

21.03.2025
Sl. No. 37
Ct No. 3
SG

WPA 29662 of 2024

**West Bengal State Electricity
Distribution Company Limited & Ors.**

Vs.

**Ombudsman, West Bengal Electricity
Regulatory Commission & Ors.**

Dr. Madhusudan Saha Roy,
Mr. Debanjan Chatterjee.
...for WBSEDCL

Mr. R. Pattanayak.
...for respondent no. 2

Mr. Suman Banerjee,
Ms. Shreejita Sen.
...for respondent no. 4

1. The petitioners are challenging the order dated 10.09.2024 passed by the Ombudsman, West Bengal Electricity Regulatory Commission. By the said impugned order, Ombudsman has held that the petitioner is liable to pay compensation to the respondent No.4 for wrongful disconnection of the electricity for the period from 13.04.2023 to 14.06.2023. It is further held that they shall waive the demand/charges as claimed during the period of wrongful disconnection from 13.04.2023 to 14.06.2023.
2. Learned Counsel for the petitioner states that the electricity connection was disconnected on the

request of Chief Engineer, Operation and Execution Cell, West Bengal Pollution Control Board. It is contended by the learned Counsel for the petitioner that a notice was served upon the respondent no. 4 on 13.04.2023 by the West Bengal Pollution Control Board whereby they were asked to close down their business activities as well as a direction was issued that the electricity connection of the unit shall be disconnected forthwith. Learned Counsel for the petitioner has relied upon Section 5 of the Environment (Protection) Act, 1986 which reads as under: -

*“5. Power to give directions. -
Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.”*

3. It is further contended by the learned Counsel for the petitioner that under Section 5 of the Environment (Protection) Act, 1986 a direction has been issued by the Pollution Control Board wherein they had been asked to disconnect the electricity connection. In furtherance of his argument he relies on the judgment of the Hon'ble Supreme Court in ***Iridium India Telecom Ltd. v. Motorola Inc., AIR 2005 SC 514*** wherein it has been held that the non obstante

clause is appended to a section in the beginning, with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision or the Act mentioned in the non obstante clause. It is equivalent to saying that inspite of the provision of the Act mentioned in the non obstante clause, the enactment following it will have its full operation and the provisions embraced in the non obstante clause would not be an impediment for an operation of the enactment. In view of the same learned Counsel for the petitioner states that the respondent no. 4 has not violated any express provision under Electricity Act or Rule which warrants the disconnection of electricity. However, in this case due to the direction issued by the Pollution Control Board under Section 5 of The Environment (Protection) Act, 1986 they were duty bound to carry out the disconnection of the electricity.

4. Learned Counsel for the petitioner further relies upon Regulation 55 Clause 4.10 read with Regulation 48 Clause 4.10 to buttress his argument that they were statutorily bound to raise bills as per the contractual load during the period of disconnection.

5. Learned Counsel for the petitioner further states that no statutory notice were issued to the private respondent no. 4 before disconnecting the electricity since they were executing the order of the

Pollution Control Board which had already given a notice to the private respondent no. 4 on 13.04.2023 wherein it was categorically stated that their electricity connection was also to be disconnected.

6. Learned Counsel for the petitioner further submits that in this particular case, WBSEDCL is not authorised to examine the legality of the reason behind the issuance of disconnection notice by Pollution Control Board.

7. Learned Counsel for respondent no. 2 contends that under no circumstance the disconnection should have effected by the Petitioner without issuance of proper notice to the consumer. They alleged that it is the violation of principle of natural justice. He relies on Regulation 55 sub-clause 4.3 wherein it is stated that even in a scenario where the disconnection is to prevent loss of human life and property, in that emergent situation also a notice shall be issued to the consumer. To substantiate his contention, he relies on Clause 4.3.4 wherein a notice has to be given to the consumer within 48 hours of disconnection.

8. Learned Counsel for the private respondent no. 4 also contends that the petitioner ought to have followed the principles of natural justice by giving them a separate notice prior to the disconnection.

9. This Court has heard the arguments advanced by the learned Counsel for the parties and examined the documents.

10. There is no dispute to the fact that while disconnecting the electricity, the petitioner was acting as per the direction of the West Bengal Pollution Control Board. The Respondent No. 4 admits the receipt of the notice dated 13.04.2023 issued by the West Bengal Pollution Control Board informing about the disconnection of electricity. This Court further noted that the electricity connection was restored on 16.06.2023 on the direction of the West Bengal Pollution Control Board.

11. In view thereof the only question remains to be adjudicated is whether in such a circumstances the petitioner is to follow the principle of natural justice by giving a separate notice to the consumer.

12. Upon perusal of the notice dated 13.04.2023 issued by the West Bengal Pollution Control Board, it is clear that the notice explicitly states that the electricity connection will be disconnected. Hence the consumer had prior notice regarding the disconnection of electricity and he was aware that the said disconnection is at the instance of the West Bengal Pollution Control Board. Whether the Petitioner is required to give a separate notice to the consumer or

not must be determined after a thorough analysis of the various provisions of the Act and the Affidavits filed on behalf of the Respondents.

13. Since the consumer had prior notice regarding the disconnection of electricity, this Court is of the considered view that the Petitioner is entitled for interim protection at this stage.

14. Learned Counsel for the respondent seeks leave to file affidavit-in-opposition.

15. Affidavit-in-opposition be filed within four weeks from date. Reply to the same, if any, shall be filed within two weeks thereafter.

16. Let the matter be listed after six weeks hence (05.05.2025).

17. In the meanwhile, the operation of the impugned order dated 10.09.2024 passed by the Ombudsman shall remain stayed till 21.05.2025 or until further orders, whichever is earlier.

(Gaurang Kanth, J.)