

M/L. 52.
December 6, 2022.
MNS.

WPA No. 12657 of 2021

West Bengal State Electricity Distribution
Company Limited
Vs.
The Superintendent of Post Offices and another

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

...for the petitioner.

Mrs. Aparna Banerjee

...for the respondent no. 1.

Mr. Amit Ghosh

...for the respondent no. 2.

Learned counsel for the
petitioner/Distribution Licensee submits that
whereas a challenge was preferred before the
Ombudsman with regard to certain Late Payment
Surcharge (LPSC) bills raised by the West
Bengal State Electricity Distribution Company
Limited (WBSEDCL) against the respondent, the
Ombudsman went beyond his jurisdiction in
deciding upon the original outstanding amount of
Rs.98,710/-, which had not even been challenged
before him and set aside such amount on the

ground that the same was barred by Section 56(2) of the Electricity Act, 2003 (2003 Act).

It is submitted that in view of the respondent having raised no objection regarding the original amount, but only in respect of the LPSC payable, the impugned order of the Ombudsman is palpably without jurisdiction.

At this juncture, an adjournment is sought on behalf of learned counsel appearing for the respondent no. 1. However, since the matter has been substantially heard, such adjournment is refused at this stage.

A perusal of the Ombudsman's order and materials available in the record itself indicate clearly that the gamut of challenge before the Ombudsman was the entitlement of the petitioner/WBSEDCL to charge LPSC on the principal amount-in-question. Moreover, the quantum thereof was also challenged before the Ombudsman.

However, while deciding such limited issue, the Ombudsman entered into the veracity of the original claim of outstanding amount of Rs.98,710/-, on the basis of which LPSC had been charged, and set aside the same holding that the said claim was barred by Section 56(2) of

the 2003 Act. The premise of such order was apparently that the bills pertain to a period from October 2007 to November, 2017, which were never raised in due time, as a result, invoking Section 56(2) of the 2003 Act.

Learned counsel for the petitioner is justified in arguing that the said original outstanding dues were never in dispute before the Ombudsman. That apart, the bar of Section 56(2) of the 2003 Act is not attracted in the present case since the outstanding dues were being shown continuously in the bills of the WBSEDCL, which fact has never been disputed by the respondent.

Hence, in view of the rider provided in Section 56(2) of the 2003 Act itself to the effect that the bar operates in the event the bill amounts are not showing during the entire period for which they are due, the Ombudsman acted palpably without jurisdiction in setting aside the original outstanding amount of Rs.98,710/-.

As such, the Ombudsman is required to decide the matter afresh on merits.

Accordingly, WPA No. 12657 of 2021 is disposed of by remanding the matter to the Ombudsman, who will decide the issue afresh

upon giving opportunity of hearing to all concerned parties and confining himself to the limited issue raised before the Ombudsman to the effect of the entitlement of the WBSEDCL to charge the LPSC on the outstanding dues, which itself was cleared by the respondent.

It is made clear that the merits of the contentions of the parties with regard to the entitlement and quantum, if any, of such LPSC has not been entered into by this Court and it will be open to the Ombudsman to decide such issue independently and in accordance with law.

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.)