

THE CHAIRMAN,
WEST BENGAL STATE ELECTRICITY BOARD & ORS.

v.
SYED MUKBUL HOSSAIN & ORS.
(Civil Appeal No. 7166 of 2008)

DECEMBER 8, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]**

Electricity Act, 2003 – ss.126 and 127 – Theft of electricity – Tampering of meter – Disconnection of supply by Electricity Board after provisional assessment – High Court held the disconnection of supply was in breach of regn.5.2 of Supply Code and imposed costs on Electricity Board – Meanwhile final assessment made by Electricity board – Statutory appeal challenging the same filed after limitation period – Maintainability of – Held: Interest of justice would be best served if challenge to the final assessment is disposed of in accordance with law – It is however open to Electricity Board and its functionaries to highlight before the appellate authority as to maintainability of the appeal on ground of alleged delay – West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation 2004 – Regn.5.2.1.

On the allegations that there was insertion of a variant element in the electricity meter to bye pass recording of actual consumption, FIR was lodged by the Appellant-Board against accused-respondent no.1. Provisional assessment was made and thereafter there was disconnection of electricity supply in terms of the Regulation 5.2.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation 2004.

Respondent No.1 filed writ petition. The High Court while permitting the parties to pursue the available remedies of filing objection u/s.126(3) of the concerned

- A Electricity Act, 2003 (which was already filed by respondent no.1) and the right to prefer appeal u/s.127 of the said Act, held the disconnection of power supply was in breach of regn.5.2 of the said Supply Code and accordingly imposed costs of Rs.25,000/- on the appellant-Board.
- B

Meanwhile final assessment was made by the appellant-board. Statutory appeal challenging the same was filed after limitation period. Maintainability of the statutory appeal was challenged in the present appeal.

- C Disposing of the appeal, the Court

- HELD: Since the final assessment is in any event the subject of challenge, interest of justice would be best served if the challenge is disposed of in accordance with law. It is however open to appellant-Board and its functionaries to highlight before the concerned appellate authority as to the maintainability of the appeal on the ground of alleged delay. The direction for costs is set aside. [Para 5] [214-D-E-G]
- D

- E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7166 of 2008.

- From the Judgment and Order dated 2.2.2007 of the High Court of Calcutta at Calcutta in F.M.A. No. 823 of 2006 in F C.A.N. No. 4482 of 2006.

Dipak Bhattacharaya and Saurabh Mishra for the Appellants.

- Anand, D. Bharat Kumar, Azim H. Laskar and Abhijit G Sengupta for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

- H 2. Challenge in this appeal is to the judgment of a Division

Bench of the Calcutta High Court disposing of the writ petition, the appeal and the application filed with certain modifications. On the allegations that there was insertion of a variant element in the meter to by pass recording of actual consumption, First Information Report was lodged by the personnel of the appellant-Board. Provisional assessment was made. Thereafter there was disconnection of electricity supply. A writ application was filed by the respondent No.1 making grievance that the disconnection of the supply was wrongly done and the provisional assessment as made claiming Rs.2,50,046/- on the alleged ground of theft of electricity and/or tempering of the meter was not sustainable.

Learned Single judge of the Calcutta High Court disposed of the matter in Writ Petition No.2029 (W) of 2006 whereby and whereunder the appellants were directed to restore electrical supply on deposit of Rs.20,000/- by the writ petitioners. Appellants questioned correctness of the order on the ground that the disconnection of supply line was effected on 24.1.2006 in terms of the Regulation 5.2.1 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation 2004 (hereinafter referred to as the 'Supply Code'). The Division Bench referred to Regulation 5.2 and observed that the appellants have got right to disconnect supply line of electricity on fulfillment of the conditions stipulated. But the same is required to be done following a particular procedure. It was held that due procedure was not followed. The Division Bench held that under Section 126 of the concerned Electricity Act, 2003 the writ petitioner had a right of filing an objection thereof which has been filed by the writ petitioner under Section 126(3). The appellants are required to pass a final order after giving a reasonable opportunity of being heard. The writ petitioner also has a right to prefer an appeal under Section 127 of the Act against the final assessment order. The Division Bench, therefore, permitted the parties to pursue the remedy. It was, however, held that the disconnection of power supply was contrary to and was in breach of regulation 5.2 and the writ

- A petitioner was, therefore, entitled to be compensated. Accordingly the cost of Rs.25,000/- was imposed.

- B 3. Learned counsel for the appellant Board submitted that approach of the High Court is clearly erroneous. Admittedly, objection has been filed. It was noticed that no order on merits could have been passed. By order dated 11.08.2008 final assessment was directed to be done.

- C 4. Learned counsel for the appellant has further submitted that the respondents has suppressed the fact that much before the order was passed by this Court, the final assessment has been made by order dated 27.9.2007 and the statutory appeal which was required to be done within 30 days was not filed within the said period and, therefore, the appeal, if any, filed subsequently is of no consequence.

- D 5. Learned counsel for the respondents, on the other hand, submitted that the High Court has taken note of the factual scenario and the legal principles applicable. The final assessment in any event is the subject to challenge. Since the final assessment has been challenged, we feel interest of
- E justice would be best served if the same is disposed of in accordance with law. It is open to appellant-Board and its functionaries to highlight before the concerned authority as to the maintainability of the appeal on the ground of alleged delay. It is needless to say that the said aspect shall be considered
- F by the appellate authority. Let the appeal be disposed of in accordance with law without being influenced by any of the observations made by the High Court in the impugned order and by learned Single Judge. The direction for costs is set aside. The interim order dated 20.4.2007 shall continue till
- G disposal of the appeal. We make it clear that we have not expressed any opinion on merits because of the interim protection.

6. The appeal is disposed of accordingly. No costs.

H B.B.B.

Appeal disposed of.