

In the High Court at Calcutta
Constitutional Writ Jurisdiction

Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No.17828 of 2019

Sureka Modern Rice Mill Private Limited
Vs.
The West Bengal State
Electricity Distribution Company Limited
and others

For the petitioner	:	Mr. Amritam Mondal, Ms. Ananya Chakraborty, Ms. Shipra Naskar
For the WBSEDCL	:	Mr. Srijan Nayak, Mr. Sujit Sankar Koley
Hearing concluded on	:	02.03.2023
Judgment on	:	13.03.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioner, a rice mill, is a consumer under the West Bengal State Electricity Distribution Company (WBSEDCL). Although the petitioner has paid all electricity bills on a regular basis, on March 5, 2018, the WBSEDCL intimated the petitioner that the bills for the month of November, 2017, December, 2017 and January, 2018 were wrongly generated due to alleged defective Potential Transformer (PT) circuit developed on and from November 3, 2017, resulting in partial demand as per consumption in the meter during the said period.

The WBSEDCL demanded that the dues outstanding for the said period of three months amounted to ₹ 17, 03, 072/-.

2. The petitioner rebutted such claim by a reply dated March 9, 2018. However, subsequent disconnection notices were sent to the petitioner on the ground of non-payment of such alleged outstanding dues. This prompted the petitioner to prefer the instant challenge against the alleged rectified outstanding bill.
3. The petitioner disputes the allegation that the meter in question was defective at any point of time. It is argued that in the event the circuit/meter was defective, there was no justification for the WBSEDCL to charge outstanding amounts for the period from November 2017 to January 2018 but omitting the months of February 2018 and March 2018 while raising the revised bill, although the defective meter was alleged to be replaced only in April, 2018.
4. It is further submitted that the WBSEDCL never inspected the meter for the purpose of ascertaining whether it was actually defective and that the alleged replacement of the same by the WBSEDCL was not done with any notice to the petitioner.
5. Learned counsel appearing for the petitioner submits that intimation is required to be given to the consumer in case a defective meter/circuit is changed in terms of clauses 3.8.3 and 3.6.1 of Regulation 55 of the West Bengal Electricity Regulatory Commission (for short, "the WBERC"). Such provisions were not complied with in the present case.

6. From August 2017 onwards, there was a flood in the area, due to which the paddy used for the purpose of the rice mill rotted. As such, during the period in question, rice production took a toll, resulting in less consumption of electricity than the corresponding months of the previous year and/or the previous months. However, such fact was not considered by the WBSEDCL in arbitrarily coming to the conclusion that the meter reading for such period was faulty.
7. Learned counsel for the petitioner next cites Clause 11.1 of Regulation 57 of the WBERC, which specifically provides for the procedure in case of meters being detected to be defective. In such case, the distribution licensee has to install a testing meter for a particular period for the purpose of ascertaining the condition of the meter, which has not been done in the present case.
8. Learned counsel also relies on the Draft (Rights of Consumers) Rules, 2020 framed by the Ministry of Power, Government of India and published on September 9, 2020. Rule 7 thereof provides for testing of meters, if found to be defective.
9. Learned counsel for the petitioner next cites certain judgements in support of his contention that the due procedure in such cases was not conformed to by the WBSEDCL.
10. First, learned counsel cites *AIR 1985 MP 70 (Smt. Basantibai v. MP Electricity Board, Indore and Ors.)* where a Division Bench of the Madhya Pradesh High Court held that when a difference or dispute arises regarding whether an electricity meter was defective, the same has to be referred to the Electrical Inspector.

11. Learned counsel next relies on a Single Judge-Bench decision of the Delhi High Court, reported at 2008 (103) DRJ 107(*Vinod Kumar Jain v. Bses Rajdhani Power Ltd.*) where in case of the dispute the High Court directed the meter to be tested.
12. Learned counsel for the petitioner then places reliance on *Nirmala Metal Industries v. KSEB* [2006 (3) KLT 465]. A Division Bench of the Kerala High Court held therein that if a consumer entertained any doubt that the meter is defective, not the Board the consumer can get the meter tested by the Electrical Inspector.
13. Again, in *Bombay Electricity Supply & Transport Undertaking v. LAFFANS (INDIA) (P) Ltd. and Anr.*, reported at (2005) 4 SCC 327, the Supreme Court held that although the meters were said to be incorrect and had been removed and replaced by the licensee, the most material evidence being the meter itself had been lost by the licensee in removing the incorrect meter. The licensee cannot be permitted to take advantage of its own acts and omission - the acts of removing the meter and the omission to make a reference to the Electrical Inspector.
14. Lastly, learned counsel for the petitioner places reliance on *Mrityunjay Pani and Anr. v. Narmada Bala Sasmal and Anr.* (AIR 1961 SC 1353) for his proposition that convenience cannot accrue to a party from his own wrong.
15. In reply, learned counsel for the WBSEDCL submits that the established method, as provided by the WBERC Regulations, is that the average daily of the corresponding months of the previous year or

for three months before or after the detection of the defect in the meter is the basis of calculation in case of defective meters.

- 16.** It is further argued that the defect was cured by way of replacing the meter and, as such, the petitioner cannot take the plea that the WBSEDCL did not take corrective measures.
- 17.** Learned counsel places reliance on Clauses 3.5 and 3.6 of Regulation 46 to submit that the Regional Grievance Redressal Officer (RGRO) is the competent authority to decide on meter disputes. It is argued that the RGRO is a technical person, competent to deal with such disputes.
- 18.** Learned counsel for the WBSEDCL argues that no counter was filed by the petitioner to the Draft Settlement Order passed by the RGRO. As such, as per the prevailing regulations, the same became final. In support of such contention, learned counsel refers to Clause 7 of Regulation 56 of the WBERC.
- 19.** Inasmuch as non-service of prior notice to the petitioner is concerned, learned counsel submits that Clause 8 of Regulation 55 gives access to the licensee to the meter and no notice is required to be given to the consumer in order to replace a meter.
- 20.** Insofar as the petitioner's argument regarding reference of the meter to an Electrical Inspector goes, it is argued that the said provision existed in the Electricity Act, 1910, on which the cited judgements were rendered. However, upon the coming into force of the Electricity Act, 2003, there is no existence of an Electrical Inspector. The RGRO himself, it is submitted, is a technical authority and is fully competent to decide issues regarding defective meters.

21. As such, it is argued that the WBSEDCL acted well within its jurisdiction and authority to assess and claim the outstanding dues on the basis of calculation as per law, regarding the period for which the meter was defective.
22. A scrutiny of the cited judgments would be of benefit in the present context. The judgments in *Smt. Basantibai (supra)* and *Bombay Electricity Supply (supra)* were rendered by the Madhya Pradesh High Court (Indore Bench) and the Supreme Court respectively, both on the basis of Section 26(6) of the Electricity Act, 1910. The provisions regarding reference to an Electrical Inspector have been done away with in the present Act of 2003, under which the instant case is governed. Hence, the said two judgments cannot be binding precedents for deciding the instant *lis*.
23. The Division Bench of the Kerala High Court, in *Nirmala Metal Industries (supra)*, also placed reliance on pre-2003 Act provisions and is not applicable to the present case.
24. The proposition laid down in *Mrityunjay Pani (supra)* is trite law. No one can take advantage of his own wrong. In the said context, we are to test whether the WBSEDCL did so.
25. In *Vinod Kumar Jain (supra)* also, the learned Single Judge resorted to the Delhi Regulations and the Electricity Rules, 1956, which are not applicable to the present case, which is governed by the Electricity Act, 2003 and the West Bengal Regulations. However, the relevant clauses of the West Bengal Regulations are in the same tune as the said Rules.

- 26.** Notification 57 of the WBERC brings in amendments to Regulation 46 of 2010 and substitutes Clause 11.1 of the principal Regulations which provides for replacement of faulty meters/metering system where supply is not affected, precisely as in the case at hand. For rural areas, as per the said regulation, the meter shall be inspected within 7 working days from the date of receipt of the complaint. In case the meter/metering system is found otherwise faulty than being burnt out, it shall be tested and the same shall be replaced/rectified within 30 days from the date of inspection.
- 27.** Clause 3.8.1 of Regulation 55 provides for provisional charging at the prevailing tariff in case of unusual variation in meter reading for a billing cycle, on the basis of average consumption for the prior six months or consumption of similar period of the last year.
- 28.** However, in Clause 3.8.3 of Regulation 55 of the WBERC, it is stipulated that in case the meter reading shows unusual consumption in the next billing cycle also, the consumer shall be informed in writing and shall be advised to clarify the reason for sudden change in consumption by the licensee. If the explanation given by the consumer is found to be satisfactory by the licensee, the consumer shall be charged for actual consumption of both the billing cycles. If, however, the explanation given by the consumer is not found to be satisfactory by the licensee or no explanation is given by the consumer or if the meter is suspected to be defective either by the consumer or by the licensee, the licensee shall keep a test meter connected in series with the existing meter for a reasonable period to check the correctness of

the meter to the satisfaction of both the licensee and the consumer. Only if, on the basis of test results, the existing meter is found to be defective, the same shall be replaced by a tested correct meter by the licensee.

- 29.** Such provisions have been given a go-bye on the part of the WBSEDCL in the present case. Although it is alleged that the WBSEDCL replaced the defective meter, there was no prior notice to the consumer/petitioner alleging the defect in the metering system. In the absence of such notice, any test meter being connected, or any satisfaction of the licensee as to the correctness of the meter, the provisions of Clause 3.8.3 of Regulation 55 are contravened, thereby rendering the entire exercise futile and unlawful.
- 30.** That apart, the provisions of the amended Clause 11.1 of Regulation 46 in respect of testing the meter/metering system has also been flagrantly contravened in the present case, despite the dispute arising in a rural area as envisaged in the said clause.
- 31.** Although it is argued by the WBSEDCL that the RGROs are technically equipped to decide meter disputes, in the present case there is no reflection at all in the order of the RGRO of having tested the meter or complied with the provisions as discussed above with regard to the testing of the allegedly defectivemeter. No test meter as contemplated in clause 3.8.3 of Regulation 55 was connected, in series or otherwise, in the present case, nor was any test held or the petitioner's satisfaction as to correctness or otherwise of the meter recorded.

- 32.** Neither the RGRO nor the Ombudsman returned any finding as to the condition of the meter being tested prior to the same being allegedly replaced.
- 33.** The reliance by learned counsel for the WBSEDCL on Clause 3.6.1 of Regulation 55 is entirely misplaced. The same provides that if, on inspection by the distribution licensee on its own or on the basis of a complaint of the consumer, the meter of the consumer is found defective or defunct for a reason other than theft of electricity and no theft of energy can be reasonably suspected, the consumer shall be provisionally charged for such consumption of electricity for the period during which the meter has been suspected to have been defective or defunct, 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 before the meter has been found to be defective or defunct.
- 34.** In the present case, the petitioner has made out a specific case that there was a flood in the area in the month of August, 2017. In fact, a specific report of the concerned Block Development Officer (BDO) has been annexed to the writ petition which clearly indicates that there was a flood in the area at the relevant juncture, which caused the paddy used as raw material in the Rice mill to rot. As such, it is reasonably argued by the petitioner that the consumption of electricity would be considerably low in the succeeding few months, since the rotted and soaked paddy had to be thrown out, bringing down the

production activity in the rice mill and, along with it, the electricity consumption.

- 35.** Such contention was brushed aside in a cryptic manner by the authorities on the assumption that flood affected the region only for a month, overlooking the obvious consequences thereof to a rice mill such as the petitioner's.
- 36.** The RGRO's order was utterly cryptic, without a single line of reasoning. Even if he/she was a technical person, the RGRO did not bother to decide on merits the cardinal question as to whether the meter was at all defective in the relevant period.
- 37.** Further, the RGRO failed to take into consideration that the written instruction of the Block Development Officer to the petitioner as well as two other rice mills was itself dated August 29, 2017 (annexed at page 169 of the writ petition). In the said communication, the BDO specifically found that the foodgrains stuffed in the mills were mostly rotten and were breaking out foul odour, which might cause pollution any time in the surrounding locality. Hence, the petitioner and the other mills were instructed to dispose of the rotten foodgrains from the mills immediately. It is pretty obvious that it could reasonably have taken the rice mills a few months' time to recover from such loss by procuring fresh foodgrains/paddy after getting rid of the rotten foodgrains. Such minimum gestation period ought to have been taken into consideration for the purpose of assessing the period during which the petitioner was under-producing, in order to ascertain the

veracity of less consumption of electricity during the relevant period of three months succeeding the flood.

38. Surprisingly, in spite of having substantially recorded the arguments of the petitioner, the RGRO did not take the trouble of discussing or deciding the most germane questions involved, as to the dispute regarding the PT circuit being defective at all. Instead, the ‘Observation’ part of the RGRO comprised of a single sentence to the effect that the petitioner did not pay the outstanding bill amount as per the regenerated bills.
39. Thus, there was no adjudication at all in the first place in the Draft Settlement Order for the petitioner to have “consented” to or “admitted” by *non traverse*. As such, the non-filing of any further objection to such a non-existent adjudication could not tantamount to the petitioner’s admission of the contents of the same.
40. In view of the petitioner having disputed the bills as well as the very allegation of the PT circuit being defective, the onus had shifted on the WBSEDCL to prove its case, which the latter miserably failed to discharge.
41. There was no basis at all for the regeneration of the bills for November 2017 to January 2018, that too, on the specific allegation that the PT circuit was defective from a particular date, that is, November 3, 2017.
42. Hence, the only possible outcome of the consideration by both the forums could be a setting aside of the regenerated bills simpliciter, without directing further regeneration, as the payment of current

electricity charges for the three months in issue has already been completed by the petitioner previously.

- 43.** The RGRO's order, being devoid of reason, cannot but be set aside in any event. Hence, the Ombudsman, who is not a technical person trained to decide such a dispute, became the first forum of adjudication for all practical purposes, thereby depriving the petitioner of a forum.
- 44.** Now let us consider some of the relevant findings of the Ombudsman.
- 45.** The Ombudsman's order clearly records that, despite clear instructions of the forum in terms of the Order dated May 16, 2019 to produce the report of the inspection as alleged to have been conducted by the WBSEDCL on March 17, 2018, in which the malfunctioning of the meter was detected, the WBSEDCL, without producing the said inspection report, has submitted copy of the inspection report regarding re-commissioning of the PT circuit in the service connection of the complainant on April 6, 2018. No explanation was forthcoming from the WBSEDCL for withholding such best evidence, if existent.
- 46.** It was also observed by the Ombudsman that the accuracy of the meter should have been tested by the local office of the WBSEDCL before reaching the conclusion that the PT circuit of the installed meter of their service connection became defective on November 3, 2017, as per the Regulatory provisions, prior to replacement of the allegedly defective PT circuit, which has not been done.
- 47.** In his conclusive observations, the Ombudsman unambiguously held that the WBSEDCL has failed to established with supporting

documents that they actually conducted the inspection on March 17, 2018 to ascertain the status of functioning of the meter of the service connection of the complainant which necessitated the regeneration of the original bills for the three months from November 2017 to January 2018.

- 48.** It was further held that even if such malfunctioning was detected, then also the accuracy of the meter should have been tested by placing a check meter in series with the existing meter for a reasonable period keeping the complainant informed in conformity with the Regulatory provisions and the meter, if found defective, should have been replaced subsequently keeping the complainant duly informed, which has not been done. Hence, it was further observed, the actions taken by the WBSEDCL for replacement of PT circuit of the meter without conducting testing of the accuracy of the meter as per Regulatory provisions are to be considered as unjustified and in violation of the Regulatory provisions. Since the alleged defective PT circuit has also been replaced, there is no scope of ascertaining the accuracy of the meter at the relevant point of time which necessitated the regeneration of bills for the said three months, which has been disputed by the complainant/petitioner. Accordingly, the only logical conclusion which can be drawn, in the opinion of the Ombudsman, is that the WBSEDCL has failed to establish the justification and correctness of the regenerated bills for the period from November 2017 to January 2018 as per Regulatory provisions on the basis of supporting documents. Those bills, are, therefore to be

cancelled. However, the Ombudsman misdirected himself in directing further regeneration of the erroneously regenerated bills for the three months from November 2017.

- 49.** As such, the conclusion arrived at by the Ombudsman was contrary to his previous observations and findings. Hence, the order of the Ombudsman directing further regeneration of bills for the relevant period cannot be sustained.
- 50.** Accordingly, WPA 17828 of 2019 is allowed on contest, thereby setting aside the order of the Ombudsman to the extent that the same directed the WBSEDCL to further regenerate bills for the period from November 2017 to January 2018 and setting aside the order of the RGRO as a whole. The regenerated bills impugned herein are hereby cancelled and quashed. Since the petitioner has already paid the current electricity charges for the said period as per regular bills raised by the WBSEDCL, no further amount need be paid by the petitioner for the period-in-question.
- 51.** There will be no order as to costs.
- 52.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)