

ML-07
Ct No.09
01.05.2023
TN

WPA No. 7164 of 2023

West Bengal State Electricity Distribution
Company Limited

Vs.

M/s Froestees India Pvt. Ltd. and others

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the petitioner (WBSEDCL)

Mr. Bidyut Kr. Halder,
Mr. Indranil Halder,
Ms. Neha Singh,
Ms. Srabanti Das

.... for the respondent no.1

Learned counsel for the petitioner/ Distribution Licensee submits that the Ombudsman acted patently *de hors* the law and in a perverse manner in observing that there was zero consumption for a commercial unit with regard to electricity.

It is submitted that even as per the self-declaration of the respondent, some amount of electricity was consumed during the relevant period, which is April and May, 2020. In spite of the same, the Ombudsman proceeded on the premise that there was zero consumption and directed regeneration of bills on such premise.

It is argued, by placing reliance on the submission of the licensee dated July 18, 2022

annexed at page-66 of the writ petition, that a comparable commercial unit immediately adjacent to the premises-in-question, also run by the respondent no.1, consumed huge amount of electricity during the contemporaneous period, which has been admitted by the respondent. However, insofar as the present premises are concerned, the respondent took the plea of the Covid pandemic and the *Amphan* cyclone.

Learned counsel appearing for the respondent no.1 places reliance on copies of orders passed by the Government of India, Ministry of Home Affairs under Section 10(2)(I) of the Disaster Management Act during the said relevant period, introducing a nationwide lockdown for such period. It is submitted that since the months of April and May, 2020 squarely fell within the purview of such lockdown, there was no operation run by the respondent at the premises-in-question at the relevant juncture.

Insofar as the adjacent premises is concerned, it is submitted that the same is an educational institution, which was operating online during the pandemic period, leading to the electricity consumption which has been admitted.

That apart, it is argued that the disputed meter-in-question, unlike the adjacent premises, was defective during the relevant period, which fact is

admitted by the licensee and, as such, the readings taken by such defective meter cannot be relied on.

It is seen that, by way of reasonably comparable period, the licensee has taken a period of time of operation of the commercial unit of the petitioner at the relevant premises, which is an automobile showroom, to be a period when the business of the respondent no.1 was running in full swing, there being no pandemic and/or cyclone.

The Ombudsman proceeded on the premise that such period, when the business of the respondent no.1 was running in its totality, cannot be taken as a reasonably comparable unit, due to prevalence of the pandemic and the *Amphan* cyclone at the relevant period, that is, during April and May, 2020.

That apart, the meter in the premises was admittedly defective during such period, which leads to the calculation as provided for in the Regulations framed by the West Bengal Electricity Regulatory Commission (WBERC).

As correctly observed by the Ombudsman, such Regulations point to three preceding or subsequent months, or corresponding months from some other period, to be taken as a reasonably comparable period. In the present case, the period taken for comparison was not reasonably comparable with the

period-in-question. As such, there is no patent perversity or illegality in exercise of jurisdiction by the Ombudsman.

However, since the respondents themselves have admitted a miniscule consumption of 554 units during the relevant period, which has been attributed to minor electrical devices such as bulbs and tube-lights operating in a security room of the premises and outside the premises as well as a water pump, which might have been necessary to be operated for security of the premises even during the pandemic period, the Ombudsman ought to have given credit to the licensee for such units.

Hence, the impugned order of the Ombudsman dated August 23, 2022 is modified to the extent that the West Bengal State Electricity Distribution Company Limited shall regenerate the bills for the period from April to May, 2020, on the basis that the consumption of the respondent was 554 units for the concerned premises during such period. Upon regeneration of such bills, the petitioner-licensee shall refund the balance amount, which was deposited on protest by the respondent, to the respondent and/or adjust the same with future bills of the respondent, to the extent the same is above the consumption charges

for 554 units. Such regeneration shall be done at the earliest, positively within three weeks from date.

The refund shall thereafter be adjusted with subsequent three billing cycles and/or be refunded outright to the respondent no.1 as per the choice of the petitioner-licensee.

WPA No. 7164 of 2023 is accordingly disposed of with the above directions.

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.)