

Constitutional Writ

Present : The Hon'ble Mr Justice Jayanta Kumar Biswas

Judgment on 27.08.2010

W.P.No.16499(W) of 2010

Tarun Pal

-vs-

The West Bengal State Electricity Distribution Company Limited & Ors.

Points:

Installment – Whether the licensee is obliged to grant installments for payment of assessed amount and to restore electricity on payment of first installment- Electricity Act, 2003 S.126- West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007-Reg.4.2

Facts:

The licensing authority detected that the petitioner was unauthorisedly using electricity adopting the hooking method. Licensing authority disconnected the petitioners supply and in the s.126 proceedings the Assessing Officer made the order of final assessment. The petitioner accepted the order of final assessment and submitted a representation dated July 26, 2010 requesting the licensee to permit him to pay the assessed amount in installments and to reconnect his supply on payment of the first installment.

Held:

There is no law that created the licensee's obligation to permit the petitioner to pay the amount finally assessed by the Assessing Officer in instalments and to reconnect the petitioner's supply on payment of the first instalment. The petitioner asserted a non-existent right and then brought this petition alleging failure on the part of the licensee to discharge a non-existent duty or

obligation. The allegation of inaction and non-action is baseless and unacceptable.

Para 5

In view of the provisions of reg.6 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007, supply of electricity to the petitioner, disconnected in terms of the provisions of reg.4.2 that empowers the licensee to disconnect or cause to be disconnected the supply to a person or premises or both immediately upon detection of theft or unauthorised use of electricity, is to be reconnected by the licensee at the earliest and positively within 48 hours from the time of payment of the assessed amount.

Para 6

Mr. Anjan Bhattacharjeefor the petitioner

Mr. Ram Mohan Chattopadhyayfor the Distribution Company

The Court : The petitioner in this art.226 petition dated August 3, 2010 is seeking the following principal reliefs:

“a) A writ of and/or order and/or Mandamus do issue –

(i) directing the respondents to allow the petitioner to deposit Rs.25,000/-, against the final assessment bill, being Annexure P-2 of the present petition and to pay off the rest of the amount @ Rs.2000/- per month till the disposal of the final assessment bill amount along with the current electricity charges.

(ii) to direct the respondents to grant electricity connection forthwith to the meter in question of the petitioner after the first deposition is made by the petitioner.”

2. The officials of the West Bengal State Electricity Distribution Company Limited, a licensee under the Electricity Act, 2003, detected that the petitioner was unauthorisedly using electricity adopting the hooking method.

Besides taking corrective measures and disconnecting the petitioner's lawful supply as well, the licensee initiated proceedings before the Criminal Court under s.135 of the Electricity Act, 2003 and also under s.126 of the Act. The petitioner was arrested and released on bail after 47 days. The criminal case is pending.

3. In the s.126 proceedings the Assessing Officer made the order of provisional assessment dated May 12, 2010 and on that same day he made the order of final assessment. The petitioner accepted the order of final assessment and submitted a representation dated July 26, 2010 requesting the licensee to permit him to pay the assessed amount in instalments and to reconnect his supply on payment of the first instalment. Since the licensee did not give any attention to his representation, he brought this petition.

4. Mr Bhattacharjee, counsel for the petitioner, has argued that considering the sincere request of the petitioner, the licensee ought to have granted the petitioner instalments to pay the amount finally assessed by the Assessing Officer and reconnected supply on payment of the first instalment.

5. There is no law that created the licensee's obligation to permit the petitioner to pay the amount finally assessed by the Assessing Officer in instalments and to reconnect the petitioner's supply on payment of the first instalment. The petitioner asserted a non-existent right and then brought this petition alleging failure on the part of the licensee to discharge a non-existent duty or obligation. The allegation of inaction and non-action is baseless and unacceptable.

6. In view of the provisions of reg.6 of the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2007, supply of electricity to the petitioner, disconnected in terms of the provisions of reg.4.2 that empowers the licensee to disconnect or cause to be

disconnected the supply to a person or premises or both immediately upon detection of theft or unauthorised use of electricity, is to be reconnected by the licensee at the earliest and positively within 48 hours from the time of payment of the assessed amount.

7. This means that if the petitioner pays the whole of the assessed amount, only then the licensee will incur a mandatory statutory obligation to reconnect supply. If he is unable to pay the amount at one go, then he is free to pay in instalments, and in that case he will acquire a statutory right to reconnection only after he pays the final instalment. Hence an order permitting him to put down a Rs.25000 deposit on the Rs.125080 assessed amount and commanding the licensee to reconnect supply, being contrary to the provisions of reg.6 of the 2007 Regulations, will just be illegal.

8. For these reasons, the petition is dismissed. No costs. Certified xerox.

(Jayanta Kumar Biswas, J.)

