

AD-18
Ct No.09
21.03.2024
TN

WPA No. 4840 of 2024

M/s. Essel Kitchenware Limited and another
Vs.
The Chief Engineer, Central Commercial Department, West
Bengal State Electricity Distribution Co. Ltd. and others

Mr. Sayan Sinha,
Mr. Dibyendu Sengupta,
Mr. Indrojit Halder

.... for the petitioners

Dr. Madhusudan Saha Roy

.... for the WBSEDCL

- 1.** The petitioners contend that the petitioner no.1's electricity connection was disconnected by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) at the behest of the West Bengal Pollution Control Board. Subsequently upon the petitioners approaching the Board, the said disconnection direction was withdrawn and the electricity supply of the petitioner no. 1 was accordingly restored by the WBSEDCL. During the interregnum, that is, from April 13, 2023 to June 14, 2023, the petitioner no.1 admittedly did not have any electricity connection. However, the WBSEDCL sent huge amounts for the months of May and June, 2023, which falls squarely within the period when the petitioner no.1 was without electricity.
- 2.** It is argued that when the petitioners challenged the said bill before the concerned Central Grievance

Redressal Officer, the petitioners were not favoured with an order due to which a challenge has been preferred before the concerned Ombudsman. When the petitioners prayed for an interim order before the Ombudsman, the WBSEDCL sought for seven days' time to produce necessary papers to answer the query of the Ombudsman as to whether the instruction of the West Bengal Pollution Control Board gives the licensee the right to disconnect the electricity of the consumer without serving any prior disconnection notice in consideration of Clause 4.3.1 and 4.3.4 of Regulation 55/WBERC dated August 07, 2013.

- 3.** However, after taking such time, the WBSEDCL invoked the bank guarantee which was lying with the WBSEDCL, given by the petitioners as security.
- 4.** The petitioners apprehend that the amount will be encashed before the Ombudsman decides on the issue which would render the challenge virtually infructuous.
- 5.** Learned counsel for the WBSEDCL contends that the provisions of Clause 4.10 of Regulation No. 48/WBERC dated April 25, 2011 empowers the licensee, in cases where no consumption of energy had taken place for any reasons whatsoever including disconnection of supply due to fault on the part of the consumer, the fixed charge or demand charge of a

consumer, as the case may be, shall be calculated on the basis of the contract demand.

6. It is further argued that the petitioners have suppressed the material facts inasmuch as by a communication dated October 27, 2023, it was informed to the WBSEDCL that the petitioners had decided to shutdown/close its unit on October 07, 2023 permanently.
7. Learned counsel for the petitioners controverts that there was any suppression since the document-in-question is annexed to the writ petition itself.
8. However, upon hearing learned counsel for the parties, the question remains as to whether the WBSEDCL exhibited *bona fides* in invoking the bank guarantee despite itself having taken seven days' time before the Ombudsman to produce necessary papers.
9. The subsequent communication of the petitioner dated October 27, 2023, expressing the intention of the petitioner to close its unit could not be sufficient to entitle the WBSEDCL, without further notice, to invoke the bank guarantee when the dues of the petitioners itself for the relevant period is *sub judice* before the Ombudsman.
10. Hence, the invocation of the bank guarantee itself indicates lack of *bona fides* on the part of the WBSEDCL which itself sought for time before the Ombudsman.

- 11.** That apart, several arguable issues have been raised before the Ombudsman, including the question as to whether the WBSEDCL had the right to disconnect the supply of the petitioner no. 1 without a prior disconnection notice, which question is yet to be answered by the WBSEDCL before the Ombudsman. Further, it is arguable as to whether Clause 4.10 of Regulation 48 as cited by the WBSEDCL is applicable to the present case and how far the expression “fault on the part of the consumer” can be attributed in the present case to the petitioners to entitle the WBSEDCL to charge electricity charges during the period of disconnection. Furthermore, it is required to be gone into whether the calculations were correctly made in terms of Clause 4.10. That apart, other issues are also involved, raised by both the parties which are to be adjudicated by the Ombudsman. Permitting the WBSEDCL to encash the amount covered by the bank guarantee prior to the same would be premature and against the principles of natural justice and equity, since the WBSEDCL itself took time to answer the query of the Ombudsman.
- 12.** Accordingly, WPA No. 4840 of 2024 is disposed of by restraining the WBSEDCL from encashing the amount covered by the bank guarantee of the petitioners till the final adjudication of the issues pending before the Ombudsman. The Ombudsman is hereby directed to

dispose of the pending challenge at the behest of the petitioners by giving adequate opportunity of hearing to all concerned and in accordance with law as expeditiously as possible, positively within April 30, 2024.

- 13.** It is made clear that the merits of the contentions of either parties has not been gone into by this court and it will be open to the Ombudsman to decide on all issues independently without being influenced in any manner by any of the observations made herein.
- 14.** There will be no order as to costs.
- 15.** 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.)