

Item No.13
14.10.2026
Court. No. 12
GB

MAT 1782 of 2026
With
CAN 1 of 2026

CESC Limited
Vs.
Smt. Sutapa Nath & Anr.

*Mr. Dr. Madhusudan Saha Roy,
Mr. Debanjan Mukherjee*

...for the Appellant.

*Mr. Bidyut Kumar Halder,
Mr. Indranil Halder,
Ms. Neha Singh*

...for the Respondent No.1.

1. The CESC Limited is the appellant. The appellant is aggrieved by the order dated September 28, 2026, passed in WPA 26103 of 2026. By the interim order, the learned Judge directed restoration of supply as payment of 50% of the finally assessed amount had been made.
2. The final order of assessment was passed on September 21, 2026 and the appellant was granted liberty to prefer an appeal. The matter has been kept pending before Her Lordship to be listed two weeks after the vacation.
3. Mr. Dr. Saha Roy, learned advocate the CESC Limited submits that the order for restoration of supply is contrary to law and in violation of the statutory provision. Restoration of supply which was disconnected on account of pilferage, can only be made upon payment of the entire finally assessed amount. He relies on two Division Bench judgments passed in the matter of ***Md. Iftekhar – versus – CESC Limited***

& Anr. in **MAT 510 of 2026** and in the matter of **Santosh Agarwal – versus – CESC Limited & Ors.** in **FMA 197 of 2022**. Relying on the decision of a Full Bench in the matter of **Prabhat Pan – versus – State of West Bengal** reported in **2015 (2) CHN (CAL) 185**, it is submitted that the order of the learned Single Judge is *per incuriam* and contrary to the Division Bench judgments. The learned Single Judge had digressed from the settled proposition of law.

4. It is further submitted that in the decision of **Anurag Kumar Singh & Ors. – versus – State of Uttarakhand & Ors.** reported in **AIR 2016 Supreme Court 4542**, the Hon'ble Apex Court held that judicial discretion could not be exercised by court when the statute was clear. Discretion could not exist when there was but one lawful option. He prayed for setting aside of the order impugned.
5. Mr. Halder, learned advocate for the writ petitioner submits that, at least three Division Benches of the High Court in **MAT 553 of 2013, MAT 1784 of 2016 and MAT 607 of 2010** had permitted restoration of supply upon payment of 50% of the assessed amount and made the payment of remaining 50% subject to the result of the statutory appeal.
6. We are not impressed with the submissions of Mr. Halder in view of the provision of Section 135(1A) of the Electricity Act, and the proviso. The same is quoted below:-

“Section 135 (1A)

(1A) Without prejudice to the provisions of this Act, the licensee or supplier, as the case may

be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity:

Provided that only such officer of the licensee or supplier, as authorized for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity:

Provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnection:

Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.”

7. The 3rd proviso to Section 135(1A) clearly mandates that on deposit and/or payment of the assessed amount in accordance with the provisions of the Act, supply shall be restored within 48 hours from such deposit and the deposit will be without prejudice to the rights and contentions of the consumer.
8. Regulation 6.3 of 55/WBERC dated August 7, 2013 provides that the supply of electricity to a consumer whose supply had been disconnected in terms of the Regulation 4.2.1 shall be reconnected by the licensee at

the earliest and positively within 48 hours from the time of payment of the assessed amount. Regulation 4.2.1 deals with disconnection of supply upon detection of theft or unauthorized use. By passing the interim order, Her Lordship has rewritten the statute. It was not a situation in which discretion could be exercised.

9. Although, Mr. Halder has tried to persuade us to agree with the directions passed by the Division Benches of this Court, we respectfully disagree with those for the following reasons:-

- a) In none of the decisions, the issue was decided by applying the legal provision.
- b) The proposition of law was not considered.
- c) No ratio had been laid down.

10. Under such circumstances, we agree with the decision of the two Division Benches passed in FMA 197 of 2022 and MAT 510 of 2023. The relevant portions of the decision in FMA 197 of 2022 are quoted below:-

“Having heard the learned Counsel for the parties and on perusal of the record, it is noticed that learned Single Judge has not committed any error in reaching to the conclusion that against the final order of assessment the appellant should avail the remedy of appeal under Section 127 of the Electricity Act, 2003. Since, an alternative efficacious remedy of appeal is available, therefore, no ground was made out to entertain the writ petition. So far as the issue on grant of reconnection on payment of 50% of the assessed amount is concerned though under Section 127(2) of the Act an appeal is maintainable on deposit of half of the assessed amount but that is not enough for restoration

of the electricity connection in a case of theft of electricity. In view of the contents of inspection report appellant cannot contend that the case is not covered by Section 135. Learned Single Judge has rightly taken note of the provisions of the Sections 126, 127 and 135 of the Act while reaching to the conclusion that the appellant is not entitled to reconnection merely on deposit of 50% of the amount.

This Court also in the matter of Biswajit Bose and Anr. vs. CESC Limited and Ors. by order dated 06.04.2022 passed in MAT 414 of 2022 considering the similar issue had held that:

“So far as the issue of right to file an appeal and its hearing is concerned, under Section 127 of the Electricity Act, appeal becomes maintainable against an order of assessment if the appellants deposit half of the assessed amount in terms of sub-section (2) of Section 127 subject to the other provisions of the Act. But the issue which has been raised in the matter is about restoration of electricity connection on deposit of 50% of the amount. Third proviso of Section 135(1A) of the Act provides for restoration of electricity on deposit of payment of assessed amount which reads as under:

“135(1A) – Without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity; Provided that only such officer of the licensee or supplier, as authorised for the purpose by the Appropriate Commission or any other officer of the licensee or supplier, as the case may be, of the rank higher than the rank so authorised shall disconnect the supply line of electricity; Provided

further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hour from the time of such disconnect; Provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or 5 electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment.”

Regulations have also been framed in exercise of the powers conferred by the Electricity Act, namely, the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations, 2013 and Regulation 6 relates to reconnection of supply and Regulation 6.4 which is relevant, reads as under:

“6.4. Where a consumer served with the order of provisional assessment under regulation 5.2 or the order of final assessment under regulation 5.4 accepts such assessment and wishes to pay the assessed amount, he may submit an application to the licensee in the format as in Annexure – 2 within two working days from the date of receipt of the order of provisional assessment or final assessment, as the case may be, and the licensee shall provide him/serve upon him bill(s) for the purpose within forty eight hours of receipt of such application to enable the consumer to pay the amount provisionally or finally assessed. On payment against such

provisional or final bill by the consumer, the reconnection shall be done within 48 hours.”

The above regulation also provides that on payment of provisional or final bill by the consumer the reconnection will be done within 48 hours.

Having perused the order of the learned Single Judge, we find that the learned Single Judge has refused to direct reconnection of electricity on deposit of 50% of the assessed amount having due regard to the provision of contained in Section 135(1A) of the Act and Regulation 6.4.

Hence, we are of the view that the learned Single Judge has not committed any error in not accepting the prayer of the appellants for restoration of the electricity only on deposit of 50% of the assessed amount.”

11. We further quote the decision of **Md. Iftekhhar** in support of the same proposition.

“3) The Court cannot rewrite the law nor can the regulations be construed. Under Section 135(1A), third proviso read with Clause 6.3 of the Regulation 55/WBERC dated August 7, 2013, the consumer whose supply has been disconnected on the ground of theft or unauthorized use of electricity can seek reconnection without prejudice to all other statutory remedies, upon deposit of the finally assessed amount.”

12. Accordingly, the order impugned is set aside.
13. However, if the writ petitioner is inclined to obtain electric connection, CESC Limited will grant such connection and we direct as hereunder:-

- i) Restoration of supply upon payment of reconnection charges shall be made within 48

hours from date, in view of the payment of 50% of the assessed amount, i.e., Rs.1,28,935.50/-.

ii) Remaining 50% shall be paid in four equal monthly instalments along with current electric charges.

iii) First of such instalment shall be paid along with current bill in November 2026 and month by month, every months, till liquidation. Fraction if any, will be added to the last instalment.

iv) In case of failure to pay any of such instalments, the CESC shall disconnect the supply.

14. Accordingly, the appeal and the application are disposed of.
15. Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Shampa Sarkar, J.)

(Arjun Ray Mukherjee, J.)