

OD- 2 & 3

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

APO/79/2022
IN
RVWO/7/2022
IA NO:GA/1/2022
PEARL CORPORATION
-VS-
CALCUTTA ELECTRIC SUPPLY CO. LTD. & ORS.

APOT/148/2022
IA NO:GA/2/2022
PEARL CORPORATION
-VS-
CALCUTTA ELECTRIC SUPPLY CO. LTD. & ORS.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th June, 2023

Appearance :
Mr. Tapas Dutta, Adv.
...for the appellant.
Mr. Debanjan Mukherjee, Adv.
...for respondent.

The Court : Heard learned advocates on either side.

These intra-Court appeals are directed against the orders passed in a writ petition filed by the appellant and a review application filed by the appellant to review the judgement and order in WPO/94/2021 dated 4.4.2022. We have elaborately heard Mr. Tapas dutta, learned Advocate appearing for the appellant and Mr. Debanjan Mukherjee, learned Advocate for the respondent CESC authority. The learned Advocate for the appellant would strenuously contend that the proceedings initiated by the respondent under Section 126 of the Act is wholly without

jurisdiction as the petitioner is not the consumer. We find that such a ground was not canvassed in the writ petition. We have also perused the grounds in the writ petition and find such a ground was never canvassed. It is the submission of the learned Advocate for the appellant that the question of jurisdiction being a question of law, it can be raised at any time and the appeal being a continuation of the original proceedings it does not preclude the appellant from raising such a contention. We are not able to accept the said submission for more than one reason. Firstly, the ground, which was not canvassed stating that the appellant was not a consumer is not a question of law but a question of fact. In the grounds raised in the writ petition the petitioner had contended that the order of provisional assessment passed was in violation of principle of natural justice. This aspect has been elaborately considered by the learned Single Bench and has found that petitioner has participated in the proceedings and he is also represented by the Advocate and after taking note of the legal decision and more particularly the decision of the Hon'ble Supreme Court in *WBSEDCL Vs. Orion Metal Private Limited* ; 2019 (5)CHN 572 the writ petition was dismissed. After carefully perusing the order impugned in this appeal we find that there are no grounds to interfere with the order passed in the writ petition or in the review application.

Therefore, the appeal fails and dismissed. Consequently, the applications are also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)