

A-24
Ct No.09
06.05.2024
TN

WPA No. 25078 of 2023

Kapil Ghosh
Vs.
The West Bengal State Electricity Distribution
Company Ltd. and others

Mr. Biswajit De,
Ms. Mallika Manna,
Mr. Subhajit De

.... for the petitioner

Mr. Srijan Nayak,
Mrs. Rituparna Maitra

.... for the WBSEDCL

- 1.** Despite service, none appears for the West Bengal Electricity Regulatory Commission (WBERC). Affidavit-of-service filed today be kept on record.
- 2.** The petitioner's grievance is that the petitioner had approached up to the Ombudsman with its grievances, which culminated in the Ombudsman setting aside the bills raised by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) for the relevant period and directing regeneration of such bills and restoration of electricity connection upon payment of a composite amount of Rs. 40,000/-.
- 3.** The matter came up before this court and was relegated to the Ombudsman. The latter held that since the grievance of the petitioner was non-compliance of its order, the remedy of the petitioner lay under Section 142 of the Electricity Act, 2003 (hereinafter referred to as "the 2003 Act").

4. Accordingly, the petitioner filed an application under Section 142 which is annexed to the writ petition. In the said application, the petitioner sought, *inter alia*, that the regenerated bill dated May 10, 2022 be set aside, since it included the previous outstanding dues which were set aside by the Ombudsman. The petitioner sought a further regeneration of the bill during the relevant period from the month of January, 2019 to October 16, 2020 and for consequential orders, including penalty to be imposed on the WBSEDCL.
5. However, the WBERC, by its communication dated June 08, 2023, merely intimated the petitioner that the compliance report submitted by the WBSEDCL on March 05, 2021 was being forwarded to the petitioner which was supposed to be self-explanatory. Apart from forwarding such compliance report, however, no order was passed by the WBERC nor was any hearing given to the petitioner, thereby refusing to exercise its jurisdiction under Section 142 of the 2003 Act.
6. Upon hearing learned counsel for the petitioner and the WBSEDCL, since the WBERC chooses not to appear or to controvert the allegations made by the petitioner, the allegations of the writ petitioner against the WBERC are deemed to stand uncontroverted by application of the doctrine of non-traverse.
7. A bare perusal at the communication of the Commission dated June 08, 2023 shows non-application of mind by the Commission and refusal to

exercise the jurisdiction vested in the Commission under Section 142 of the 2003 Act. The Commission merely forwarded the “compliance report” filed by the Distribution Licensee without adjudicating on the question as to whether there was actual compliance of the order of the Ombudsman or not.

- 8.** Accordingly, WPA No. 25078 of 2023 is allowed, thereby setting aside the impugned communication dated June 08, 2023 made by the WBERC to the petitioner (Annexure P/13 at page-85 of the writ petition) and directing the West Bengal Electricity Regulatory Commission to decide on merits the application filed by the petitioner under Section 142 of the 2003 Act upon giving adequate opportunity of hearing to the petitioner as well as the WBSEDCL.
- 9.** It is expected that such exercise shall be concluded within six weeks from the date of communication of the server copy of this order to the respondent no. 3, that is, the Secretary, West Bengal Electricity Regulatory Commission. Immediately after such adjudication, the reasoned outcome thereof shall be communicated by the respondent no. 3 to the petitioner as well as the WBSEDCL.
- 10.** It is made clear that the merits of the allegations made by the petitioner in the petitioner’s application under Section 142 of the 2003 Act have not been entered into by this court and it will be open to the Commission to

deal with all issues involved therein independently on their own merits and in accordance with law.

- 11.** There will be no order as to costs.
- 12.** 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.)