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25.03.2022
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WPA No.1113 of 2022

Prithiraj Ghosh

Vs.

The Chairman, West Bengal State Electricity
Distribution Company Limited and others

Mr. Saptarshi Banerjee,
Mr. Kuntal Banerjee

.... for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the WBSEDCL

Learned counsel for the petitioner submits that despite the specific direction dated January 28, 2021 of the Ombudsman that the Distribution Licensee, that is, West Bengal State Electricity Distribution Company Limited (for short “the WBSEDCL”) shall replace the defective meter, which was existing at that point of time, within next seven days so that the Appeal Petitioner can cultivate his agricultural land during on set Boro Season, the WBSEDCL supplied another defective meter, which is apparent from the admission in that regard which finds place in the bill raised in November, 2021 by the WBSEDCL and sent

to the petitioner. Learned counsel for the petitioner hands up the original bill for the court's perusal.

Such bill is also shown to the learned Advocate for the WBSEDCL. However, learned Advocate for the WBSEDCL submits that he fails to understand what prevented the petitioner from paying the electric bill at least upto October, 2021, since the replacement of the new meter had been effected as long back as on February 1, 2021 and only in November, 2021, the meter was admitted to be defective.

It is most unfortunate that an authority like the WBSEDCL, which is discharging public function and is doing the duty which the State should do within the contemplation of Article 12 of the Constitution of India, is so nonchalant about cultivators' fate. It is surprising that despite the previous meter being defective, the second meter which was supplied to the petitioner, as per the order of the Ombudsman, was also admitted to be defective after only about ten months from its replacement.

If the WBSEDCL cannot supply fresh and proper meters to consumers like the petitioner, it is beyond imagination what will be the plight of people of still weaker financial condition.

In the present case, the Ombudsman's order dated January 28, 2021 provided, *inter alia*, that the

previous disputed bill raised in respect of the service connection of the petitioner from May, 2016 up to the date of replacement of the defective meter shall stand cancelled and the WBSEDCL should regenerate the same on the average estimated monthly consumption basis “to be calculated as per the actual consumption recorded in the new meter to be installed for a period of succeeding one year to take care seasonal variation without claiming any LPSC...”.

Unfortunately, however, the new meter supplied to the consumer-petitioner again was admittedly found to be defective even before a year elapsed, which was the time for which the average estimate was to be taken by the WBSEDCL in order to comply with the Ombudsman’s direction of taking an average bill of the succeeding one year. Since the defect was detected within about ten months from the replacement of the meter, the WBSEDCL, in particular the responsible Officers/Engineers, who supplied the subsequent defective meter, ought to be penalized in favour of the petitioner.

Since the WBSEDCL spends public money, the compensation to the petitioner should come in the form of costs to be borne by the responsible Engineers/Officers, which may be determined by the WBSEDCL upon an internal enquiry.

However, the petitioner cannot suffer for the laches of the WBSEDCL, since the specific direction of the Ombudsman was to take an estimate and raise bill thereon for a period of one year succeeding the replacement of the meter. Since the replaced meter was also found to be defective prior to expiry of the following year, there could not arise any question of the estimate of one year's consumption being taken after the said replacement took place.

Hence, the petitioner cannot be charged any money in the absence of satisfaction of the yardstick of one year, which was the time over which the estimate was to be assessed as per the Ombudsman's order.

In such view of the matter, WPA No.1113 of 2022 is disposed of by directing the WBSEDCL to replace the second defective meter supplied to the petitioner as early as possible, positively within a fortnight from date, with a new meter, which must be fully functional and in order.

The entire bill raised for the period from replacement of the meter till date, shall be deemed to stand cancelled, since uncertainty looms over the exact time from when the second meter had become defective. However, in consonance with the spirit of the order of the Ombudsman dated January 28, 2021,

the Distribution Licensee, that is, the WBSEDCL shall raise bills for the entire period from replacement of the second meter till the date of further replacement as directed by this court. Such bill shall be taken on an estimate of the average consumption for the one year succeeding the present replacement of the meter to take care of seasonal variation, without claiming any LPSC, after allowing tariff/slab benefit and adjustment of the payment made by the complainant during the intervening period, if any, in consonance with the observations of the Ombudsman.

It is made clear that it will be open to the petitioner to approach the appropriate authorities for redressal, including further replacement of the meter and compensation for the harassment suffered by the petitioner due to repeated installation of defective installations, in the event the third meter is also detected to be defective.

It is made clear that upon replacement of the meter as per the direction of this court, the WBSEDCL will continue to charge current electricity charges as per the prevailing rate. The petitioner shall go on making such payments in terms of all the current bills, till the estimated adjusted bill, incorporating the successive one year's average, is raised. As and when such a bill is raised after one year from the date of the

latest replacement, the WBSEDCL shall also intimate to the petitioner the basis of such calculation with detailed break-up. The petitioner shall then deposit the estimated dues within one month from the date of the bill being sent to the petitioner by the WBSEDCL.

However, this order will not preclude the WBSEDCL from taking appropriate steps in accordance with law in the event the petitioner fails to pay any of the current bills raised after the latest replacement of meter.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)