

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.16016 of 2019

Sri Prasanta Sen and another

Vs.

Ombudsman, West Bengal and others

For the petitioners	:	Mr. Aniruddha Sarkar, Mr. Goutam Dey, Ms. Sweta Bhatta
For the WBSEDCL	:	Mr. Srijan Nayak, Mrs. Rituparna Maitra
Hearing concluded on	:	09.06.2022
Judgment on	:	15.06.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioners, as partners of the firm, namely, M/s. Technocrats & Associates, have been running business at the premises-in-question.
2. For the said purpose, the petitioners had been enjoying industrial electricity connection from the West Bengal State Electricity Distribution Company (WBSEDCL) (respondent no.3). The electricity supply to the petitioners was disconnected on January 22, 2014 on the allegation of outstanding dues of electricity charges. The petitioners applied for taking service connection at the premises and

issued a letter to that effect to the concerned Station Manager of the WBSEDCL on March 27, 2014, expressing the intention of clearing the amount allegedly outstanding.

3. On several occasions the petitioners allegedly appeared in the office of the Station Manager, but without any fruitful result. Ultimately upon being so advised at the office of the Station Manager, the petitioners filed a complaint with the concerned Regional Grievance Redressal Officer (RGRO) on February 3, 2017. Ultimately, *vide* Memo No. RM/24-PNR/PG dated March 29, 2017, the RGRO decided the complaint by directing the complainant/petitioners to pay the total outstanding dues. However, although it was recorded by the RGRO in his order that the petitioners had asked for compensation as per law, such request was not dealt with specifically and/or granted by the RGRO.
4. Being thus aggrieved, the petitioners approached the Ombudsman, West Bengal who, *vide* final order dated November 20, 2018 passed in the petitioners Representation No. W-99 AKT/2017, decided the issue in favour of the petitioner. Upon consideration of a report filed by the distribution licensee and coming to the finding that the allegation against the petitioners that the premises were often closed could not be sustained, the Ombudsman arrived at the conclusion that the Regulatory requirements for disconnection of the service line of the complainants had not been properly fulfilled by the distribution licensee. The Ombudsman further directed that the WBSEDCL (the licensee) shall cancel electricity bills in respect of the service

connection of the complainant from January 16, 2014 to January 30, 2014 and regenerate the same on the basis of consumption recorded in the installed meter along with other charges as per the regulatory provisions, without claiming any LPSC (Late Payment Surcharge) after adjustment of payment made by the complainant, if any.

5. The electricity bills from the date of restoration of the service connection on January 12, 2018 were directed to be cancelled and regenerated. However, the Ombudsman, despite having found that the petitioners were otherwise entitled to compensation, refused to pass any order of compensation for wrongful disconnection and delayed restoration of service connection on the ground of violation of Regulation 15.1 of the West Bengal Electricity Regulatory Commission (Standards and Performance of Licensee Relating to Consumer Services) Regulations, 2010, as amended. It was observed that the petitioners had approached with the claim of compensation beyond 90 days from the date from which compensation arises.
6. Learned counsel for the petitioners argues that the date from which compensation arises can only be the date of restoration of the electricity supply and payment and/or payment of the compensation.
7. Since the cause of action for compensation accrues day-to-day, it is argued that the claim for compensation did not crystallize before the same was paid. It is submitted that, *vide* Clause 21 of Regulation No.57 dated August 26, 2013 framed by the West Bengal Electricity Regulatory Commission (WBERC), Clause 15.1 was inserted in the principal Regulation of 2010.

8. Clause 15.1 provides that the limitation for claiming compensation is 90 days from the date from which compensation arises. However, in Regulation No.46 dated May 31, 2010, the original Clause 15.0, which remained substantially the same even after the amendment of 2013, clearly stipulated the rates at which the compensation is to be paid.
9. Thus, it is contended that since the first complaint was alleged on March 27, 2014, which was rejected after the period of three years on March 29, 2017 by the RGRO, the date of rejection of the claim for compensation has to be treated as the date on which the cause of action for compensation arises.
10. Learned counsel appearing for the distribution licensee submits that the complaint filed by the writ petitioners is not annexed to the writ petition and, as such, no basis for calculation of compensation has been disclosed by the petitioners.
11. It is further submitted that the date on which the claim for compensation arose was the date of disconnection and not the date of rejection by the RGRO.
12. Based on the rival contentions of parties, the following deductions can be arrived at:
13. The amended Clause 15.1, inserted by the 2013 Regulation, provides that no compensation as determined under Regulation 15.0 of the principal Regulation of 2010 is payable if compensation is not claimed by the affected person at the appropriate forum within 90 days from the date from which compensation arises. In the present case, compensation was claimed before the RGRO on the date of filing

of the complaint, that is, on February 3, 2017. Although the disconnection took place on January 22, 2014, the petitioners communicated in writing to the Station Manager of the Madhyamgram Sector Office of the WBSEDCL within 90 days therefrom, that is, on March 27, 2014 (Annexure P1 at page 15 of the writ petition). In the said communication, the petitioners clearly offered to pay up the outstanding dues for the purpose of getting restoration of connection.

14. A complete reading of the order of the Ombudsman, however, reveals that the Ombudsman, upon considering all relevant documents and materials-on-record, came to the conclusion that the requirements for disconnection of the service line of the complainant had not been properly fulfilled by the distribution licensee. It was clearly observed by the Ombudsman that the distribution licensee could not explain the reason for the bills generated from their system for the relevant period. Hence, the bills from 2018 onwards, raised during the pendency of the case, were held to be unjustified and were directed to be cancelled.
15. The Ombudsman further observed that the disconnection took place without any valid notice as per Section 56(1) of the Indian Electricity Act, 2003 and, as such, the disconnection was labelled as 'wrongful disconnection' of the service line. Although the Ombudsman arrived at the conclusion that the petitioners were otherwise entitled to be compensated, such compensation was refused due to alleged violation of Regulation 15.1 of the 2010 Regulation. Hence, in the present case, the disconnection was held to be patently wrongful by the

Ombudsman. In such view of the matter, the suffering of the petitioners for disconnection started from the date of disconnection, that is, January 22, 2014.

- 16.** However, the restoration of the electricity connection took place in January 12, 2018, subsequent to the RGRO's order dated March 29, 2017.
- 17.** To determine the quantum of compensation, the relevant clause to be looked into is Clause 15.0 of the Regulation No.57 dated August 26, 2013. Sub-clause (c) thereof provides for compensation for delay in reconnection whereas sub-clause (d) deals with compensation for wrongful disconnection. In the present case, in view of the clear finding of the Ombudsman that the disconnection of the petitioners' connection was wrongful, which has not been assailed by the distribution licensee, sub-clause (d) of Clause 15.0 is squarely applicable.
- 18.** Clause 15.1, introduced by the 2013 Resolution No.57, stipulates the time-limit for seeking compensation. It provides that, notwithstanding anything contained contrary elsewhere in any other Regulation of the Commission, no compensation as determined under Regulation 15.0 is payable if compensation is not claimed by the affected person at the appropriate forum within 90 days "from the date from which compensation arises".
- 19.** The expression "from the date from which compensation arises" is also found in sub-clause (c) of Clause 15.0. In paragraph (ii) thereof, the number of days for which compensation will be applicable has been

stipulated to be the number of days or slab, as applicable, between the date of the order of the compensation and the date from which compensation arises.

- 20.** For LT industrial categories of consumers, the chart given under Clause (d)(ii) provides that the rate of compensation would be, Rs.3,000/- per instance plus the amount paid by the consumer to the licensee in getting reconnection plus Rs.500/- per day or part thereof during which period the supply remained wrongfully disconnected.
- 21.** Since the present petitioners have been enjoying an industrial connection of LT category, the calculation of compensation shall be at the rate as indicated above.
- 22.** In the present case, the disconnection took place on January 22, 2014 and the connection was restored on January 29, 2018. Hence, the date “from which compensation arises” for the purpose of Clause 15.1, in order to calculate limitation, could only be the date on which the reconnection was given, since the period during which the supply remained wrongfully disconnected has to be calculated from the date of disconnection to the date of restoration thereof. The claim of compensation crystallizes only when connection is restored.
- 23.** Thus, there is an apparent anomaly between the senses conveyed by the same expression, “from which compensation arises”, as used in Clause 15.0 (e) ii), read in conjunction with Clause 15.0 (d)i), on the one hand and Clause 15.1 on the other. The first conveys the sense that the claim for compensation matures upon connection being restored, since all three categories of the chart under sub-clause (d) i)

speak of compensation to include the reconnection charge and the period during which the supply remained wrongfully disconnected, which can be calculated only after reconnection is given.

- 24.** However, applying the Rule of Harmonious Construction, there ought to be a parity in the sense conveyed by the phrase “from which compensation arises”, as used in Clause 15.0 (e) ii) and Clause 15.1. Otherwise, the 90 days’ limitation for the claim has to be calculated from the date of reconnection, taking reconnection to be the starting point of limitation, which signifies that the order of compensation can, theoretically, precede the claim itself, on which it is passed.
- 25.** As for example, in the present case, the disconnection took place on January 22, 2014 and reconnection on January 12, 2018; whereas the complaint (apparently including the claim of compensation) was lodged on February 3, 2017 and the RGRO passed order on the complaint on March 29, 2017. So, applying the logic proposed above, the limitation would start when the compensation claim matures, that is, on reconnection (January 12, 2018) whereas the RGRO order is passed before that, on March 29, 2017. Such an interpretation, thus, would lead to absurdity, which cannot be attributed to legislative intent.
- 26.** To avoid such absurdity, the expression “from which compensation arises” has to be taken as the date when the cause of action first arises, that is, the wrongful disconnection takes place, and not the date of reconnection, when the claim matures.

- 27.** Proceeding on such premise, the Ombudsman was justified in observing that the claim of compensation was made much after the expiry of 90 days from the date of disconnection and, as such, was time-barred. The first communication of the petitioners dated March 27, 2014, made within 90 days from disconnection, was merely an offer to pay up the outstanding dues for the purpose of getting restoration of connection and contained no claim of compensation. Rather, arguably, such claim was waived by the petitioners, as implicit in the offer to pay up and clear the outstanding dues.
- 28.** Thus, the finding of the Ombudsman that the petitioners' application was time-barred was fully justified. Hence, there is no scope of interference with the decision of the Ombudsman under Article 226 of the Constitution of India.
- 29.** Accordingly, W.P.A. No.16016 of 2019 is dismissed, thereby affirming the impugned order of the Ombudsman.
- 30.** There will be no order as to costs.
- 31.** 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.)