ML-60
24.01.2023
MNS

W.P.A. No. 25365 of 2022

Amit Ghosh @ Srikanta Ghosh
Vs.
Calcutta Electric Supply
Corporation Limited and others.

Mr. Anirban Ray,
Mr. Kuldeep Mallick,
Mr. Arif Ali,
Mr. Sayantak Das,
Mr. Sarban Bhattacharjee

…for the petitioner

Dr. Madhusudan Saha Roy

…for the CESC Limited

Learned counsel for the petitioner contends that despite one Rabin Guchait, who was an erstwhile tenant in respect of the premises of which the petitioner is an owner since 2003, having surrendered such tenancy in the year 2018, the CESC Limited raised a provisional, and then a final, bill on an allegation that the petitioner's electricity meter was catering to the said meter of Rabin, which was allegedly disconnected in the year 2019, which is belied *per se* since the said meter did not exist after its disconnection.

It is alleged that the subsequent claim made in the year 2022 by way of a provisional order of assessment as well as a final order of assessment is patently baseless since there could not have been any nexus between the petitioner and the previously disconnected meter of 2019 to attract the provisions of disconnection as provided in the Electricity Act, 2003 in respect of the petitioner's meter.

Learned counsel appearing for the CESC Limited places reliance on the annexures to the affidavit-in-opposition of the CESC Limited and submits that on May 02, 2019, a final order of assessment had been made against the petitioner on the allegation of unauthorized supply of electricity from the petitioner's meter to the maters of the said Rabin Guchait as well as one Narshing Patel.

The petitioner was given an opportunity of hearing on the provisional order of assessment of 2019, in which the petitioner was represented. However, subsequently, the final order of assessment was passed on May 02, 2019, which has attained finality in view of the same never being challenged by the present petitioner Amit Ghosh.

Again, on a subsequent allegation of further unauthorized supply of electricity to the disconnected meters of Rabin Guchait and Narsing Patel, a separate provisional order of assessment was made in the name of the petitioner. However, the petitioner never preferred any challenge against the final order of assessment on such occasion also. Hence, in view of the previous final order of assessment dated May 02, 2019, which had attained finality against Amit, the present petitioner, the present claim clubbing the previous dues as well as all consequential interests, is absolutely justified in law.

Upon perusal of the documents relied on by learned counsel and upon hearing their submissions, it appears that the language of Section 126 of the Electricity Act, 2003 clearly provides that if on an inspection of any place or premises or after inspection of the equipment, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

In the present case, as evident from the records, on May 02, 2019 a previous provisional order of assessment had attained finality in respect of the present petitioner's electricity meter by way of a final order of assessment. The petitioner was given a hearing on the said provisional order of assessment at that juncture, in which the petitioner was very much represented.

Therafter, the final order of assessment was passed on May 02, 2019 on the allegation that the electricity meter of the petitioner was catering to the meters of Rabin and Narsing at that point of time.

The petitioner never challenged the said final order of assessment dated May 02, 2019 before the appellate forum within the contemplation of Section 127 of the Electricity Act, 2003, which contains an appellate provision along with a precondition of deposit of fifty per cent of the claim for preferring an appeal.

Since the petitioner has let the said final order of assessment dated May 02, 2019 attain finality, it is beyond the scope of the present writ petition to re-open the said final order of assessment now, in the present writ petition, particularly in view of no appeal having ever been preferred against the same and the limitation for filing the same having expired long back.

Since the petitioner was incriminated on the allegation of providing unauthorized supply of electricity to the meters of Rabin and Narsing in the year 2019 itself, the petitioner sill remains liable to pay such dues along with consequential interests till payment.

Hence, as on December 07, 2022, when the subsequent allegation was made that there was a further instance of unauthorized supply of electricity by the present petitioner Amit, to the disconnected meters of Rabin and Narsing and a provisional assessment was made afresh, the petitioner was heard again through his learned advocate and ultimately, the final order of assessment was made. The same has, since, attained finality as well, as the petitioner did not prefer any appeal against the same under Section 127 of the 2003 Act within the stipulated limitation period.

Since the final order of assessment dated December 07, 2022 was on similar allegation as in 2019, that is, supplying electricity to the meters of Rabin and Narsing, there is patent and obvious nexus between the petitioner and the alleged instances of unauthorized use of electricity.

Since the petitioner has never challenged either the final order of assessment of 2019 or that of 2022, there is no scope of re-opening the issues at this juncture. As in December, 2022, the fresh provisional and final assessments clubbed the previous dues from the petitioner on the ground of self-same allegation of unauthorized use of electrify, such clubbing is absolutely justified, since the petitioner still remains liable to pay the previous dues.

Hence, the final order of assessment dated December 07, 2022 has been passed well within the authority of law conferred upon the respondent-authorities. The petitioner, despite being liable to pay the entire dues and consequential interests on the final orders of assessment made in the year 2019 as well as on December 07, 2022 has not challenged the said orders before the competent appellate forum. As such, there is no scope of interference in the present writ petition.

Accordingly, W.P.A. No. 25365 of 2022 is dismissed on contest without, however, any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)