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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

R.V.W. 104 of 2023
with
W.P.A. No.7255 of 2023

West Bengal State Electricity
Distribution Company Limited & Ors.
Vs.
Hanif Haque

Mr. Mihir Kundu
...for the review applicants

Mr. Mahammad Mahmud,
Mr. Neyaz Ahmed
...for the petitioner/ respondent

Learned counsel appearing for the review applicant submits that there was some misunderstanding on the part of the applicants to the effect as to whether any concession could be given on the charges estimated by the concerned officials of the Distribution Licensee.

Heard learned counsel for the parties.

The review applicant contends that under Office Order No. 52, dated May 05, 2012, a copy of which is handed over in court and which is the governing provision, if cost of scheme for effecting such service connection where erection and commissioning of new distribution sub-station is required, is recovered within four years, the scheme

may be done with WBSEDCL cost. Intending consumer will pay the S.C. charge as per Procedure-A. It is further stipulated thereunder that, as a guideline, based on prevalent tariff and average annual running hours of private agricultural pumps, techno-economic feasibility of any scheme for effecting such connection will be considered as viable if the scheme value for such involvement of distribution sub-station case is found to be Rs. 40,000/- per H.P. per connection or less.

In the present case, the Court observed in its order dated April 20, 2023, upon a consideration of the relevant legal provisions, that the licensee acted within its power to claim the amount of Rs.2,65,310.65P from the petitioner, since the right under Section 43(1) of the Electricity Act, 2003 is not unfettered but circumscribed by the other provisions of the 2003 Act, including Section 45 and 181, read with the WBERC Regulations.

However, in paragraph 15 of the order under review, it was observed that in fact, in the present case, keeping in view the economic condition of the petitioner, the licensee acted graciously enough in agreeing to waive the cost of Rs.2,00,000/- and to take only Rs. 65,000/- from the petitioner as the

necessary cost for constructing the sub-station, thereby agreeing to bear a portion of such costs.

It was also observed that it would be entirely against the law for the court, sitting in judicial review under Article 226 of the Constitution of India, to direct the WBSEDCL to spend further public money by unnecessarily decreasing the amount payable further, merely to serve the purpose of an individual. Hence, it was observed, there was no scope for interference in the writ petition. However, it was reiterated, in view of the fair offer made by the WBSEDCL to waive the cost of Rs.2,00,000/- and take only Rs.65,000/- from the petitioner for constructing new sub-station, it would only be appropriate if liberty is given to the petitioner to deposit the amount.

Hence, it is clear from the said order that the WBSEDCL, through counsel, had specifically offered to waive the amount of Rs.2,00,000/- and to take only Rs.65,000/- from the petitioner. Although learned counsel for the WBSEDCL now, as an afterthought, submits that the same was a misunderstand on behalf of the learned advocate, the Court is not empowered to review its order, since there is no error apparent on the face of the record or discovery of new fact or any ground akin

thereto, permitting the court to review its order dated April 20, 2023.

Although the WBSEDCL, as an afterthought in review, seeks to make a new argument of law that it was not possible in law to give such concession, for the sake of justice the said argument is also dealt with hereinbelow.

A bare perusal of the Office Order cited by the WBSEDCL indicates that, as per the same, an advisory was issued by the Chief Engineer (Dist.) of the WBSEDCL in general on the subject of techno-economic feasibility for effecting service connection to private agricultural pumps where erection and commissioning of new distribution sub-station is required, is recovered within four years, the scheme may be done with WBSEDCL cost. The intending consumer will pay the S.C. charge as per Procedure-A.

Hence, there is nothing in the said Office Order restricting the WBSEDCL or any other distribution licensee to waive any portion of the amount charged for constructing of the said sub-station.

From the said Office Order cited by the WBSEDCL itself, it is clear that the same is merely an advisory within the provisions of the Regulation, particularly Regulation No. 46 of the WBERC, which is relied on by the WBSEDCL.

As such, WBSEDCL is not fettered in any manner by law from spending money requiring to build a sub-station, particularly in cases where the cost of scheme for effecting such service connection is recovered within four years.

In view of the Office Order itself giving such leeway to the WBSEDCL, this Court does not find any irregularity in giving concession to the petitioner, which was recorded in the order dated April 20, 2023.

Hence, there is nothing in law or any equity for allowing the present application for review of the said order.

Accordingly, R.V.W. 104 of 2023 is dismissed on contest without, however, any order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)