

(2013) 09 CAL CK 0112
In the Calcutta High Court
Case No : Writ Petition No. 22855 (W) of 2012

M/s. Polymac Thermaformers Pvt. Ltd. and Another	APPELLANT
Vs	
The State of West Bengal and Others	RESPONDENT

Date of Decision : 19-09-2013

Acts Referred:

Citation : (2013) 4 CALLT 486

Hon'ble Judges : Sambuddha Chakrabarti, J

Bench : Single Bench

Advocate : Bikas Ranjan Bhattacharya, Mr. Raja Basu Choudhury, Mr. Basudev Biswas and Mr. Asimesh Goswami, for the Appellant; P.S. Bose and Mr. S.S. Koley for the Respondent Nos. 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

Dr. Sambuddha Chakrabarti, J.—By the present writ petition the petitioners have assailed an order dated July 28, 2012 which has been annexed to the writ petition as Annexure P-12. This is the final assessment order for the alleged unauthorized use of electricity by the petitioner No. 1.

2. The petitioner No. 1 is a company engaged in the business of manufacturing different plastic items. It has its factory at Dankuni in the district of Hooghly. The company is a bulk consumer and obtained electricity connection from the respondent No. 2 on or about October 1, 2001.

3. Without going into the details suffice it will be to say that an inspection was carried out in the meter room of the factory premises by some officers of the respondent No. 2. On July 2, 2012 the petitioners received a provisional assessment order to which the petitioners filed their objections. The petitioners were asked to attend a hearing and on July 28, 2012 the respondent No. 5 made over a copy of the final assessment to the petitioners by which the provisional assessment order was confirmed and the respondent No. 5 directed the petitioner No. 1 to pay a sum of Rs. 2,50,59,848/-.

4. It has been recorded in the said order that during inspection it was revealed that the petitioner No. 1 was unauthorizedly using electricity. Anomalies were noticed during inspection as both sides of the meter test terminal block were opened and a remote sensor device was found to be inserted to be operated from outside the meter room with a control device. It was further observed that this unauthorized use of electricity attracted penal action u/s 135 of the Electricity Act and power supply was immediately disconnected on the spot. Thereafter provisional assessment was made and the consumer was asked to pay Rs. 2,50,59,848/- for the unauthorized use of electricity by the consumer.

5. The Assessing Officer while passing the final order had taken into consideration the submissions made by the representative of the consumer and the grounds advanced by the respective parties and after considering the records and all related documents the Assessing Officer passed the impugned order on July 28, 2012.

6. The respondents Nos. 1 to 5 have used an affidavit-in-opposition to which the petitioners have used their affidavit-in-reply.

7. At the hearing of the petition the respondents have taken the point of maintainability of the writ petition. According to Mr. Bose the assessment order made u/s 126 of the Electricity Act, 2003 and section 127 contained a provision of appeal. The latter section provides that any person aggrieved by the final order made u/s 126 of the Act may prefer an appeal in such form verified in such manner and accompanied by such fees as may be specified by the State Commission to an appellate authority as may be prescribed. Mr. Bose has taken a strong objection to the maintainability of the writ petition on the ground that 30 days from the date of the order expired on August 27, 2012. The petitioners without filing any appeal had straight away filed this writ petition which was affirmed on October 5, 2012, i.e., well after the expiry of the period of limitation as provided u/s 127 of the Act. The petitioners have assailed the impugned order in the writ petition on various grounds but have not, however, mentioned anything about why they did not avail themselves of the provisions of the statutory appeal.

8. The respondents have taken the point of the maintainability of the writ petition also in their affidavit-in-opposition. It has been specifically contended in the affidavit that the application was a premature one and under the provisions of the Electricity Act and the rules and regulations framed thereunder the petitioner No. 1 was entitled to file objection before the Assessing Officer who after giving reasonable opportunity of hearing to the petitioner would have passed final order of assessment. According to the respondents the petitioner may accept such assessment and deposit the assessed amount within 7 days or he may or if he is aggrieved by the final order of assessment he may prefer an appeal u/s 127 of the Act within the specified time. But the petitioner has filed the writ petition without availing of such opportunity.

9. In reply the petitioners have alleged that having filed an affidavit-in-opposition the respondents cannot turn back and claim that the petitioners had an alternative remedy.

10. This, however, does not appear to be the complete picture in its entirety. That the respondents had taken the point of the maintainability of the writ petition filed beyond 30 days from the date of the passing of the final order was taken by the respondents at the time of moving the writ petition is admitted very clearly by the petitioner in the affidavit-in-reply. The order dated October 17, 2012 passed by a learned single judge of this Court when the motion was moved also supports the contention of the respondents. It appears from the said order that the Learned Trial Judge had recorded that the petitioner was entitled to file an appeal u/s 127 of the Act before the appellate authority. But such an appeal was not filed. The learned judge had specifically observed that "prima facie it appears that the petitioner by seeking reconsideration of the final order of assessment is once again seeking to save limitation to enable him to file an appeal u/s 127 of the 2003 Act". The whole purpose of seeking reconsideration of the final order was thus very clear to the learned judge admitting the writ petition which was to save limitation in order to enable him to file an appeal.

11. Mr. Bose has said that the petitioner having allowed the statutory period of preferring an appeal to have lapsed the writ petition is not maintainable.

12. In the case of Cal. Electric Supply Corporation Ltd. and Another Vs. Kalavanti Doshi Trust and Others, the facts were more or less similar to that of the present one. In that case on the allegation of pilferage of electricity the electric connection of the petitioners was disconnected and subsequently proceeding was initiated for assessment of the unauthorized use of electricity. A final order of assessment was passed by the appropriate authority from which the writ petitioners did not prefer any appeal within the period of limitation prescribed by law and decided to move the writ application after the expiry of the period of limitation. The writ petition was moved during the vacation and a learned single judge had ex parte directed the appellant to restore the electricity by way of an interim measure on deposit of Rs. 3 lacs. The licensee company had filed an appeal. The division bench of this Court to which I was a party had inter alia held that the learned Trial Judge should not have entertained the writ petition at all in view of the fact that efficacious alternative remedy prescribed under the law had become barred by limitation and there was no provision for condonation of delay in preferring any appeal against such order of final assessment.

13. Thus this is not exactly a case of rejecting a writ petition on the ground of the existence of alternative remedy. This case goes far beyond. This is a case where the statutory period for filing an appeal was allowed to be expired and a writ petition was filed after the period of limitation provided for the statutory appeal. Reliance was placed by the division bench on the case of Chhattisgarh State Electricity Board Vs. Central Electricity Regulatory Commission and Others, In that case the Supreme Court had inter alia held that Electricity Act is a special

legislation within the meaning of section 29(2) of the Limitation Act which lays down that where any special or local law prescribes for any suit, appeal or application a period of limitation different from the one prescribed by the schedule to the provisions of section 3 the same shall apply as if such period was the period prescribed by the schedule and the provisions contained in sections 4 to 24 shall apply for the purpose of determining any period of limitation prescribed for any suit, appeal or application unless they are not expressly excluded by the special or local law. The Supreme Court had held that section 5 of the Limitation Act cannot be invoked by the Supreme Court for entertaining an appeal filed against an order of Tribunal beyond the statutory period specified in section 125 of the Act. Any interpretation of section 125 of which may attract the applicability of section 5 of the Limitation Act will defeat the object of the legislation namely, to provide special limitation for filing an appeal against the decision or order of the Tribunal.

14. Following the said judgment it can be held that on the date of the presentation of the writ petition the remedy of the petitioner was totally barred. It is now a settled position of law that by invoking the writ jurisdiction a Court should not entertain a barred remedy. On this ground alone the writ petition is liable to be dismissed.

15. In such view of it the writ petition is not entertainable. The petitioner cannot allege of any suffering because of the pendency of the writ petition in this Court inasmuch as the respondents had taken this point at the time of moving this motion and the petitioner wanted to give a fresh life to a remedy which was already time barred.

16. The writ petition is hereby dismissed.

17. With the dismissal of the writ petition the application for addition of party being CAN 3747 of 2013 has become infructuous and the same is also being disposed of. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all requisite formalities.