Form No.J(2)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Partha Sarathi Chatterjee

WPA 6970 of 2007

Umashankar Gupta
Versus
CESC Limited & Ors.

For the petitioner	:	Mr. S.S.Sarkar Mr. Amal Kumar Mukhopadhyay Ms. Tanusri Chandra Ms. Anindita Banerjee Mr. Palash Kanti Chakraborty Ms. Debopriya Chakraborty
For the CESC	:	Mr. Debanjan Mukherjee Mr. Aziz Amin
Heard on	:	13.02.2024
Judgment on	:	**13.02.2024**

Partha Sarathi Chatterjee, J:

1. Questioning the sustainability of the order dated March 14, 2007 passed by the appellate authority in an appeal preferred as the instance of the petitioner under Section 127 of the Electricity Act, 2003 to assail the final order of assessment dated 23.02.2007 passed by the Assessing Officer-IV and seeking a direction upon the concerned respondents to rescind, cancel and forbear from giving effect to the provisional assessment, final assessment and the order of the appellate authority, the instant writ petition has been preferred.

2. The essential facts that are required to be adumbrated for effective adjudication in this writ petition are that for running a 'Dal Mill' set up at the premises located at 2, Canal East Road, Police Station-Ultadanga, Kolkata – 700067, the petitioner had been consuming electricity from the respondent no. 1 being the Calcutta Electric Supply Corporation (In short "CESC") and for the supply of electricity, two meters were installed in the mill. On 11th March 2004, an inspection team of CESC entered into the premises of the petitioner and inspected the electric meters, other equipment and gadgets On such inspection, the assessing officer came to a conclusion that the petitioner was indulging in unauthorized use of electricity and accordingly, he provisionally assessed the electricity charges payable by the petitioners at Rs.3,83,790/- and electric supply to the mill was disconnected. The order of provisional assessment dated 11th March 2004 was served upon the petitioner with a request to submit written objection to the said provisional assessment. Upon receipt of such provisional assessment, the petitioner submitted written objection.
3. Challenging the provisional assessment, the petitioner preferred a writ petition being W.P. no. 4423 (W) of 2004 which was disposed of by the Hon'ble Coordinate Bench of this Court *vide.* order dated 22nd March 2004 directing the men of the CESC to remove the meters during the office hours in the presence of the petitioner's representative and to put the meters in a sealed cover for onward transmission of the same to the Director, School of Materials Science and Engineering, Bengal Engineering College, Shibpur, Howrah. The said Director was asked to submit a report on getting the meters examined from the engineering department. The

petitioner was given liberty to deposit a sum of Rs.1,90,000/- towards unmetered consumption and Rs.6,000/- towards the cost of meter and reconnection charges and upon deposition of aforesaid amounts, the CESC was directed to restore electric connection in the petitioner's premises.

4. The Director concerned submitted a report under his covering letter dated 4th August 2004, wherefrom it is explicit that on careful inspection/examination it was found that in both the meters the meter body seals were tampered with and the terminal plate seal was also found missing in both the meters.

5. Praying for an order to quash the provisional assessment and the FIR lodged against the petitioner under the relevant provisions of the Electricity Act, 2003, the petitioner moved another writ petition being WP no. 6214 (W) of 2005 which was dismissed by a Coordinate Bench of this Court by order dated 6th June 2005. In the order dated 6th June, 2005 it was observed that the petitioner was required to wait for final assessment and the order of final assessment was an appealable order and hence, the same could be impugned in appeal before the concerned appellate authority.

6. Subsequent thereto, the petitioner preferred another writ petition being WP no. 26519 (W) of 2006 which was disposed of by a Hon'ble Coordinate Bench of this Court by order dated 21st December 2006, directing the concerned respondent to make final assessment upon giving opportunity of hearing to the petitioner and considering the objection submitted by the petitioner within the period specified therein.

7. In terms of the order dated 21st December 2006 passed in WP no. 26519 (W) of 2006, the petitioner submitted his objection before the assessing officer. Ultimately, the final order of assessment was passed by the assessing officer on 23rd February, 2007.
8. The petitioner preferred the statutory appeal before the appellate authority and the appellate authority, by order dated 14th March 2007, disposed of the said appeal. Challenging the said order of the appellate authority the instant writ petitioner has been instituted.
9. The parties have exchanged their affidavits, as directed. Mr. Mukherjee, learned advocate appearing for the CESC contends that affidavit-in-opposition was filed and taken on record but record does not contain such affidavit. In view thereof, a copy of the affidavit-in-opposition along with all the annexures thereto, as produced by Mr. Mukherjee is retained with the record. The copy of this affidavit shall be treated as the copy of the original affidavit-in-opposition for all purposes.
10. Mr. Sarkar, learned advocate representing the petitioner submits that Section 163 of the Electricity Act, 2003 (hereinafter referred to as the "said Act") and Regulation 4 of the West Bengal Electricity Regulatory Commission (Electric Supply Code) Regulation, 2004 (hereinafter referred to the Regulation, 2004) have prescribed the mode and manner in which the premises of a consumer shall be inspected and who shall be the part of the inspection team. Mr. Sarkar strenuously contends that the inspection was done at odd hours at 2.00 A.M. without giving any notice to the consumer. According to him, the assessment made on the basis of such illegal inspection cannot be claimed to be valid.

11. On facts, Mr. Sarkar argues that the assessing officer was not part of the inspection team and accordingly, the assessment made by such officer cannot be treated to be a valid assessment. He submits that no findings have been returned by the appellate authority on the issues raised by the petitioner. He asserts that the appellate authority has passed a non-speaking order which cannot be sustained.

12. To invigorate his submission, Mr. Sarkar places reliance upon the following judgments :-

- West Bengal State Electricity Distribution Company Ltd. –vs- Jadavpur Tea Company [1]
- Narayan Chandra Kundu –vs-State of West Bengal & Ors.[2]
- Kranti Associates Private Limited & anr. –vs- Masood Ahmed Khan & Ors.[3]
- Oryx Fisheries Private Limited –vs- Union of India[4]
- Hasi Mazumdar & Anr. –vs- The West Bengal State Electricity Board & Ors.[5]

13. In response, Mr. Mukherjee, by drawing my attention to the order dated 6th June 2005 passed in WP no. 6214 (W) of 2005 submits that in this writ petition, the petitioner raised the issue that at wee hours the inspection team of CESE inspected the meters and other equipment without giving any notice to the petitioner and the issue was dealt with by the Hon'ble Coordinate Bench and came to conclusion that the CESC raised the allegations against the petitioner that he had indulged in theft of energy and hence, the petitioner committed an offence punishable

[1] 2011 (4) CHN (CAL) 204
[2] 2008 (1) CHN 459
[3] (2010) 9 SCC 496
[4] (2010) 13 SCC 427
[5] AIR 2006 CAL 59

under the provisions of the said Act and if this was the reason for entering into the premises of the petitioner, then the authorities were fully competent and empowered to enter into the premises without giving any prior notice to the petitioner.

14. It is further contended that the said order has not been assailed in the appeal and hence, the order is binding upon the petitioner. Mr. Mukherjee contends that it is not mandatory for the assessing officer to be a part of the inspection team. By drawing my attention to sub-Section (1) of Section 126 of the said Act, he submits that the assessing officer can make provisional assessment after inspection of records maintained by a person. He submits that the appellate authority had passed a reasoned order.

15. Heard the learned advocates appearing for the respective parties. Perused the materials on record.

16. The issue that the authority has inspected the electric meters and other equipment and / or gadget installed in the premises of the petitioner in derogation of the norms prescribed in Section 163 of the said Act and Regulation 4 of the said Regulation had been dealt with by a Hon'ble Co-ordinate Bench of this Court and no appeal has been preferred against the said order and hence, the order dated 6th June 2005 has attained finality in between the parties. The petitioner is estopped from raising such issue before any forum.

17. Needless to state that every decision-maker must record reasons in support of his conclusion. Doctrine of fairness requires that every order must be informed with reason. A decision-maker is insisted on recording

reason in support of his decision to ensure transparency in decision-making process. When any order is subject to appeal or amenable to judicial review, then such order must be reasoned and speaking order.

18. From the memorandum of appeal submitted by the petitioner before the appellate authority, it appears that the petitioner has specifically raised this issue that the assessing officer was not a party to the inspection team and consequently, the provisional and final assessment made by such assessing officer are bad.

19. As per the proposition laid down by the Hon'ble Division Bench of this Court in the case of ***West Bengal State Electricity Distribution Company Ltd. –vs- Jadavpur Tea Company Ltd. (Supra),*** the assessing officer must be a person who was actually a member of the inspection team at the time of detecting pilferage or unauthorized use of electricity so that he can pass the order of assessment not on the basis of the papers placed before him but after actually visiting the site at the time of detection of illegality.

20. The decision rendered by the Hon'ble Division Bench in case of ***West Bengal State Electricity Distribution Company Ltd. –vs- Jadavpur Tea Company Ltd. (Supra)*** is binding upon this Court.

21. The petitioner raised this issue in the memorandum of appeal submitted by him before the appellate authority but the appellate authority has glossed over the issue and no finding has been returned on this issue. Admittedly, it is a question of fact and hence, it is difficult for this Court to investigate such factual aspect.

22. Accordingly, for reasons stated above, the order of the appellate authority is set aside and the matter is remanded back to the appellate authority with a direction upon the appellate authority to decide the following issues:

    1. Whether the Assessing Officer-IV was a part of the inspection team or not.
    2. In the event, the answer to the issue no. 1 comes in negative, then to decide whether the provisional and final assessments made by the Assessing Officer-IV shall be valid in view of the proposition laid down in the judgment of ***West Bengal State Electricity Distribution Company Ltd. –vs- Jadavpur Tea Company Ltd. (Supra)*** *or not.*

23. The appellate authority shall decide the issues framed hereinabove after affording an opportunity of hearing to the petitioner within a period of 6 weeks from the date of receipt of a copy of this order and pass a reasoned order afresh. It is made clear that the appellant authority shall not allow the petitioner to raise any other issue in support of his appeal.
24. The petitioner is directed to communicate this order along with a server copy thereof to the appellate authority and the appellate authority shall act on basis of such communication.
25. With the aforesaid observations and directions, the writ petition being WPA no. 6970 of 2007 is ***disposed of***.

(Partha Sarathi Chatterjee, J.)