

AD-22 to 25
34, 35, 38 & 42
Ct No.09
09.04.2024
TN

WPA No. 6591 of 2024

Kshudiram Bera
Vs.
The West Bengal State Electricity Distribution Company
Limited (WBSEDCL) and others

With

WPA No. 6592 of 2024

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

With

WPA No. 6593 of 2024

Subal Chandra Das
Vs.
The West Bengal State Electricity Distribution Company
Limited (WBSEDCL) and others

With

WPA No. 6607 of 2024

Madhusudan Shit
Vs.
The West Bengal State Electricity Distribution Company
Limited (WBSEDCL) and others

With

WPA No. 7466 of 2024

Bankim Khanra @ Bankim Behari Khanra
Vs.
The West Bengal State Electricity Distribution Company
Limited (WBSEDCL) and others

With

WPA No. 7484 of 2024

Nitai Mandal @ Nitai Chand Mandal
Vs.
The West Bengal State Electricity Distribution Company
Limited (WBSEDCL) and others

With

WPA No. 7794 of 2024

Sk. Hasinuddin

Vs.

The West Bengal State Electricity Distribution Company
Limited (WBSEDCL) and others

With

WPA No. 7953 of 2024

Lakshmikanta Santra

Vs.

The West Bengal State Electricity Distribution Company
Limited (WBSEDCL) and others

Mr. Saibal Kumar Acharyya,
Mr. Pradip Paul,
Ms. Renesa Dey

.... for the petitioners
in all the matters

Ms. Susmita Chatterjee

.... for the WBSEDCL
in WPA 6591 of 2024, WPA 6592 of 2024, WPA 7466 of
2024, WPA 7484 of 2024, WPA 7794 of 2024
and WPA 7953 of 2024

Mr. Debjit Mukherjee

.... for the WBSEDCL in
WPA 6593 of 2024 and WPA 6607 of 2024

1. The common issue involved in all the writ petitions is whether the Grievance Redressal Officer (GRO) and thereafter the Ombudsman were justified in refusing to consider a grievance regarding excess billing raised by the petitioners only on the ground of delay in making such complaint.
2. Learned counsel for the petitioners submits that in a similar case of another applicant, by an order dated

April 12, 2023, the Ombudsman had observed that in other cases, despite delay in filing the complaint, the same was entertained, for which the same benefit should be given to other applicants as well. As such, it is argued that the benefit conferred in the said case, which is annexed at page-27 of WPA No. 6591 of 2024, should also be extended to the present petitioners.

- 3.** Learned counsel for the West Bengal State Electricity Distribution Company Limited (WBSEDCL) places reliance on Clause 6.1 of Regulation 56 of the West Bengal Electricity Regulatory Commission (WBERC) which stipulates 90 days as the time from the date of occurrence as the outer limit for making the claim. It is also pointed out by learned counsel that in paragraph no. 7 of the cited judgment of the Ombudsman, it was observed that the petitioner in the said case had been continuously processing his case to get refund the excess amount since 2015, which is not the case here.
- 4.** The question which arises is whether the bar stipulated in Clause 6.1 of Regulation 56 is absolute.
- 5.** Although the case of the present petitioners may be different on facts from that cited, the question remains as to whether the 90 days stipulated in Clause 6.1 is inexcusable or can be relaxed.
- 6.** A bare perusal of the said provision indicates that it merely provides that the aggrieved consumer shall submit the written petition along with enclosures, if

any. It also says that the same has to be done within 90 days from the date of occurrence of the cause of action. What is to be considered is that the said clause is not couched in a negative language, debarring the GRO from entertaining such a complaint in the event the limit of 90 days is crossed.

- 7.** In any event, there is no time-bar for raising a dispute envisaged in the Electricity Act, 2003, which is the parent statute under which the Regulations have been framed. The Regulations formulated under a particular Act cannot put in additional fetters which are not contemplated in the main statute itself.
- 8.** Moreover, the provision for redressal of grievances is to afford an opportunity to consumers to ventilate their grievances. Most Distribution Licensees have a near-monopoly in distribution of electricity, which gives an unequal bargaining power to the said licensees, which is a further reason why the fetter in raising complaints should be read more liberally in favour of the complainant.
- 9.** Interpreted so, it must be observed that the limitation of 90 days in Clause 6.1 of Regulation 56 of the WBERC is directory in nature and in appropriate cases, the GRO, upon sufficient cause for delay being shown, take a liberal approach and condone the delay, thereby entertaining the complaint and decide the same on merits.

- 10.** In the present case, the petitioners claim that they came to know about the tariff order late, which was the reason for the delay.
- 11.** However, I do not intend to prejudge the merits of such explanation.
- 12.** Accordingly, WPA No. 6591 of 2024, WPA No. 6592 of 2024, WPA No. 6593 of 2024, WPA No. 6607 of 2024, WPA No. 7466 of 2024, WPA No. 7484 of 2024, WPA No. 7794 of 2024 and WPA No. 7953 of 2024 are disposed of by granting liberty to the petitioners in each of such cases to make a fresh application giving explanation for the delay in preferring the complaint before the GRO. Such application shall be made within a week from date in each case. Upon such application being made, the GRO shall decide on the said application on the issue of whether sufficient cause for the delay has been made out by each of the petitioners, upon affording an opportunity of hearing to both the contesting parties including the licensee.
- 13.** In the event the GRO is of the opinion that sufficient cause has been shown, the complaints shall be taken up and decided on merits, expectedly within two months thereafter.
- 14.** Accordingly, the impugned orders of the Ombudsman as well as the GRO in each of the cases are hereby set aside.
- 15.** There will be no order as to costs.

- 16.** 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.)