

27.08.2024
Item No.85
RP
Ct. No.7

WPA 20729 of 2023
West Bengal State Electricity Distribution Company
Limited
Vs.
Sri Shukdeb Chaulya & Ors.

Mr. Srijan Nayak
Mrs. Rituparna Maitra

....for Petitioner

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

....for Respondent No.1

1. Affidavit-in-opposition and reply thereto filed in Court today be kept on record.
2. This writ petition at the instance of West Bengal State Electricity Distribution Company Limited (for short "WBSEDCL") is directed against the order passed by the Ombudsman dated May 16, 2023 in representation no.W210 YM/2022.
3. The respondent no.1 herein approached the Regional Grievance Redressal Officer (for short "RGRO"), Medinipur with a complaint stating that excess amount has been collected from the respondent no.1 herein for providing temporary electric connection for agricultural purpose. It was stated therein that the respondent no.1 herein enjoyed such temporary electric connection for the period from 2007-2008

and 2008-2009. It has been further stated in the said representation that as per the Tariff Regulation a consumer has to pay a sum of Rs.10,800/- for enjoying supply of electricity for 365 days. In the representation dated 4th November, 2022, the details of period(s) during which the respondent no.1 enjoyed unmetered short-term irrigation service connection and the amount paid by him for such period has been specifically indicated. The RGRO by an order dated 24th November, 2022 rejected the complaint on the ground that such complaint violates serial no.6.1 of notification no.56/WBERC as the same was filed beyond ninety days from the date of occurrence of the cause of action.

4. Challenging the decision of RGRO dated 24th November, 2022 the respondent no.1 herein approached the Ombudsman appointed under Section 42(6) of the Electricity Act, 2003. The Ombudsman by an order dated May 16, 2023 directed WBSEDCL/licensee to refund the excess amount realized from the respondent no.1 in connection with unmetered short-term irrigation service connection for the year 2007-2008 and 2008-2009 along with applicable interest.

5. The said order of the Ombudsman is under challenge in this writ petition.
6. Mr. Nayak, learned advocate representing the licensing company refers to Clause 6.1 of the notification no.56/WBERC dated August 26, 2013 and submits that the respondent no.1 herein, who claims to be aggrieved by alleged excess collection of the amount, ought to have submitted the written petition along with enclosures within 90 days of occurrence of the cause of action. He submits that the respondent no.1 herein approached the RGRO only in the month of November 2022 claiming refund of the excess amount paid with regard to unmetered short-term irrigation service connection enjoyed by him for the period 2007-2008 and 2008-2009. He submits that the Ombudsman without considering the effect of Clause 6.1 had allowed the claim of the respondent no.1 herein.
7. Mr. Nayak also refers to several orders passed by the Ombudsman rejecting the prayer for refund of similarly situated consumers. He further submits that the Ombudsman without quantifying the amount of alleged excess amount collected by the licensing company ought not to have directed refund of the excess amount for the aforesaid period.

8. Per contra, Mr. Acharya, learned advocate appearing for the respondent no.1 submits that as per the Tariff Regulation the licensing company ought to have charged an amount from the respondent consumer at the rate of Rs.10,800/- for 365 days for the period of consumption. He submits that the respondent in his representation dated 4th November, 2022 has given the details of the period of consumption of electricity and the amount paid by him and the licensing company should refund excess amount collected from the petitioner together with interest.
9. Insofar as the notification dated 26th August, 2013 is concerned, Mr. Acharyya submits that the same cannot be given a retrospective effect.
10. Heard the learned advocates for the parties and perused the materials placed.
11. It appears from the order of the RGRO dated November 24, 2022 that the complaint of the respondent no.1 herein was rejected as it was filed beyond 90 days from the date of occurrence of the cause of action and, therefore, in violation of Clause 6.1 of the notification no.56/WBERC. From Clause 1(i) of the notification dated August 26, 2013 it is evident that such Regulation is to come into force on

the date of publication in the official Gazette and shall be concurrent with the area of jurisdiction of West Bengal Electricity Regulatory Commission. It appears from the record that the said notification was published in the Kolkata Gazette (Extraordinary) dated August 26, 2013. Therefore, the notification dated August 26, 2013 came into force on and from August 26, 2013 and the same cannot be applied for rejecting the claim made on the basis of consumption for the period 2007-2008 and 2008-2009. That apart, on facts, the Ombudsman noted that the respondent no.1 herein pursued his claim for refund of the excess amount from the year 2013 and not from 3rd July, 2019 as contended by the licensing company. The Ombudsman further observed that the respondent no.1 herein knocked the office of the licensing company for getting refund of the excess amount during the year 2013, 2016, 2019 and 2022.

12. With regard to the issue that the claim made by the respondent herein for refund of the alleged excess amount is barred, the Ombudsman in the order impugned has given a detailed reason in support of its conclusion that such claim is not barred. The reasons have been stated in paragraph 9 of the said order, which is extracted hereinafter.

“The argument with which the Licensee wants to nullify the claim as beyond 90 (ninety) days from the date of occurrence of the cause of action has no relevance in this case because the appeal petitioner has kept on paying against his unmetered short-term irrigation service connection from the year 2005-06 to 2011-12. Every year the payment made by the consumer was in excess of the actual due as specified by the Tariff Regulation framed by the WBERC in the respective tariff order. Nowhere, the Licensee took the trouble to inform the consumer about the excess realised amount. So, how the Licensee could determine the ‘date of occurrence’ and consequently the expiry of 90 days from the date of occurrence? Whenever, the consumer came to know about the fact of excess payment, he immediately applied for the same which are evident in various correspondence starting from 08.08.2013. Besides, there are no dearth of cases where the same type of consumers have received their excess amount along with interest, the latest being in the year 2022, where the Licensee has paid the excess amount along with the interest to the consumer having the same issue and completion report of the same has also been

forwarded to this forum by the Licensee. There cannot be any discrimination in the dispense of justice in cases having same grievances.”

13. In the light of the aforesaid observation, the Ombudsman directed the licensing company to refund the excess amount realized from the respondent no.1 in connection with unmetered short-term irrigation service connection for the year 2007-2008 and 2008-2009. As rightly contended by Mr. Nayek, the Ombudsman did not adjudicate the quantum of excess amount which is to be refunded to the respondent no.1 herein. Though the respondent no.1 herein in its claim for refund has stated the rate as mentioned in the Tariff Regulation as well as the period of consumption and the amount paid by him, it appears that the licensing company did not make any submission with regard to such contention of the respondent no.1 herein. However, the Ombudsman before directing refund of excess amount ought to have given an opportunity to the parties to advance their submissions in that regard.
14. In view thereof, this Court is of the considered view that the matter is to be remanded to the Ombudsman to decide only the issue as to the amount of refund which the respondent no.1 may be

entitled to as per the relevant Tariff Regulation or any other rules or notification that may be applicable with regard to the unmetered short-term irrigation service connection.

15. The order(s) passed by the Ombudsman in case of other consumers is of no relevance as this Court has to test whether the order impugned suffers from any infirmity. WPA 20729 of 2023 is disposed of by directing the Ombudsman, being the respondent no.2 herein, to decide only the issue as to whether the respondent no.1 herein is entitled to any refund of amount allegedly paid in excess after giving an adequate opportunity to the licensing company and the consumer/respondent no.1 herein to place relevant materials in support of their respective claim and to take a decision by passing a reasoned order after affording an opportunity of hearing to the parties or their authorized representatives. The Ombudsman shall first fix a date for appearance of the parties before him for the purpose of placing relevant materials in support of their cases and shall thereafter proceed to decide the aforesaid issue as directed hereinbefore. The entire exercise shall be completed by the Ombudsman within a period of eight weeks from the date of receipt of the server copy of this order.

16. It is made clear that this Court has not interfered with the decision of the Ombudsman on the point of limitation.

(HIRANMAY BHATTACHARYYA, J.)