
(2017) 02 CAL CK 0039
In the Calcutta High Court
Case No : W.P. No. 4016 (W) of 2006

M/s. Gourhati Cold Storage Pvt. Ltd.

APPELLANT

Vs

West Bengal State Electricity Board

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 CalLT 60

Hon'ble Judges : Siddhartha Chattopadhyay, J.

Bench : Single Bench

Advocate : Mr. Dinabandhu Chowdhury, Mr. Amal Kumar Saha, Mr. Iresh Paul, Mrs. Shreya Ghosh and Mr. S. S. Banerjee, Advocates, for the Petitioner; Mr. Bhaskar Mitra and Mrs. Mitali Bhattacharya, Advocates, for the WBSEDCL

Final Decision : Allowed

Judgement

Siddhartha Chattopadhyay, J.—The writ petitioner challenges the final order dated 12.12.2005 passed by the Appellate Authority (being the Chief Engineer) WBSEB. By the impugned order the statutory Appellate Authority came to a conclusion that the provisional bill as well as final bill served upon the writ petitioner are in order. According to the appellant, the said order passed by the Appellate Authority is without any reason and mainly based on surmise and conjecture.

2. The grievance of the petitioner is such that in terms of the general conditions of supply, the WBSEB may make provisional assessment of the alleged damages and further they may claim amount in terms of the provisions of the said clause but in any case such notice of such claim has to be served upon the consumer within a month from the date of inspection. The said time limit relating to service of the provisional assessment may be relaxed under Clause 22 (K) of the general conditions of supply. It is the specific case of the petitioner, that such relaxation does not permit the Board to make the provisional assessment after the prescribed period. According to the petitioner, in the present case the Board,

along with the notice under Clause 22 (K) sent a copy of the notice under Clause 22 (J). So according to him, such provisional claim itself is bad in law.

3. At the time of hearing, learned Counsel appearing on behalf of the petitioner contended that the order dated 22.12.2005 ex facie makes it clear that the final assessment has been made beyond the period of sixty days as well as beyond the extended period which would be evident from the letter dated 25.08.2001 itself.

4. The petitioner also contended that over the alleged pilferage of energy, the Board had instituted a criminal case against the writ petitioner. The petitioner appeared before the learned Special Judge (Electricity Act) and faced the trial. After taking evidence of the WBSEB authority and other prosecution witnesses, the said Court came to a finding that there is no evidence of "pilferage of energy" and as a result the writ petitioner was honourably acquitted by the said Special Court. No Appeal has been preferred by the state or by the WBSEB authority against such acquittal. According to him, the story of pilferage has not been established. In spite of that the WBSEB authority had raised the final bill which includes the pilferage of electricity.

5. As against this learned Counsel appearing on behalf of the respondent contended that inspection of the premises of the writ petitioner was inspected in accordance with law and at that time they could not hand over the copy of inspection memo to the petitioner as nobody was found there. After a considerable period, the present opposite party has sent of copy of this inspection memo to the petitioner and so according to them there is no illegality.

6. On a meticulous reading it appears that the authority virtually admitted that they could not serve the inspection report within the statutory period. The Appellate Authority wanted to justify their stand by showing the reasons which are not acceptable. It is perhaps needless to say that when a statute speaks that certain things have to be done in a certain matter, that has to be done in that way not by any other means. In other words, if rules framed under statute ordain action not contemplated by statute, it certainly suffers from excessive delegation.

7. On a close scrutiny of the final order passed by the Appellate Authority it appears that due to disappearance of employees in fear of apprehension and due to arrest of some employees, the memorandum of inspection could not have been served on 28.03.2001. This self-claimed excuse does not stand on the ground that no document has been produced before the Appellate Authority to that effect nor the Appellate Authority had the occasion to consider such document. The said authority further held that in the context of pendency of several suits in different courts including High Court and non-payment of ad hoc bill, provisional bill could not be prepared and served within the stipulated period of time. Pendency of several suits in different Courts cannot be a ground for disobedience to the statute. Here again, the Appellate Authority did not mention

about the pending suits in different Courts. The Clause 22 (A) (3) of general conditions of supply speaks "if such entry or inspection reveals prima facie commission of any act of prejudicial use of supply, malpractice or theft as the case may be, the authorised officer shall prepare a memorandum of such inspection regarding therein the date, time and fact of entry and inspection. The authorised officer shall hand over a copy of the memorandum of inspection to the consumer or his representative or employee, whoever may be present and available at the time of such inspection. Refusal to accept it by the consumer or his representative or his employee shall be deemed to be sufficient service of such copy to the consumer." If we read these provisions meticulously we would find that the authority concerned was under an obligation to serve the memorandum of inspection to the consumer or his representatives or employee whoever may be present and available at the time of such inspection. There is no evidence that the inspecting team has ever made an endeavour to serve the copy upon the present petitioner or his representatives or anybody present there. It is not the case of the authority concerned that they had tendered the memorandum of inspection to the writ petitioner or his men and agents but they refused. Under Clause 22 (J) speaks "notice of provisional assessment:- (1) The notice of the provisional assessment made under Clause 22 (E) or Clause 22 (I) shall be served upon the consumer by the concerned authorised officers in the form prescribed in Appendix-I to these Conditions: (a) Within fifteen days from the date of inspection in the case of L and MV consumers and within thirty days from the date of inspection in case of HV and EHV consumers."

8. Therefore, it was peremptorily incumbent upon the authority concerned to abide by the rules and regulations framed by them. Power to do a particular act must be located in statute and if rules framed under statute ordain action not contemplated by statute, it certainly suffers from vice of excessive delegation. It is perhaps needless to say that when rules are framed for dealing in detail with myriad situations that may manifest themselves for guidance of authority concerned and in that case the authority concerned cannot say goodbye to the said rules.

9. Therefore, it is crystal clear that memorandum of inspection was not served upon the present petitioner in accordance with rules. Final bill has been claimed showing the pilferage of energy charges also. Story of pilferage has been negated by a competent court of law. The said Special Judge held "that apart, it has been already found that the meter room of a bulk consumer remains under a lock and key and that the key remains with the officials of the Board. At the risk of the repetition, I would like to say that there is no evidence at all that the accused persons entered into the meter room by breaking the lock and key and inserted foreign articles in the meter." Finding of that Court has not been appealed against. Since the pilferage is not established from the finding of the learned Special Judge, so the Electricity Authority cannot claim that amount from the petitioner.

10. Having regard to the facts and circumstances of this case I am inclined to hold that the order dated 12.12.2005 passed by the Appellate Authority is unsustainable. But I make it clear that the respondent authority is at liberty to raise the final bill (without charging pilferage of electricity energy) if otherwise due to them, against the present petitioner in accordance with law. With this direction, the writ petition stands allowed.

11. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.