AD-31
Ct No.09
25.01.2024
TN

WPA No. 202 of 2024

Seikh Abdul Aalim
Vs.
The West Bengal State Electricity Distribution Company Ltd. and others

Mr. Bhagbat Chaudhuri,
Mahbub Asfakul Zinna
…. for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra
…. for the WBSEDCL

1. The petitioner is a cultivator and of meagre means.

2. It is contended by learned counsel for the petitioner that due to faulty billing, additional charges were raised in respect of electricity consumed by the petitioner. The petitioner approached the concerned RGRO. Being dissatisfied with the order of the RGRO, an appeal was preferred before the Ombudsman. The present challenge is against the order of the Ombudsman.

3. Learned counsel for the petitioner points out that although the Ombudsman clearly recorded that the licensee is liable for the negligent act of its meter reader which caused inconvenience to the poor cultivators/consumers but the Ombudsman found no provision in the Regulation to award compensation. In the same breath, although absolving the petitioner of paying the dues on account of Late Payment Surcharge (LPSC), the Ombudsman directed the petitioner to pay the entire dues by twelve equal instalments.

4. It is argued that the Ombudsman acted without jurisdiction, since despite having found that it was the fault of the meter reader of the licensee, the petitioner was saddled with the dues.

5. That apart, it is argued that Section 56(2) of the Electricity Act, 2003 debars the Distribution Licensee from making the claim after expiry of two years from the date when the same accrued.

6. Learned counsel appearing for the Distribution Licensee submits that the Ombudsman acted well within the constraints of his authority in passing the impugned order. It is further argued that in view of the faulty meter readings, which were detected for the first time within two years from raising the bills, the provisions of Section 56(2) are not applicable in the present case.

7. A perusal of the impugned order indicates that the Ombudsman took a sympathetic view and rightly waived the LPSC imposed on the petitioner. It was also observed by the petitioner that there was no provision to award compensation to the petitioner for the negligent act of the meter reader of the Distribution Licensee. The Ombudsman further granted twelve equal instalments to the petitioner, also quite rightly so.

8. The present case is not one where the dues of the period prior to two years from the date of raising the bills are being claimed simpliciter. The electricity charges for the said period were duly charged from the petitioner and paid by the petitioner at the relevant point of time. The present case is one where there was an error in calculation on the part of the Distribution Licensee, which caused the Distribution Licensee to raise further additional bills for a period prior to two years in the instant case.

9. It has been held in *Ajmer Vidyut Vitran Nigam Limited and another vs. Rahamatullah Khan alias Rahamjulla* reported at *(2020) 4 SCC 650* by the Supreme Court that Section 56(2) does not preclude the licensee-company from raising an additional or supplementary demand after the expiry of the limitation period under Section 56(2) in case of a mistake or *bona fide* error; however, it does not empower the licensee-company to take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional amount.

10. Thus, in the present case, as per the judgment of the Supreme Court as quoted above, the only recourse of the Distribution Licensee is to make a money claim from the petitioner.

11. As per *Ajmer Vidyut Vitran Nigam Limited* (supra), the Distribution Licensee, after the expiry of limitation period under Section 56(2) even in case of a mistake or *bona fide* error, cannot take recourse to the coercive measure of disconnection of electricity supply for recovery of the additional demand.

12. Hence, what has not been spoken by the Ombudsman is that although the Distribution Licensee is within its powers to make a claim of additional amount due to *bona fide* error for a period prior to two years, the distribution company cannot disconnect the electricity supply of the petitioner for non-payment of such amount.

13. As such, the remedy of the Distribution Licensee lies in recovery of the money from the petitioner by taking legal recourse to a money suit if the dues are not paid by the petitioner. Hence, the impugned order of the Ombudsman is modified to the extent that in the event the petitioner is unable to pay the amount-in-dispute, it will be open to the WBSEDCL to institute a money suit before a competent civil court for recovery of the amount from the petitioner. However, the Distribution Licensee, that is, the WBSEDCL shall not be entitled to disconnect the electricity supply of the petitioner for non-payment of such disputed amount.

14. Accordingly, WPA No. 202 of 2024 is disposed of by modifying the impugned order of the Ombudsman to the effect that in the event the petitioner does not pay the amount-in-dispute to the WBSEDCL, the WBSEDCL shall be at liberty to recover the said amount by way of a regular money suit.

15. However, the WBSEDCL shall not be entitled to disconnect the electricity supply of the petitioner for non-payment of such disputed amount of arrears.

16. Nothing in this order shall preclude the WBSEDCL from raising current bills, however, without including in the said current bills the disputed component of arrears which is the subject-matter of the present writ petition. It will also be open to the WBSEDCL to take recourse to law otherwise if the petitioner does not pay the current bills to the WBSEDCL.

17. It is also made clear that since the bills were raised later on, the WBSEDCL shall not be entitled to claim any LPSC from the petitioner, which has in any event been already waived by the Ombudsman which component of the order has not been challenged by the WBSEDCL.

18. 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.)