

(2007) 08 CAL CK 0075

In the Calcutta High Court

Case No : M.A.T. No. 2494 of 2007 with CAN No. 6756 of 2007

Seiko Steel and Wires Industries and Another

APPELLANT

Vs

West Bengal State Electricity Board and Others

RESPONDENT

Date of Decision : 31-08-2007

Acts Referred:

Electricity Act, 2003 — Section 126(1), 127

West Bengal Electricity Regulatory Commission (Regulation) Act, 2004 — Regulation 5.2

Citation : (2007) 4 CHN 404

Hon'ble Judges : Rudrendra Nath Banerjee, J; Bhaskar Bhattacharya, J

Bench : Division Bench

Advocate : Joy Saha and Rakhi Shroff, for the Appellant; Sumit Panja and Ram Mohan Chottapadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Bhaskar Bhattacharya, J.—This mandamus appeal is at the instance of unsuccessful writ petitioners and is directed against order dated July 12, 2007 passed by a learned Single Judge of this Court thereby dismissing the writ application filed by the appellants wherein they challenged the decision of the respondents dated 13th December, 2006 by which the respondents disconnected the supply of electricity to the writ petitioners on the ground of pilferage of electricity. The other consequential orders were also prayed for in the writ application.

2. Being dissatisfied, the writ petitioners have come up with the present mandamus appeal.

3. It appears from record that on 13th December, 2006 at about 4.20 a.m., the West Bengal State Electricity Board exercised its power under Regulation 5.2 of the West Bengal Electricity Regulatory Commission (Regulation), 2004 by disconnecting the supply of electricity of the writ petitioners on the ground of tampering the meter or meter-in-circuit/theft/malpractice/unauthorized use of

electricity as indicated in the attached inspection report.

4. The attached inspection report in details gives the nature of the illegal act committed by the writ petitioners and such report was signed on behalf of the writ petitioners by two of its employees.

5. The learned Single Judge, by the order impugned herein, has held that there was no illegality in the decision of disconnection of the supply of electricity in the facts of the present case and that after passing of the decision of disconnection, the same was again restored on the basis of an interim order passed in the writ application after the writ petitioner had complied with the direction for deposit of part of the amount assessed by the provisional assessment order and ultimately, even the final assessment order had been passed. The learned Single Judge was of the view that if the writ petitioners were at all dissatisfied with such final assessment order, they were free to challenge such decision by way of appeal u/s 127 of the Electricity Act, 2003.

6. Mr. Saha, the learned Advocate appearing on behalf of the appellants vehemently contended before us that a mere perusal of the decision dated 13th December, 2006 would show that no specific reason was assigned why the electricity of the writ petitioners had been disconnected. Mr. Saha points out that in the said notice, no definite cause had been assigned but only on the basis of allegations contained in a vague printed form used by the West Bengal State Electricity Board, the decision to disconnect the supply of electricity had been communicated. Mr. Saha submits that although in the notice itself it was specifically mentioned that the disconnection would not be made before the expiry of 24 hours from the service of such notice, in fact, the electricity was disconnected simultaneously with the service of such notice.

7. Apart from the ground of ambiguity in the order, Mr. Saha by referring to Section 126(1) of the Electricity Act, 2003 contends that as in this case the Assessing Officer himself did not inspect the property prior to taking decision of disconnection, the order of assessment was bad.

8. Mr. Panja, the learned Advocate appearing on behalf of the respondents, has, on the other hand, opposed the aforesaid contentions of Mr. Saha and has contended that in this case along with the notice of disconnection, the inspection report was very much attached which in detail had shown the actual act of theft of electricity committed by the writ petitioners. Mr. Panja also refers to the photographs annexed to the affidavit-in-opposition to the writ application filed before the learned Single Judge showing that there was definite illegal act on the part of the writ petitioners in bypassing the meter.

9. As regards the question whether the Assessing Officer was in the inspection team, Mr. Panja submits that no such point was taken in the writ application and therefore, this Court should not permit the writ petitioners to raise such a new point for the first time before this Court. Mr. Panja, therefore, prays for dismissal of this mandamus appeal.

10. After hearing the learned Counsel for the parties and after going through the materials on record, we find that in the notice dated 13th December, 2006 specific illegal act of the writ petitioners was admittedly not disclosed. However, the order dated 13th December, 2006 itself shows that the same was accompanied by the inspection report attached to the said notice and the inspection report itself shows, in detail, the exact nature of illegal act committed by the writ petitioners.

11. We find no substance in contention of Mr. Saha that such report was not part of the notice, which is annexed at page 53 of the application for stay. We have already pointed out that in the second paragraph of the notice dated 13th December, 2006 it was expressly stated that the inspection report was attached to the said notice and in the writ application, the writ petitioners never alleged that no such inspection report was attached to the notice impugned in the writ application.

12. We, therefore, find that on the face of the notice, challenged in the writ application, there was neither any want of the authority on the part of the respondents nor was the said notice illegal for violation of any of the laws for the time being in force.

13. We find substance in the contention of Mr. Panja, the learned Advocate appearing on behalf of the respondent, that the allegation that the Assessing Officer was not a member of the inspection team had not been made in the writ application and if such point was taken, his clients in their affidavit could disclose the documents falsifying such allegation. Although, Mr. Saha tried to impress upon us that the inspection report does not show the signature of the Assessing Officer, we are of the view that it is not necessary that all the members of the inspection team should sign the inspection report and such point being basically a question of fact, ought to have been specifically alleged in the writ application and such point not being taken before the learned Single Judge, was not available to the appellants for the first time in this appeal before this Court. Although, Mr. Saha strenuously contended before us that the subsequent order making the final assessment should be liable to be set aside as the same was passed during the pendency of the writ application, we are not at all impressed by such submission.

14. In the writ application, there was no interim order restraining the respondents from proceeding with the final assessment. The copy of the inspection report having been served upon the writ petitioners and in spite of such report, the writ petitioners not having raised any objection before the authority, we are of the view that within the scope of this writ application, we cannot enter into the question whether the final assessment order was illegal. The learned Single Judge, as it appears from the order impugned, has given liberty to the writ petitioners to challenge such order before appropriate forum.

15. We, therefore, find no reason to interfere with the order passed by the

learned Single Judge. This appeal is, thus, devoid of any substance and is dismissed accordingly with costs, which we assess at 300 G.Ms.

Rudrendra Nath Banerjee, J.

16. I agree.