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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 28469 of 2023

La-Chemico Private Limited & Anr.
Vs.
The West Bengal State Electricity Distribution Company Limited & Ors.

Mr. Tanoy Chakraborty,
Mr. Keshav Kumar Daruka,
Ms. Chandrani Das,
Mr. Subham Dey
...for the petitioners

Mr. Srijan Nayak,
Ms. Rituparna Maitra
...for the WBSEDCL

1. The petitioners have challenged the demand charges levied by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) against the petitioners even after disconnection of electricity supply of the petitioners due to non-payment of electricity bills. It is argued that the disconnection was first effected for such reason on November 26, 2022 and, thereafter, upon payment, was reconnected on July 20, 2023. Upon subsequent default, disconnection was again effected from August 10, 2023.

2. Learned counsel for the petitioners argues that the WBSEDCL acted without jurisdiction and *de hors* its own Regulations and the provisions of the Electricity Act, 2003 in charging demand

charge even for the period when electricity supply was not provided due to disconnection.

3. Learned counsel places reliance on Section 2(70) of the Electricity Act, 2003, which defines "supply" in relation to electricity to mean the sale of electricity to a licensee of consumer, which, according to the petitioners, could not have taken place during the period of disconnection.

4. Again, relying on the definition of "consumer" in Section 2(15) of the 2003 Act, it is argued that a consumer means any person who is supplied with electricity. Since disconnection entails non-supply of electricity, the petitioners could not have been saddled with demand charges during the periods of disconnection, it is argued.

5. In this context, learned counsel also criticizes the reason cited by the WBSEDCL in its communication dated May 24, 2023 that there was initially a temporary disconnection, by placing reliance on Section 56 of the 2003 Act, which according to the petitioners, does not envisage any distinction between temporary and permanent disconnection, but provides merely for cutting off the supply of electricity for non-payment of electricity and ancillary charges.

6. Learned counsel appearing for the petitioners next relies on the Tariff Regulations framed by the West Bengal Electricity Regulatory Commission (WBERC). Clause 4.1.1(b) thereof speaks about demand charges being one of the components of tariff. According to learned counsel for the petitioners, the same is subject to Clause 4.3.3, which provides that the demand charge shall be based on the data available from the recording in consumer's meter of average supply in terms of demand as provided therein. Thus, supply of electricity is a *sine qua non* for charging demand charges, which could not have happened during the period of disconnection.
7. Learned counsel for the petitioners also relies on Clauses 4.3.5, 4.3.6 as well as 4.10 and 4.11 of the same Regulations in support of his arguments and stresses on the point that if there is a disconnection of supply, there cannot be any supply, as a necessary corollary of which, there cannot be any demand charges due to non-consumption of electricity.
8. Learned counsel also places reliance on the electricity bills for the relevant period which shows that the consumption of electricity, naturally, was zero during the period of such disconnection.

9. Learned counsel appearing for the Distribution Licensee, on the other hand, places reliance on Clause 4.6.1 of Regulation 55 of the WBERC, which speaks about deemed termination of agreement. The said provision stipulates that if the power supply to any consumer remains disconnected continuously for a period of 180 days where the disconnection has been effected in compliance with any of the provisions of the Act or Regulations, the agreement of the licensee with the consumer for supply of electricity shall be deemed to have been terminated with consequential effect on expiry of the said period of 180 days. It is, thus, submitted that till subsistence of the agreement, that is, 180 days after the last disconnection, the WBSEDCL is entitled to charge demand charges as well.

10. Upon hearing learned counsel for the parties, it is required to be considered as to what are the provisions of law regarding demand charges being exacted from the consumer.

11. To consider the matter, the first relevant clause is Clause 4.1.1 of the Tariff Regulations, which includes demand charges as a component of tariff. Although no specific definition is found regarding demand charges, Clause 4.3.3 stipulates that the demand charge shall be

based on the data available from the recording in consumer's meter of average supply.

12. However, conspicuously, Clause 4.3.5 does not restrict demand charge to the data of supply but provides that demand charge shall be levied on the basis of maximum demand recorded during the month or 85 per cent of the contract demand, whichever is higher. Thus, the expression "contract demand" assumes considerable significance in the context.

13. Contract demand is obviously the premise on which the demand charges are levied.

14. Clause 4.3.6 provides that no demand charges shall be payable by any consumer for the period when load of the consumer is interrupted because of any fault of the Licensee. However, the same clause provides in its latter part that such exemption from demand charge shall not be available if the interruption is caused due to disconnection of supply for any fault on the part of the consumer.

15. In the present case, needless to say, the electricity supply to the petitioners/consumers was disconnected twice entirely due to the fault of the petitioners, for non-payment of electricity charges within the contemplation of Section 56 of the 2003 Act.

16. Clause 4.10 of the tariff regulations provides that notwithstanding anything to the contrary contained anywhere in the Regulations, in cases where no consumption of energy has taken place, for any reasons whatsoever, including disconnection of supply due to fault on the part of the consumer, but excluding instances of interruption in supply due to failure of the Licensee, the fixed charge or demand charge of a consumer, as the case may be, shall be calculated on the basis of the contract demand. Thus, Clause 4.10, which can be read independently in view of the *non-obstante* clause provided therein, leaves no manner of doubt that even in cases where there is no consumption of energy due to disconnection due to fault of the consumer, fixed charge or demand charge of a consumer calculated on the basis of the contract demand can be charged.

17. Clause 4.11 merely adds that when a licensee bills a consumer for consumption of electricity covering only a part of month, caused by discontinuance of consumership before the expiry of a full month, the computation of fixed charge or demand charge shall be made for the entire month.

18. However, the consumership itself is not discontinued by termination of the agreement prior to expiry of 180 days after the last disconnection and, as such, Clause 4.11 is not of any importance whatsoever in the present context.
19. The overriding effect of Clause 4.10 clearly mandates that even for a period of disconnection due to the fault of the consumer, demand charge has to be levied and calculated on the basis of the contract demand.
20. The same is not in derogation of but rather in consonance with Clause 4.6.1 of Regulation 55 of the WBERC, both which comprise of a composite and joint scheme. Whereas it is stipulated in Clause 4.10 of the Tariff Regulations that demand charge has to be levied on the basis of contract demand during discontinuance of electricity supply due to fault of the consumer, Clause 4.6.1 of Regulation 55 stipulates that if power supply remains disconnected continuously for 180 days after disconnection, the agreement of the licensee with the consumer is deemed to be terminated.
21. The expression “agreement” used in Clause 4.6.1 of Regulation 55 is synonymous with the expression “contract” in the term “contract

demand" used in Clause 4.10 of the Tariff Regulations.

22. Thus, read in conjunction, the contract or agreement between the electricity Distribution Licensee and the consumer continues for all practical purposes till 180 days after the date of disconnection. Hence, during the entire period of such continuance, the contract subsists and contract demand remains chargeable.

23. Hence, demand charge can very well be levied till 180 days after the disconnection of electricity supply.

24. Insofar as the other argument of the petitioners is concerned, it has been contended that since the petitioners sought in the year 2023 a reduction of contract load, even the contract demand and, consequentially, the demand charges ought to have been reduced considerably.

25. The said argument does not hold good ground in view of the provisions of Clause 12.0 of Regulation 46 of the WBERC. Sub-clause 12.3 provides that reduction of load shall be effected within the next billing cycle from date of receipt of the request from the consumer to do so. However, relying on the meaning of the expression "consumer", as placed by the

petitioners themselves in their arguments, the expression "consumer" contemplates that there is continuance of supply of electricity. More importantly, the caption of Clause 12.0 of Regulation 46 is "Modifications to the Existing Connection".

26. Hence, as rightly argued by the WBSEDCL, the modification envisaged in Clause 12.3 regarding reduction of load can only apply to an existing connection of a consumer and not after disconnection of the supply.

27. In the present case, although the contract between the petitioners and the WBSEDCL is subsisting, the connection is not.

28. Hence, the provision applicable to an existing connection, as contemplated in Clause 12.0 and its sub-clauses, cannot apply to the present writ petitioners.

29. Thus, on a comprehensive consideration of the above legal provisions, it is evident that the WBSEDCL is justified in continuing to claim demand charges on the basis of the contract demand of the petitioners till the expiry of 180 days from the date of disconnection.

30. Hence, there is no scope of interference in the present writ petition. Accordingly, W.P.A. No. 28469 of 2023 is dismissed on contest.

31. There will be no order as to costs.

32. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)