

D/L. 22.  
April 25, 2023.  
MNS.

WPA No. 4153 of 2023

Singerkone Maa Annapurna Cold Storage  
and Agro Projects Private Limited and  
another

Vs.

State of West Bengal and others

Mr. Suddhasatva Banerjee,  
Mr. Debjit Mukherjee,  
Mr. Shashwata Nayak

... for the petitioners.

Mr. Sujit Sankar Koley

...for the WBSEDCL.

Mr. Adil Rashid,  
Ms. Afreen Khan,  
Mr. Vivek Paswan

...for the private respondent 5.

The petitioners contend that, at the initial juncture of taking electricity connection at the premises-in-question, they had deposited security amount, roughly to the tune of Rs.1,210,831.04 p.

Subsequently, the petitioners were unable to repay the loan taken from the bank, for which the property-in-dispute was sold by way of a SARFAESI sale. Such sale took place initially on August 11, 2014. Thereafter, however, the petitioners challenged the sale and ultimately there was a private treaty between the petitioners

and the subsequent purchaser, that is, the private respondent no. 5. Pursuant thereto, a new electricity connection was given to the private respondent no. 5. However, subsequently, when the petitioners asked for refund of the security deposit initially made by the petitioners, although the West Bengal State Electricity Distribution Company Limited (WBSEDCL) was first agreeable to refund the same, subsequently the WBSEDCL did not refund the same on the pretext that the private respondent no. 5 is claiming adjustment of such amount with the security deposit put in by the private respondent no. 5.

Learned counsel for the WBSEDCL takes a stand that the WBSEDCL, in principle, has no grievance if the amount of security deposit put in by the petitioners is to be refunded. However, upon query of court, learned counsel for the WBSEDCL submits that in such event, the balance security deposit to be refunded has to be compensated by the subsequent purchaser, that is, the respondent no. 5.

Learned counsel appearing for the private respondent no. 5 points out that at the time of entering into the private treaty, it was specifically

agreed between the petitioners and the private respondent no. 5 that the property would be sold on "as is where is and whatever there is" basis. Hence, since prior to such date, the WBSEDCL had already given adjustment to the security deposit previously put in by the petitioners with the security deposit payable by the private respondent no. 5 at the time of giving electricity connection, the expression "as is where is and whatever there is" includes such liability to pay the amount of security deposit, which has already been adjusted. Hence, it is argued that there is no scope of refunding such security deposit, which has already been adjusted with the amount payable by the private respondent no. 5 to the petitioners.

Upon a perusal of the materials annexed to the present writ petition and the connected affidavit-in-opposition, it is seen that the initial certificate of sale in favour of the respondent no. 5 was dated August 11, 2014.

Almost contemporaneously with such certificate of sale, by a communication dated November 8, 2014 issued by the WBSEDCL to the private respondent no. 5, it is clearly disclosed that even as per the Distribution

Licensee, the respondent no. 5 was to furnish security deposit of RS.12,18,000/- calculated as per the then latest tariff on 200 KVA in the name of the respondent no. 5.

Subsequently, in the communication dated June 9, 2015, it is seen that the WBSEDCL admitted that the total amount of security deposit lying with the WBSEDCL was the sum total of the bank guarantee furnished by the private respondent no. 5 to the tune of Rs.1,218,000/- and the cash deposit, which had been previously made by the writ petitioners to the tune of Rs.1,210,831.04 p.

It was further indicated by the WBSEDCL that the security deposit furnished was more than sufficient and the excess amount was payable to the private respondent no. 5 by the WBSEDCL.

Even from the subsequent electricity bills raised for the respondent no. 5 by the WBSEDCL with regard to the property, it is disclosed that the WBSEDCL went on giving adjustment by way of interest for the excess security deposit lying with the WBSEDCL. The communication to the respondent no. 5 made by the WBSEDCL on November 8, 2014, read in conjunction with the communication between the same parties dated

June 9, 2015, clearly discloses that the total security deposit sought from the respondent no. 5 by the WBSEDCL for giving new electricity connection to the respondent no. 5 was Rs.12,18,000/- only. Thus, there is no scope of there being any further outstanding amount, which was never, in any event, communicated by the WBSEDCL either to the petitioner or to respondent no. 5 on any previous occasion. Hence, as admitted by the WBSEDCL, the cash deposit of Rs.1,210,831.04 p. given by the petitioners was lying in excess, for which interest was being disbursed in favour of the respondent no. 5.

However, since the respondent no. 5 did not have any further claim against the petitioners, nor did the WBSEDCL have any claim of outstanding dues on the excess cash deposit deposited by the petitioners, which was still lying with the WBSEDCL, there could not have been any occasion to the respondent no. 5 being unjustly enriched by the interest being paid by the WBSEDCL for each billing cycle on the excess security deposit, which was lying with the WBSEDCL.

That apart, learned counsel for the petitioners has rightly contended that Clause 4.2.5 of Regulation No. 52 dated April 2, 2013 of the West Bengal Electricity Regulatory Commission (WBERC) stipulates specifically that the security deposit shall be appropriately returned/refunded within fifteen days on the request of the person who gave such security deposit after adjusting with the amount of any outstanding bill.

In fact, Clause 4.2.6 of the same Regulation stipulates that the non-refund or non-adjustment of the interest on security deposit to eligible consumer shall attract interest @ 10% per annum in addition to other penalties etc. as per the provisions of the Act and Regulations.

In view of the above discussions, the petitioner are squarely entitled to get back the refund of the excess security amount, which was lying with the WBSEDCL at the behest of the petitioners. Since the petitioners are no longer consumers and the contract between the petitioners and the WBSEDCL stood terminated for all practical purposes, it is the bounden duty of the WBSEDCL to refund the amount of

Rs.1,210,831.04 p. to the petitioners in terms of Clause 4.2.5 of the Regulation 52.

In so far as the interest contemplated in Clause 4.2.6 is concerned, however, since the WBSEDCL has already been paying extra amounts of interest by giving credit of the same to the bills of respondent no. 5, which transpires to be a *bona fide* mistake in view of the arguable case made out by the parties, the WBSEDCL can be relieved of the liability to pay such additional amount of interest on the amount of security deposit lying with them to the petitioners. However, there is no scope of the WBSEDCL withholding the security deposit of Rs.1,210,831.04 p. and the same has to be returned immediately to the petitioners.

Accordingly, WPA No. 4153 of 2023 is allowed, thereby directing the WBSEDCL to refund the security deposit of Rs.1,210,831.04 p. to the petitioners within May 31, 2023.

In the event such payment is not made within the date as stipulated above, the WBSEDCL shall also pay interest @ 6% per annum for the entire period from April 1, 2023 till such is disbursed in favour of the petitioners.

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.)