

24th May,
2024
(AK)
01

W.P.A 13584 of 2024
IA No: CAN 1 of 2024

Shyamal Kumar Naskar and others
Vs.
The Chairman-Cum-Managing Director, West Bengal
State Electricity Distribution Company Limited and
others

Mr. Debabrata Ray
Mr. Gari Faruque Hossain
Mr. Md. Hafizur Rahaman
Ms. Varsha Roy

...for the petitioners.

Dr. Madhusudan Saha Ray
Mr. Asif Dewan

...for the WBSEDCL.

1. The application has been filed by the Pradhan of the concerned Panchayat for review of an order dated May 15, 2024.
2. Learned counsel for the review applicant, the Pradhan of the Dhaphdapi Gram Panchayat-I submits that in the said order, caustic remarks had been made against the Pradhan.
3. In paragraph no.14 of the order, it has been directed that the WBSEDCL is to initiate action against the respondent no.4 in the writ petition (present review applicant) under Sections 126 and 135 of the Electricity Act, 2003 and to lodge a complaint with the local police for such

unauthorized use of electricity within a week from the date of the order.

4. The first submission made by the review applicant is that the review applicant received a copy of the writ petition only on May 18, 2024 whereas the order under review was passed on May 15, 2024.
5. Accordingly, it is argued that the review applicant could not have been present and attend the hearing at the relevant point of time.
6. Secondly, learned counsel for the review applicant places reliance on the annexure at page-22 of the review application which is a Notice Inviting e-Tender dated November 29, 2023 floated by the Baruipur Panchayat Samity.
7. A work order issued by the said Samity has also been annexed at page-25 of the review application.
8. It is argued that the composite effect of the said two annexures is that the work-in-question for installing the high mast street light was undertaken entirely by the Panchayat Samity, the present Panchayat being subordinate thereto.
9. As such, the allegations and remarks against the review applicant, it is submitted, were unwarranted.
10. Learned counsel for the petitioner also cites Section 42 of the Panchayat Act to argue that in terms of the same, the public properties, including lamp

posts etc. within Panchayat areas are vested in the Gram Panchayat.

11. Any anomaly or dispute regarding thereto is to be thrashed out before the concerned Collector.
12. Learned counsel appearing for the WBSEDCL points out that under Section 12 of the Electricity Act, 2003, no person shall transmit, distribute or undertake trading in electricity unless he is authorized to do so by a license issued under Section 14, subject to exemption under Section 13.
13. Section 13 of the said Act provides that the Appropriate Commission may on the recommendation of the Appropriate Government, in accordance with the National Policy formulated under Section 5 and in public interest, direct by notification that subject to such conditions and restrictions if any and for such period or periods as may be specified in the notification, the provisions of Section 12 shall not apply to any local authority, Panchayat institution etc.
14. However, it is argued that regarding high mast street lights, there has to be a single meter and unless such norm is followed, the concerned person is subject to proceeding under Section 135 of the Electricity Act.
15. Learned counsel for the writ petitioners/present private respondent reiterates that it will be evident

from the affidavit-of-service filed in connection with the writ petition that service was effected on the Pradhan not on May 18 but on May 14, 2024, that is, a day prior to the order under review being passed.

16. Upon a careful perusal of the concerned provisions, it is clear that Section 42 of the Panchayat Act stipulates that the public properties including lamp posts etc. in Panchayat areas are vested with the Gram Panchayat.
17. The Pradhan, as the head of such Panchayat, thus, cannot feign ignorance of any installation on such property, all the more so since even lamp posts vest in it.
18. Even if the Panchayat Samity had floated a tender for the concerned work, since it is evident from the documents and the photograph annexed to the writ petition that the high mast street light was installed on Panchayat property, the Panchayat Pradhan cannot, under any circumstances, disown liability for such installation.
19. That apart, the review application is based on an incorrect statement that copy of the writ petition was served on the Pradhan only on May 18, 2024.
20. It is evident from the annexure at page-7 of the affidavit-of-service filed in connection with the writ petition, which is a part of the record of the writ

petition, that the copy of the writ petition was served on the Pradhan, that is, review applicant/respondent no.4 on May 14, 2024 at 3:15:59 hours, a day before the order under review was passed.

21. Thus, the very premise of the argument of the Pradhan that he received the copy of the writ petition subsequent to the order under review is incorrect and misleading.
22. That apart, Section 42 clearly denotes that it is the Panchayat in which the lamp posts vest and as such, the Pradhan, being the head of the Panchayat, cannot disown responsibility for the same.
23. In any event, nothing has been pleaded or proved before this court to show that the Panchayat-in-question came under the purview of Section 13 of the Electricity Act, 2003 and/or if so, under what particular conditions and restrictions such exemption was granted.
24. In the absence of any such pleading, the same is a non-issue in the present review application.
25. It is observed from the findings in the order under review that the WBSEDCL had at the relevant point of time categorically submitted that it had not given any metered connection to the particular high mast street light and although the Panchayat has one

meter for street lights for the entire Panchayat area, the impugned action was not done by the WBSEDCL.

26. Thus, what is clear is that despite the Panchayat already having a metered connection, the offending high mast street light was installed on Panchayat property, *de hors* the provisions of the Electricity Act, 2003.
27. Even if the concerned Panchayat were to be an exempted entity, the other provisions of the 2003 Act had to be mandatorily complied with by the Panchayat.
28. In any event, since despite notice, the Panchayat Pradhan did not appear and place his case when the order was passed, no lenience ought to be shown to the Panchayat Pradhan, since the present review application is not covered by any of the grounds enumerated in Order XLVII of the Code of Civil Procedure.
29. It cannot be said that there has been any discovery of new matter or error apparent on the face of record in the instant case.
30. The respondent no.4 in the writ petition now seeks to reopen the entire hearing and arguments in the writ petition in a review application, which is not permissible in law.

31. Even otherwise, the Panchayat Pradhan has not been convicted by the order under review which this court could not even do in a writ petition.
32. What has been observed in the order is that in view of the submissions and surrounding circumstances, the WBSEDCL was to initiate action against the respondent no.4 in the writ petition, that is, the present review applicant, under Sections 126 and 135 of the 2003 Act and to lodge a complaint with the local police for such unauthorized use of electricity within a week from that date.
33. Since the said direction was a logical culmination of the preceding paragraphs in the said order, I do not find any scope of reviewing the same.
34. In any event, upon a complaint being lodged by the WBSEDCL, it is for the investigating agency/police to ascertain whether the Panchayat Pradhan had any role to play in the said offending action.
35. Thus, I do not find any ground for reviewing the order dated May 15, 2024.
36. Further, the present application, for all practical purposes, having been filed for review of the order-in-question, has been couched as a recalling and/or modification and/or clarification application.

37. It is well-settled that once an order is passed on merits, there is ordinarily no scope of recall or modification of the same unless there is a clerical/arithmetical and/or apparent error on the face of the said order.
38. In such view of the matter, CAN 1 of 2024 is dismissed on contest without, however, any order as to costs.
39. Since the writ petition had already been disposed of previously, no further order need be passed in connection therewith.

(Sabyasachi Bhattacharyya, J.)