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24.03.2022.
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 9339 of 2021

Samsul Sk.

-vs.-

The West Bengal State Electricity
Distribution Company Limited & Ors.

Md. Sabir Ahmed,
Mr. Mujibar Ali Naskar,
Md. Kutubuddin,
Mr. Subham Saha,
Ms. Doyel Dey
...for the petitioner

Mr. Srijan Nayak,
Ms. Rituparna Maitra
...for the WBSEDCL

Learned counsel appearing for the petitioner submits that the West Bengal State Electricity Distribution Company Limited (WBSEDCL) unlawfully disconnected the electricity supply of the petitioner lastly on March 05, 2021 on the allegation that the petitioner had illegally reconnected his electric supply, despite the same having been previously cut-off, allegedly due to unauthorized use of the electricity.

Learned counsel contends that, even as per the admission of the concerned official of the WBSEDCL, as annexed at pages 9 and 10 of the affidavit-in-reply filed by the petitioner, on August 14, 2018 the petitioner's

line had been restored upon a payment of Rs.60,000/-, pursuant to an order of this Court passed in W.P. No. 12137 (W) of 2017.

However, now the WBSEDCL has come up with a fresh allegation that the usage by the petitioner of the electricity supply was unauthorized, since allegedly the petitioner had, in the meantime, restored the electric connection without the knowledge or permission of the WBSEDCL.

Learned counsel for the Distribution Licensee squarely denies the contentions of the petitioner and submits that the matter has a checkered career. Initially, on the allegation of unauthorized use, the petitioner's electricity supply had been disconnected and was subsequently reconnected upon deposit of an ad hoc sum, as per direction of a coordinate Bench of this Court dated November 26, 2013 passed in W.P. No. 6127 (W) of 2013. However, it is contended that even thereafter, the petitioner again committed unauthorized use of electricity for which the petitioner's SMP service line was disconnected due to huge amount of outstanding dues on January 31, 2017. It may be mentioned that the WBSEDCL also alleges that such outstanding amount was against the final assessment bill raised by the WBSEDCL at that juncture.

According to the WBSEDCL, pursuant to another order of this Court passed in W.P. No. 12173

(W) of 2017, the WBSEDCL was directed to restore electricity connection to the petitioner, subject to the petitioner depositing Rs.60,000/- along with reconnection charges. However, it is argued that since the petitioner failed to pay the reconnection charges, although the amount of Rs.60,000/- was deposited, the WBSEDCL never restored the electricity connection of the petitioner.

Despite such non-restoration by the WBSEDCL, it is alleged that the petitioner of his own arranged for reconnecting the line illegally and, thus, has been in unauthorized use of electricity for the period after that.

It appears from the affidavit-in-reply filed by the petitioner, particularly from a communication to the Ombudsman, West Bengal Electricity Regulatory Commission, by the then Chief Engineer-CRM on November 09, 2020, that the WBSEDCL, through the Chief Engineer, had inter alia admitted that upon disconnection of the petitioner's service line due to outstanding dues on July 27, 2018, the said line was reconnected on August 14, 2018 upon the petitioner having paid Rs.60,000/- . Since it was clearly admitted by the WBSEDCL at a previous point of time that the petitioner's connection had been restored on August 14, 2018, it does not now lie in the mouth of the Distribution Licensee to dispute their own admission at this belated juncture. However, learned counsel for the

WBSEDCL has pleaded ignorance of the officer at the relevant period, in view of internal communication gap. Be that as it may, at the present juncture, it would be premature to arrive at a final conclusion regarding the period for which the electric line of the petitioner remained disconnected and/or the actual quantum of money payable by the petitioner to the WBSEDCL, as well as the contention that the petitioner has been using the electric supply in an unauthorized manner by having it reconnected himself.

Since such matter, including all the above disputes, is at present sub-judice before the Ombudsman, it would not be appropriate to usurp the jurisdiction of the Ombudsman, that too sitting in writ jurisdiction, where the scope of taking evidence and/or appreciating detailed materials is very limited.

Hence, the final decision of the disputes is left open for the Ombudsman.

Since, at the present juncture, no final conclusion regarding the alleged commission of illegal reconnection and unauthorized use thereafter can be arrived at for the reasons indicated above, it would also be premature to either quash the First Information Report or affirm the veracity of the same at this point of time. Since the veracity of the First Information Report is disputed and such dispute is for the appropriate Criminal Court to decide at the relevant juncture when

the matter is decided on trial by the Criminal Court, no such observation is given on the First Information Report at present.

However, since it appears from the averments of the WBSEDCL in its own affidavit-in-opposition, that is, in paragraph 6(xi) that a huge consumption of 89453 units was made, amounting to a charge of Rs.4,08,831.96 which is due from the petitioner, even deducting the Late Payment Surcharge (LPSC) on March 16, 2021, it would only be appropriate that such amount of usage charges, which has been averred by the WBSEDCL, be paid by the petitioner on an ad hoc basis for the electric supply of the petitioner to be restored.

Accordingly, W.P.A. No. 9339 of 2021 is disposed of by directing the WBSEDCL to restore the electricity connection of the petitioner, subject to the petitioner depositing an amount of Rs.4,00,000/- (Rupees Four Lakhs only), preferably within one week from the deposit of such amount.

It is, however, made clear that the said payment shall be without prejudice to the rights and contentions of either party before any forum whatsoever including the Ombudsman and the criminal forum where matters are/will be sub-judice in the context. Such deposit shall be subject to any order passed finally by the Ombudsman on the amount actually due and payable

by the petitioner. The dues found by the Ombudsman finally, if any, shall be adjusted from the quantum of Rs.4,00,000/-, which is being deposited by the petitioner pursuant to this order.

It is further clarified that the merits of the dispute pending before the Ombudsman and/or the Criminal Court have not been entered into at all by this Court. All findings recorded above are tentative, arrived at for the purpose of deciding the limited scope of adjudication in the present writ petition only.

It is made clear that this order will not prevent the petitioner from challenging the veracity of the First Information Report before a competent Criminal Court, including this Court.

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 of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)