

4th February,
2022
(AK)
02

W.P.A 868 of 2022

West Bengal State Electricity Distribution Company
Limited

Vs.

Sukanta Kumar Singha and another

(Via Video Conference)

Mr. Srijan Nayak

Mrs. Rituparna Maitra

...for the petitioner.

Mr. Sumit Kumar Ray

...for the respondent no.1.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner-Distribution Licensee argues that the Ombudsman acted without jurisdiction in awarding damages to the consumer, that is, respondent no.1 in the writ petition, although the consumer had approached the Grievance Redressal Officer (GRO) after 90 days of the cause of action which is the limitation as per Clause 6.1 of Regulation 56 of the West Bengal Electricity Regulatory Commission.

It is further submitted that compensation was awarded from the date of the cause of action, that is, November 19, 2017, at the rate of the maximum amount of Rs.500/- per day, without any justification, although

the law says that Rs.500/- or any part thereof can be awarded as compensation.

Thirdly, learned counsel argues that the Ombudsman clearly observed that the petitioner had not established his claim of damages.

However, in spite of such specific finding, the Ombudsman merely deducted twenty per cent from the total amount of compensation and ultimately awarded lumpsum compensation to the tune of Rs. 1,21,400/- to the respondent no.1 without jurisdiction.

Learned counsel appearing for the respondent no.1 places reliance on the various communications annexed to the writ petition from the end of the respondent no.1 which indicate that the cause of action had not crystallized before the respondent no.1 approached the GRO for the first time.

The disconnection took place on November 19, 2017 and in the very next month, the respondent no.1 had approached the authorities seeking a clarification regarding the reason for disconnection.

Thereafter, several communications via e-mail were exchanged and despite the respondent no.1 having sent at least 200 e-mails, the authorities did not give any reply. Ultimately, the respondent no.1 was compelled to approach the GRO for such inaction on the part of the WBSEDCL.

Since the GRO did not pass any direction on the Distribution Licensee on the prayer of the respondent no.1 to furnish necessary details regarding the disconnection, the respondent no.1 had to approach the Ombudsman.

The respondent no.1 has made out a specific case in pleadings before the forums below that, upon being advised then by the Ombudsman, the respondent no.1 again approached the GRO challenging the disconnection.

It is submitted that not only is the respondent no.1 a layman in electricity law but that the cause of action of the respondent no.1 has been continuing day-to-day, in view of the extreme distress being suffered by the respondent no.1 every day from the date of disconnection till the date of approaching the GRO for the first time, in fact, till date.

Hence, it is argued that there does not arise any question of limitation in making the claim. That apart, learned counsel submits that the Ombudsman was justified in passing an award against the Distribution Licensee in favour of the respondent no.1, since the respondent no.1 has suffered sufficient harassment to entitle him to such compensation.

Upon considering the provision of Clause 6.1 of Regulation 56 dated August 26, 2013 of the WBERC, it is evident that the time-limit for an aggrieved consumer to submit a written petition against a grievance along with

annexures, if any, is 90 days “*from the date of occurrence of the cause of action*”.

Learned counsel for the respondent no.1 is justified in arguing that the cause of action of the instant respondent no.1 continued *de die in diem* due to the harassment regularly being faced by the respondent no.1 in view of the disconnection of electricity, which is a basic necessity of life and part of the right to life of the respondent no.1.

That apart, even if it is viewed from a different perspective, the cause of action could not be said to have crystallized prior to the respondent no.1 being purportedly advised by the Ombudsman to prefer the specific challenge before the GRO.

The respondent no.1, in fact, had approached the GRO with the first complaint seeking explanation for the disconnection and the reasons therefor well within the limitation period of 90 days from the inception of the cause of action.

As such, there did not arise any occasion for either the GRO or the Ombudsman to have dismissed the respondent no.1’s grievance on the ground of limitation. In fact, in the impugned order, the Ombudsman has clearly discussed the ground but did not come to any specific finding as regards the limitation not being applicable in the present case or the exact reasons therefor.

That apart, in view of the factual details averred by the respondent no.1 at every stage, limitation has been a mixed question of fact and law, and not a pure question of law evident on the face of the pleadings, in the present case.

In the absence of any controversy or challenge being taken out by the petitioner-Distribution Licensee before any of the forums below on the ground of limitation, it does not lie in the mouth of the petitioner to say for the first time now that the claim of the respondent no.1 was time-barred.

As far as the peculiar method of calculation of the Ombudsman is concerned, it is not a charity that was done by the Ombudsman but the legal right of the respondent no.1 to get damages at the rate of Rs.500/- per day.

The argument of the Distribution Licensee, that the Ombudsman failed to give any reason for having awarded the full amount of compensation payable in law, is belied by the deduction of twenty per cent of the total amount by the Ombudsman without any rhyme or reason.

That apart, no plausible explanation has been given by the Distribution Licensee before any of the forums as to why the respondent no.1 would not be entitled to the full amount of compensation due in law.

In cases such as the present one, it is the gross laches of the Distribution Licensee which compelled the

respondent no.1, a consumer, to suffer unnecessary ignominy and harassment.

Hence, the Ombudsman had actually acted without jurisdiction even in deducting twenty per cent of the compensation amount from the total amount initially calculated at the rate of Rs.500/- per month, which comes to Rs.6,07,000/.

Hence, the impugned order does not contain any reason insofar as the deduction by the Ombudsman from the compensation amount is concerned and the same is entirely arbitrable.

As far as the conduct of the Distribution Licensee in the present case is concerned, the same is deplorable and the consumer was compelled to run from pillar to post at every point of time.

During the entire period, the respondent no.1 had suffered due to disconnection of the electric connection arbitrary by the Distribution Licensee. Even after repeated requests, no clear reason was disclosed by the Distribution Licensee on such score to the consumer-respondent no.1.

Hence, there was no scope of reducing the total amount of compensation at the rate of Rs. 500/- per day, as calculated by the Ombudsman. Rather, in exercise of this court's powers under Article 226 of the Constitution of India, the impugned order of the Ombudsman is modified to the effect that the Distribution Licensee shall

pay compensation not to the tune of Rs.1,21,400/- as awarded but will pay a total amount of Rs.6,07,000/- to the consumer-respondent no.1 within a month from date, deducting any amount, if already paid pursuant to the impugned order of the Ombudsman.

This court is fully conscious of the fact that no separate challenge has been preferred by the respondent no.1 against the compensation.

However, this court can, in exercise of its power of judicial review under Article 226 of the Constitution of India, even *suo motu*, review an illegal and arbitrary act of any authority or quasi-judicial forum.

Hence, there is no fetter on the powers of the High Court to modify the order impugned, even if the challenge is at the instance of the Distribution Licensee, under the aegis of Article 226 of the Constitution of India.

In such view of the matter, WPA 868 of 2022 is disposed of by modifying the order of the Ombudsman dated September 2, 2021 passed in connection with Representation No.W-12BB/2021 to the extent that the compensation/damages payable by the petitioner/Distribution Licensee to the respondent no.1-consumer shall be Rs.6,07,000/- which shall be paid by the Distribution Licensee to the respondent no.1 within March 4, 2022.

At this juncture, learned counsel appearing for the Distribution Licensee prays for an order of stay of

operation of this order for a period of three months from this date.

However, in view of one month (commensurate with the appeal period before a Division Bench of this court) already having been granted to the Distribution Licensee to pay the amount directed, such prayer for stay is refused.

There will be no order as to costs.

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.)