

13.06.2024
Item No.27
Ct. No. 7
KS

W.P.A. 1654 of 2009

C.E.S.C. Limited & Anr.

Versus

**The Circle Manager, Hooghly (Dist) Circle, West
Bengal State Electricity Distribution Co. Ltd. & Ors.**

Mr. Om Narayan Rai

Mr. Debanjan Mukherjee

Mr. Shounak Mitra

Mr. Aditya Sarkar

.....For the Petitioners

Mr. Sujit Sankar Koley

.....For the W.B.S.E.D.C.L.

Mr. Noni Gopal Chakraborty

.....For the Private Respondent

1. The order of the appellate authority dated December 2, 2008 in Appeal No.40 of 2008 is under challenge in this writ petition at the instance of C.E.S.C. Limited.
2. Alleging that the respondent no.3 herein was guilty of supplying power illegally to a disconnected consumer, the supply of electricity to the respondent no.3 was disconnected on 11th June, 2008. An order of provisional assessment dated 11th June, 2008 was passed. The respondent no.3 filed an objection against the provisional order of assessment and the Assessing Officer – III passed the final order of assessment dated 7th July, 2008. In the final order of assessment, the Assessing Officer assessed the amount of Rs.21,177/- as

charges payable by the consumer, who was benefited by such unauthorized use of electricity.

3. The respondent no.3 filed an appeal under Section 127 of the Electricity Act, 2003 challenging the final order of assessment and the appellate authority by the order dated December 2, 2008 set aside the final order of assessment.
4. Mr. Rai, learned advocate appearing for the writ petitioners submits that the appellate authority while deciding the appeal petition failed to consider the specific stand taken by C.E.S.C. Limited before the appellate authority in the written submission dated November 7, 2008. He further submits that the seizure of the artificial means could not be made as the inspection team was denied access to the premises of the respondent no.3. He submits that the appellate authority was vested with the powers to consider the additional grounds raised by the C.E.S.C. Authority before the appellate authority and in support of such submission, he placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Jute Corporation of India Limited Vs. Commissioner of Income Tax and Anr.* reported at 1991 Supp (2) SCC 744.
5. By placing reliance upon the decision of the Hon'ble Supreme Court in the case of *Isha Marbles Vs. Bihar State Electricity Board & Anr.* reported at (1995) 2 SCC 648, Mr. Rai contended that the electricity is a public property and the

appellate authority ought to have kept that in mind while deciding the appeal under Section 127 of the 2003 Act.

6. Mr. Rai, learned advocate further submits that the observations made in the penultimate paragraph of the order of the appellate authority dated 2nd December, 2008 insofar as it records that it was not possible for the Universal Enterprise to extend supply of electricity through a disconnected meter, which was disconnected on 31st March, 2003 is without any basis as it is the specific stand of the C.E.S.C. Limited that it is a case of unauthorized extension of electricity to a disconnected consumer through artificial means by the 3rd respondent.
7. Learned advocate appearing for the respondent no.3 submits that the appellate authority after taking note of the inspection report and other materials on record allowed the appeal petition and this Court in exercise of jurisdiction under Article 226 of the Constitution of India should not interfere with the order of the appellate authority.
8. Learned advocate appearing for the respondent no.1 submits that the appellate authority passed the order after considering the materials on record.
9. Heard the learned advocates for the respective parties and considered the materials placed.
10. It appears from the inspection report that the inspection was made and supply was disconnected on 11th June, 2008. The

Assessing Officer while passing the final order of assessment noted that during an inspection of the service installation and metering system inside the premises of the consumer viz. Universal Enterprises by authorized engineers of C.E.S.C. Limited on 11th June, 2008, it was observed that the electricity was being provided from the aforesaid supply being catered through the Electric Meter No.3491737 to one, Sk. Rahimuddin (Consumer No.66002124003) whose supply of electricity through Meter Nos.2331312 and 1872429 had been disconnected on 31st January, 2003 because of theft of electricity.

11. Therefore, from the aforesaid observation of the Assessing Officer it is evident that an inspection was carried out by the officers at the premises of Universal Enterprise.
12. Record reveals that on 11th June, 2008, a complaint was made by the Senior Engineer /LCC, CESC Limited, Serampore Police Station with regard to unauthorized extraction of electricity. In the said complaint, it has been specifically stated that the Senior Engineer /LCC, CESC Limited visited the premises in question being, No.1, Barin Ghosh Lane, Sheoraphully, Hooghly – 712 223 at about 1:30 hours along with others as well as the police contingent and during the inspection it was found that the consumer has been indulging in unauthorized supply of electricity to already disconnected supply favouring one, Sk. Rahimuddin.

13. Upon a reading of the said complaint it is evident that the inspection team could carry out the inspection after entering into the premises at 1, Barin Ghosh Lane, Sheoraphully, Hooghly – 712 223.
14. The stand taken by the C.E.S.C. Limited in the written submission dated 7th November, 2008 appears to be an afterthought as the documentary evidence reflects otherwise.
15. After going through the materials on record, more particularly, the inspection report, this Court is of the considered view that the appellate authority was right in observing that neither provisional assessment order nor the final order of assessment took note of the fact that the inspection report is silent about the manner the supply was given to the disconnected consumer viz. Sk. Rahimuddin.
16. Mr. Rai, learned advocate may be justified in arguing that the appellate authority has the power to entertain additional grounds raised before the appellate authority in view of the proposition of law laid down by the Hon'ble Supreme Court in *Jute Corporation of India Limited (supra)*, but, the said decision cannot come to the aid of the petitioners in the case on hand as the stand taken in written submission is contrary to the materials on record, which were available before the appellate authority.
17. On a query of this Court Mr. Rai, learned advocate, in his usual fairness, submitted that after supply of electricity

through a meter is disconnected, it is not possible to supply electricity through such disconnected meter. The issue in the instant writ petition is whether the licensing company could prove its allegation with regard to unauthorized extension of electricity from Premises No. 1, Barin Ghosh Lane, Sheoraphully, Hooghly – 712 223 to a disconnected consumer by way of artificial means. Such unauthorized extension of electricity from a meter installed at Premises No. 1, Barin Ghosh Lane, Sheoraphully, Hooghly – 712 223 to the disconnected consumer at a different premises by artificial means could not be linked by way of any documentary evidence.

18. There is no quarrel to the proposition of law laid down by the Hon'ble Supreme Court in *Isha Marbles (supra)*. The facts of the said reported decision are distinguishable.

19. For the reasons, as aforesaid, this Court is not inclined to interfere with the order passed by the appellate authority.

20. Accordingly, writ petition fails and the same stands dismissed.

21. There shall be, however, no order as to costs.

22. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)