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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 27148 of 2024

Sushil Sarkar alias Sushil Kumar Sarkar
Vs.
West Bengal State Electricity
Distribution Company Ltd. & Ors.

Mr. Debashis Banerjee
Ms. Gargi Roy
Mr. Rakesh Jana
... For the petitioner

Dr. Madhusudan Saha Roy
... For the WBSEDCL

1. The petitioner has preferred the present writ petition seeking redressal against the letters dated 20th March, 2024 and 22.05.2024 issued by the respondent authorities whereby they rejected the prayer made by the Petitioner for the refund of an amount of Rs. 54,356/- (Fifty Four Thousand Three Hundred Fifty Six Rupees Only) along with interest, which was deposited by the petitioner in pursuance of the final assessment order dated 18th March 2015 made by the respondent authority for unauthorized use of electricity.

2. The factual conspectus of the present case reveals that the officials of the respondent authority conducted an inspection of the Shallow Tube Well of the premises of the petitioner on 20th February, 2015. During the said inspection programme, the inspecting officials of

the respondent authority allegedly detected that service connection of the petitioner which was previously disconnected, had been illegally reconnected by the petitioner, who was allegedly operating the said Tube Well by pilfering electricity illegally. Consequent to the said incident, Haringhata P.S. Case No.69 of 2015 was registered against the petitioner under Sections 135(1)(a) and 138 of the Electricity Act, 2003. During the pendency of the said criminal proceedings the respondent authority conducted a final assessment under Section 126 of the Electricity Act, 2003 and prepared a final assessment bill in respect of the alleged pilferage of electrical energy demanding a sum of Rs. 54,356/-. Thereafter, according to the alleged demand made by the respondents, the petitioner deposited the sum of Rs. 54,356/- to WBSEDCL on 09.11.2015.

3. Subsequently, the said case, i.e., Haringhata P.S. Case No.69 of 2015 was converted into I.E. Case No.35 of 2015 before the Special Court under the Electricity Act, at Krishnagar, Nadia, wherein by an order dated 31st August, 2023, the learned Special Judge acquitted the petitioner from the said case. The learned Counsel for the petitioner contends that since he has been acquitted by the charges under Section 135 of the Electricity Act, 2003, the amount paid by him under the final assessment order should be refunded.

4. Pursuant to the said acquittal, the petitioner submitted multiple representations seeking a refund of Rs.54,356/- from the respondent authorities. However, by a communication dated 20th March 2024, the respondent authorities categorically rejected the petitioner's demand by indicating that the proceedings under Sections 126 and 135 of the Electricity Act, 2003 stand on a separate and independent footing and they do not depend on each other.

5. Learned counsel for the respondents opposes the writ petition by relying upon the settled legal proposition that the proceedings under Sections 126 and 135 of the Electricity Act, 2003 are independent and distinct. Section 135 of the Electricity Act deals with penal consequences and hence mandates a standard of proof beyond all reasonable doubt, whereas Section 126 of the Electricity Act, 2003 involves with civil liability where the standard of proof is based on preponderance of probability. Thus, the mere acquittal of the petitioner under Section 135 of the Electricity Act, 2003 cannot efface the civil liability assessed under Section 126.

6. Learned counsel for the respondents relies upon the judgments rendered by this Court in **Ashok Kumar Maity vs. The West Bengal State Electricity Board, through Chairman, WBSEDCL & Ors. (WPA No.21298 of 2021)** and **Basudeb Paine vs. WBSEDCL**

& Ors., (MAT 263 of 2015 with CAN 2584 of 2025,
delivered on 24th March, 2015).

7. Relying on both the Judgments, the learned counsel for the respondents prays for the dismissal of the present writ petition.

8. This Court has carefully heard the arguments advanced on behalf of the parties and has perused the relevant documents and judicial precedence relied upon by both the parties.

9. The issue whether the acquittal of a consumer in a criminal proceeding on the allegation of theft of electricity *ipso facto* absolves the consumer from the liability to pay the amount finally assessed under Section 126 of the Electricity Act, 2003 is no longer *res integra*. The Hon'ble Division Bench of this Court in Basudeb **Paine** (supra) has examined an identical issue and held as follows:

“Therefore, in the light of the acquittal of the respondent for the offence punishable under Section 135 of the Act, the appellant need not pay the assessed amount. No doubt, two parallel proceedings were initiated. So far as under Section 135 of the Act is concerned, it is penal proceeding to punish the person/accused of the theft of energy. In the case of theft of energy, definitely element of unauthorized use of electricity would be involved. But all unauthorized use of electricity or energy would not result in prosecution under Section 135 of the Act. There different provision may be referable. One is a civil action for recovery of amounts towards the

consumption of electricity and the other penal action is towards the act of theft of energy.

In the above decision, Their Lordships have categorically held that proceedings under Section 126 and 135 of the Act stand on a separate and independent footing and they do not depend upon each other.

In that view of the matter, we are of the opinion that there is no justification in the stand of the appellant to contend that in the light of acquittal of the accused in the proceeding under Section 135 of the Act, there should not be any assessment of consumption charges.”

10. Furthermore, it is an admitted position that the final assessment order was passed on 18th March, 2015 after affording an opportunity of hearing to the petitioner. The petitioner never challenged the said order at the relevant time and voluntarily deposited the assessed amount on 9th November, 2015.

11. As per Section 127 (1) of the Electricity Act, 2003, *‘Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed’.*

12. In view of Section 127(1) of the Electricity Act, 2003, the Appeal is to be preferred within a period of 30 days from the final assessment order. In the present case, the final assessment order was passed on 18th March 2015 and the Petitioner deposited the amount

as per the final assessment bill on 09th November, 2015 with out any protest. Till date, no Appeal has been preferred. Hence the said final assessment order attained finality in the year 2015 itself. Now 9 years after the passing of the final assessment order, the Petitioner preferred the present writ Petition seeking a refund under the pretext of an acquittal in a criminal case.

13. As held by this Court in **Ashok Kumar Maity (Supra)** and **Basudeb Paine (Supra)**, the proceedings under Section 135 and 126 of the Electricity Act, 2003 stand on different footings and acquittal of the consumer under Section 135 of the Electricity Act, 2003 will not enlarge the time limit for preferring an Appeal against the final assessment order passed under Section 126 of the Electricity Act, 2003. In view of the said settled position of law, this Court has no hesitation in holding that the present writ petition is nothing but a belated attempt to challenge the final assessment order dated 18th March, 2015 in an indirect manner.

14. Since the the petitioner has not made out any case for the refund of the amount of Rs. 54,356/- paid in the year 2015 at this belated stage, this Court find no illegality in the stand taken by the Respondent in rejecting the petitioner's prayer for refund of the said amount. In view thereof, this court is not inclined to exercise its discretionary jurisdiction under Article 226

of the Constitution and hence the present writ Petition fails.

15. The present writ petition is dismissed with no order as to cost.

16. Urgent photostat certified copy of this order, if applied for, be given to the parties, upon compliance of necessary formalities.

(Gaurang Kanth, J.)