

17.12.2024
Item Nos. 4-8
PG
Ct. No.7

W.P.A. 21701 of 2023
West Bengal State Electricity
Distribution Company Limited
Vs.
Sanatan Das & Ors.
With
W.P.A. 24796 of 2023
West Bengal State Electricity
Distribution Company Limited
Vs.
Durgapada Mahapatra & Ors.
With
W.P.A. 25385 of 2023
West Bengal State Electricity
Distribution Company Limited
Vs.
Gunadhar Singh & Ors.
With
W.P.A. 25389 of 2023
West Bengal State Electricity
Distribution Company Limited
Vs.
Pintu Sau & Ors.
With
W.P.A. 25397 of 2023
West Bengal State Electricity
Distribution Company Limited
Vs.
Subhas Chandra Singh & Ors.

Mr. Srijan Nayak
Ms. Rituparna Maitra.....For the petitioners

Mr. Saibal Acharyya
Mr. Pradip Paul
Ms. Renesa DeyFor the respondents

1. The West Bengal State Electricity Distribution Company Limited (for short 'WBSEDCL') has challenged the final order passed by the ombudsman under section 42(6) of the Electricity Act, 2003 (for short '2003 Act') in these writ petitions.

2. Since identical questions of law and fact are involved in these writ petitions, the same are taken up for hearing analogously and are being decided by this common order.
3. For the sake of convenience, W.P.A. 21701 of 2023 (West Bengal State Electricity Distribution Company Limited vs. Sanatan Das & Ors.) is taken as the lead case.
4. The respondent no. 1 approached the Regional Grievance Redressal Officer (for short 'RGRO') alleging that the WBSEDCL is not refunding the excess amount paid by him as provisional energy charge in respect of short-term unmetered service connections for the periods from 2007-2008 to 2010-2011.
5. RGRO passed the final order on November 24, 2022 rejecting the grievance of the respondent no. 1 herein on the ground that the same is time-barred. Being aggrieved by the said order of the RGRO, the respondent no. 1 approached the Ombudsman under section 42(6) of the 2003 Act. The Ombudsman passed the final order on April 12, 2023 by directing WBSEDCL (the licensee) to refund the excess realised amount, as specifically indicated in the said order to the respondent no. 1 along with interest as per the existing norms.
6. Challenging the final order of the Ombudsman dated April 12, 2023, the licensee has approached this Court.

7. Mr. Nayak, learned advocate appearing for the WBSEDCL submits that the Ombudsman failed to consider that the grievance raised by the respondent no.1 before RGRO was time-barred. He submits that the claim for refund was made long after the period of consumption of electricity and therefore, the Ombudsman ought to have dismissed the application made by the respondent no. 1 on the ground of delay.
8. He further submits that the tariff order for the purpose of irrigation pumping for agriculture (unmetered) was issued by the Hon'ble Commission, WBERC for yearly basis only and there was no such provision to realise estimated/proportionate amount other than the tariff order, as published by the said Commission. He submits that it is not possible to assess the consumption per hour or per day by the consumer, who has been given connection from unmetered supply. In support of such contention, Mr. Nayak draws the attention of the Court to the written submission made by the licensee vide letter dated March 10, 2023 before the Ombudsman.
9. Mr. Nayak submits that the final order was passed by the Ombudsman without dealing with the contention raised by the licensee in the written submission dated March 10, 2023.
10. Mr. Acharyya, learned advocate appearing for the respondent no. 1 submits that the tariff was an annual

tariff. The respondent no. 1 consumed electricity for a part of the year during the period 2007-2008 to 2010-2011. The respondent no. 1 deposited the entire amount as per the tariff rate and therefore, the said respondent is entitled to refund balance of the excess amount paid by him.

11. Mr. Acharyya further submits that the Ombudsman, after taking into consideration the materials available in the records, arrived at the excess amount realised. Therefore, this Court should not interfere with the directions passed by the Ombudsman.

12. Heard the learned advocates for the parties and perused the materials placed.

13. Record reveals that prior to passing of the final order, the Ombudsman passed a Draft Settlement Order on February 9, 2023. The Draft Settlement Order also forms part of the writ petition. After going through the said draft settlement order, this Court finds that the Ombudsman directed the licensee and the respondent no. 1 herein to submit their respective views on the Draft Settlement Order within the time limit indicated therein in terms of clause 10.4 of Regulation 56/WBERC dated August 26, 2013.

14. Pursuant to the liberty granted by the Ombudsman, the licensee submitted a representation dated March 10, 2023. The point raised in the said written submission was that the tariff is for the purpose of

irrigation pumping for agriculture (unmetered) and the same is on yearly basis. It was further stated in the said written submission that there was no provision to realise estimated or proportionate amount other than the said tariff order.

15. After the written submission was filed by the licensee, a hearing was fixed by the Ombudsman on April 12, 2023. It appears from the record that the parties were again heard and their views contained in the written submission were considered. The Ombudsman, after hearing the submissions of the respective parties, arrived at a factual finding that every year the payment made by the consumer was in excess of the actual dues, as specified by the Tariff Regulation framed by the WBERC in the respective tariff order.
16. The Ombudsman further recorded that there has been no denial on the part of the licensee relating to the excess amount made by the consumer. The Ombudsman also recorded its finding as to why the claim made by the respondent no. 1 cannot be said to be time-barred. Such factual findings cannot be interfered with by this Court as the same does not suffer from perversity.
17. This Court had the occasion to deal with the issue with regard to the alleged violation of clause 6.1 of Notification No. 56/WBERC in W.P.A. 20729 of 2023 in the case of **West Bengal State Electricity Distribution**

Company Limited vs. Sri Shukdeb Chaulya & Ors.

delivered on August 27, 2024. After considering the said regulation, it was held that 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 earlier period. In the case on hand, the consumption is also for a period prior to issuance of the said notification. This Court is, therefore, not inclined to accept the submission of Mr. Nayak that the claim of the respondent no. 1 before the RGRO was time-barred.

18. After going through the final order of the Ombudsman, this Court finds that the ombudsman took note of the period of consumption for the periods from 2007-2008 to 2010-2011, the amount paid by the respondent no. 1 against such consumption and arrived at a factual finding that the total excess amount to the tune of Rs. 76,159/- was realised. The written submission of the licensee dated March 10, 2023 was taken note of by the Ombudsman and the respective parties were also heard on the basis of such written submission and therefore, the ombudsman arrived at a final decision, which culminated in the order dated April 12, 2023.

19. Mr. Nayak would submit that the Ombudsman followed the procedures laid down under clause 10.4 and 10.5 of the West Bengal Electricity⁶ Regulatory Commission (Guidelines for Establishment of Forum for

Redressal of Grievances of Consumers and Time and Manner of Dealing with such Grievances by the Ombudsman) Regulations, 2013.

20. After going through the materials on record, this Court finds that the Ombudsman gave opportunity to the respective parties to make submissions against the draft settlement order and the final order was passed in accordance with the said provisions.
21. This Court therefore, holds that there is no infirmity in the decision making process warranting interference under Article 226 of the Constitution of India.
22. Accordingly, the writ petitions stand disposed of.
23. There shall be no order as to costs.
24. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(HIRANMAY BHATTACHARYYA, J.)