

AD. 17.
February 18, 2022.
MNS.

(Through Video Conference)

WPA No. 23563 of 2012

West Bengal State Electricity
Distribution Company Limited
Vs.
Sri Krishnendu Tung and another

Mr. Srijan nayak,
Mr. Sujit Sankar Koley,
Mrs. Rituparna Maitra

...for the petitioner/WBSEDCL.

Learned counsel for the petitioner submits that both the Ombudsman and the consumer, who are arrayed as respondents herein, have been served duly.

From the affidavit-of-service, which is kept on record, it is evident that the Ombudsman-respondent no. 2 was informed by e-mail. However, since nothing is on record to indicate that the consumer had been served, upon query, learned counsel for the petitioner undertakes to file, during the course of the day, a printout of the relevant track report from the postal website to indicate that proper service has also been effected on the consumer-respondent no.1.

Since none appears for the respondents today, as on several previous dates, the matter is

taken up for hearing *ex parte* in the absence of the respondents.

The short question involved in the present writ petition is whether the Ombudsman was justified in directing the respondent no. 1-consumer to pay electricity tariff at the rate applicable for an unmetered permanent SMP connection

Learned counsel for the petitioner contends that there were two existing systems at the relevant juncture. The first was that a TOD meter was to be installed for a three-phase metered connection, which would read the total electricity units used by the consumer. However, due to scarcity of TOD meters at that juncture, the alternative practice was to give a three-phase connection, however, by installing a single-phase meter, which was available on that juncture, and tripling the amount recorded by such meter for the three-phase consumption.

In the present case, it is contended that the second option was chosen with the consent of the consumer and the consumer had no complaint as to either the said arrangement of charging or the proper functioning of the electricity meter. However, when the West Bengal State Electricity Distribution Company Limited (in short 'WBSEDCL') sought payment of electricity charges at the rate of thrice the amount than payable for the actual metered units, on the premise that from that single-phase meter, a

three-phase connection was being used by the consumer, the consumer-respondent no. 1 defaulted in doing so and disputed the amount. The matter was referred to the concerned Grievance Redressal Officer (GRO) for resolution of the dispute. The GRO ultimately held in favour of the petitioner/WBSEDCL.

However, in a challenge before the Ombudsman, the Ombudsman-respondent no. 2 reversed such findings and came to the conclusion that since the WBSEDCL had failed to give the connection with a TOD meter, as per the extant Regulations framed by the West Bengal Electricity Regulatory Commission (WBERC) at that juncture, the WBSEDCL is only entitled to charge the tariff as per the existing unmetered annual tariff rate.

In the instant case, the consumer-respondent no. 1 had been enjoying electricity connection from the meter, which is not in dispute before any forum. It also appears from the order of the Ombudsman and the materials annexed to the writ petition that the consumer never raised any objection as to the proper functioning of the said electric meter.

It may be arguable whether such established practice of triple charging was based on sound logic, since the usage was equivalent to a three-phased connection, or it was arbitrary and *de hors* the governing law and regulations.

However, it cannot be denied that the WBSEDCL was, in the least, entitled to the amount of electric charges due on the actual meter reading.

Since there was no complaint against the functioning of the meter at any point of time and as the installed single-phase meter took readings on the basis of actual electricity usage of the consumer, the consumer could not avoid the responsibility of payment of electricity charges on such actual meter reading.

Hence, the Ombudsman acted without jurisdiction and *de hors* the law in arbitrarily directing that tariff was to be realized at the rate of unmetered annual tariff for permanent SMP connection, which was even lower than the charges for consumption as read by the single-phase meter for one phase.

Although the WBSEDCL failed to provide a proper TOD meter due to scarcity at that point of time, such deficiency of service on the part of the WBSEDCL cannot, *ipso facto*, give a licence to the consumer to avoid payment of the metered charges even for a single-phase connection.

In such view of the matter, WPA 23563 of 2012 [Old No. WP 23563(w) of 2012] is allowed, thereby modifying the impugned order of the Ombudsman dated May 17, 2012 passed in respect of G.R. Case No. W-170 KB of 2012 to the extent that the respondent no. 1 shall now pay to the WBSEDCL,

within a fortnight from the date of communication of this order to the consumer-respondent no. 1, the entire amount, as per the meter reading for the relevant period.

It may be clarified that this order is being passed in the peculiar circumstances of the case and will not operate as a precedent in all similar cases.

The WBSUEDCL shall intimate this order, along with server copies of the same, to the respondent nos. 1 and 2 at the earliest to ensure due compliance. The respondents shall act on the server copy of this order, without insisting upon prior production of a certified copy thereof.

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.)