

Constitution Writ

Present: The Hon'ble Justice Jayanta Kumar Biswas.

Judgment on: March 11, 2010

W.P.No.8328 (W) of 2004

Md. Nasim

v.

State of West Bengal & Ors.

POINTS:

Provisional assessment---Order of final assessment passed-----Whether provisional assessment can be challenged---Electricity Act,2003, Section—126.

FACTS:

The petitioner filed the instant Writ Application questioning order of provisional assessment under s.126 of the Electricity Act, 2003 read with cl.29 of the Conditions of Supply. Respondent /CESC has produced a copy of the order of final assessment of the assessing officer. It is evident from the order that it was made after giving reasonable opportunity of hearing to one of the two consumers named in the order.

The petitioner is one of the consumers named in the order of final assessment. It is submitted that during pendency of this petition the assessing officer ought not to have made the order of final assessment.

It has been argued that for appealing the petitioner would have been required to pay a part of the other consumer's liability.

HELD:

Proceedings pending before the assessing officer were not stayed, and hence the officer was free to proceed with them and make the order of final assessment. The petitioner acquired knowledge of the order of final assessment as back as June 28, 2004. He was free to appeal and request the appellate authority to consider the question of deposit only with respect to his own liability. There was no valid reason not to appeal before the statutory authority, if anyone was aggrieved by the order of final assessment. When the order of final assessment was in existence at the date this petition was brought, the Court is unable to see how the order of provisional assessment could be challenged. Before this petition was brought the order of provisional assessment challenged thereby had stood merged into the order of final assessment.

PARAS---3&4

Mr Sanowar Alam, advocate, for the petitioner

Mr N.K. Mukherjee, advocate, for CESC Ltd.

The Court:

1.This art. 226 petition dated May 12, 2004 was filed questioning an order of provisional assessment dated March 11, 2004, Annexure P4 at p.30, of the assessing officer of CESC Limited under s.126 of the Electricity Act, 2003 read with cl.29 of the Conditions of Supply.

2.With the opposition dated June 28, 2004 CESC has produced a copy of the order of final assessment of the assessing officer dated April 6, 2004. It is evident from the order that it was made after giving the consumer reasonable opportunity of hearing and hearing Md. Shakil, one of the two consumers named in the order.

3.The petitioner is one of the consumers named in the order of final assessment. It is submitted that during pendency of this petition the assessing officer ought not to have made the order of final assessment. There is no merit in the argument. Proceedings pending before the assessing officer were not stayed, and hence the officer was free to proceed with them and make the order of final assessment.

4.From the order of final assessment made under s.126 both the consumers named therein could appeal to the forum mentioned in s.127. It has been argued that for appealing the petitioner would have been required to pay a part of Shakil's liability. The petitioner acquired knowledge of the order of final assessment as back as June 28, 2004. He was free to appeal and request the appellate authority to consider the question of deposit only with respect to his own liability. It seems to me that there was no valid reason not to appeal before the statutory authority, if anyone was aggrieved by the order of final assessment. When the order of final assessment was in existence at the date this petition was brought, I am unable to see how the order of provisional assessment could be challenged. Before this petition was brought the order of provisional assessment challenged thereby had stood merged into the order of final assessment. For these reasons, the petition is dismissed. It is made clear that nothing herein shall prevent the petitioner from submitting representation to CESC and also from appealing under s.127 in accordance with law. No costs. Certified xerox according to law.

(Jayanta Kumar Biswas, J.)