

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

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.26868 of 2022

**Agarwala Agro Rice Mills Private Limited and another
Vs.
West Bengal State Electricity Distribution
Company Limited and others**

For the petitioners	:	Mr. Subir Sanyal, Ms. Sumouli Sarkar
For the WBSEDCL	:	Mr. Srijan Nayak, Mrs. Rituparna Maitra
Hearing concluded on	:	06.12.2022
Judgment on	:	09.12.2022

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1- company (previously M/s Sunita Rice Mills, a unit of Delta Merchandise Private Limited, now Agarwala Agro Rice Mills Private Limited) runs a rice mill and the petitioner no. 2 is one of its directors. The petitioner no. 1 has been enjoying electricity supply from the respondent no. 1-WBSEDCL (West Bengal State Electricity Distribution Company Limited) for running the mill from the month of February, 2016. The petitioner no. 1 has been paying the current electricity charges regularly on the basis of bills raised by the WBSEDCL.
2. On January 28, 2019, the WBSEDCL issued a Memo to the petitioner no. 1 intimating that during a visit to the petitioners' premises on January 25,

2019 it was observed that the installed CT ratio should be 100/5 Amp instead of 50/5 Amp, which was not updated inadvertently from November, 2017, as a consequence of which the net multiplying factor (MF) had been reduced to 1000 instead of 2000.

3. Accordingly, on February 18, 2019 a bill was raised for the billing cycle January, 2019, including the allegedly outstanding amount of Rs. 2,00,88,271.77 p (Rupees Two Crore Eighty-Eight Thousand Two Hundred and Seventy One and Seventy-Seven Paise Only) as less claim for the period November, 2017 to December, 2018.
4. The petitioners issued a letter on February 28, 2019 disputing the claim of outstanding dues. However, the current electricity charges for January, 2019 were paid.
5. Again, the bill dated March 3, 2019 for the month of February, 2019 included the outstanding dues. The petitioners then lodged a complaint on March 15, 2019 before the respondent no. 6, the Regional Grievance Redressal Officer, Murshidabad Region.
6. A Memo dated March 9, 2019 followed from the end of WBSEDCL, reiterating the claim of outstanding dues. On March 16, 2019, a disconnection notice under Section 56 (1) of the Electricity Act, 2003 (for short, "the 2003 Act") was served on the petitioners.
7. The alleged outstanding amount continued to be shown on the subsequent current bills. The petitioners have been paying all current charges, without the alleged outstanding dues.

8. The RGRO passed a Draft Settlement Order (DSO) on April 2019, opining that the claim of the WBSEDCL was justified but if the petitioners applied for instalments the respondent-authorities should consider the same by allowing a maximum of 14 instalments without charging LPSC (Late Payment Surcharge). The petitioners filed an exception to the DSO on April 15, 2019.
9. A further disconnection notice was issued on April 16, 2019 by the WBSEDCL, upon which the petitioners filed a writ petition, giving rise to WP No. 8989(W) of 2019.
10. On May 10, 2019 the petitioners received the final order of the RGRO, directing the petitioners to pay the outstanding dues within 15 days from the order.
11. WP 8989(W) of 2019 was disposed of on May 17, 2019 by directing the Ombudsman, West Bengal (respondent no. 7) to hear the petitioners' grievance upon the petitioners paying a further amount of Rs. 18,00,000/- (Rupees Eighteen Lakh Only) within seven days therefrom.
12. Accordingly on May 17, 2019 the petitioners preferred an appeal before the Ombudsman against the order dated May 10, 2019 of the WBSEDCL. The Ombudsman passed a DSO on July 8, 2019 holding that the petitioners are to pay the entire outstanding amount in instalments as directed therein. The final order virtually reiterated the DSO.

- 13.** On August 24, 2019, another disconnection notice was issued to the petitioners, alleging dues of Rs. 1,68,27,488/-, since certain payments had been made in the meantime by virtue of different orders.
- 14.** The petitioners filed another writ petition, giving rise to AST 28 of 2019 which was decided on September 4, 2019, setting aside the final order of the Ombudsman dated July 30, 2019 and directing rehearing of the dispute upon granting an opportunity of hearing to the parties. The petitioners were to deposit Rs. 40 Lakh with the WBSEDCL. Such amount was deposited on October 16, 2019. The Ombudsman passed an interim order, formulating certain questions. The petitioners, as per direction of the Ombudsman, filed their submissions and written arguments.
- 15.** The Ombudsman passed his DSO on April 25, 2022, in respect of which the parties filed their submissions. The final order was passed on September 8, 2022, holding that the demand of the WBSEDCL to the tune of Rs. 2,00,88,271.77 p. was justified. A Memo was issued by the WBSEDCL on September 22, 2022 claiming the outstanding amount. Thereafter a disconnection notice was issued on November 28, 2022.
- 16.** The present writ petition has been preferred by the petitioners against the final order of the Ombudsman dated September 8, 2022, the Memo of September 22, 2022 and the disconnection notice dated November 28, 2022 and have claimed refund/adjustment of the LPSC charges of Rs. 77,78,372.43 p. claimed by the WBSEDCL, along with the 'timely rebate payment' of Rs. 21, 65,251.33 p. which has been disallowed, apart from other consequential reliefs.

- 17.** Learned counsel for the petitioners argues that the WBSEDCL has failed to prove that the CT (Current Transformer) was installed on November, 2017 and, hence, to justify the CT ratio change and double MF for the period November, 2017 to December, 2018. It is disputed that the CT was changed on November 2, 2017, as alleged. Learned counsel contends that no notice was served on the petitioners with regard to change/installation of new CT. Moreover, the CT is an integral part of the meter and the meter room at the petitioners' premises has all along, since inception, been in the exclusive control of the licensee-WBSEDCL, being under the lock and key of the licensee and accessed solely by personnel of the licensee.
- 18.** The petitioners argue that the electricity charges for the entire period-in-question, that is, November, 2017 to December, 2018 was paid as per current electricity bills raised by the WBSEDCL. At this belated stage, after more than a year has elapsed, the WBSEDCL could not claim any outstanding dues for such period. The impugned claims are, thus, inflated and illegal and do not have any material basis.
- 19.** Learned counsel appearing for the petitioner submits that the Ombudsman, while passing his final order, did not consider the exception and submissions filed by the petitioners at all, mechanically reiterating the DSO.
- 20.** It is argued that at least two inspection reports were produced, as well as a commissioning report. The Ombudsman acted perversely in choosing to accept the particular report dated November 2, 2017 in priority over the others and acted on the basis that the same was sacrosanct. None of the

reports carry the signature of the petitioners or their agents. As such, the alleged inspection reports are sham documents and no inspection was held at any point of time, at least within the knowledge of the petitioners.

- 21.** Learned counsel for the petitioners submits that if a new CT was installed or the CT ratio was changed since November, 2017, the same ought to have been within the notice of the WBSEDCL immediately. There is no valid reason for the WBSEDCL to wait till the beginning of the year 2019 to claim the impugned amounts.
- 22.** There is nothing on record to show, it is argued, that the alleged 'error' on the part of the WBSEDCL was bona fide, to justify saddling the petitioners with an over Rupees Two Crore due. The petitioners run a rice mill and have already charged their customers during the relevant period, calculating such charge on the basis of the then current electricity charges raised by the WBSEDCL and paid by the petitioners in due time. Hence, the imposition of a huge, inflated claim of outstanding dues, *post facto*, is a mala fide approach to ruin the petitioners financially, since they cannot recover such huge money now.
- 23.** Learned counsel for the petitioners cites a judgment of the Supreme Court, reported at *AIR 1991 SC 583 (M/s Priyanka Overseas Pvt. Ltd. and anr. v. Union of India and ors.)*, in support of the proposition that one cannot be allowed to take advantage of his own wrongful and illegal act.

- 24.** The petitioners also place reliance on a final order dated February 28, 2022 by the same Ombudsman, although passed in a different matter, where a contrary view to the present impugned order was taken.
- 25.** Learned counsel for the WBSEDCL, in reply, contends that the absence of the petitioners' signature on the inspection and commissioning reports is not fatal. As regards the allegation that CT ratio was changed from November, 2017, it is argued that the said fact is evident from the publicly maintained records of the WBSEDCL and can be checked by anyone at any point of time. The error in calculation arose only due to non-application of 2000 MF during the relevant period, which is a bona fide human error and the petitioners have not been able to establish any *mala fide* behind it.
- 26.** Learned counsel submits that the meter room is situated in-house within the petitioners' premises and, as such, the petitioners were all along aware of the installation of new CT, but took undue advantage of the error in applying the correct MF by not pointing out the same.
- 27.** By placing reliance on Clause 8.1 of Regulation 55 of the WBERC (West Bengal Electricity Regulatory Commissioning), it is argued that the licensee always has access to the premises where the meter room is situated, but that does not preclude the consumers to have access as well.
- 28.** Learned counsel appearing for the WBSEDCL contends that the error was patently a bona fide one, since there is always a human factor in applying the correct MF. As regards the actual number of units consumed, the same can be verified even today and is not in question. The WBSEDCL deals with

public money and, once the defect is detected, such money cannot be waived for the benefit of an individual consumer.

29. It is argued that the petitioner's alleged financial loss consequent upon paying the outstanding amount cannot be a relevant factor in the present consideration. Rather, the petitioners acquiesced to the change of CT ratio by continuing to pay current electricity charges at the increased rate, upon applying the enhanced MF.
30. Learned counsel for the WBSEDCL cites *(2020) 4 SCC 650 [Assistant Engineer (D1), Ajmer Vidyut Vitran Nigam Limited and anr. v. Rahamatullah Khan alias Rahamjulla]* for the proposition that an additional or supplementary demand can be raised even after expiry of the limitation period in the case of a mistake or bona fide error.
31. *Rahamatullah's Case (supra)* was also followed in *M/s Prem Cottex v. Uttar Haryana Bijli Vitran Nigam* by the Supreme Court vide judgment dated October 5, 2021 passed in Civil Appeal No. 7235 of 2009, which is also relied on by the WBSEDCL.
32. Learned counsel for the petitioners seeks to distinguish the said judgments on facts inasmuch as in the present case, the huge business loss to be suffered by the petitioners is an additional factor to be considered. Moreover, in the present instance, the error is not a bona fide calculation mistake but is dependent on the alleged change of CT, the date of which has not been established by the WBSEDCL specifically.
33. Considered the submissions of learned counsel for both parties.

- 34.** It is borne out by a plain reading of *Rahamatullah Khan (supra)* that the proposition laid down therein was in the context of calculating limitation in the backdrop of Section 56 (2) of the 2003 Act, which is not in issue in the present case. It was held that the limitation for the purpose of the said provision commences from the date of discovery of the mistake in the case of a mistake or bona fide error. However, no blanket proposition was pronounced to the effect that any and every mistake or error would entitle the licensee to raise an additional or supplementary bill. Rather, the Supreme Court clarified that the date of discovery of mistake would only be germane if the error was bona fide. Therefore, it is required to be examined whether the alleged mistake in the case at hand can be labelled as a ‘bona fide’ mistake or not.
- 35.** The plinth of the WBSEDCL’s case is that it committed a mistake in not applying the correct MF from the month of November, 2017 despite the CT having been altered at that juncture. Since the assessment of the Ombudsman was of a civil, as opposed to criminal, nature, the test of ‘preponderance of probability’ and not ‘beyond reasonable doubt’ has to be applied to the evidence.
- 36.** The WBSEDCL, in support of its contentions, has produced two inspection reports and a commissioning report, copies of all of which are annexures to the writ petition.
- 37.** The first commissioning report in respect of the petitioners’ electricity supply is of February 20, 2016. Under the caption ‘Remarks’ at the footnote thereof, in the third item it is printed: “CTR needs to be set at 100/5A in

place of 50/5A for cont. demand 1 MVA, so CT needs to be replaced.”

Therefore, at the time of commissioning itself, on February 20, 2016, the requirement to replace the CT was spelt out.

38. The next relevant document is an inspection report dated November 2, 2017. In the second item under the ‘Remarks’ footnote there, it is stated: *“CT ratio was set at 100/5A from 50/5A on the day Trippings were checked and found in order”*. This is indicative of the fact that the CT was set from the original 50/5A value to 100/5A at least on the said day, if not before.
39. The third is another inspection report dated January 31, 2019. Interestingly, in the second item under ‘Remarks’, it is mentioned: *“Installed CT ratio was checked and found set at 100/5A. So MF is 2 from 02/11/17 as per testing record because CT was recommissioned”*.
40. Therefore, as on January 31, 2019, the CT was already recommissioned, as borne out by the testing record, and the CT ratio was checked and found set at 100/5A, thus justifying application of double MF from the date of such recommissioning, that is, November 2, 2017.
41. The petitioners have challenged the veracity of the reports and have argued that the petitioners’ signature do not appear on any of the reports. However, the petitioners have not produced a single report or even called for any sample report to show that the usual practice during inspection was to obtain a signature of the representative of the consumer as well.
42. Even the commissioning report generated on February 20, 2016 did not contain any signature of the petitioners’ representative(s). It is noteworthy,

that the petitioners have not specifically challenged the commissioning report or the fact that the electricity supply started from the month of February, 2016, which is contemporaneous with the report.

43. The petitioners neither called for the records of the WBSEDCL, nor challenged any of the reports on the ground of fraud, the particulars of which were required to be pleaded and proved. As such, the WBSEDCL did not get any opportunity to produce its records to verify the sanctity of the reports. In fact, it did not have any occasion or reason to do so.
44. Rather, the principle embodied in Section 114 (e) of the Evidence Act, that official acts are presumed to be performed regularly, can very well be borrowed as a yardstick in the present consideration. The petitioners have failed to rebut, by cogent evidence, the presumption that the impugned inspection report dated January 31, 2019 was the outcome of an inspection done in regular course of business. The petitioners have also not shown that the signature of the petitioners' representative was taken on the report on any occasion of inspection.
45. Hence, there is nothing on record to rebut the presumption of correctness of the report dated January 31, 2019.
46. However, there is a chink in the armour of WBSEDCL inasmuch as the notice of correction of multiplying factor was sent by the WBSEDCL on January 28, 2019, which is three days *prior* to the date of inspection, that is, January 31, 2019. More interestingly, the date of inspection mentioned in the January 28, 2019 notice is January 25, 2019, which is a third date

even prior to the notice. The WBSEDCL has not produced before the Ombudsman any inspection report of January 25, 2019 to substantiate their claim.

- 47.** Yet, the said factor cannot, by itself, vitiate the entire findings of the Ombudsman.
- 48.** The initial commissioning report of February 20, 2016 indicates in no uncertain terms that the CTR needed to be set at 100/5A in place of 50/5A for continued demand of 1 MVA.
- 49.** Again, the inspection report dated November 2, 2017 clearly indicates that the CT ratio was set at 100/5A and the trippings were checked and found in order. Notably, in the said report, under the heading 'Type Of Complaint / Reason For Inspection', it was stated 'AUGMENTATION OF CT RATIO'. Hence, its purpose could not be in doubt.
- 50.** The third relevant document was another inspection report of January 31, 2019, where the reason for inspection was shown to be 'PERFORMANCE CHECKING'. There may be several explanations for the apparent discrepancy between the dates of inspection mentioned respectively in the notice dated January 28, 2019 and the inspection report dated January 31, 2019. It may very well be that the "certain visit" dated January 25, 2019, as alleged in the notice of January 28, 2019, was not a formal inspection but a surprise visit or a supervisory visit, the outcome of which might have been sought to be corroborated in the resultant formal inspection dated January 31, 2019, when the doubt of the WBSEDCL was confirmed.

51. Mere non-production of any report of January 25, 2019 or non-mention of the inspection dated January 31, 2019 in the notice of January 28, 2019 cannot be fatal for the case of the WBSEDCL, since the surrounding circumstances and evidence clearly indicate its correctness.
52. A composite reading of the three reports, one commissioning report and two inspection reports, create a preponderance of probability in favour of veracity of the November 2, 2017 inspection report, which was held for the specific purpose of augmentation of CT ratio and contains a remark that the CT ratio was, indeed, set at 100/5A from 50/5A and the trippings were checked and found in order.
53. Such incident is fully in consonance with the remark in the commissioning report of February 20, 2016 that the CTR needed to be set at 100/5A in place of 50/5A and the CT was required to be replaced for continued demand of 1 MVA.
54. Insofar as the mistake in applying the correct net multiplying factor (MF) is concerned, the same was clearly a calculation error which can be attributed to the human factor involved in feeding data inputs to the system. Thus, there cannot be any reason to attribute mala fides.
55. Although the petitioners feign ignorance of replacement of CT on November 2, 2017, the truth of the allegation of re-setting of CT ratio is borne out by the documents produced by the WBSEDCL before the Ombudsman and RGRO, copies of which are annexed to the writ petition itself.

- 56.** The petitioners, in paragraph no. 55 of the writ petition, admit that it was impossible for them to detect if the officers of the licensee entered the rice mill on November 2, 2017. It is the consistent argument of the petitioners that the WBSEDCL had exclusive access to the meter room.
- 57.** In the backdrop of such admission, there is no scope for the petitioners to disprove the evidence produced by the WBSEDCL. Hence, there is no reason to disbelieve the available materials on record, which circumstantially corroborate the case of the WBSEDCL.
- 58.** *M/s Priyanka Overseas (supra)* reiterates the well-settled proposition that one cannot take advantage of one's own wrong. However, there is a world of difference between a 'wrong', which has a deliberate element in it, and an 'error' in calculation, which is bona fide in nature.
- 59.** Although *Rahamatulla's Case (supra)* and *M/s Prem Cottex (supra)* are not identical with the present case on facts, the crux of the ratio, to the effect that a mistake or bona fide error can justify subsequent raising of an additional or supplementary bill even beyond the limitation period, applies in its full rigour in the present case as well.
- 60.** The argument of the petitioners that the impugned bill in the present case was not a 'supplementary' bill is a mere attempt at jugglery with words. A 'supplementary' or 'additional' or whatever other classification is attributed to the said bill, it is a mere matter of nomenclature since, after all, "What's in a name?" Thus, the said argument cannot be accepted.

- 61.** Insofar as the petitioners' alleged prospective loss to be suffered due to belated billing of the outstanding amount is concerned, the WBSEDCL is right in arguing that the same cannot be a relevant factor in the present case, just as the yardstick of the money being public money is a non-issue as well. Since the petitioners have enjoyed the electricity supplied by the WBSEDCL during the relevant period, that too, for commercial purpose, there is no reason why they should not pay up at the lawful rate.
- 62.** However, keeping in mind that the petitioners' burden would be less if they had to disburse the amount over several months, if billed timely by the WBSEDCL, the petitioners would be justified in claiming instalments.
- 63.** Thus, the Ombudsman adopted one of the very plausible views on the basis of the materials on record and the reasoning behind his judgment is sound. Sitting in writ jurisdiction, there is no scope of reversing the same merely because some alternative view might, in the opinion of the court, have been possible.
- 64.** In view of the above discussions, the petitioners' challenge cannot be sustained.
- 65.** Hence, WPA 26868 of 2022 is dismissed on contest without any order as to costs.
- 66.** The petitioners, however, are permitted to pay the remaining outstanding dues for the period November, 2017 to December, 2018, after adjustment of the amounts, if any, already paid to the WBSEDCL from time to time by the orders of different courts/forums, in 10 (ten) equal monthly instalments,

the first of which shall be paid within January 15, 2023 and thereafter by the fifteenth day of each succeeding month. The remaining fractional balance, if any, shall be deposited with the last such instalment. It is made clear that the above payments shall be over and above the current electricity charges payable by the petitioners for each billing cycle.

- 67.** In view of the pendency of litigation till now, the right of the WBSEDCL to recover such amount is construed to ripen only now. Thus, the petitioners shall not be liable to pay late payment surcharge (LPSC) on such payment and the WBSEDCL shall not charge LPSC on the same.
- 68.** The WBSEDCL is restrained from disconnecting the electricity supply of the petitioners, which is the subject-matter of the present dispute, unconditionally up to January 15, 2023 and thereafter, on condition of that the petitioners continue paying all dues in instalments, along with the current electricity charges, as directed above.
- 69.** In case of even a single default on the part of the petitioners, however, the WBSEDCL will be at liberty to disconnect the petitioners' electricity supply by following due procedure of law.
- 70.** Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)