

W. P. No. 6898 (W) of 2016

Pintu Ranjan Dey
-Vs.-
CESC Limited & Ors.

Mr. Shuvasish Sengupta,
Mr. Balarko Sen,
Mr. Subhra Das.

...for the Petitioner.

Mr. Om Narayan Rai.

...for the CESC Limited.

Mr. Soumyajit Mishra.

...for the Respondent No. 9.

The electric connection to the petitioner was disconnected by the licensee pursuant to a raid conducted by the latter. The raid revealed that several consumers of electricity were unauthorizedly using it by direct connection from the service cut out to the main switch by passing the actual meter. A provisional bill was raised to the tune of Rs.54,19,925/- for such unauthorized use of electricity and the same was sent to all the alleged wrong doers. The petitioner has challenged the provisional bill primarily on the ground that he is a caretaker in respect of the premises in question under the private respondent and cannot commit the said offence. The second and the more vehement objection is to the amount mentioned in the provisional bill.

Whether the petitioner can commit the offence or not is not for the Writ Court to judge. All said and done the petitioner was admittedly a caretaker of the respondent no. 9 and was engaged by him to look after the premises in question

and the unauthorized use of electricity has been detected in the meter board of the said premises at the ground floor where the petitioner's room is located.

The second ground of challenge is with regard to the quantification made by the licensee. According to the petitioner he was enjoying domestic connection but the computation has been made on the basis at the commercial and industrial tariff rate. In support of his contention the petitioner has relied on a Division Bench Judgment of this Court in the case of *Sk. Jaffar Ali & Anr. -Vs.- West Bengal State Electricity Distribution Company Limited & Ors.*, reported in A.I.R. 2010 Cal 84. There the Division Bench had held that whether meter is given for domestic supply but used illegally for commercial purposes the assessment should be made at the rate equal to twice the tariff applicable for the relevant category of service, i.e. the domestic category. Such assessment is to be made for a period of one year if the period of unauthorized use is not certain or has not been arrived at.

Mr. Rai, the learned Advocate for the licensee wanted to impress upon the Court that since the Judgment in the case *Sk. Jaffar* (Supra) was passed West Bengal Regulatory Commission (Electricity Supply Code) Regulations of 2013 has been brought into force. According to Regulation 5.1 the methodology to be applied for making provisional assessment under Section 126 (1) of the Electricity Act, 2003 is that certain elements were to be multiplied by "*the applicable energy charge for the purpose for which the energy is consumed during the period concerned as per the prevailing tariff order into two*".

He submitted that when the Division Bench had passed the Judgment in *Sk. Jaffar* (Supra) these Regulations had not been published and, therefore, the present Regulation has the effect of superseding the Division Bench Judgment.

It is true that *Sk. Jaffar* was delivered before this Regulation came into being but not before any Regulation on the point was enacted. Even if the Judgment does not make any specific reference to any Regulation the submission of the licensee-company before the Division Bench was exactly the same which will appear from paragraph 13 of the said Judgment. There also the learned Advocate for the licensee contended that the assessment should be made at the rate of equal to twice the tariff applicable to the category of services for which the electricity was allegedly used and not the relevant category of service provided by the electric-company. That submission was not accepted by the Division Bench and the Division Bench had very specifically held that the appropriate authority erred in law in calculating the amount at the rate of equal to twice the tariff applicable to the commercial rate notwithstanding the fact that the meter used for commercial purpose has not been tampered with and that the meter was for domestic consumption.

In arriving at the said conclusion the Division Bench applied a very settled principle of law that if the statute allows an authority to act in a particular way that act must be done in that way or should not be done at all. In this case, the Division Bench held, the law has not permitted the respondent authority to

assess at the rate of equal to twice the tariff applicable for the category for which the electricity was unauthorizedly used for one year.

Mr. Rai wanted to salvage the situation by referring to a Division Bench of the Kerala High Court in *Classic Colour Lab –Vs.- Assistant Engineer, Electrical Section Central*, reported in I.L.R. 2014 (3) Kerala 309. In that case the Division Bench after elaborately referring to the Supreme Court Judgment in the case of *Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTH CO.) & Anr. –Vs.- Seetaram Rice Mill*, reported in (2012) 2 SCC 108 disagreed with the view taken by our High Court. Following that Mr. Rai also sought to submit that if the methodology of calculation employed by the licensee is not allowed to stand the purpose of the Electricity Act may be defeated.

I have given my very anxious consideration to the submissions made by Mr. Rai and gone through the Judgments placed by him. Had it been a case that the Supreme Court had taken a different view there would not have been any occasion for the licensee to rely on the Kerala Judgment because the Judgment of the Supreme Court would have been impliedly overruled by the subsequent Judgment of the Supreme Court. The Supreme Court has not expressed anything about the view taken by the Calcutta High Court. All that it has said was that Section 126 of the Act had a purpose to achieve, i.e. to put an implied restriction on unauthorized construction of electricity. In *Seetaram Rice Mill (Supreme)* the Supreme Court dealt with how to construe Section 126 of the Act. It held that revenue focus was one of the principal considerations that weighed

with the legislature while inacting the law. This is the legislation which establishes a regulatory regime for the generation and distribution of power. It is a settled cannon of interpretative jurisprudence that the statute should be read as a whole, a construction which will improve the workability of the statute to be more effective and positive should be preferred to any other interpretation which may lead to undesirable result.

The only reason why the Division Bench of the Kerala High Court differed from the Calcutta High Court's view is that if the interpretation put on by the Division Bench of this Court is accepted a consumer for his unauthorized use of electricity may have to pay less.

Mr. Rai submitted that an SLP was filed to the Supreme Court. Although the Supreme Court did not admit the S.L.P. it held that in view of the facts of the case it is not to be treated as a precedent. Mr. Rai submitted, therefore, that the value of the Division Bench Judgment has been lost as a precedent. I am afraid, such view is not tenable. Supreme Court could never have meant that the High Court Judgment cannot be cited as a precedent. On the contrary, it must have meant that rejection of the S.L.P. after considering the facts, etc. shall not operate as a precedent.

Apart from the fact that a Division Bench of the Judgment of a High Court is binding on a Judge of that Court I am also in respectful agreement with the view expressed by Their Lordships of this Court. The observation that the phrase "applicable for the relevant categories of services specified in Sub-Section (5)", as

appearing in Section 126 (6) of the Act should be construed as the rate applicable for the relevant category of the services to which the consumer belongs. The reason for not accepting the interpretation sought to be put by the licensee has been very specifically dealt with by the Division Bench, i.e. if the intention of the legislature had been to realize at the rate applicable to the category for which the electricity was actually improperly use the language would not have been framed in the way in which it stands now.

I thus find sufficient force in the submission of the petitioner. I, therefore, direct the concerned Assessing Officer to issue a revised provisional bill along the principle of law decided in the case of *Sk. Jaffar* (Supra) and giving the petitioner an opportunity to file an objection. Such revised provisional bill is to be raised by the Assessing Officer of the licensee-company by April 13, 2016 and be served upon the petitioner by April 14, 2016. The petitioner shall be given the statutory opportunity to file an objection thereto. After giving the opportunity to file their objection he shall fix a date for the final assessment bill thereafter.

It is made clear by way of abundant precaution that I have directed the licensee to issue a fresh provisional bill on certain legal grounds as contained in the Judgment. This Judgment and order shall not be construed as any expression of the petitioner's innocence in respect of the charges alleged against him.

Since this writ petition is being disposed of without calling for an affidavit all allegations contained therein are deemed to have been denied.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(Dr. Sambuddha Chakrabarti, J.)