

AD-03
Ct No.09
27.02.2023
TN

WPA No. 21077 of 2019

Sri Prabhat Ghosh
Vs.
The West Bengal State Electricity Distribution
Company Limited and others

Mr. Atanu Biswas,
Mr. Bikram Basak

.... for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the WBSEDCL

Learned counsel for the petitioner points out several errors apparent on the face of the order of the appellate authority impugned herein.

A provisional assessment bill being raised on the allegation that the petitioner had reconnected a disconnected meter of some other user, much after the statutory period of forty-eight hours, which is stipulated in Clause 5.2 of Regulation 55 of the West Bengal Electricity Regulatory Commission (WBERC) of 2013.

Not only that, subsequently the final assessment was made, also much after the statutory period of thirty days, as stipulated in the said Regulation.

That apart, it is contended that the petitioner specifically challenged before the appellate authority the contention of the West Bengal State Electricity Distribution Company Limited (WBSEDCL) that the meter-in-question had been previously disconnected, which was a prerequisite for establishing the allegation that it was “reconnected”.

However, the said issue was not even touched by the appellate authority while deciding the appeal.

In fact, it is contended that Clause 4.1 of the same regulation clearly envisages that the licensee shall issue a disconnection notice under Sub-Section (1) of Section 56 of the Act.

Section 56 of the Electricity Act, 2003 (hereinafter referred to as “the 2003 Act”), on the other hand, contemplates that where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him, the line might be disconnected by the licensee.

Learned counsel for the WBSEDCL submits that there are several factual disputes raised by the petitioner. However, the petitioner was not the consumer of the concerned electricity meter at all.

It is submitted that the petitioner has no *locus standi* inasmuch as the petitioner’s electricity connection has not been severed by the WBSEDCL on

the allegation as levelled while raising the provisional assessment and the final assessment bills.

Heard learned counsel for the parties.

Since the allegation of unauthorized use of electricity by way of reconnection of a disconnected electricity line has been levelled against the present petitioner, it is untenable in law to argue that the petitioner does not have a *locus standi* to prefer a challenge against the said provisional, and thereafter final, orders of assessment.

In the present case, it is evident from the materials on record themselves that the provisional assessment was raised after forty-eight hours as stipulated by the Regulations and the final assessment was made much after thirty days, which is also beyond the stipulated time in the Regulations.

Moreover, there is no discussion at all in the impugned order dated August 31, 2018 of the appellate authority with regard to the specific allegation made by the petitioner that there was no previous disconnection with regard to the concerned meter, to give rise to the allegation of reconnection at all. In fact, not only did the appellate authority not discuss such issue at all, the same was not even adverted to in the arguments of the WBSEDCL, nor was any document produced by the WBSEDCL either

before the first authority at the time of making the final order of assessment or before the appellate authority, which is evident from the records.

In such view of the matter, the appellate authority acted palpably without jurisdiction in dismissing the appeal of the petitioner without entering into the merits of the same by merely reducing the hours from the calculation for the purpose of reduction of some amount of the assessment made against the petitioner, probably as a consolation price to the petitioner.

However, such consolation is not adequate or in accordance with law. The appellate authority had to decide all questions raised by the petitioner on factual score as well as on the issue of whether there was any prior disconnection at all to justify the allegation of reconnection of electricity supply.

That apart, it is *prima facie* evident that the WBSEDCL failed to comply with the Regulations as stipulated in 2013 by the WBERC to the effect that that the provisional assessment as well as the final assessment were made much after the respective statutory periods.

In such view of the matter, the order dated August 31, 2018 passed by the appellate authority under Memo No. AM/BDNAO/E-35/1343 impugned

in the present writ petition (Annexure P-14 at page-72 of the writ petition) is hereby set aside.

In view of the appellate authority having not adverted to all the aspects of the challenge, the matter is remanded back to the said authority to re-decide the issue upon giving a fresh hearing to the parties and upon considering the observations made hereinabove.

However, it is made clear that since the petitioner has already deposited the statutory pre-requisite amount of fifty per cent of the alleged dues in connection with the filing of the appeal under Section 127 of the 2003 Act, such deposit shall not be made again by the petitioner. The deposit made earlier shall be deemed to be sufficient for the purpose of deciding the appeal afresh, deeming the same as a continuation of the appeal already filed by the petitioner.

It is expected that the appellate authority shall re-adjudicate the issue and come to a definite conclusion as expeditiously as possible, positively within six weeks from the date of communication of this order to the appellate authority.

The appellate authority shall also consider the issue of restoration of the electricity connection-in-question.

Accordingly, WPA No. 21077 of 2019 is disposed of.

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.)