

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**R.V.W. No.29 of 2022
With
IA No.: CAN 1 of 2022
In
W.P.A. No.868 of 2022**

**West Bengal State Electricity Distribution Company Limited
Vs.
Sukanta Kumar Singha and anothes**

For the petitioner/WBSEDCL :	Mr. Srijan Nayak, Ms. Rituparna Maitra
For the respondent no.1 :	Mr. Sunit Kumar Ray
Hearing concluded on :	08.06.2022
Judgment on :	05.07.2022

Sabyasachi Bhattacharyya, J:-

1. The present Review Application has been filed by the writ petitioner/West Bengal State Electricity Distribution Company Limited (WBSEDCL) in respect of an order dated February 4, 2022 passed in W.P.A. No.868 of 2022. By the said order, an order of the Ombudsman had been modified to the extent that the compensation/damages payable by the WBSEDCL to the respondent no.1-consumer was fixed at Rs.6,07,000/- which was to be paid by the distribution licensee within March 4, 2022. The Ombudsman, it

may be noted, had granted twenty per cent of the said amount as compensation.

2. At the outset, learned counsel for the respondent no.1 opposes the review application on the ground that the same is not maintainable in law. Learned counsel cites *Union of India Vs. Sandur Manganese and Iron Ores Limited and others*, reported at (2013) 8 SCC 337, where it was held that mere disagreement with a view of the judgment cannot be a ground for invoking review jurisdiction. As long as the point is already dealt with and answered, parties are not entitled to challenge the same in the guise that an alternative view is possible under review jurisdiction. In review application, it was held, the Court shall interfere only when there is a glaring omission or patent mistake or when a grave error has crept in the impugned judgment.
3. Learned counsel for the respondent no.1-consumer next cites *Kamlesh Verma Vs. Mayawati and others* reported at, (2013) 8 SCC 320. In the said judgment, the Supreme Court held that repetition by new counsel in review of old contentions and arguments is not enough to reopen a concluded matter. Order XLVII Rule 1 of the Code of Civil Procedure was, *inter alia*, relied on by the Supreme Court.
4. Learned counsel review applicant submits, by placing reliance on *A.V. Papayya Sastry and others Vs. State of A.P. and others*, relied on (2007) 4 SCC 221 that fraud vitiates all judicial acts, whether *in rem* or *in personam*. Judgment, decree or order obtained by fraud has to be treated as *non est* and nullity, whether by the court of first instance or by the final court. As in the said case, it is contended, the

respondent no.1 suppressed vital facts which might have changed the outcome of the writ petition.

5. In the said judgment, the Supreme Court reiterated the proposition that fraud vitiates all.
6. Learned counsel for the review applicant contends that there were two connections in the name of the respondent no.1 in the vicinity of the premises – one domestic and another commercial. The disconnection in question was effected due to default of the consumer in one of such connections, in respect of the other.
7. Learned counsel appearing for the review applicant controverts such submissions and contends that the said proposition was dealt with adequately by the Ombudsman.
8. Upon a perusal of the records it is revealed that learned counsel for the respondent no.1 is justified in his submission.
9. The Ombudsman, in his order which was challenged in the writ petition, clearly took into consideration the terms of Section 55 and 56 of the Electricity Act, 2003 (hereinafter referred to as 'the 2003 Act'), read with Clause 4 of the Regulation 55 of the WBERC as well as Clause 3.4.2 of Regulation 55. Upon such consideration, the Ombudsman observed that Section 56(1) contemplates a prior notice of not less than 15 days, in writing, to the consumer.
10. In the present case, it was held by the Ombudsman that the WBSEDCL failed to produce any disconnection notice and, as such, the disconnection was held to be wrongful. Such observation was the

plinth of the order of the Ombudsman as well as this Court, in writ petition.

- 11.** Learned counsel for the review applicant further submits that the consumer did not stay at the location where the disconnection was effected, that is, at Harishchandrapur, regularly. As such, it is submitted that no suffering and/or harassment of the respondent no.1 could have been inferred by the court for the purpose of grant of compensation.
- 12.** The contention, of course, is denied by learned counsel for the consumer, who submits that, despite having visited the said location, sometimes irregularly, the petitioner had his residence there and the occasional absence was also prompted by such disconnection.
- 13.** Learned counsel submits that numerous complaints and communications were made to the WBSEDCL Authorities and places reliance upon several pages of the pleadings in the review application and the writ petition to substantiate such contention.
- 14.** First, it may be noted that, this contention is being forwarded for the first time in the review application by the WBSEDCL and is not a new fact and, as such, ought to have been already known by the WBSEDCL when the writ petition was filed and disposed of.
- 15.** Moreover, the said allegation being one of facts, which requires material evidence to be gone into, a review cannot be said to lie on such premise, since there cannot be said to have been any error “apparent on the face of records”.

16. Such re-appreciation of pleadings and materials is uncalled for in the review jurisdiction, since the court is not sitting in appeal over its own decision.
17. That apart, the issue of alleged irregular residence of the writ petition at the site was a non-issue, since the Ombudsman had granted compensation, but reduced the total amount to twenty per cent of the same, without any reasonable basis, as observed in the order under review.
18. It is the Ombudsman, who calculated the compensation to come to Rs.6,07,000/- in total, but subsequently the Ombudsman reduced the amount to 20 per cent.
19. That apart, it was elaborately held, on giving reasons in the order under review, as to why the claim of the consumer was not time-barred. The cause of action for compensation was observed to be *de die in diem*. The harassment faced by the respondent no.1 need not have been further substantiated by proof of the respondent no.1 residing at the premises, in view of the fact that the consumer has a residence at the locality-in-question and electricity is a basic necessity of life and part of the right of life.
20. In fact, the order under review clearly set out reasons for turning down the ground of limitation. It was further observed, by way of reasons that the respondent no.1 had approached the Grievance Redressal Officer (GRO) within 90 days, by construing the cause of action to have ripened when the respondent no.1 was directed by the Ombudsman to approach the GRO.

- 21.** Clause 6.1 of Regulation 56 dated August 26, 2013, framed by the WBERC, was clearly discussed and interpreted in the order under review.
- 22.** The argument now sought to be advanced by the review applicant had been contended at the time of disposal of the writ petition itself and considered at length. Even if the review applicant argues that the said observation was bad in law, such error of law, requiring further arguments, does not fall within the contemplation of error apparent on the face of record, justifying a review.
- 23.** Regarding the harassment of respondent no.1, the said respondent has produced several communications and docketed complaints, which were considered at the time of granting compensation. After the inference that the claim was not time-barred and the observation of Ombudsman that the total amount of compensation would be Rs.6,07,000/- left no other option before the court but to grant the entire amount as compensation.
- 24.** It may further be recorded that, in the order under review, it was considered that Clause 6.1 of Regulation 56 stipulated the time limit for an aggrieved consumer to be 90 days from the date of occurrence of the cause of action. It was also held that limitation is a mixed question of fact and law in the context of the case and not a pure of law evident on the face of pleadings, for which the review applicant, having not taken the point of limitation at any point of time before any of the forums, was observed not to have the right to take such objection at the stage of the writ petition. The language of the

governing Regulations and the Statute indicates that the default compensation in such cases of wrongful disconnection was Rs.500/- per day. The total computed amount of compensation by the Ombudsman was transparent and the calculation (break-up) was set out to be 1,214 days X Rs.500/- per day, which comes to Rs.6,07,000/- in total. Such ratio was not interfered with by this Court in the writ petition. Only the arbitrary reduction thereof to twenty per cent of the total amount was modified. In any event, since both the Forums have affirmed the mode of calculation, no challenge in the review jurisdiction lies merely because an alternative view could be possible. The scope and ambit of the review jurisdiction is well-demarcated in terms of the several judgments of the Supreme Court as cited by the respondent no.1 and otherwise. Hence, the present case does not call for any review of the order of this Court dated February 4, 2022.

- 25.** Insofar as the allegation of fraud vitiating all is concerned, contrary to the contemplation of Order VI Rule 4 of the Code of Civil Procedure, the principle of which is applicable in the writ jurisdiction as well, no particulars or detail of fraud or forgery has been pleaded or proved by the review applicant in the writ petition.
- 26.** Such allegation of fraud, in fact, is being levelled in specific terms for the first time in the review application. As per the above discussions, no component of suppression of any relevant material or patent forgery has been made out at all by the distribution licensee. Hence, the challenge on such score is also turned down.

- 27.** In such view of the matter, since the review applicant has failed to make out any case of review, RVW No.29 of 2022 is dismissed on contest without any order as to costs.
- 28.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)