

(2007) 07 CAL CK 0036

Calcutta High Court

Case No: Writ Petition No. 2028 (W) of 2007

Seiko Steel and Wires Industries
and Another

APPELLANT

Vs

West Bengal State Electricity
Board and Others

RESPONDENT

Date of Decision: July 12, 2007

Acts Referred:

- West Bengal Electricity Regulatory Commission (Supply Code) Regulations, 2004 - Regulation 5.2, 5.2.1, 5.3.3, 6.05.1

Citation: (2008) 1 CHN 88

Hon'ble Judges: Nadira Patherya, J

Bench: Single Bench

Advocate: Joy Saha, Subhankar Nag and Rakhi Shroff, for the Appellant; Sumit Kr. Panja and R.M. Chattopadhyay, for the Respondent

Final Decision: Dismissed

Judgement

Nadira Patherya, J.

This is an application challenging the notice of disconnection dated 13.12.2006 and the demand dated 16.12.2006.

2. Petitioner's Case

2.1. The case of the petitioner is that on 13.12.2006 at 4 a.m. a notice of disconnection was issued under Regulation 5.2 of the West Bengal Electricity Regulatory Commission (Supply Code) Regulations, 2004. A copy of the said notice was handed over to the petitioner's representative and on the basis thereof a provisional order of assessment for Rs. 64,33,853/- was issued to the petitioner on 16.12.06. The said notice of disconnection and provisional order of assessment have been challenged in the instant writ petition and pursuant to order dated 9.1.07 the petitioner was directed to deposit 50% of the amount due. From the said order an

appeal was filed by the petitioner. The petitioner was directed to make payment and pursuant to orders of the Appeal Court 50% of the amount provisionally assessed has been paid in instalments and connection restored to the petitioner's factory.

2.2. The ground on which the notice of disconnection was challenged is that without waiting for the expiry of 24 hours as stipulated in the notice dated 13.12.2006, disconnection was made immediately upon service of notice and thereafter the provisional order of assessment served on the petitioner. The last reading taken was on 24.11.06 and between 24.11.06 to 13.12.2006 there was no question of any theft of electricity or tampering with the meter and equipments. Therefore the provisional order of assessment and notice of disconnection are bad and liable to be set aside. Regulation 5.2.1 and 6.05.1 have not been complied with by the respondent authorities and therefore the said notice dated 13.12.06 and provisional order of assessment be set aside.

3. Respondents' Case

3.1 Counsel for the respondent authorities submits that the provisional order of assessment was served on the petitioner on 16.12.06 and provides for an objection to be filed. As no objection was filed, the final order of assessment has been passed on 22nd May, 2007. Regulation 5.3.3 empowers the authorities to disconnect in emergent cases without notice and the procedure accordingly has been followed. Pursuant to orders of this Hon'ble Court and on receipt of 50% of the billed amount the supply has been restored.

3.2. All procedures of the 2003 Act and Regulation, 2004 relating to the Supply Code have been followed in the instant case. The Inspection Team headed by the Superintending Engineer visited the petitioner's factory premises on 12.12.06 at 9.30 p.m. and on inspection it was detected that the petitioner had tampered with the metering equipments and thereafter an inspection report was prepared. The articles were seized and a "Seizure List" was prepared. Subsequently, a First Information Report was also lodged with the concerned police station and the notice of disconnection was issued. The contractual load as per agreement between the petitioner and the licensing company is for supply of 124 KVA. At the time of inspection it was found that the petitioner was consuming a load of 330 KVA, far in excess of the contractual load. The inspection was made in the presence of the Superintending Engineer and therefore the question of submitting a report within 24 hours of disconnection as per Regulation 5.3.3 was not required. The final order of assessment has been passed and the petitioner has an efficacious alternative remedy and therefore this writ petition ought not to be entertained.

4. Conclusion

4.1. Having considered the facts of the case the order of provisional assessment dated 16.12.06 gave liberty to the petitioners to raise an objection. The same was not availed of and the final order of assessment was passed. The final order of

assessment was passed on 22nd May, 2007 and served on the petitioner. Therefore the petitioner ought to file a statutory appeal u/s 127 of the 2003 Act.

4.2. By orders of Court supply has been restored to the petitioner's factory premises and therefore no question arises to quash the notice of disconnection,

4.3. The only question which needs to be considered is whether disconnection could have been made by the licensing company under Regulation 5.2 of the Supply Code of 2004 without service of notice in writing. On a plain reading of Regulation 5.2 of the Supply Code, 2004 it will appear that in cases where the licensing company proposes to disconnect supply for theft/tampering, the detailed reasons in writing must be served on the consumer. From a reading of the notice dated 13.12.06 the reasons have been specified for discontinuing supply to the petitioner's factory premises. It is true that none of the alternatives have been ticked. But from the seizure list, handed over on 13.12.06 to the representative of the petitioner, the petitioners have been informed that the seizure has been made on account of theft and that the meter has been bypassed from the city chamber busbar. Therefore the "ticking" of any particular box will not be necessary. Regulation 5.2 does not mandate issuance of 24 hours notice in cases of disconnection. It requires reasons to be given in writing for the disconnection and information to the consumer with regard to his right of appeal against such disconnection. It is also not mandatory to give notice prior to disconnection. Therefore, the disconnection can be made immediately depending on the circumstances of each case. Regulation 5.3.3 is not applicable in the instant case as the notice has been issued under Regulation 5.2 of the Supply Code of 2004.

4.4. For the aforesaid reasons the notice dated 13.12.06 is as per the provisions of the 2003 Act and Regulation 5.2 and therefore except to the extent that the petitioner is given liberty to file an appeal from the order of final assessment dated 22nd May, 2007, no order need be passed on this application. The application is accordingly disposed of.

Later:

5. The Counsel appearing for the petitioner prays for stay of the judgment passed today.

6. Such prayer is considered and refused.