

# SUPREME COURT OF INDIA

Chairman, West Bengal State Electricity Board

Vs.

Syed Mukbul Hossain

SLP (C) No. 6618 of 2007

(Dr. Arijit Pasayat and Dr. Mukundakam Sharma JJ.)

08.12.2008

## JUDGMENT

**Dr.Arijit Pasayat, J.**

1. Leave granted.

2. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court disposing of the writ petition, the appeal and the application filed with certain modifications. On the allegations that there was insertion of a variant element in the meter to bye pass recording of actual consumption, First Information Report was lodged by the personnel of the appellant-Board. Provisional assessment was made. Thereafter there was disconnection of electricity supply. A writ application was filed by the respondent No.1 making grievance that the disconnection of the supply was wrongly done and the provisional assessment as made claiming Rs.2,50,046/- on the alleged ground of theft of electricity and/or tempering of the meter was not sustainable. Learned Single judge of the Calcutta High Court disposed of the matter in Writ Petition No.2029 (W) of 2006 whereby and where under the appellants were directed to restore electrical supply on deposit of Rs.20,000/- by the writ petitioners. Appellants questioned correctness of the order on the ground that the disconnection of supply line was effected on 24.1.2006 in terms of the Regulation 5.2.1 of the *West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulation 2004* (hereinafter referred to as the 'Supply Code'). The Division Bench referred to Regulation 5.2 and observed that the appellants have got right to disconnect supply line of electricity on fulfillment of the conditions stipulated. But the same is required to be done following a particular procedure. It was held that due procedure was not followed. The Division Bench held that under Section 126 of the concerned *Electricity Act, 2003* the writ petitioner had a right of filing an objection thereof which has been filed by the writ petitioner under Section 126(3). The appellants are required to pass a final order after giving a reasonable opportunity of being heard. The writ petitioner also has a right to prefer an appeal under Section 127 of the Act against the final assessment order. The Division Bench, therefore, permitted the parties to pursue the remedy. It was, however, held that the disconnection of power supply

was contrary to and was in breach of regulation 5.2 and the writ petitioner was, therefore, entitled to be compensated. Accordingly the cost of Rs.25,000/- was imposed.

3. Learned counsel for the appellant Board submitted that approach of the High Court is clearly erroneous. Admittedly, objection has been filed. It was noticed that no order on merits could have been passed. By order dated 11.08.2008 final assessment was directed to be done.

4. Learned counsel for the appellant has further submitted that the respondents has suppressed the fact that much before the order was passed by this Court, the final assessment has been made by order dated 27.9.2007 and the statutory appeal which was required to be done within 30 days was not filed within the said period and, therefore, the appeal, if any, filed subsequently is of no consequence.

5. Learned counsel for the respondents, on the other hand, submitted that the High Court has taken note of the factual scenario and the legal principles applicable. The final assessment in any event is the subject to challenge. Since the final assessment has been challenged, we feel interest of justice would be best served if the same is disposed of in accordance with law. It is open to appellant-Board and its functionaries to highlight before the concerned authority as to the maintainability of the appeal on the ground of alleged delay. It is needless to say that the said aspect shall be considered by the appellate authority. Let the appeal be disposed of in accordance with law without being influenced by any of the observations made by the High Court in the impugned order and by learned Single Judge. The direction for costs is set aside. The interim order dated 20.4.2007 shall continue till disposal of the appeal. We make it clear that we have not expressed any opinion on merits because of the interim protection.

6. The appeal is disposed of accordingly. No costs.