IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble **Justice Kausik Chanda**

W.P.A. No.1300 of 2025

JAMAL SEIKH

-VERSUS-

THE WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED AND OTHERS

And

W.P.A. No.10995 of 2025

LUTFAR RAHAMAN

-VERSUS-

THE STATE OF WEST BENGAL AND OTHERS

And

W.P.A. No.1289 of 2025

ABDUL RAJAK

-VERSUS-

THE WEST BENGAL STATE ELECTRICITY DISTRIBUTION COMPANY LIMITED AND OTHERS

For the petitioner (W.P.A. No.1300 of 2025) (W.P.A. No.1289 of 2025)	: Mr. Arindam Chattopadhyay Adv., Ms. Lipika Chatterjee, Adv., Mr. Soumik Dey, Adv., Mr. Saikat Pal, Adv.
For the petitioner (W.P.A. No.10995 of 2025)	: Mr. Anindya Ghosh, Adv., Mr. Pronojit Roy, Adv.
For WBSEDCL (W.P.A. No.1300 of 2025)	: Mr. Srijan Nayak, Adv., Ms. Rituparna Maitra, Adv.
For WBSEDCL (W.P.A. No.1289 of 2025)	: Mr. Srijan Nayak, Adv., Mr. Asif Dewan, Adv.
For WBSEDCL (W.P.A. No.10995 of 2025)	: Dr. Madhusudan Saha Roy, Adv.

Hearing concluded on : 16.06.2025

Judgment on : 23.07.2025

Kausik Chanda, J.:-

The question of law that arises for consideration in these writ petitions is whether the period of thirty days, as provided under Section 126(3) of the Electricity Act, 2003, to pass a final order of assessment from the date of service of a provisional assessment, is mandatory. In other words, whether the assessing officer can pass a final order of assessment after expiry of thirty days from the date of service of the provisional order of assessment. The law point is required to be answered first, while the factual aspects involved in these cases shall be considered separately.

2. Learned advocates appearing for the licensee company argued that the issue is settled by two judgments of this Court. One is passed by a Single Bench in **WP 2477 (W) of 2019 (Swapan Kumar Dey alias Das v. WBSEDCL)** dated April 11, 2019, and another by a Division Bench passed in **F.M.A. No. 121 of 2023 (The West Bengal State Electricity Distribution Company Limited & Ors. v. Tapan Sen Majumder)** dated December 11, 2024. The licensee company argued that the aforesaid judgments have already answered the issue in favour of the licensee company.

3. Learned counsel for WBSEDCL relies on the decision in **Swapan Kumar Dey (supra)** to contend that where a provisional assessment bill is not challenged or objected to within the statutory period, it attains finality

and becomes enforceable. Accordingly, it is submitted that the petitioners' liability persists, despite the absence of a formal final order.

4. In the alternative, placing reliance on ***Tapan Sen Majumder*** **(supra)**, it is submitted that the petitioners may be directed to face proceedings under Section 126 of the Act for finalisation of the provisional demand. In either case, it is contended, the petitioners cannot evade liability for unauthorised consumption.

5. The petitioners, however, contend that an assessing officer cannot complete the assessment after thirty days from the date of service of the provisional order of assessment.

6. Section 126 of the Electricity Act, 2003, reads:

> *"**Section 126: (Assessment):** -(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use.*
> *(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.*
> *(3) The person, on whom an order has been served under sub- section (2) shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment of the electricity charges payable by such person.*

> *(4) Any person served with the order of provisional assessment, may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him.*
> *2[***]*
> *(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorized use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.*
> *(6) The assessment under this section shall be made at a rate equal to 1[twice] the tariff rates applicable for the relevant category of services specified in sub-section (5). Explanation.- For the purposes of this section,- (a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government; (b) "unauthorised use of electricity" means the usage of electricity – (i) by any artificial means; or (ii) by a means not authorised by the concerned person or authority or licensee; or (iii) through a tampered meter; or 2[(iv) for the purpose other than for which the usage of electricity was authorised; or (v) for the premises or areas other than those for which the supply of electricity was authorized."*

7. The Supreme Court, while interpreting Section 126 of the Act of 2003 in the case reported at **(2012) 2 SCC 108 (Southern Electricity Supply Co. of Orissa Ltd. v. Sri Seetaram Rice Mill)**, applied the following principles of interpretation:

> *"**16.** First and foremost, we have to examine how provisions like Section 126 of the 2003 Act should be construed. From the objects and reasons stated by us in the beginning of this judgment, it is clear that "revenue focus" was one of the principal considerations that weighed with the legislature while enacting this law. The regulatory regime under the 2003 Act empowers the*

Commission to frame the tariff, which shall be the very basis for raising a demand upon a consumer, depending upon the category to which such consumer belongs and the purpose for which the power is sanctioned to such consumer. We are not prepared to accept the contention on behalf of the respondent that the provisions of Section 126 of the 2003 Act have to be given a strict and textual construction to the extent that they have to be read exhaustively in absolute terms.

.....

***19.** The provisions of the 2003 Act, applicable Regulations and the Agreement executed between the parties at the time of sanction of the load prohibit consumption of electricity in excess of maximum sanctioned/installed load. In the event of default, it also provides for the consequences that a consumer is likely to face. It embodies complete process for assessment, determination and passing of a demand order. This defined legislative purpose cannot be permitted to be frustrated by interpreting a provision in a manner not intended in law. This Court would have to apply the principle of purposive interpretation in preference to textual interpretation of the provisions of Section 126 of the 2003 Act.*

.....

***48.** Another similar rule is the rule of practical interpretation. This test can be effectually applied to the provisions of a statute of the present kind. It must be understood that an interpretation which upon application of the provisions at the ground reality, would frustrate the very law should not be accepted against the common sense view which will further such application."*

8. Section 126 has been incorporated not only to compensate the licensee company for the loss incurred due to unauthorised use of electricity but also to prevent unauthorised use of electricity by unscrupulous persons. Unauthorised use of electricity results in a loss to the distribution company, and the distribution company ultimately

recovers its loss from its bona fide customers. In other words, unauthorised use of electricity ultimately affects the interests of the public at large. Section 126(3) has been engrafted to prevent unauthorised use of electricity and also to deal with unscrupulous users of electricity with civil consequences.

9. There may be various justifiable grounds for not completing the assessment within a period of thirty days from the date of inspection. There may be a valid prayer for adjournment of hearing by the consumer, the grant of which may result in a delay in passing the final order of assessment. Denial of adjournment on proper grounds may defeat the principle of natural justice.

10. There may be various reasons beyond the control of the assessing officer that may result in delay, such as transfer of the officer, natural calamities, pandemic, etc. The office may remain closed due to strike, lockout, or any other administrative reasons, preventing the assessing officer from completing the assessment in due time.

11. If an assessing officer loses jurisdiction upon the expiry of thirty days to make the final order of assessment, the same would run contrary to the object of Section 126 of the Electricity Act, 2003.

12. It does not necessarily imply that an assessing officer under the said provision has the liberty to withhold assessment at his own will.

13. The person against whom an allegation of unauthorised use of electricity has been levelled must not be left in uncertainty regarding the finalisation of the proceeding initiated against him.

14. If the assessment is done after an excessive and unexplained delay, especially years later, it may violate the principles of natural justice. Unreasonable delay may prejudice the consumer's right to defend and affect the reliability of evidence (e.g., old meter readings, changed conditions). If an authority like a distribution licensee delays assessment for years without any just reason, it can be struck down as arbitrary, violating Article 14 of the Constitution of India.

15. In this context, it is necessary to mention that Section 127 of the 2003 Act provides a limitation period of thirty days for preferring an appeal against a final order of assessment before the Appellate Authority.

16. A Special Bench of this Court in ***WP No. 84 of 2019 (Sudipta Koley v. M. Bhowmick)*** held that a time-barred appeal under Section 127 cannot be considered on merit by the Appellate Authority upon condonation of delay.

17. A detailed timeline has been prescribed by the West Bengal Electricity Regulatory Commission by Notification No. 55/WBERC dated 7th August 2013 relating to assessment orders.

18. The relevant part of the said regulation is quoted below:

> *"**5.2** The order of provisional assessment under sub-section (1) of section 126 of the Act shall be served*

within forty eight hours of disconnection under regulation 4.2.1 or within forty eight hours of inspection when disconnection is not effected, as the case may be, upon the person, in occupation or possession or in charge of the place or premises, by the concerned assessing officer. In no case the assessing officer and the grievance redressal officer shall be the same person of the licensee. In case it is found that the assessing officer and the grievance redressal officer are the same person, then any one officer at higher rank of that person, as will be determined by the licensee, will be considered as grievance redressal officer for the specific case.

5.3 *A person, who is not satisfied with the order of provisional assessment, may file his written objections against the provisional assessment with the assessing officer, who has passed the provisional order of assessment, within fifteen days from the date of receipt of the order of provisional assessment.*

5.4 *On receipt of a written objection under regulation 5.3, the assessing officer shall fix the date, time and venue for hearing the person or his authorised representative and intimate the same to the person, in writing, so as to reach the person at least seventy two hours before the scheduled date and time of hearing. The person may appear in person or depute his authorised representative for being heard by the assessing officer. The person being authorised or deputed must submit to the assessing officer a "Letter of Authority" duly signed by the person, who is not satisfied with the order of provisional assessment, providing inter-alia the name, the address and the attested signature of the representative being authorised for this purpose. After hearing the person or his authorised representative, the assessing officer shall pass the final order of assessment within thirty days from the date of service of order of provisional assessment under regulation 5.2 and serve the final order of assessment on the person within seven days from the date of such order. If the person or his authorised representative fails to attend the hearing, the final order of assessment may be passed by the assessing officer ex-parte. The final assessment shall also be based on the methods as mentioned in regulation 5.1.*

> ***5.5*** *Upon receipt of the final order of assessment, the person shall have the right to prefer an appeal to the appellate authority within thirty days of the said final order of assessment in terms of the provisions of sub-section (1) of section 127 of the Act. The form for the appeal and the manner of verification thereof shall be such as specified in the Conduct of Business Regulations. The fees payable shall be such as specified in the Fees Regulations."*

19. A bare reading of Sections 126 and 127 of the 2003 Act, read with the Regulations framed by the West Bengal Electricity Regulatory Commission as quoted above, makes it clear that under the scheme of the Act of 2003, an assessment proceeding should be completed and attain finality in an expeditious and time bound manner. Therefore, even in spite of the best intention of the assessing officer, if the assessment is not finalised within the thirty days period as indicated above for any bona fide reason, the same should be completed immediately thereafter with utmost expedition. In the case of a delayed assessment, the burden lies upon the assessing officer to demonstrate that he was prevented by a just cause from completing the assessment.

20. In the judgment passed in ***Swapan Kumar Dey*** (supra), a learned Single Judge of this Court held that a provisional order of assessment does not stand extinguished in the absence of the passing of any final order. It was held that where there is absolutely no objection raised whatsoever to a provisional assessment order, the provisional assessment itself becomes a

final assessment in the absence of any challenge to the same. The aforesaid observations were made in a factual context where the petitioner in that case was served with a provisional assessment, but the licensee company did not pass any final order of assessment within thirty days from the date of service of the provisional order of assessment. A criminal case was initiated against the petitioner also under Section 135 of the Act of 2003. To obtain bail, the petitioner had paid 25% of the provisional bill amount. The petitioner, however, was acquitted in the criminal proceeding in the year 2009. After a lapse of about 10 years, the petitioner filed the writ petition, inter alia, praying for a refund of 25% of the provisionally assessed amount together with interest.

21. Unfortunately, neither of the parties before this Court has brought it to the attention of this Court that the said judgment of the Single Judge was set aside by a Division Bench of this Court in the case reported at **AIR 2020 Cal 148 (*Swapan Kumar Dey v. W.B. State Electricity Distribution Co. Ltd.*)** with the following observations:

> *"3. However, merely because the time schedule indicated is read to be directory does not imply that the period may be stretched to 10 or 15 years. The provisional assessment in this case was completed in 2006. A notice was issued to the consumer. The consumer did not make any representation against the provisional assessment. It was then incumbent on the assessing officer to complete the final assessment without reference to the consumer or issue a notice to the consumer and complete the final assessment even if the consumer paid no heed to such notice.*

> *4. It is not acceptable that merely because criminal proceedings are pending, there would be an automatic stay of the assessment. Even though the time limit indicated in Section 126(3) of the Act is seen to be directory, the completion of the final assessment cannot be delayed by years. The final assessment needs to be completed contemporaneously, particularly since the evidence would be lost.*
>
> *……*
>
> *7. Accordingly, the appeal is allowed and the impugned order is set aside by observing that no final assessment can now be permitted to be undertaken in respect of a provisional assessment order passed in the year 2006. As a consequence, the amount deposited by the appellant will be refunded to the appellant within four weeks from date failing which the entire money will carry interest at the rate of 6 per cent per annum from the date of deposit till repayment."*

22. In fact, no different view has been taken by the Division Bench in F.M.A. 121 of 2023 (The West Bengal State Electricity Distribution Company Limited v. Tapan Sen Majumder), where it was held, inter alia, as follows:

> *"29. ….*
>
> *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 Subsection (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."*

23. In the facts of the said case, the Division Bench permitted the licensee company to proceed with passing the final order of assessment, treating the objection filed in the Court.

24. In view of the aforesaid discussion, I am of the definite view that if an assessing officer does not pass the final order of assessment within thirty days from the date of service of the provisional order of assessment, he does not lose the jurisdiction to pass the final order of assessment. However, such delay must be reasonable, not inordinate, and the assessing officer must provide a just cause for the delayed assessment.

25. I shall now proceed to address each of the three cases individually.

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26. The petitioner, Jamal Seikh, applied for a new STW (submersible tube well) electric connection and deposited a sum of Rs. 8,033/- on 10.10.2023 towards the quotation amount, including the requisite security deposit. His application, however, was not considered by the WBSEDCL, the licensee company, which prompted him to file this writ petition.

27. WBSEDCL alleged that the petitioner had previously been involved in theft of electrical energy by unauthorised hooking. A police case was registered against him, being Sagardighi P.S. Case No. 182/2017 dated 18.07.2017. Pursuant to that, a provisional assessment bill for Rs. 2,10,152/- was prepared and handed over to the petitioner. However, due to his non-cooperation, the final assessment under Section 126 of the Electricity Act, 2003 could not be completed.

28. It is contended that the petitioner was not a registered consumer of WBSEDCL at the relevant time, and his usage of electricity was wholly

unauthorised. The provisional bill issued for Rs. 2,10,152/- remains unpaid till date.

29. It is also alleged that the petitioner was again involved in a second instance of theft of electricity by hooking. A second police case, being Case No. 44 of 2022 dated 16.02.2022, was initiated. In this case, a final assessment bill of Rs. 1,96,020/- was issued and paid by the petitioner. This payment demonstrates the petitioner's past involvement in unauthorised usage of electricity.

30. It is the contention of WBSEDCL that the mere deposit of the quotation amount for a fresh connection in 2023 does not entitle the petitioner to receive a new electricity connection, in view of the subsisting dues arising from the 2017 provisional assessment bill, which continues to remain unpaid.

31. WBSEDCL further submits that the petitioner had earlier filed WPA 24706 of 2024 before this Hon'ble Court seeking similar relief for a permanent electricity connection based on the 2023 quotation. That writ petition was dismissed for default on 20.02.2025.

32. It is therefore contended that the present writ petition, being based on the same cause of action, is not maintainable. A second writ petition on the same set of facts and relief cannot be entertained after dismissal of the earlier one.

33. Lastly, it is submitted that since the petitioner has never been a registered consumer and is found to have unauthorisedly consumed electricity, he is liable to pay the demand raised through the provisional assessment bill of 2017. The same has not been challenged within time and cannot now be avoided by applying for a new connection.

34. I, however, find that no reason has been provided by WBSEDCL in its report or affidavit as to why the final assessment order was not passed even after about eight years from the date of the provisional assessment.

35. In view of the discussions above, I am not inclined to allow WBSEDCL to resurrect the proceedings for a final order of assessment after such a lengthy delay.

36. Accordingly, **W.P.A. No. 1300 of 2025** is disposed of, giving a direction to WBSEDCL to effect the electricity connection to the petitioner within a period of eight weeks from the date, subject to compliance with all necessary formalities by the petitioner. It is needless to clarify that to effect the connection, WBSEDCL shall not insist on payment of Rs. 2,10,152/- from the petitioner following the provisional assessment made in the year 2017.

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37. In this case, also, the petitioner's application for a connection to his submersible pump set was not considered by WBSEDCL.

38. Like the earlier case, a provisional assessment bill of Rs. 2,10,152/- was prepared in the year 2017 for the alleged hooking of electricity by the petitioner. In the same year, a criminal case was also filed. Though there is a serious dispute between the parties as to whether the provisional order of assessment was served upon the petitioner or not, it is undisputed that WBSEDCL did not pass any final order of assessment.

39. For the same reasons, W.P.A. No. 1289 of 2025 is allowed with similar directions to effect the electricity connection to the submersible pump sets of the petitioner within a period of eight weeks from the date, subject to compliance with all necessary formalities by the petitioner and without requiring the petitioner to deposit Rs. 2,10,152/- in terms of the provisional assessment made in the year 2017.

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40. In this case, the petitioner seeks to restore his industrial connection. It appears that a provisional assessment bill of Rs. 4,34,375.33/- for an alleged unauthorised use of electricity was raised against the petitioner on April 11, 2020. A criminal case was also lodged. The petitioner, however, was acquitted by the competent criminal court on December 2, 2024.

41. Thereafter, this present writ application was filed. In this case also, no final order of assessment has been passed by WBSEDCL to date. The prayer of the petitioner is opposed by WBSEDCL on the same grounds as those raised in the other two writ petitions. The reason for not passing the

final order of assessment even after about five years has not been explained.

42. Accordingly, **W.P.A. No. 10995 of 2025** is also allowed. WBSEDCL is directed to restore the industrial electricity connection of the petitioner within a period of four weeks from the date, subject to compliance with all necessary formalities by the petitioner and without requiring the petitioner to deposit Rs. 4,34,375.33/- in terms of the provisional assessment made in the year 2020.

43. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)