

AD-17
Ct No.09
21.04.2023
TN

WPA No. 28422 of 2022

Sri Sanjoy Pal
Vs.
The West Bengal State Electricity Distribution
Company Limited (WBSEDCL) and others

Ms. Soma Ray Chaudhury,
Ms. Payel Khanra

.... for the petitioner

Mr. Asif Dewan

.... for the WBSEDCL

The plinth of the dispute in the present litigation is the bill raised by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for the month of October, 2018.

Such bill is annexed as Annexure P5 at page-53 of the writ petition.

Learned counsel for the petitioner submits that the matter has a chequered history, which culminated in the matter being decided by the Ombudsman in favour of the petitioner. The order of the Ombudsman stipulated that the RGRO order dated December 16, 2016 was set aside and the WBSEDCL was to cancel its claim of LPSC against the service connection of the complainant/petitioner amounting to Rs.1,37,938/- against the bills for the period from January, 2006 to

January, 2014 as it had been established that the said amount was claimed in total violation of Section 56(2) of the Indian Electricity Act, 2003.

The WBSEDCL was also directed to regenerate the electricity bills for the period from January, 2014 to the date of disconnection.

Subsequently, an application was levied before the concerned coordinate Bench, then taking up electricity matters, where the court had observed that the outstanding dues were in consonance with the order dated June 07, 2018 passed by the Ombudsman. However, the petitioner was permitted to pay the said dues in two instalments.

It is submitted that the instalments were duly paid by the petitioner. However, thereafter a bill was raised on October 30, 2019, indicating that for the month of October, 2018, the petitioner was to pay certain charges, including fixed/demand charge to the tune of Rs.62,551.25p.

It is submitted that even at the juncture when the coordinate Bench of this court directed the petitioner to pay the outstanding dues by instalments, the fixed/demand charge was not mentioned to be due by the WBSEDCL. Since the order dated October 10, 2018 passed by the coordinate Bench did not mention

about the fixed/demand charge, the petitioner does not have any further liability to pay such charges.

Moreover, there is no conceivable reason why the said bill was raised about one year after the alleged incidence of the charge.

Learned counsel for the petitioner also disputes the very premise of the charges being levied under the head “fixed/demand charge”.

Learned counsel for the WBSEDCL submits on instruction that the fixed/demand charge was raised by the WBSEDCL to meet up the expenses incurred by the WBSEDCL for maintenance of its infrastructure during the period when the electricity connection of the petitioner remained disconnected.

The premise of such maintenance was, it is submitted, that if the petitioner subsequently seeks restoration of the connection and pays the due amount, the same would be reconnected without incurring unnecessary costs for installation of the infrastructure again. It is submitted that since such charges were incurred for the purpose of saving costs of the petitioner, the petitioner is liable to pay such amount.

There are two primary grounds on which the demand of fixed/demand charge, impugned in the present writ petition, is *de hors* the law.

First, when the matter was taken up for hearing before the coordinate Bench and the order dated October 10, 2018 was passed by the coordinate Bench (Annexure P3 at page 44 of the writ petition), the fixed/demand charges now demanded were not mentioned by the WBSEDCL or recorded in the said order at all. It is evident from the said order that the learned Single Judge had proceeded on the premise that the entire outstanding dues at that point of time were comprised of the amount which was directed to be deposited by the petitioner and was duly deposited.

All on a sudden, more than one year thereafter, the WBSEDCL has raised the claim of fixed/demand charge out of the blue, without having any material basis. Since such claim was not mentioned before the coordinate Bench and the coordinate Bench had conclusively determined the outstanding amount at that juncture, without any mention of the fixed/demand charge now claimed, the issue cannot be reopened by the WBSEDCL by claiming such amount afresh after the lapse of one year thereafter.

Secondly, there is no basis or premise of charging such fixed/demand charges by the WBSEDCL at all. It was the option of the WBSEDCL whether to sustain the infrastructure for giving

electricity connection in the area or to dismantle the same during the period of disconnection.

Since the WBSEDCL chose to sustain such infrastructure of its own volition, the petitioner cannot be made liable all on a sudden to pay such charges.

The common practice of licensees is to bill such demand/fixed charges in cases of electricity supply to industrial houses or concerns, where a huge, dedicated infrastructure is required to be maintained for supply of electricity to such concerns. Such component is specifically provided for in the energy supply agreement. However, in the present case, there was no agreement between the petitioner and the WBSEDCL at any point of time for such demand charge to be met.

That apart, it is not seen from the materials on record that such demand charge was demanded at any other point of time from the petitioner. Hence, the said claim of the WBSEDCL is entirely contrary to law and natural justice.

In such view of the matter, there is no scope of sustaining the impugned bill of the WBSEDCL.

Accordingly, WPA No. 28422 of 2022 is allowed, thereby setting aside the impugned bill dated October 30, 2019, raised for the bill month October, 2018, to the extent that fixed/demand charge of Rs.62,551.25p

was levied (the document is annexed at page 53 of the writ petition as Annexure P5).

Since the petitioner has already cleared the balance amount of outstanding dues and is going on paying electricity charges for enjoyment of the connection regularly, no further direction is required to be passed apart from the WBSEDCL being directed to sustain the electricity connection of the petitioner subject to payment of regular electricity charges by the petitioner and compliance of law otherwise.

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.)