In the High Court at Calcutta

Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.2051 of 2023

M/s. Sancheti Graphitech Services Private Limited and another
Vs.
Union of India and others

For the petitioners	:	Mr. Rahul Karmakar, Mr. Sounak Mukherjee, Mr. Sourav Gucchait
For the WBSEDCL	:	Mr. Sujit Sankar Koley
For the Union of India	:	Mr. Somnath Bhattacharjee
Hearing concluded on	:	05.04.2023
Judgment on	:	25.04.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1-company is a consumer of electricity under the West Bengal State Electricity Distribution Company Limited (in brief, "the WBSEDCL"). The Low Tension (LT) Bulk meter of the petitioners' factory was found to be defective in the month of July, 2019. The same was replaced with a new meter on August 4, 2020.

2. The bills raised by the WBSEDCL for the interim period were challenged by the petitioner in WP 5586 (W) of 2020, which was decided by a co-ordinate Bench of this Court on July 30, 2020 by directing the petitioner to deposit Rs. 1,25,000/- within two weeks and the licensee to revisit the bills for the relevant period.

3. On September 8, 2020, the WBSEDCL directed regeneration of the electricity bills from April 1, 2020 to May 15, 2020 (during which the Pandemic lockdown was prevalent) for average of 500 units per month and from May 16, 2020 to July 30, 2020 at 10953 units per month.

4. The said order of the WBSEDCL was challenged by the petitioners before the Ombudsman, who passed final order on April 20, 2022. On the same date, a further order correcting the final order was also passed. After correction, the order directed the bills to be regenerated in the following manner:

(i) From August, 2019 to March 23, 2020 on the basis of average consumption of the new meter for 3 months from the date of installation of the new meter;

(ii) From March 24, 2020 to May 31, 2020 as per 500 units per month;

(iii) For the months of June-July, 2020 on the basis of average consumption of the new meter for 3 months from the date of installation of the new meter.

5. The bills were regenerated accordingly by the WBSEDCL. However, the petitioner further challenged the Ombudsman's order before the West Bengal Electricity Regulatory Commission (WBERC) under Section 142 of the Electricity Act, 2003. Vide a letter dated September 2, 2022, the Secretary of the WBERC intimated the petitioner no. 1 that all bills from August, 2019 to April 2022 had been regenerated as per order of the Ombudsman; hence, the matter was disposed of. Any further complaint was directed to be taken up with the WBSEDCL Grievance Redressal Forum.

6. The petitioners have preferred the writ petition challenging the orders of the WBERC, Ombudsman and WBSEDCL. The limited ground of challenge is the billing for the months of June, 2020 and July, 2020 on the basis of average of 3 months succeeding the installation of new meter on August 4, 2020.

7. The petitioners admittedly run an offset printing factory and use LT bulk electricity connection. During June and July, 2020, they were admittedly allotted the job of manufacturing COVID kits and face masks. Thus, it cannot be said that the factory was not running or consuming electricity during such period, although the Pandemic was still prevailing. Moreover, the lockdown restrictions had been relaxed. It is beyond the charter of the WBSEDCL or the Ombudsman to assess the exact amount of electricity actually consumed during such period, since the meter was defective till then.

8. Although there was a considerable delay of one year on the part of the WBSEDCL to replace the defective meter after detection of fault in July, 2019, there is no reason why a substantial period of such delay cannot also be attributed to the disruption of normal activities due to the Pandemic and the lockdown.

9. In any event, the WBSEDCL and the Ombudsman were liberal enough to relax the calculations for March 24, 2020 to May 31, 2020, which was the lockdown period even as per the petitioners, by assuming the monthly units to be 500. It may be noted that such concession in favour of the petitioners was somewhat against the WBERC Regulations. Clause 3.6.1 of Regulation 55 of the WBERC provides that in case of non-theft defects in meters, average consumption and other parameters of billing are to be taken for the *preceding and/or succeeding three months or during any previous and/or subsequent period that may be reasonably comparable before the meter has been found to be defective or defunct.*

10. The Ombudsman made an exception to such rule, since the same parameters should have been applied to the entire period – by taking as basis of calculation either the preceding or the succeeding three months. However, such approach of the licensee and Ombudsman was justified and humane keeping in view the COVID situation and the considerable delay of one year occasioned by the WBSEDCL itself in replacing the meter.

11. Yet, there is no reason why such relaxation should have been extended even to June-July, 2020. The bills for the period of August, 2019 to March 23, 2020 were regenerated on the basis of average consumption of the new meter for 3 months from the date of installation of the new meter. The exactly same yardstick was also applied to June and July, 2020, when there was no lockdown. In fact, the PPE kit and face mask business was one of the most thriving industries at that point of time and the petitioner no. 1 was engaged in manufacturing the same.

12. Hence, the calculations of the Ombudsman do not suffer from any illegality or irregularity whatsoever.

13. Insofar as the jurisdiction of the WBERC to entertain the challenge of the petitioners is concerned, the reliance placed by the petitioners on Sections 14 (grant of license), 16 (conditions of license), 96 (power of entry and seizure) and 126 (powers to investigate and make assessment vested in the Assessing Officer of the licensee) is entirely misplaced, because those operate in distinct and different fields.

14. The power of the State Commission, vested under Sections 128 and 142 of the 2003 Act, is not of an appellate authority against an adjudication by the Ombudsman but primarily relate to failure of licensees to comply with conditions of license or Rules or Regulations. Such adjudicatory authority, however, is mostly restricted to violations of principles in general and not to each and every individual billing dispute. Thus the principles laid down in *MERC v. Reliance Energy Limited and Others [(2007) 8 SCC 381]* are not attracted in the instant case.

15. The Grievance Redressal Officers are the forum specifically designated for taking up such billing disputes. Hence, the WBERC was not at fault in advising the petitioners to approach the said forum.

16. However, in the present case the petitioners have invoked the writ jurisdiction of this Court and have sought to argue the violations of fundamental rights of the petitioners. Thus, the matter is not relegated afresh to the Grievance Redressal Officer concerned, particularly since both sides have been heard exhaustively on merits of the writ petition.

17. Thus, in view of the discussions above, there is no occasion or ground for interfering with the observations of the Ombudsman or the WBSEDCL in assessing the electricity dues of the petitioners for June-July, 2020 on the average consumption for three succeeding months after the installation of the new meter.

18. Accordingly, WPA 2051 of 2023 is dismissed on contest, but without any order as to costs.

19. Urgent certified copies, if applied for, be supplied to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)