IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Md. Shabbar Rashidi

F.M.A. 121 of 2023
With
CAN 1 of 2022

The West Bengal State Electricity Distribution Company Limited & Ors.
vs.
Tapan Sen Majumder

For the Appellants : Mr. Sumit Kumar Panja
Mr. Sumit Ray

For the Respondent/ Writ petitioner : Mr. Ashis Kumar chowdhury
Mr. Rajib Ghosh
Mr. Babhru Bahan Bera
Mr. Avisek Chatterjee
Mr. Puspam Das

Heard on : **December 11, 2024**

Judgment on : **December 11, 2024**

DEBANGSU BASAK, J.:-

1. Appeal is directed against the judgment and order dated July 15, 2022 passed in W.P.A. 14580 of 2015.

2. Appeal is at the behest of the distribution company.

3. By the impugned judgment and order, learned Single Judge construed various provisions of the Electricity Act, 2003 and the authorities cited before the Court and directed distribution company to refund the amount of Rs.81668/- which was deposited by the private respondent pursuant to the order of the Coordinate Single Bench filed in an earlier writ petition as 50% of the provisional bill dated June 18, 2007 with interest @ 6% p.a. from the date of deposit till payment.

4. Learned advocate appearing for the appellants submits that learned Single Judge misconstrued and misapplied the ratio of **(2020) 18 SCC 588 (West Bengal State Electricity Distribution Company Limited & Ors. Vs. Oriental Metal Private Limited and Anr.**). He submits that in the facts and circumstances of the present case, the private respondent was found stealing electricity supply. Private respondent was charged with the criminal offence of theft and was put up before Special Court for adjudication. In such criminal proceeding, private respondent was acquitted.

5. Learned advocate appearing for the appellants submits that the private respondent is also guilty of unauthorized use of electricity within the meaning of Section 126 of the Electricity Act, 2003. He refers to **Oriental Metal Private Limited and Anr.**. (supra) and submits that the Supreme Court recognized that the civil liabilities under Section 126 of the Electricity Act, 2003 and Criminal liability visualized under the Act of 2003 are different

and that simultaneous proceeding in respect of both can continue. He also submits that acquittal in the criminal case does not *ipso facto* result in an ablution of the civil liability contemplated under Section 126 of the Act of 2003. According to him, the proceeding under the Act of 2003 is required to be taken to its logical conclusion. In the facts and circumstances of the present case, final assessment is yet to be done. Therefore, learned Single Judge erred, according to him, in directing refund of the 50% deposit of the provisional bill. He submits that the authorities are entitled to continue with the assessment proceedings contemplated under Section 126 of the Act of 2003. Learned Judge erred in interdicting such proceeding.

6. Learned advocate appearing for the appellant draws the attention of the Court to **(2014) SCC Online All 16635 (Sandeep Kesarwani vs. State of U.P. & Ors.)** and submits that ratio of such judgment does not assist the private respondent in the facts and circumstances of the present case. In any event, such judgment was rendered prior to **Oriental Metal Private Limited & Anr**. (supra).

7. Learned advocate appearing for the private respondent submits that the private respondent was tried before the Special Court on the allegation of theft of electricity under the Act of 2003. Special Court acquitted the private respondent.

8. Learned advocate appearing for the private respondent submits that a provisional bill was raised upon the private respondent dated June 18, 2007 for a sum of Rs.1,63,335/-. Private respondent filed a writ petition being W.P. 13447 (W) of 2007 which was disposed of by permitting the private respondent to deposit 50% of the provisional bill being a sum of Rs.81,668/- to obtain reconnection of the electricity. He submits that his client complied with the order dated June 26, 2007 passed in W.P. 13447 (W) of 2007 and obtained electricity connection.

9. Learned advocate appearing for the private respondent submits that the Act of 2003 contemplates the Special Court to determine the civil liability. On the Special Court established under the provisions of the Act of 2003 acquitting the private respondent in the criminal proceeding and such Special Court not returning any finding with regard to the civil liability of the private respondent, no civil liability of the private respondent exists. Moreover, he refers to the provisions of Section 126 of the Act of 2003, particularly Sub-Section (3) thereof and submits that subsequent to the provisional bill being raised and his client filing a written objection with regard thereto, the authorities not undertaking a final assessment within 30 days as contemplated under Section 126(3) of the Act of 2003, the claim of the distribution company is now stale. Coupled with the fact that there was no declaration of any civil liability by the Special Court under the Act of 2003, no

civil liability so far the private respondent exists till date. Moreover, at the highest, assuming though not admitting that, there exists any civil liability so far as the private respondent is concerned in terms of Section 56 of the Act of 2003, the alleged civil liability cannot relate back more than two years.

10. Learned advocate appearing for the private respondent submits that there is no dispute that written objection was filed to the provisional assessment with the appropriate authorities. In any event, in order to allay the misconception that no written objection was filed and in reference to the wishes of the Court, he makes over a copy of the written objection so filed by the private respondent with the authorities against the assessment proceedings contemplated under Section 126 of the Act of 2003, in Court, to the learned advocate appearing for the appellant.

11. Learned advocate appearing for the private respondent relies upon **(2014) SCC Online All 16635 (Sandeep Kesarwani vs. State of U.P. & Ors.)** and submits that, there does not exist any civil liability so far as the private respondent is concerned as it is barred by the laws of limitation prescribed under Section 56 of the Act of 2003.

12. Private respondent was a domestic consumer under the appellant. A raid was conducted by the Inspecting Team of the appellant on June 16, 2007 where the appellant claims to find t the private respondent to be guilty

of unauthorized use of electricity and stealing electric supply with the help of passing device installed on the meter line.

13. Appellant initiated a criminal case against the private respondent under Section 135 (1)(a) of the Act of 2003 being Bankura Police Station Case No. 144 of 2007 dated June 16, 2007. Appellant issued a provisional bill dated June 18, 2007 for a sum of Rs.1,63,335/-. Private respondent being aggrieved by such stand taken by the appellant filed a writ petition being W.P. 13477 (W) of 2007 which was disposed of on June 26, 2007. By the order dated June 26, 2007, the High Court permitted the private respondent to pay 50% of the provisional assessment bill in two instalments and upon payment thereof, restoration of electric supply. The private respondent was also permitted to raise objection to the provisional bill by July 6, 2007.

14. Private respondent deposited a sum of Rs.81,668/- being 50% of the provisional bill amount with the appellant. Electric supply to the private respondent was restored on July 2, 2007.

15. Private respondent claims that a written objection with regard to the assessment proceedings under Section 126 of the Act of 2003 was filed on October 10, 2008. There is a dispute as to whether such written objection was filed or not.

16. Be that as it may, in Court, learned advocate appearing for the private respondent made over a copy of the written objection filed by the

private respondent with the authorities in respect of the assessment proceedings under Section 126 of the Act of 2003. For the ends of justice, we direct such written objection to be treated as an objection of the private respondent in the proceedings under Section 126 of the Act of 2003.

17. By an order dated July 31, 2010, the learned Special Court, Bankura acquitted the private respondent from the offence under Section 135 (1)(a) of the Act of 2003.

18. Subsequent to the acquittal of the private respondent, he approached the distribution company through his Advocate's letter dated June 15, 2011 praying for refund of the sum of Rs.81,668/- paid on account of the provisional bill. Private respondent also challenged the order of assessment before the District Consumer Forum at Bankura being CC Case No.17 of 2009. District Consumer Forum at Bankura directed refund of the sum of Rs.81,668/- to the private respondent. An appeal was carried by the distribution company which was allowed by the State Consumer Disputes Redressal Commission in SC Case No.FA/844/13 dated September 15, 2014.

19. The order of the State Consumer Redressal Commission was assailed before the National Consumer Disputes Redressal Commission being Revision Petition No.4402 of 2014. Such revision petition was dismissed by the National Commission on January 2, 2015 granting liberty to

the private respondent to seek remedy available to him before the appropriate forum.

20. Private respondent thereafter filed the writ petition resulting in the impugned judgment and order.

21. ***Orion Metal Private Limited and Another*** (supra) deals with the relative scope and meaning of unauthorized use of electricity and theft of electricity. It notices amongst others Sections 126,135 and 154 of the Act of 2003. It is of the view that use of electricity through tampered meter amounts to unauthorized use of electricity. It is also of the view that, every unauthorized use of electricity may not amount to theft and every theft of electricity amounts to unauthorized use of electricity.

22. ***Orion Metal Private Limited and Another*** (supra) notices the interplay and distinction between Sections 126 and 135 of the Act of 2003 and explains the same. It is of the view that, power to make assessment under Section 126 of the Act of 2003 and the determination of liability under Section 154 thereof cannot be termed as parallel proceedings.

23. In the facts of ***Orion Metal Private Limited and Another*** (supra), a criminal case under Section 135 of the Act of 2003 was initiated as against the accused therein. A provisional assessment for loss of energy was also made. In such context, Hon'ble Supreme Court held that, the two proceedings cannot be said to be parallel proceedings. Facts scenario obtaining in the

present case is similar. There was a criminal proceeding as against the private respondent which resulted in an acquittal and a proceeding under Section 126 of the Act of 2003, in the present case.

24. On the strength of the ratio of ***Orion Metal Private Limited and Another*** (supra), we are of the view that, proceedings under Section 126 of the Act of 2003 can continue irrespective of an acquittal in a proceedings under Section 135 of the Act of 2003 as against the private respondent.

25. Proceedings under Section 135 of the Act of 2003 is required to be determined by a Special Court established under the Act of 2003. Special Court under the Act of 2003 is empowered under Section 154 thereof to determine the civil liability against a consumer or against a person in terms of money for theft of energy. Sub-section (6) of Section 154 and particularly the explanation thereto, defines 'civil liability' within the meaning of the Act of 2003 which is capable of being determined by the Special Court established under the Act of 2003. Explanation states that, 'civil liability' means a loss or damage incurred by the Board or licensee or the concerned person, as the case may be, due to the commission of an offence referred to under Sections 135 to 140 and Section 150.

26. These provisions were considered in ***Orion Metal Private Limited and Another*** (supra) where the Hon'ble Supreme Court is of the view that,

the proceedings under Section 126 of the Act of 2003 and those undertaken in respect of Sections 135 onwards are not parallel.

27. Sub-section (3) of Section 160 of the Act of 2003 is pressed into service to claim that, a final assessment order is required to be made within 30 days from the date of service of the provisional assessment order and that, with no final assessment order being served within the stipulated period of 30 days, no final assessment can be made.

28. With respect, we are unable to accept such contention. Firstly, the time period prescribed in Sub-section (3) of Section 126 is an ideal situation which the assessing authority must endeavour to meet. That does not mean that, any breach of the prescribed period results in the assessing authority being denuded with the jurisdiction to continue with the assessment proceedings. The words in Sub-section (3) of Section 126 of the Act of 2003 is couched in such a language that the time period of 30 days to make the final order of assessment gets triggered from the date of service of the order of provisional assessment on the defaulter. In a given case, the consumer or the defaulter on whom the provisional assessment bill is raised may be absconding. Such a person may be absconding for a period in excess of 30 days from the date of the order of the provisional assessment bill.

29. If the interpretation to Sub-section (3) of Section 126 of the Act of 2003 as canvassed on behalf of the private respondent is accepted then, such

an interpretation will result in permitting the assessing authority to act in breach of the principle of natural justice. The alleged defaulter or the consumer allegedly at fault would not be heard in order to adhere to the time-limit prescribed as contended by the private respondent. An interpretation of a statute, which results in violation of another statutory provision or a principle of law should be eschewed. Therefore, we are not in a position to accept the contention that, the time period prescribed in Sub-section (3) of Section 126 is final and that, any breach thereof results in the assessing authority being denuded of its jurisdiction to make the final assessment under Section 126 thereof.

30. There is one more aspect which we should keep in mind while considering the time period prescribed in Sub-section (3) of Section 126. Sub-section (3) permits raising of an objection. Sub-section (4) of Section 126 allows the persons served with an order of provisional assessment to accept such assessment and deposit the assessed amount with the licensee. In a scenario of Sub-section (4), the time period of 30 days is not required to be adhered to. Time period of 30 days comes into operation only if an objection is filed. In a given case, as noted above, the person entitled to object may be absconding or unavailable. Therefore, to read the time period prescribed in Sub-section (3) would be contrary to the scheme of the Act of 2003 itself. Moreover, Sub-section (3) requires affording a hearing to the effected party.

31. There is one more defence raised at the behest of the private respondent which is Section 56. This defence revolves around the merit of the claim and may be decided by the assessing authorities in terms of Section 126 of the Act of 2003. We are not minded to decide such defence of the private respondent in these proceedings as it may prejudice the parties.

32. In such circumstances, we set aside the impugned judgment and order dated July 15, 2022 passed in W.P.A. No.14580 of 2015.

33. W.P.A. No.14580 of 2015 is dismissed.

34. **FMA 121 of 2023** along with all connected applications are disposed of without any order as to costs.

35. The assessing authority will proceed to pass the final assessment order in terms of Section 126 of the Act of 2003 treating the objection made over in Court to the learned advocate for the appellants as the objection of the private respondent in terms of Section 126 thereof. Notice of hearing in such assessment proceedings served upon the learned advocate for the private respondent, in the event, the private respondent cannot be served will be construed as appropriate notice on the private respondent in terms of Sections 126 of the Act of 2003.

36. We clarify that, none of our observations will prejudice any of the parties in the assessment proceedings directed to be done in terms of this judgment and order.

(Debangsu Basak, J.)

37. I agree.

(Md. Shabbar Rashidi, J.)

S.D./A.D.