

(2022) 11 CAL CK 0098
In the Calcutta High Court
Case No : W.P.A. No. 22741 Of 2022

West Bengal State Electricity Distribution Company Limited	APPELLANT
Vs	
Paul High Care Chemical Pvt. Ltd. And Others	RESPONDENT

Date of Decision : 29-11-2022

Acts Referred:

Citation : (2022) 11 CAL CK 0098

Hon'ble Judges : Sabyasachi Bhattacharyya, J

Bench : Single Bench

Advocate : Srijan Nayak, Rituparna Maitra, Dhruva Mukherjee, Ajit Kumar Barman, Tushar Sil

Final Decision : Dismissed

Judgement

Sabyasachi Bhattacharyya, J

1. The present challenge has been preferred by the West Bengal State Electricity Distribution Company Limited (WBSEDCL) against the final order dated March 15, 2022 passed by the Ombudsman in an appeal preferred by the respondent no.1-Company against the final order dated October 13, 2020 of the Grievance Redressal Officer (GRO), South 24 Parganas. By the impugned order, the Ombudsman reversed the conclusion of the GRO and accordingly set aside the bill raised on the ground of not registering actual units of consumption by the WBSEDCL for the period from August, 2017 to February, 2020.
2. Learned counsel for the petitioner/WBSEDCL contends that the Ombudsman failed to take into account the objection filed by the WBSEDCL to the Draft Settlement Order (DSO) dated December 15, 2021.
3. By placing reliance on the said objection, annexed at page 32 (Annexure P-6) of the writ petition, learned counsel submits that the same elaborately clarified that the amount charged from the respondent/consumer was in lieu of less claimed bill which had taken place due to defect in the metering circuit.

4. It is submitted that the technical points raised by the WBSEDCL were not appreciated properly by the Ombudsman while passing the final order.
5. Learned counsel appearing for the respondent no.1 contends that the Ombudsman gave ample reasons for reversing the findings of the GRO. As such, the impugned order was perfectly justified in law and on facts.
6. Learned counsel argues that the reasons given by the Ombudsman in his order were in consonance with law and reason. It is submitted that only upon the respondent no.1/consumer having repeatedly given representations with regard to excess billing, the WBSEDCL concocted the story of R-Phase PT Secondary fuses having blown out in August, 2017. The allegation of detection of such defect on February 28, 2020, it is argued, is an after-thought to cover up the excess billing by the WBSEDCL.
7. It is further argued that the Ombudsman rightly observed that the WBSEDCL failed to substantiate its allegations.
8. In fact, it is submitted that there was no repair work of the allegedly defective fuses on February 29, 2020. The averments of the WBSEDCL to the effect that it had sent out technical personnel on February 29, 2020 to inspect the metering circuit and had repaired the defect on the same date is incorrect. No notice or proof of the said repair has been furnished by the WBSEDCL at all.
9. Upon consideration of the rival contentions of the parties, a perusal of the Ombudsman's impugned order becomes necessary.
10. The Ombudsman has found that upon the consumer having raised its voice regarding excess billing for the billing cycle February 2020, on March 12, 2020, the Licensee intimated that due to development of technical fault in the metering circuit installed against the meter of the consumer, less claim of energy bill had been made. In the initial letter dated March 12, 2020, such defect was indicated to have existed for a couple of months immediately preceding the letter. However, in the letter dated March 21, 2020, a different version was sought to be made out by the WBSEDCL. It was for the first time in the said letter that the WBSEDCL alleged about having sent technical personnel on February 29, 2020 for inspecting the metering circuit. The Ombudsman also arrived at the finding that the Licensee did not give prior intimation of the defect to the consumer as per the WBERC Regulations. The Licensee did not rely on any test report or any repair report before the forum, it was recorded. In such context, the Ombudsman disbelieved the contentions of the WBSEDCL and went on to set aside the order of the GRO.
11. Certain facts can be extracted from the materials-on-record.
12. First, the WBSEDCL has failed to establish by any cogent evidence or material that any prior intimation of the alleged defect in the meter was given at any point of time to the consumer/respondent no.1, as rightly observed by the Ombudsman. The WBSEDCL has miserably failed to substantiate their allegation

of such defect in the metering circuit and repair of the same by any cogent test report and/or document to indicate that a repair work had been conducted. No details have been disclosed by the WBSEDCL of the said repair work having been done on February 29, 2020 even in its letter dated March 12, 2020.

13. It is rather peculiar that the WBSEDCL initially took a stand in its March 12, 2020 letter that due to development of technical fault at their metering circuit installed against the meter of the respondent no.1, less claim of energy bill had been made "since last couple of months". The said less claim units was stated to be added to the next bill(s) of respondent no.1 until realization of provisionally calculated all less claim units.

14. However, in the communication dated March 21, 2020, the WBSEDCL diametrically shifted from its previous stand and indicated that the faulty meter reading has taken place since as long back as in August, 2017 till February, 2020.

15. If the defect had been detected and repaired on February 29, 2020, there would not have been any reason for the WBSEDCL to inform the respondent no.1 in its initial letter dated March 12, 2020 that the less billing had been done only for the preceding couple of months.

16. Secondly, the WBSEDCL has sought to place reliance upon its MDAS Software, which is used by the WBSEDCL to capture meter particulars remotely.

17. As such, even as per the WBSEDCL, there was a discrepancy between the remote readings and the regular meter readings. However, such post facto attribution of fault to the metering circuit would not, by itself, justify the veracity of one set of readings against the other. Nothing has been brought on record by the WBSEDCL to establish that the meter readings initially taken were incorrect, as opposed to the MDAS Software readings.

18. Even if it is assumed that the MDAS remote readings were correct, the WBSEDCL has failed to show that the regular meter readings were not taken remotely but on physical inspection. In fact, in view of availability of the remote meter readings software, further physical inspection for meter reading would be redundant. It has not been explained as to whether physical readings were taken at all by the WBSEDCL in respect of the meter of the respondent no.1. There is precious nothing on record to indicate the repair work undertaken by the WBSEDCL purportedly on February 29, 2020 and/or that the metering circuit was defective for the period as alleged by the WBSEDCL.

19. Seen more closely, the explanation in the WBSEDCL letter March 12, 2020 attributed the cause of less billing to a mere two-month technical fault of the metering circuit installed against the meter of the respondent no.1. However, there is gross inconsistency between the said stand and the subsequent stand taken on March 29, 2020 by the WBSEDCL that the R-phase had blown out from August, 2017 to February, 2020.

20. No explanation comes forth from the WBSEDCL to justify why the remote

readings were not taken all along and/or physical meter readings were not corroborated with the said meter readings taken by the MDAS software.

21. In view of availability of the Meter Data Acquisition System (MDAS), the onus lay on the WBSEDCL to justify as to why there was less billing despite such software being available to the WBSEDCL all along.

22. If there was discrepancy between the MDAS readings and physical meter readings, the same was a result of the negligence on the part of the WBSEDCL and cannot be said to be a mere bona fide mistake.

23. Rather, the chronology of events creates doubt as to whether the WBSEDCL's allegations of faulty meter readings since August, 2017 due to blown out R-phase PT secondary fuse was a cover-up for the excess billing in the month of February, 2020.

24. The petitioner had given repeated representations, which failed to prompt the WBSEDCL to verify its meter readings and/or to check the condition of the circuit.

25. That apart, the WBSEDCL has taken a specific stand that it collects and gets the entire data and records of electricity consumption every month regularly by virtue of the remote data readings and raises bills on the said basis.

26. Hence, if there was less recording, the same ought to have been noted immediately. The long period of about 30 months since August, 2017, when the defect allegedly cropped up and February, 2020 remains unexplained, since the same modality of meter reading had been allegedly used by the WBSEDCL all along.

27. The only change of circumstance in February, 2020 was the petitioner raising the alarm regarding excess billing.

28. In such view of the matter, since the WBSEDCL has failed to substantiate its allegations against the respondent no.1 before the Ombudsman, the mere filing of a response to the Draft Settlement Order passed by the Ombudsman cannot cure the defect in their case.

29. Although the WBSEDCL has prayed for a remand of the matter and/or ascertainment of the veracity of its claims by a third authority, it is too late in the day for the WBSEDCL to seek such relief, which could have been sought before either of the fora below.

30. In fact, since the WBSEDCL, in the first place, has failed to substantiate its case before the Ombudsman, it cannot now get a fresh opportunity to refer the matter to a third agency, which would, in effect, unnecessarily entangle the respondent no.1-consumer in protracted litigation.

31. Moreover, the Ombudsman has, on a preponderance of probability on the basis of the materials-on-record, adverted to all the facets of the case and come

to a possible conclusion which is not patently perverse or erroneous in law. Hence, there is no reason why this Court, sitting in its writ jurisdiction, would exercise the sweeping powers of judicial review to replace the said opinion of the Ombudsman merely because another view was possible.

32. It is a cardinal legal principle that even the appellate court does not reverse the finding of the preceding forum merely because another view was possible on the facts. In the present case, the said logic is applicable all the more, since no jurisdictional error and/or patent perversity in the decision-making process of the Ombudsman has been made out by the WBSSEDCL.

33. Hence, there is no scope of interference with the impugned order of the Ombudsman.

34. Accordingly W.P.A. No.22741 of 2020 is dismissed on contest, affirming the impugned decision of the Ombudsman.

35. There will be no order as to costs.

Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.