IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

PRESENT:

HON'BLE JUSTICE SUBRATA TALUKDAR
AND
HON'BLE JUSTICE KESANG DOMA BHUTIA

A.P.O.T. No. 117 of 2021
With
W.P.O. No. 260 of 2021

Jaishree Steels Pvt. Ltd. and Anr.
-Vs.-
West Bengal State Electricity Distribution Company Ltd. and Ors.

For the Appellant	: Mr. Ratnanko Banerji Mr. Ratnesh Rai Mr. D.N. Sharma Mr. AnkurRai Ms. Vipra Garg
For the Respondents	: Mr. SrijanNayak Mr. Sujit Sankar Koley
Heard on	: 24/09/2021
Judgment on	: 17/11/2021

Subrata Talukdar, J:

The short point which arises for consideration in this appeal is whether the appellants and, specifically the appellant No.1/ the Company, were liable to suffer sudden disconnection of electricity supply by the respondents/ the Distribution Company/ WBSEDCL/ the Licencee.

The appellants contend that previously they were under a licensing agreement for supply of electricity for the contracted demand supplied by the Durgapur Projects Limited (DPL). The contracted demand level being upwardly revised upon mutual agreement of the parties, DPL started raising incorrect bills *qua* the upward revision.

The escalation of the tariff demand became the subject of stiff negotiation between the parties. While the appellants insisted on waiver of the escalated bill amounts, DPL sought fulfilment of the demand on the basis of instalments.

DPL thereafter merged with the Licensee/ WBSEDCL on and from 1st January 2019. The appellants further contend that consequent to the merger, WBSEDCL failed to appreciate the basis of the transactions with DPL leading up to the enhanced tariff demand. The appellants submit that the notice of disconnection dated 8th July 2021, if at all the same can be treated to be one, is not in conformity with Section 56(1) of the Electricity Act, 2003 (for short the *2003 Act*). The appellants also contend that in the alternate no disconnection could have been effected by the Licencee since the purported enhanced tariff demand failed the limitation test of two years as provided by Section 56 (2) of the *2003 Act.*

The appellants submit that there are no current outstandings payable to the Licencee and *Late Payment Surcharge* (LPSC) have been surreptitiously introduced by the Licencee to pad up the current bills. In any even stage LPSCs have lost their validity to be enforced having regard to the restriction imposed by Section 56(2) of the *2003 Act (supra).* From a compilation of bills raised by the Licencee and claimed to be paid by the appellants, it is sought to be demonstrated that out of the last outstanding shown prior to disconnection, corresponding to the period of the amount of Rs. 10.4 Crores approximately, the appellants have paid approximately above Rs. 13 Crores, inclusive of current consumption charges. The appellants dispute the add-on LPSCs and maintain that the disconnection is thoroughly illegal. It is submitted that due to the sudden disconnection, the factory has been left idle, the workers with their dependants have been left without livelihood and, equally important, the appellants would have to incur huge costs to re-fire the furnace.

Mr. Mukherjee, Learned Senior Counsel appearing for the appellants, strongly relies on the reported decision in *2020) 4 SCC 650* to make the point that in the event limitation in terms of Section 56(2) (*supra*) expires *qua* any demand proposed to be raised by the Licencee, the result cannot be disconnection of electricity supply. It may be arguably open to a Licencee to raise the demand by way of an additional supplementary charge, which however does not apply to the present facts.

Learned Senior Counsel submits that the Hon'ble Single Bench fell into deep error by comprehending the dispute between the parties to be in the nature of a complex arithmetical analysis which should be best left for a decision by the Central Grievance Redressal Officer (for short the *CGRO*) as provided by the *2003 Act*.

Per contra, the Licencee, on the basis of a subsequent affidavit directed to be filed by the order of the Hon'ble Single Bench dated 23rd July

2021 has argued that with the migration of the billing process to WBSEDCL, the outstanding dues of the appellants stood at around Rs. 8.81 Crores as in the first quarter of 2019. Throughout 2019 the appellants were granted payment by instalments which, however, was not maintained by them.

The failure to honour the instalments continued throughout 2020. Such failure, in addition to raising the consumption charges, also led to imposition of LPSCs. The current payments being made by the appellants were therefore required to be adjusted against previous outstanding dues.

At *Paragraphs 11,12* and *13* of the said subsequent affidavit (below) the following is pleaded on behalf of the Licencee. The pleadings are sought to be supported by a Chart disclosing the outstanding dues of the appellant No.1/ the Company for the billing months December 2020 to June 2021. The aforesaid paragraphs read as follows:

> "*11) In this way for Bill month June 2021: Total OSD was Rs. 9231931426, out of which Amount for the said month was Rs. 12130967.89 for consumption period of 01.06.21 to 01.07.21. The accrued LPSC was Rs. 994130.45 and the payable after due date amount is Rs. 10,44,50,283/-. The petitioner paid Rs. 1,932,866/- on 8th June, 2021 and Rs. 14,131,551.00/- on 14th June, 2021 whereas the actual date of the entire payment was scheduled on 14th December, 2020 and 13th January 2021 respectively. The outstanding amount in the said bill was meant for the month of December 2020, January 2021, February 2021, March 2021, April 2021 and May 2021.*
>
> *12) In the meanwhile disconnection notice was sent to consumer every month on expiry of due date. Last notice was served vide our memo no. C/BC/BUR/DPL/22/290 dated 19.04.21 for the outstanding due up to March 2021. Disconnection was not effected on sympathetic ground due to pandemic. Finally disconnection was effected on 08.07.21.*

13) Present OSD as on date amounting Rs. 10,44,50,282.16 includes OSD of bill month December 2020 (partially) to June 2021. A Table showing details of current consumption charges along with outstanding dues for the period mentioned in the bills and payment made therein and accrued Late Payment Surcharge, amount

adjusted against outstanding dues are as follows:-

A	B	C	D	E	F	G	H
Bill Month	Normal Due Date	OSD Amt.	LPSC Amt. during this bill	LPSC Amt. cropped due to delay payment	Actual due date of payment was	Payment Amt. during the month	Payment Date
Dec-20	13.01.2021	4,842,682.86					
Jan-2021	15.02.2021	17,947,166.76	2,514,940.08	1,170,900.87	13.07.2020	15,000,000.00	04.01.2021
				307,919.84		4,218,080.00	05.01.2021
				792,534.56		10,000,000.00	28.01.2021
				243,584.81		4,512,015.00	30.01.2021
Feb-2021	15.03.2021	14,617,457.32	1,564,939.35	523,244.07	13.10.2020	10,000,000.00	03.02.2021
				291,000.00	13.10.2020	6,000,000.00	17.02.2021
				279,759.69	13.10.2020	5,432,227.00	23.02.2021
				470,935.59	12.11.2020	10,000,000.00	26.02.2021
Mar-21	13.04.2021	15,669,954.86	594,517.94	594,517.94	12.11.2020	12,806,012.00	15.03.2021
Apr-21	17.05.2021	23,305,001.03	923,334.71	289,866.00	12.11.2020	5,000,000.00	07.04.2021
				633,468.71	12.11.2020	10,384,738.00	13.04.2021
May-21	14.06.2021	15,937,051.44	1,533,761.73	1,533,761.73	14.12.2020	22,381,667.00	27.05.2021
Jun-21	15.07.2021	12,130,967.89	994,130.45	132,769.17	14.12.2020	22,381,667.00	27.05.2021
				861,361.28	13.01.2021	14,131,551.00	14.06.2021
Total		104,450,282.16	8,125,624.26	8,125,624.26		131,799,151.00	

For more explanation, it may be stated that for example the billing month of February 2021, Total OSD was Rs. 103795229/-, out of which Amount ofr

> *the said month was Rs. 1,46,17,457.32 for consumption period of 01.02.2021 to 01.03.2021. The accrued LPSC was Rs. 15,64,939.35 due to delayed payment of (Rs. 1,00,00,000/- on 03.02.2021 Rs. 60,00,000/- on 17.02.2021 Rs. 54,32,227.00 on 23.02.2021 and Rs. 1,00,00,000/- on 26.02.2021). For these payments the LPSC accrued during this month (Rs. 523244.07 + 291000+279759.69+470935159 = Rs. 1564939.35) which has been claimed through energy bill of February 2021. The Outstanding Amount of Rs. 24,278.62 in the said bill was meant for the month of October 2020, November 2020, December 2020 and January 2021.*
>
> *15) This affidavit is being done only to the extent of explanation of the dues of Rs. 104,450,282.16/- which include LPSC accrued therein"*

By way of reply, the appellants point out that there was no imposition of *LPSCs* by DPL between 2016 to 2019. For the first time pertaining to the monthly cycle of February 2019 the alleged outstanding of Rs. 8.81 Crores was shown by WBSEDCL against the regular account of the appellants. The appellants rely on bank statements for confirmation of the fact that for the entire period between February 2019 till date, all current bills have been paid. The appellants argue that *LPSCs* have been imposed to the extent of Rs. 9.12 Crores from September 2019 till June 2021. Such *LPSCs* have no relation whatsoever to payment of the regular monthly consumption bills by the appellants but have been exclusively imposed for the so-called delay in paying the supplementary bills. As a measure of the net bill imposed towards consumption charges by the appellants between August 2019 to June 2021, the appellants also produce a chart showing break-up of the net bill amount into two parts, *viz.* actual outstanding bills and *LPSC* charge.

MONTH	*NET BILL AMOUNT (Excluding outstanding Amount) (in Rs.)*	*OUTSTANDING BILL INCLUDED (in Rs.)*	*LPSC CHARGED (in Rs.)*
Aug’19	*8,10,81,955.00*	*86,50,066.00*	*2,64,757.00*
Sept’19	*2,53,79,676.00*	*7,39,01,406.00*	*1,36,08,974.00*
Oct’19	*2,42,05,325.00*	*0*	*1,04,87,695.00*
Jan’20	*2,66,81,621.00*	*8,48,80,156.00*	*1,23,87,775.00*
Feb’20	*2,78,83,374.00*	*9,75,43,143.00*	*1,39,26,971.00*
Jun’20	*2,21,14,509.00*	*10,60,23,055.00*	*82,23,511.00*
Jul’20	*2,26,71,179.00*	*10,96,57,648.00*	*85,37,011.00*
Aug’20	*1,71,43,929.00*	*2,26,71,178.00*	*21,48,219.00*
Oct’20	*3,40,09,278.00*	*11,82,24,153.00*	*64,14,185.00*
Nov’20	*21,87,55,895.00*	*13,39,37,188.00*	*26,57,815.00*
Dec’20	*1,95,29,571.00*	*11,71,08,663.00*	*20,17,556.00*
Jan’20	*1,79,47,167.00*	*10,29,09,339.00*	*25,14,940.00*
Feb’20	*1,43,70,951.00*	*8,94,24,278.00*	*15,64,939.00*
Apr’20	*2,33,05,001.00*	*9,15,23,346.00*	*9,23,334.00*
May’20	*9,24,46,680.00*	*1,56,65,313.00*	*15,33,761.00*
Jun’21	*1,21,30,969.00*	*9,23,19,314.00*	*9,94,130.00*
TOTAL			***9,12,05,573.00***

The appellants allege that it is not on account of outstanding consumption charges but purely on account of the *LPSC* amount, that the disconnection was effected on 8th July 2021. Such disconnection being also contrary to the statute, is utterly capricious.

Having heard the parties and closely examined the materials placed, this Court is unable to come to a conclusion *pari materia* with that of the

Hon'ble Single Bench that the problem posed in this appeal can *only* be remedied by experts. In this connection it would be useful to refer to certain portions of the discussion made by the Hon'ble Single Bench in three of its orders passed while hearing and ultimately deciding the writ petition. The observations in the first order dated 23rd July 2021 read as follows:

> *"The writ petitioner is aggrieved by a disconnection of electricity supply for omission of payment of what the petitioner calls 'late payment surcharge' for the year 2015-16. At the relevant time electricity was being supplied to the petitioners by one Durgapur Projects Ltd. (DPL). The supply operations of the said DPL have since been taken over by and merged into, the West Bengal State Electricity DistributionCompany Limited (WBSEDCL).*
>
> *It is submitted by Mr. S.N. Mookherji, learned Senior counsel for the petitioner that the principal amount of dues for the said period as claimed, have been paid. At no point of time was late payment surcharge claimed by either DPL or WBSEDCL. It is submitted that in the year 2019, for the first time, WBSEDCL has claimed about a sum of about ₹10.45 crores towards the purported Late Payment Surcharge.*
> *Mr. S. S. Koley, learned counsel appearing for the WBSEDCL submits that his client is surprised to note the reasons attributed by the petitioner behind the demand of the said sum of ₹10.45 crores. It is submitted that the demand arose out of arrears of electricity dues for the period from December, 2020 till June, 2021. Given the divergence of facts, this Court directs the WBSEDCL to file an affidavit justifying its contention that the dues of ₹ 10.45 crores arose for the aforesaid period i.e., 2020- 3 21. It shall also be indicated as to whether the said sum of ₹ 10.45 crores includes any amount towards any late payment surcharge and to what extent. The licencee may also produce any document or evidence to show that the demand for late payment surcharge of ₹9 lacs towards late payment charges, has been continuous since 2015-16 till the year 2020.*
> *Let such affidavit be filed within a period of ten days from date; reply thereto, if any, be filed within a day thereafter. List this matter in the same position as 'motion' eleven days hence."*

The observations in the second order dated 3rd August2021 read as follows:

> *"Affidavit-in-opposition and the affidavit-inreply, filed in Court today, are taken on record.*
> *Having heard learned counsel for the parties, let this*
> *matter stand adjourned until tomorrow to consider passing of*
> *interim orders."*

The observations in the third order dated 4th August 2021 read as follows:

> *"WBSEDCL has filed affidavit explaining the current dues to*
> *the extent of Rs.10,44,50,282.16. These dues, according to WBSEDCL, have*
> *arisen out of current consumption from December, 2020 to June, 2021. It is*
> *explained that the payment amount during the month against Column-G at*
> *page 7 of Rs.13,17,99,151/- is the payment made against bills on dates later*
> *than the due date.*
> *2*
> *Therefore, the accumulated past dues including LPSC during this*
> *current period have been mentioned at the bottom of the bills annexed to the*
> *rejoinder.*
> *Mr. S.K. Kapur, learned Senior Counsel appearing for the petitioner,*
> *would counter the argument of the WBSEDCL by submitting that there are no*
> *current dues that could be outstanding. It is also submitted that if any amount*
> *of dues was there during the period from January to June, 2021, disconnection*
> *would have been effected much earlier. It is also argued that the sum of*
> *Rs.10,44,50,282.16, now explained as current dues for the period from*
> *December 2020 to June 2021, is an afterthought and actually represent late*
> *payment charges for amounts that accrued sometime in the year 2015.*

There is prima facie evidence before this Court that all sums against bills raised have not been paid within the due dates. In fact, payments against some bills have been made in instalments from time to time, after the due date. Having considered the entire facts, this Court is of the view that a large number of disputed questions of fact emerge which cannot be gone into by a writ court. The Electricity Act, 2003 provides for a Central Grievance Redressal Officer (CGRO) under Section 42 of the Act. The dispute between the parties is referred to the Central Grievance Redressal Officer (CGRO)."

The observations in the fourth order dated 9th August 2021 read as follows:

"*The matter is taken up for further hearingpursuant to this Court's order dated 4th August, 2021. On thatday, detailed arguments of the parties were recorded and this Court expressed views that the Central Grievance Redressal Officer(CGRO) shall receive pleadings from the petitioner as well asWBSEDCL and dispose of the issue raised in the writ applicationwithin a period of one month.At the request of Mr. S.K. Kapoor, learned SeniorCounsel, this Court had adjourned the matter today to enable thepetitioner to cite judgments on the question of alternative remedy and disputed question of fact. Opening his submission today, Mr. Kapoor relied upon the chart set out by WBSEDCL at page 7 of their affidavit. Mr. Kapoor tried to demonstrate before this Court that even a plain reading of column D and column H would indicate that his client had, at all times, made payment of monthly bills albeit with some delay.He, therefore, submits that there are no disputedquestions of fact and this Court can entertain the writ application and test propriety of the entire claims of therespondent against the petitioner.Reference is also made to Section 56 of the Electricity Act, 2003 and it is submitted that no notice of disconnection, as* *stipulated thereunder, has been issued by the WBSEDCL.*

……….

Having carefully considered the submissions of Mr.Kapoor, this Court notes that the table, set out in paragraph may be simple for a chartered accountant or a person regularlydealing with the bills, payments and late payment thereof. A writ Court does not even have the expertise to see though any improper demand of WBSEDCL or any lawful claim of the petitioner. The parties are at each other's throats on the figures, numbers and facts. There are therefore absolutely no admitted facts herein."

To the best of the mind of this Court in the event the two charts respectively relied upon by the appellants and the Licencee are placed next to each other, it would require not too much effort to decipher that at the bottom of the rival contentions lies the *LPSC* figures. There is no dispute raised by the Licencee connected to payment of current consumption charges. The *LPSCs* have been a source of friction between both the parties stemming from the migratory phase of billing from the first quarter of 2019 following the merger of DPL with the Licencee. Whether such *LPSCs* should be at all allowed to remain in their present form in the bills in issue or, only their quantum requires to be reassessed by an expert in the nature of a CGRO, is one issue.

The other issue which a Writ Court is competent to decide is whether the presence of the *LPSCs* should automatically result in disconnection of electricity supply *de hors* the statute. This Court is unable to accept the single line contention of the Licencee in its affidavit filed pursuant to the order dated 23rd July 2021 of the Hon'ble Single Bench that the appellants are habitual defaulters.

From the affidavit of the Licencee it has been, *inter alia*, pleaded that the monthly billing period commencing from December 2020 to June 2021 grew in size due to the add-on factor of the *LPSCs*.

Nowhere from the Charts relied upon by both the parties it could be shown to this Court that the current outstandings were not paid by the appellants. Therefore to permit a disconnection to stand when on the face of the record the appellants are far from being characterised as habitual defaulters would be ill-fitted to sound reason and equity. To permit a factory to remain closed only for the CGRO to compute whether the LPSCs were there to stay and, if at all, to what extent in the face of a statutory limitation and zero current consumption outstandings, will defeat the balance of convenience which lies in favour of the appellants.

In the backdrop of the above discussion, it would be appropriate for this Court to turn around the conclusion arrived at by the Hon'ble Single Bench.

The CGRO would therefore decide the dispute connected to imposition of the *LPSCs* *qua* their validity and proportionality. The CGRO shall take a decision within a period of three months from the date of communication of this order upon affording the parties an opportunity of hearing and presenting materials in support of their stand. The Licencee/ the WBSEDCL shall reconnect the electricity supply to the Appellant No.1/ the Company within 48 Hours of receiving notice of this order and upon compliance of the necessary formalities.

The notice of the disconnection dated 8th July, 2021 stands thus set aside.

Needless to add, the appellants shall continue to pay the regular consumption charges upon reconnection being effected.

A.P.O.T. 117 of 2021 *with* ***W.P.O. No. 260 of 2021*** stand accordingly **disposed of.**

There will be no order as to costs.

Parties shall be entitled to act on the basis of a server copy of the order placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

I agree.

(Kesang Doma Bhutia, J.) **(Subrata Talukdar, J.)**