

AD-07
Ct No.09
10.05.2023
TN

WPA No. 10100 of 2023

Pranay Jana
Vs.
The West Bengal State Electricity Distribution
Company Ltd. and others

Mr. Partha Ghosh,
Mr. Amal Kumar Datta,
Ms. Simran Sureka

.... for the petitioner

Mr. Sujit Sankar Koley

.... for the WBSEDCL

The petitioner has challenged an order of the Ombudsman dated March 21, 2023, whereby the Ombudsman merely communicated that he did not admit the grievance redressal petition of the petitioner dated March 20, 2023, as it has been filed well after the stipulated period of submission of such petition in terms of Clause 10.1(i) of the West Bengal Electricity Regulatory Commission (WBERC) Guidelines of 2013.

It is argued that the final order passed by the RGRO on March 14, 2022, which was sought to be challenged before the Ombudsman, clearly specified that the bills have to be regenerated and readjusted as per Regulation 55 of the WBERC, Clause No. 3.6.1. However, the same was not specifically complied with by the authorities.

Learned counsel submits that as per Regulation No. 68 of 2020, Clause 10.4.2(iii), after completion of 100 (one hundred) working days from the date of lodging of a complaint to a GRO, if the licensee does not comply with the order of the GRO, a challenge may be preferred before the Ombudsman. Further, a proviso has been introduced to the effect that the Ombudsman may entertain a representation after expiry of the stipulated period of twenty days if the Ombudsman is satisfied about sufficient cause existing for not filing it within that period. In the present case, it is argued, such consideration has not been given by the Ombudsman at all.

Learned counsel appearing for the respondents submits that the petitioner's challenge before the Ombudsman was hopelessly barred since the order of the RGRO was dated March 14, 2022, whereas the challenge before the Ombudsman was filed much thereafter, after more than one year, thereby much exceeding the stipulated period of twenty days for preferring such challenge.

Moreover, the authorities have only complied with the order of the RGRO, which cannot give rise to any further grievance of the petitioner.

Thirdly, it is argued that even if the petitioner has a grievance regarding such regeneration of bills,

the same furnishes a fresh cause of action to move the RGRO again.

Upon hearing learned counsel for the parties, it transpires that the Regional Grievance Redressal Officer, in his order dated March 14, 2022, left an ambiguity in the ordering portion of the same. The A.E. & S.M., Digha CCC was directed by the RGRO to calculate the last (preceding) one year's average consumption as it was a seasonal business when meter was running in good condition before October 24, 2010.

However, in the same breath, the bills were directed to be re-adjusted or rectified as per Regulation 55/WBERC, Clause No. 3.6.1.

Clause No. 3.6.1 of Regulation 55 stipulates, among other things, that where the period during which the meter has been defective or defunct cannot be ascertained, the period shall be limited to three months immediately preceding the date of inspection. Even otherwise, the provisional payment has to be made by the consumer in cases where the meter is found defective or defunct for reasons other than theft of electricity, on the basis of average consumption and other parameters for the preceding and/or succeeding three months or during any previous and/or

subsequent period that may be reasonably comparable.

The doubt which might have crept into the mind of the petitioner is, as to whether the comparable period for taking an average could be arbitrarily taken by the GRO to be the preceding one year or had to be restricted to three months.

Although one year was clearly mentioned in the order of the RGRO, there might have been a scope of doubt regarding whether the applicability of Clause 3.6.1 of Regulation 55 would be contrary to such period of one year.

As such, only after the regeneration being actually made, the petitioner was in a position to crystallize his challenge against the GRO order upon understanding the full implication of the same. The petitioner, in the present case, had made representations before the concerned authorities upon such regeneration being made, on the premise that the regeneration had not been done in terms of the RGRO order. As such, the benefit of doubt for the delay in filing the challenge before the Ombudsman ought to be given in favour of the petitioner.

Hence, the Ombudsman, vide order dated March 21, 2023, acted without jurisdiction in passing a cryptic order refusing to admit the challenge of the

petitioner merely in terms of Clause 10.1(i) of the relevant Regulation of 2013, without taking into consideration the proviso to the said Clause, which has been brought in by the 2020 Regulation and without adverting to the reasons for the delay.

Thus, it was incumbent upon the Ombudsman to consider the circumstances as indicated above and to condone the delay in preferring the challenge occasioned by the petitioner.

In such view of the matter, WPA No. 10100 of 2023 is allowed, thereby setting aside the impugned order of the Ombudsman dated March 21, 2023, whereby the Ombudsman refused to admit the challenge of the petitioner against the order of the RGRO. The delay in preferring such challenge is hereby condoned and the Ombudsman is directed to give a fresh hearing to the petitioner and the respondent-authorities and to adjudicate the challenge of the petitioner afresh on its own merits and in accordance with law, preferably within three months from the date of communication of this order to the Ombudsman. The petitioner shall communicate a server copy of this order to the Ombudsman for the purpose of ensuring compliance of the same.

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.)