D/L.25.
March 28, 2024.
MNS.

WPA No. 6139 of 2024

Sri Surajit Mondal
Vs.
The Secretary, Department of Power
and others

Mr. Biswajit Roy,
Ms. Somosreedebi Dutta,
Ms. Kankana Bhattacharya

… for the petitioner.

Dr. Madhusudan Saha Roy

…for the WBSEDCL.

1. Affidavit-of-service filed in Court today be kept on record.
2. Learned counsel for the petitioner submits that the petitioner comes from the marginal sections of society, employed as a security guard.
3. The petitioner has been enjoying electricity since the year 2016. However, the petitioner was not charged with electricity bills all along before a composite bill was raised, apparently for the period between March, 2018 and February, 2024, on December 5, 2023.
4. Only three installments were granted to the petitioner. Subsequently, after the payment of first installment, the petitioner approached the concerned Grievance Redressal Officer (GRO). During pendency of the said

challenge, however, the electricity connection of the petitioner was disconnected without fifteen clear days' notice given by the West Bengal State Electricity Distribution Company Limited (WBSEDCL).

5. Learned counsel for the petitioner argues that apart from the fact that the claim of the WBSEDCL was palpably time-barred under Section 56(2) of the Electricity Act, 2003 (2003 Act), no clear fifteen days' notice was given, thereby vitiating the disconnection.

6. More importantly, it is pointed out that in terms of Clause 3.5.2 of the Regulation 55 of the West Bengal Electricity Regulatory Commission (Regulation 55 of WBERC) dated August 7, 2013, if any aggrieved consumer makes a provisional payment, no penal measure including disconnection of non-payment shall be taken against him till the dispute is settled either at the level of the Grievance Redressal Officer of the Central Grievance Redressal Officer or the Ombudsman, as the case may be.

7. Learned counsel appearing for the WBSEDCL argues that the petitioner himself agreed to comply with the claim of the WBSEDCL. Such admission is evident from the very fact that the petitioner paid the first installment of

Rs.10,000/- in terms of the Installment Bill dated December 5, 2023.

8. It is contended that in the said bill itself, it is clearly indicated that failure of installment payment within due date as stated thereinabove would lead to cancellation of the installment order and disconnection of supply without any further notice, thereby precluding the necessity of any further notice in any event. Having taken advantage of the said installment bill, the petitioner cannot now resile from such position by pleading the bar of Section 56(2) of the 2003 Act.

9. Learned counsel appearing for the WBSEDCL further points out that the petitioner had enjoyed electricity connection not from the year 2016, but from the year 2013, under a particular scheme. However, the petitioner did not ever come up before the installment bill was raised, seeking to pay the electricity charges due from the petitioner.

10. It is submitted that such *mala fide* intention of the petitioner ought to be deprecated.

11. Learned counsel for the petitioner, however, controverts the fact that the petitioner never approached the WBSEDCL and argues that the petitioner made several communications

to the WBSEDCL asking for bills, which was not complied with by the WBSEDCL.

12. There are three issues which are involved primarily in the present case.
13. The first issue is the alleged violation of Clause 3.5.2 of Regulation 55 of the WBERC.
14. The WBSEDCL has, in defence, pleaded that the payment of the first installment by the petitioner was not a qualified payment, since the petitioner had not indicated that it was merely a provisional payment.
15. As such, the provision of Clause 3.5.2 of Regulation 55 of the WBERC cannot apply in the present case. However, such argument is not tenable in the eye of law due to the chronology of events in the present case.
16. Although the petitioner, obviously under compulsion of threatened disconnection, paid the first installment of Rs.10,000/-, before making payment of the other remaining two installments, the petitioner duly approached the appropriate GRO, thereby clearly indicating the petitioner's intention that the first installment, which was already deposited, was by way of a provisional payment.
17. Nothing in Clause 3.5.2 necessitates that the aggrieved consumer has to indicate with the payment that the payment is provisional in

nature. The circumstances of the case are sufficient indicators of the conduct of the parties and their intentions. In the present case, the very fact that the petitioner approached the GRO immediately after paying the first installment is sufficient to clinch the issue in favour of the petitioner with regard to the fact that the payment was provisional in nature.

18. Thus, there cannot be any doubt that the disconnection is bad on such score alone.

19. However, there is a dispute regarding whether fifteen clear days' notice was given to the petitioner. The "Installment Bill" dated December 5, 2023 annexed at page 30 of the writ petition in any event cannot qualify as a valid disconnection notice. The clause of disconnection mentioned therein was merely a rider, which was a component of the installment agreement between the parties.

20. Hence, the same cannot be construed to be a valid, independent disconnection notice within the contemplation of the 2003 Act and/or the extant Regulations.

21. Be that as it may, since a cloud has sought to be cast on whether any other independent disconnection notice has been issued, even without going into the said issue, there is

another important consideration which interdicts the claim of the WBSEDCL.

22. Section 56(2) of the 2003 Act, in no uncertain terms, stipulates that notwithstanding anything contained in any other law for the time being in force “no sum due from any consumer, under this section shall be recoverable after a period of two years from the date when such sum became first due”. The rider thereto that the sum has been shown continuously as recoverable is not applicable here since it is not the case of the WBSEDCL that the amount due was shown prior to the raising of the Installment Bill dated December 5, 2023.

23. The language and manner in which sub-section (2) of Section 56 of the 2003 Act is couched makes the provision of time-bar stipulated therein mandatory in nature. There is no scope of waiving a right, which has not been conferred by the statute.

24. Section 56(2) of the 2003 Act is not a right conferred on the consumer, which can be waived by the consumer, but a statutory fetter cast on the Distribution Licensee.

25. Hence, there is no scope of the consumer to waive a right which is not conferred by the Statute at all.

26. Section 56(2) of the 2003 Act is not a right, it is reiterated, but a fetter on the claims being made by the WBSEDCL, which is absolute since the provision provides that no sum as spoken of therein *shall* be recoverable. The use of the expression "shall" is completely mandatory and cannot be resiled from.
27. It is too well settled to reiterate that a legal fetter cannot be waived by agreement of parties.
28. The bar under Section 56(2) is an absolute bar and in the event the other conditions of the said provision apply, a substantial portion of the claim of the WBSEDCL is clearly barred on such count.
29. Even if there was a subsequent correction of previously raised bills by raising additional bills, which is not the present case, it is settled legal position now that the WBSEDCL could not disconnect the supply as a penal measure but at best recover the amount; more so in the present case, where the claim itself is substantially barred except for the last two immediately preceding years before the bill was raised for the first time.
30. Hence, the petitioner has a strong *prima facie* case to move the GRO. Since such challenge is already pending before the GRO, there

cannot be any occasion for the WBSEDCL to disconnect the electricity supply both in terms of Clause 3.5.2 and in view of substantive portion of the claim being palpably time-barred under Section 56 (2) of the 2003 Act. Under such circumstances, the disconnection effected by the WBSEDCL is required to be reversed.

31. Accordingly, WPA No. 6139 of 2024 is allowed on contest, thereby directing the WBSEDCL to immediately restore the electricity connection of the petitioner, latest within 48 hours from now, without asking for any reconnection charges or further charges whatsoever.

32. However, such reconnection shall be subject to the outcome of the adjudication by the GRO and, if either of the parties is aggrieved against the same, before the Ombudsman.

33. It is further made clear that this court has not dealt with the merits of the challenge before the GRO other than the issues which have been directly touched in this order, and it will be open to the GRO to decide all issues in accordance with law as expeditiously as possible.

34. The connection being given to the petitioner, however, shall be subject to regular payment

of the current bills to be raised henceforth by the WBSEDCL. The WBSEDCL shall not club the outstanding dues, which were raised by the impugned Installment Bill dated December 5, 2023, in the garb of current bills, till a final decision is arrived at by the GRO and subject to such adjudication.

35. The WBSEDCL shall give due adjustment to the amount of Rs.10,000/- already paid by the petitioner to the WBSEDCL, in terms of the provisions regarding the same, if made by the order of the GRO and even otherwise, if no such provision is there in the GRO order.

36. There will be no order as to costs.

37. 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.)