AD-132
Ct No.09
12.12.2022
TN

WPA No. 20836 of 2022

Astdurga Constructions Pvt. Ltd.
Vs.
The West Bengal State Electricity Distribution Company Limited and others

Mr. Rabindra Nath Bag,
Mr. Rohan Raj
.... for the petitioner

Mr. Sujit Sankar Koley
.... for the WBSEDCL

Learned counsel for the petitioner vociferously argues that as per the agreement between the West Bengal State Electricity Distribution Company Limited (WBSEDCL) and the petitioner/promoter, a turnkey project was to be entered into between the parties for completion of electrification of a huge project developed by the petitioner.

It is contended that the understanding between the parties was clearly that the internal portion of the works, within the premises of the petitioner, would be completed by the petitioner as per standards set on agreement and the external work would have to be done by the WBSEDCL at their expenses.

It is contended that subsequently the WBSEDCL is resiling from the position and is claiming that the petitioner is to complete the external work as well.

However, it is contended by learned counsel for the petitioner that it will not be possible or legal for the petitioner to undertake such work of laying cable and other necessary constructions on third party property.

Moreover, it is argued that such duty is cast as per law upon the Distribution Licensee and not the consumer.

In any event, it is argued, for all such projects, the Distribution Licensees, including the WBSEDCL, float regular tenders and pays up the costs. On such premise, it is contended that the petitioner's representatives did not sign on several purported diagrams which were prepared by the WBSEDCL subsequently, thereby signifying the lack of consent of the petitioner to the terms of agreement offered by the WBSEDCL.

It is also argued that the terms and conditions offered by the WBSEDCL are *de hors* the law and cannot be complied with.

Learned counsel appearing for the WBSEDCL places reliance on several Regulations, including Regulation 46 dated May 31, 2010 of the West Bengal Electricity Regulatory Commission (WBERC). Learned counsel places reliance on Clause 3.1.2 of the same to indicate the components of a quotation.

Sub-clause (i) of the said Clause provides that service connection charge based on the regulations made under Section 46 of the Electricity Act, 2003, to recover the expenditure of any expenses to be incurred in providing the electric line or electrical plant to be used for the purpose of providing the supply against the application, is one of such components.

It is also pointed out by learned counsel that Clause 13.13 of the same Regulation provides that for quick disposal of applications for new connections or load enhancement or for affordability of new connection to a consumer or for better complaint lodging mechanism, a licensee may, at its discretion, develop a new procedure for any class/classes of consumers with the approval of the Commission. However, if any provision of such procedure is inconsistent with any provision of any Regulation and to the disadvantage of the consumers, then the relevant provision of the Regulation shall prevail.

It is argued by learned counsel for the WBSEDCL that in the present case, requisite approval of the Commission is already there and, pursuant to the said clause, the WBSEDCL agreed to the offer given by the petitioner to undertake the necessary work on a turnkey basis.

Learned counsel for the WBSEDCL next cites Regulation 53 of the WBERC dated April 2, 2013. In the second paragraph of clause 4.2.1 thereof, it is stipulated that where there is provision of turnkey work and completion of the service connection is to be borne by the consumer under any procedure framed under Regulation 13.13 of SOP, then on sharing of the same asset by any other consumer, the licensee shall refund the proportionate cost to the consumer who has built the asset under turnkey concept.

By placing reliance on the said provision, learned counsel argues that, in the present case as well, the costs for the sub-station which is required to be set up for the purpose of the petitioner's project but may also cater to others, has only been raised on a proportionate basis as per the requirement of the petitioner.

It is further submitted that the Cost Schedule has been clearly specified in Clause 11 of the Regulation.

As such, it is argued that, within the provisions of the extant regulations, it is the liability of the party undertaking a turnkey project to complete the work. If the WBSEDCL is to do the work, however, necessary expenses have to be borne by the consumer-in-question.

Learned counsel also places reliance on Procedure-B of electricity supply of the WBSEDCL, where, in clause 2.10(a), it is provided that in case of non-availability of material required for the electrical infrastructure, in order to expedite the connection as per time-frame laid down by the Commission, the WBSEDCL shall initiate an offer of completing the infrastructure work on turnkey basis by the developer of the complex. Such offer of turnkey shall be issued along with the quotation.

By placing reliance on the annexures to the affidavit-in-opposition, it is contended that the offer of a turnkey project was given by the petitioner on November 23, 2019 (Annexure-'R' at page-15 of the affidavit-in-opposition). In the very next page, which is a copy of the order for technical and administrative approval, it is indicated that the same was entered into on March 23, 2021.

The terms of the same included the costs under each heading, including material, labour, cess etc. The payable amount for the petitioner has been clearly mentioned to be 'proportionate'. As such, it cannot be said that the WBSEDCL acted in contravention of any provision of law in insisting upon payment of the expenses by the petitioner.

Learned counsel for the WBSEDCL has rightly pointed out from Annexure R2 at page-40 of the affidavit-in-opposition that the said offer, including the terms and conditions as indicated above and other terms and conditions, were accepted categorically by the petitioner on April 5, 2021.

It is clear from the said documents, as produced by the WBSEDCL, that although the petitioner had agreed to the turnkey project, the terms and conditions of the same were initially inchoate. Only subsequently, upon the offer being finalized by the terms and conditions being indicated by the WBSEDCL, as annexed to the affidavit-in-opposition as well as the writ petition, the particular terms and conditions became final.

Since the petitioner accepted such terms and conditions vide communication dated April 5, 2021, annexed at page-40 of the affidavit-in-opposition, the petitioner, under normal circumstances, ought not to be permitted to resile from such position.

However, a valid question has been raised by learned counsel for the petitioner insofar as the power and authority of the petitioner, as a private operator, to undertake the work required for the project on third party property is concerned. In spite of the petitioner having initially agreed to the terms and conditions, the benefit of doubt is given to the petitioner to the extent that the legal fall-out of such terms and conditions were initially not within the know of the petitioner.

In such a scenario, the Regulations, in particular, the clauses of Regulations 46 and 53 as well as the stipulations in Procedure-B formulated by the WBSEDCL, are sufficiently clear and flexible to the extent that in the event the work cannot be done within the limited period, the WBSEDCL can give an offer of turnkey work. However, in such case, as per the regulations as discussed above, the expenses therefor have to be borne by the petitioner.

Since some payments have already been alleged to be made by the petitioner, it is only fair that the WBSEDCL shall deduct the costs paid by the petitioner, if not adjustable under any of the different heads required, should be refunded to the petitioner. In the event the amount already paid by the petitioner to the WBSEDCL is used for any of the purposes for the work to be done or already done, the same shall be adjusted with such amount and no further question of refund will arise.

Accordingly, WPA No. 20836 of 2022 is disposed of by directing the WBSEDCL, in view of the petitioner's inability to complete the project, to undertake the entire balance work for electrifying the petitioner's project-in-question. The necessary expenses for such work shall be raised by way of a quotation duly in the name of the petitioner by the WBSEDCL, giving due credit and adjustment to amounts which have already been paid by the petitioner and not appropriated by the WBSEDCL under any work done previously.

Such quotation shall be raised by the WBSEDCL at the earliest, preferably within four weeks from date.

Upon the petitioner paying the necessary charges, the WBSEDCL shall complete the remaining work of electrification and give the electricity connection to the project as expeditiously thereafter as possible.

However, it is made clear that the exact amount required for the project has not been decided in any manner by any of the observations made herein.

Moreover, the payments to be made by the petitioner are to be decided by the WBSEDCL upon duly giving credit to the proportionate expenses required for the project of the petitioner only.

In the event any scope of refund arises subsequently, due to the infrastructure being used for any other purpose than of the petitioner, the WBSEDCL shall make such refunds to the petitioner in due process of law as per the WBERC Regulations.

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.)