

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION

(Appellate Side)

Present: THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

W.P.A 9874 of 2010

Reserved on : 16.08.2023
Pronounced on: 08.12.2023

Tapas Ghosh

...Petitioner

-Vs-

State of West Bengal & Ors.

...Respondents

Present:-

Mr. M.C. Ghosh
Mr. Indrajit Sen
Mr. S. Medda

....for the petitioner

Mr. Sujit Sankar Koley

... for the respondents

Rajarshi Bharadwaj, J:

1. The instantaneous writ application has been preferred challenging an order through memo no. DTC/E-32/702 dated 14.11.2009 passed by Superintending Engineer, Durgapur Transmission Circle, Durgapur herein respondent No. 3 together with revised provisional bill dated 22.11.2007 as leading to final assessment bill dated 15.03.2008 prepared by Station Manager Monteswar Gr. E.S, Burdwan herein respondent No. 4 in connection with pilferage and theft of electricity by one Tapash Ghosh herein the writ petitioner.

2. The facts of the case are that the writ petitioner has been running a retail outlet of Indian Oil Corporation Ltd, under the name and style of M/s Ganapati Service Station (hereinafter referred to as petrol pump) at Kusumgram, Monteswar, Burdwan having Service connection No. 1/2773 and Consumer No. 1-502335 since 30.09.2004. The petrol pump remains open for 14 hours from 6 am to 8 pm as per terms of dealership from M/s Indian Oil and there is no canopy at its service station.

3. The petrol pump was inspected by West Bengal State Electricity Distribution Company Limited (WBSEDCL) herein respondent No. 2 through the S & LP Team on 21.11.2007. It was found that the seal of P.P Box No. V100873 was duplicated and the meter box No. SF 503232 was tampered. The meter box recorded reading at 9934.70 units and observed load was found to be 19.2 K.W. Foreign device inserted inside the meter caused less registration of energy consumption. The meter box and allied materials were seized on spot, inspection report was prepared by the inspection team. FIR was lodged against petitioner and the service connection of the petrol pump was disconnected.

4. The petitioner was charged with pilferage of energy and theft of electricity within the meaning of Section 135 (i) (b) (c) (d) and Section 138 (i)(d) of the Electricity Act 2003. As the exact date of tampering of the meter could not be ascertained on the spot, a provisional bill for theft of energy amounting to Rs 11,41,889/- was drawn up by respondent No. 4 vide memo no. MNT/SM/161449 dated 22.11.2007. The petitioner was directed to produce relevant papers for theft of electricity and pay the bill on and before 29.11.2007.

5. The petitioner on 23.11.2007 paid Rs.5,70,945/- being 50% of provisional bill of Rs.11,41,889/- by pay order being No. DDC/NO.223207 drawn on Burdwan Central Co-operative Bank Ltd, Kalna Branch. An amount of Rs.9,100/- was also paid for reconnection of power supply and cost of new

3 phase electronic energy meter. A new meter being No. ST 502296 was installed at the petrol pump and the supply of electricity was restored on the same day.

6. The order of final assessment provisional bill dated 15.03.2008 was passed by respondent No.4 in response to objection to the provisional assessment and meter reading by the petitioner as- "Hence provisional bill dated 22.11.2007 is hereby finally assessed at Rs.6,53,842/- which the consumer should pay within 30 days subject to adjustment of Rs. 5,70,945/- which has already been paid on 23.11.2007. However, if the consumer desires he may file appeal before the appropriate authority as per terms of Sub section 1 of Section 127 of 1.E. Act 2003, against this order of final assessment."

7. The petitioner preferred appeal against the final assessment order before Superintending Engineer, Durgapur Transmission Circle, Durgapur herein respondent No.3, the appellate authority. Pending proceedings by memo no. DTC/E-32 dated 17.12.2008, the tampered energy meter in the custody of Monteswar Police Station was handed over to respondent No.1 for testing by the Central Testing Department of respondent No.1.

8. The appeal of the petitioner was disposed of vide order through memo no. DTC/E-32/702 dated 14.11.2009 by respondent No.3 with the following particulars-"Accordingly, it is hereby ordered that revised energy bill for pilfer loss is to be preferred by the Assessing Officer in terms of Section 126 of the Electricity Act-2003 and Notification No.36/WBSERC dated 12.09.2007, taking into consideration the 'applicable Energy Charge & Electricity Duty as per prevailing tariff order'. Also the name of the consumer is to be regularized immediately as per rules. The revised bill is to be served to the Appellant within seven days of date of receipt of this order and the amount is to be paid by the consumer within thirty days from the date of receipt of revised bill. The amount already paid by the consumer against Final Assessment is to be adjusted".

9. A bill dated 28.01.2010 was drawn in favour of the petitioner by respondent No. 4. After deducting amount of Rs.5,70,945/- the petitioner was instructed to pay the remaining Rs.2,700/- of the provisional bill. Aggrieved by the aforesaid orders, the present writ application lies.

10. Learned Counsel for the writ petitioner submits at the offset that no unauthorised use of electricity occurred at the petrol pump. The pattern of consumption of electricity from the period 24.03.2006 to 21.11.2007 recorded in the alleged tampered meter box and from 23.11.2007 to 22.09.2008 after installation of new meter is same, both the readings do not exceeding more than 609 units. In computing the electricity consumption of the petrol pump, respondent No.2 failed to consider that the pump has no workshop/servicing and is without a canopy. The Purchase and Sales Register of Diesel and Petrol of the petrol pump explains that the purchase of oil as well as sale of oil to the purchaser remained uniform proving that there has been no pilferage of energy.

11. Learned counsel further submits that the electricity connection was illegally disconnected without thoroughly testing the foreign material recovered from the meter box as well as the alleged tampered meter box. The alleged meter reading recorded on 21.11.2007 at 9935 units is absurd and in excess of the average electricity bills of the petrol pump. The inspection report reveals no well-founded grounds as to such a conclusion. The assessment order has been arrived at without placing reliance on any testing report and no documents of testing of fake material or tampered meter could be produced by respondent No.2.

12. Learned Counsel for respondents 2, 3 and 4 plead that there is no ambiguity in the final assessment order. The conclusion that there has been theft of electricity under Section 135 and 138 of The Electricity Act 2003 has been arrived at on the basis of readings of meter and metering installation downloaded to laptop, checked and analysed on-site as well as inspection

report and seizure list of foreign articles consisting of polycarbonate roro seals, lead seals and polycarbonate cup shaped seals recovered inside the tampered meter box to record less consumption of electricity thereby causing financial loss to respondent No. 2 and illegal gain to the petitioner. Detecting of unapproved use of electricity, the respondent No.2 being the specifically empowered licensee under Clause 4.2 of Regulation No. 36 framed by the West Bengal Electricity Regulatory Commission disconnected electricity of the petrol pump owned by the writ petitioner. The liability of the petitioner to pay charges is assessed in accordance with Section 126 of Electricity Act 2003 read with the Regulations framed by West Bengal Electricity Regulatory Commission and the final assessment order takes into account the electricity duty, rate, hours and applicable tariff.

13. The order of final assessment on 13.03.2008 was passed by reducing the consumption hours of the petrol pump in a day from 24 hours to 14 hours in the presence of the petitioner and after due opportunity of hearing in compliance of Section 126(3) of The Electricity Act 2003. As per Section 126(3), the person on whom an order of provisional assessment has been served shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person. The petitioner by paying 50 % of the assessed amount on 23.11.2007 has complied with such order and is thereafter barred from taking further action under Section 126(4) of Electricity Act 2003. According to Section 126(4), any person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.

14. Having heard the Learned Counsel for the parties and on perusal of records, more specifically the letter dated 22.11.2007, this Court finds that in order to avoid further liability and action taken against him, the writ petitioner had explicitly agreed to pay the amount specified in the provisional bill. An amount of Rs.5,70,945/- being 50 % of such bill was deposited without demur and an arrangement was arrived at to deposit the remaining amount in four monthly equal installments starting from December 2007. It was only after the payment of the aforesaid amount that the writ petitioner became entitled to the perks of restoration of electricity and installation of new meter box. The service connection of the petrol pump was duly regularized on part payment of provisional bill for theft of energy. The petitioner enjoying the aforesaid benefits and being under a mistake of fact for treating such amount for reconnection charges is estopped from disputing the correctness of the final assessment bill. It is also apparent on the basis of inspection report and evidence in support thereof, the final assessment order dated 15.03.2008 was rectified by the appellant authority as per the relevant provisions of Electricity Act 2003 and as per meticulous computation and adjustment of amount already paid, an amount of Rs.27,001/- remains to be unpaid by the writ petitioner.

15. In such view, the writ application being WPA 9874 (W) of 2010 lacks merit and the same is dismissed accordingly.

16. There will be no order as to costs.

17. Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(RAJARSHI BHARADWAJ, J)

Kolkata

08.12.2023

PA (BS)