

Vs. Cesc Ltd. and ors.

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SooperKanoon Citation : sooperkanoon.com/1060463

Court : Kolkata

Decided On : Aug-06-2012

Judge : Jayanta Kumar Biswas

Respondent : Cesc Ltd. and ors.

Judgement :

ORDER

SHEET W.P.No.1150 of 2009 IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction ORIGINAL SIDE NASIMUL HUDA SHAMSHI
Petitioner Versus CESC LTD.& ORS.Respondents BEFORE: The Hon'ble
JUSTICE JAYANTA KUMAR BISWAS Date :

6. h August, 2012.

For Petitioner : Mr.Sk.R.Islam, Advocate For Respondents: Mr.Subir Sanyal,
Mr.Ashok Jena, Advocates The Court : The petitioner in this writ petition under
art.226 dated November 13, 2009 is questioning an order of final assessment
dated October 7, 2009, passed by an assessing officer of CESC under s.126 of
the Electricity Act, 2003.

The order reveals that it was passed ex parte.

The assessing officer recorded that in spite of intimation through the order of
provisional assessment, the consumer chose representation or appear for

personal hearing.

not to submit any In paras.10 and 13 and also in ground VI of the writ petition, the petitioner has made out a case that no order of provisional assessment was served on him, and that the impugned order was passed without giving him a reasonable opportunity of hearing.

Referring affidavit in to the documents opposition dated at pages Februar

8. an

2010. of Mr.the Sanyal appearing for CESC has submitted that it is wrong to say that no order of provisional assessment was passed and served, and that the petitioner was not given a reasonable opportunity of contesting the proceedings.

The document at page 20 of the opposition does not conclusively prove that the order of provisional assessment was actually served on the petitioner.

Only a xerox of a postal receipt has been produced to show that a copy of the order of provisional assessment was sent to the petitioner.

No acknowledgement in support of the claim has been produced.

The document at page 21 shows that someone received certain material for one F.

Saher on September 16, 2009.

It cannot lead to a conclusion that the person received the order of provisional assessment on behalf of the petitioner.

In my opinion, on the facts of the case, it will be appropriate to direct the assessing officer to proceed afresh with the matter.

For these reasons, I set aside the final order of final assessment dated October 7, 2009, allow the writ petition to this extent and order as follows.

If the provisional petitioner assessment files dated his objection September 15, to 2009 the order (page 22 of AO) within a fortnight, then the objection shall be

accepted.

In any case, the assessing officer shall pass the order of final assessment after giving the petitioner reasonable opportunity of presenting his case and hearing.

Nothing herein shall prevent the petitioner from seeking reconnection according to provisions of the relevant regulations.

No costs.

Certified xerox.

(JAYANTA KUMAR BISWAS, J.) SN.

Asst.Registrar(CR)

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