

M/L. 77.
November 16, 2022.
MNS.

WPA No. 9955 of 2022

Suprakash Bose
Vs.
The West Bengal State Electricity
Company corporate Distribution Limited
and others

Md. Sasanuz Zaman,
Mr. Shamiul Bari

... for the petitioner.

Mr. Sumit Kumar Panja,
Mr. Sujit Sankar Koley

...for the WBSEDCL.

Affidavit-in-reply filed in Court today be
kept on record.

Learned counsel for the petitioner argues
that despite a specific direction of the
Ombudsman on the complaint of the petitioner
dated January 19, 2022, which was in the form of
a Draft Settlement Order (DSO), the West Bengal
State Electricity Distribution Company Limited
(WBSEDCL) authorities have not given any
comprehensive chart to indicate what are the
outstanding dues, adjusted with the petitioner's
payment. It is alleged by the petitioner that there
are more outstanding amounts returnable by the
WBSEDCL to the petitioner even after the
adjustments made by the WBSEDCL.

Learned counsel appearing for the WBSEDCL, by placing reliance on the affidavit-in-opposition filed by the Distribution Licensee and the annexures thereto, indicates that detailed charts have been given for the entire period to indicate the billing details, the billed amounts and the amounts adjusted for each such period. It is also indicated, by placing reliance on the footnote at the end of the chart at page 13 of the affidavit-in-opposition, that the Late Payment Surcharge (LPSC) accruing for the particular period, as indicated therein, was waived by the Distribution Licensee, giving the benefit of doubt to the consumer since the supporting bills could not be traced from the records.

Such allegations are controverted by learned counsel for the petitioner.

It is seen from the order of the Ombudsman dated January 19, 2022, that the same was in the nature of a DSO, wherein the Ombudsman had directed the licensee to prepare a clear statement of account showing the dues, payment of the petitioner and deduction. A copy of the statement of account was to be supplied to the petitioner as well as to the Ombudsman. However, no such document was produced, as

recorded in the order of the Ombudsman dated March 2, 2022 when, by his final order, the Ombudsman observed that neither of the parties submitted their views in response to the DSO dated January 19, 2022 and, accordingly the DSO was accepted as the final order.

However, in view of the conflicting factual allegations made by the parties in the writ petition, it is clear that there is no consensus between the parties as regards the adjustments actually made and/or the remaining entitlement of the WBSIEDCL vis-à-vis the petitioner after such adjustments.

Moreover, the final order passed by the Ombudsman on March 2, 2022 clearly shows that the Ombudsman did not enter into the relevant calculations or a scrutiny of the charts, which were to be produced by the Distribution Licensee, before coming to the conclusion.

In fact, in a mechanical manner, the Ombudsman proceeded to pass the final order entirely on the basis of the DSO, despite the DSO clearly indicating that there would not be any disconnection and that no notice to disconnect would be issued till disposal of the case and that the licensee was to prepare and furnish a copy of

the clear statement of account showing the dues, payment of the petitioner and deduction.

Hence, the 'adjudication' by the Ombudsman was not worth the name and was, at best, patently incomplete.

Thus, there is no other option but to remand the matter to the Ombudsman, who will give an opportunity to the Distribution Licensee afresh to produce the clear statement of account showing dues, payment of the petitioner and deduction, as directed in its DSO dated January 19, 2022.

Upon such statement being filed, the Ombudsman shall hear both sides and come to a final conclusion, upon proper calculation of the amounts-in-question as regards the dues, if payable, *inter se* the parties.

The entire exercise shall be completed by the Ombudsman as expeditiously as possible, preferably within three months from the date of communication of this order to the Ombudsman.

It is made clear that the factual averments made in the writ petition, affidavit-in-opposition and/or the affidavit-in-reply have not been gone into by this Court and it will be open to the

Ombudsman to decide the same afresh in terms of the above directions.

WPA No. 9955 of 2022 is, accordingly, disposed of in the light of the above observations.

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.)