

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

W.P.No.17512(W) of 2010

Judgment on 24.08.2010

Sri Amit Sasmal

-vs-

The West Bengal State Electricity Distribution Co. Ltd. & Anr.

Points:

Final Assessment- Provisional assessment paid with objection whether the assessing officer is to pass final assessment himself.-Electricity Act, 2003-S.126

Facts:

The writ petitioner alleged that though the assessing officer of the West Bengal State Electricity Distribution Company Limited concluded hearing for making an order of final assessment under s.126 of the Electricity Act, 2003 as back as February 17, 2010, he has not yet made the order of final assessment. Licensing company alleged that since Asutosh, father of the petitioner, paid the whole of the provisionally assessed amount without filing any objection, the assessing officer was not required to make any order of final assessment. Since a hearing notice was issued after receipt of the petitioner's letter, the assessing officer sent a proposed order for approval to the higher authority.

Held:

Court is unable to read the provisions of sub-s.(3) of s.126 (as they were before the amendment dated June 15, 2007) to hold that payment of the provisionally assessed amount discharged the assessing officer of his

statutory obligation to make the order of final assessment. The fact that Asutosh did not accept the order of provisional assessment was evident from the fact that feeling aggrieved thereby he moved this Court under art.226.

Para 14

It is evident that the assessing officer failed and neglected to discharge his statutory obligations. It is curious to note that the assessing officer, required to discharge quasi-judicial functions, has sent the proposed order of final assessment for approval to his higher authority. He is to make the order on his own. If he is unable, he should recuse himself.

Para 16

Court directed the assessing officer concerned to give the parties reasonable opportunity to present their respective cases, take down evidence, hear the parties and make the order of final assessment within four weeks from the date of communication of this order and communicate it without any delay.

Para 17

Mr. B.K. Samantafor the petitioner

Mr. Sumit Royfor the Company

The Court : The petitioner in this art.226 petition is aggrieved by the fact that though the assessing officer of the West Bengal State Electricity Distribution Company Limited concluded hearing for making an order of final assessment under s.126 of the Electricity Act, 2003 as back as February 17, 2010, he has not yet made the order of final assessment.

2. The petitioner's late father Asutosh Sasmal was the consumer of the Company, a licensee under the Electricity Act, 2003. Alleging unauthorised use of electricity by him the officials of the licensee disconnected his supply. The assessing officer of the licensee issued an order of provisional

assessment dated July 10, 2006. Asutosh paid the whole of Rs.2,39,550 provisionally assessed under protest and thus created the licensee's statutory obligation to reconnect his supply. The licensee reconnected the supply.

3. Asutosh then moved W.P. No.7133 (W) of 2007 under art.226. During pendency of the petition he died, and the petitioner was substituted for him. By an order dated August 12, 2009 the petition was disposed of recording submission of counsel for the licensee that the order of final assessment had already been made, and saying that in view of the order of final assessment the petitioner would be free to take steps according to law before the appropriate forum.

4. Thereafter the petitioner wrote a letter dated November 4, 2009 calling upon the station manager concerned of the licensee to set aside the order of provisional assessment and refund the amount paid by Asutosh. With the letter he submitted a copy of Asutosh's objection dated July 12, 2006 to the order of provisional assessment. He also pointed out that Asutosh had paid the amount on July 12, 2006 under protest.

5. On receipt of the letter the station manager gave a notice of hearing dated February 6, 2010 and then he heard the petitioner on February 17, 2010, presumably in the capacity of the assessing officer of the licensee. Then by a letter dated February 18, 2010 he informed the petitioner that the matter had been sent to the higher authority for necessary action. He did not do anything thereafter, and on the contrary, remained silent even after service of a legal notice dated July 15, 2010. Feeling aggrieved, the petitioner brought this petition.

6. Mr Samanta, counsel for the petitioner, has submitted that in the proceedings the assessing officer never made any order of final assessment. Mr Roy, counsel for the licensee, has submitted that since Asutosh paid the

whole of the provisionally assessed amount without filing any objection, the assessing officer was not required to make any order of final assessment.

7. Mr Roy has further submitted that since a hearing notice was issued after receipt of the petitioner's letter, the assessing officer sent a proposed order for approval to the higher authority. He has lastly contended that once Asutosh, the consumer, accepted the order of provisional assessment, the petitioner, in the capacity of Asutosh's son, was not entitled to submit any objection.

8. The admitted position is that the assessing officer never made any order of final assessment in the proceedings. It is, therefore, evident that the order dated August 12, 2009 disposing of Asutosh's W.P.No. 7133(W) of 2007 was made on the basis of an incorrect submission made by counsel for the licensee. Since no final order was made under s.126 of the Electricity Act, 2003, there was no scope for filing an appeal under s.127 of the Act.

9. The questions today are whether the assessing officer of the licensee was under any obligation to make an order of final assessment; and whether on Asutosh's death the petitioner was entitled to proceed with the matter.

10. I am unable to accept the argument that since Asutosh paid the whole of the provisionally assessed amount, the assessing officer was not required to make any order of final assessment.

11. The provisions of sub-s. (3) of s.126 (before the amendment dated June 15, 2007) were as follows:

“(3). The person, on whom a notice has been served under sub-section(2), shall be entitled to file objections, if any, against provisional assessment before the assessing officer, who may, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment of the electricity charges payable by such person.”

12. The provisions of sub-s.(4) of s.126 (before the amendment dated June 15, 2007) were as follows :

“(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. Provided that in case the person deposits the assessed amount, he shall not be subjected to any further liability or any action by any authority whatsoever.”

13. In this case there is nothing to show that Asutosh accepted the order of provisional assessment. On the contrary, the petitioner supplied to the assessing officer a copy of Asutosh’s written objection dated July 12, 2006 against the order of provisional assessment. Simply because Asutosh paid the whole of the provisionally assessed amount, it cannot be said that he accepted the order of provisional assessment.

14. By paying the amount Asutosh simply created the licensee’s statutory obligation under the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2004, reg.6.03, to reconnect his supply within 24 hours from the date and time of payment of the amount and treat the payment as provisional subject to adjustment against the amount finally determined and balance recovered or refunded as per assessment.

15. I am unable to read the provisions of sub-s.(3) of s.126 (as they were before the amendment dated June 15, 2007) to hold that payment of the provisionally assessed amount discharged the assessing officer of his statutory obligation to make the order of final assessment. The fact that Asutosh did not accept the order of provisional assessment was evident from the fact that feeling aggrieved thereby he moved this Court under art.226.

15. This Court permitted the petitioner to be substituted for Asutosh and made an order permitting the petitioner to proceed with the matter. Under the circumstances, I am unable to see how today the licensee can contend that the petitioner is not entitled to proceed with the matter for any purpose.

16. It is evident that the assessing officer failed and neglected to discharge his statutory obligations. It is curious to note that the assessing officer, required to discharge quasi-judicial functions, has sent the proposed order of final assessment for approval to his higher authority. He is to make the order on his own. If he is unable, he should recuse himself.

17. For these reasons, I dispose of the petition directing the assessing officer concerned to give the parties reasonable opportunity to present their respective cases, take down evidence, hear the parties and make the order of final assessment within four weeks from the date of communication of this order and communicate it without any delay. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)

