long abstinence of the petitioner, for about seven years, from challenging the final order of assessment before an appellate authority even on such ground.

The ground now being sought to be raised was available to the petitioner all along in the appeal, if any, preferred against the final order of assessment.

More so, it is debatable whether any further opportunity ought to have been given to the petitioner since a notice of the hearing on the provisional assessment was allegedly served on the petitioner and the petitioner could not, for some reason or the other, attend the final hearing.

Hence, it cannot be said that the final order of assessment is tainted by any contravention of the statute, that is, the Electricity Act, 2003 or the connected Regulations.

Under Section 126, the person making the provisional assessment, that is, the Assessing Officer, is the same person who has to pass the final order of assessment. Thus, there is no irregularity on the part of the licensee on such score as well.

Insofar as the subsequent acquittal of the petitioner is concerned, the same was on the standard of a criminal trial, that is, beyond reasonable doubt, which is different from that of a final order of assessment under Section

126, the yardstick of the latter being preponderance of probability.

As such, the acquittal of the petitioner, in the absence of any challenge whatsoever being taken out against the final order of assessment since 2016, does not benefit the petitioner in the present context in any manner whatsoever.

In the event the petitioner is to obtain the electricity connection, the petitioner has to fulfill all formalities, including payment of outstanding dues, which situation cannot be improved at this belated stage, seven years after the final order of assessment was passed.

Hence, despite having full sympathy for the petitioner on the other aspects of the petitioner, WPA 11160 of 2023 has to be dismissed as it stands. Accordingly, the writ petition is dismissed on contest.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)