

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

FMA 179 OF 2023

WITH

CAN 1 OF 2022

WITH

CAN 2 OF 2022

WITH

CAN 3 OF 2025

**THE WEST BENGAL STATE ELECTRICITY DISTRIBUTION
COMPANY LIMITED & ORS.**

VS

JYOTISH CHANDRA RICE MILL & ORS.

BEFORE:

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

AND

THE HON'BLE JUSTICE UDAY KUMAR

For the Appellants : Mr. Srijan Nayak, Ld. Adv.
Mr. Sujit Shankar Koley, Ld. Adv.

For the Respondents : Mr. Sayan Chattopadhyay, Ld. Adv.
Ms. A. Acharya, Ld. Adv.
Ms. S. Jana, Ld. Adv.
Ms. Sushama Hansda, Ld. Adv.

Hearing concluded on : 07.01.2026

Judgment on : 04.02.2026

Uday Kumar, J:-

1. Jurisdiction is not an end in itself; it is a fundamental means to achieve the ends of justice. The power to provide a public utility is a fiduciary

trust, not a charter for administrative high-handedness. As an "Instrumentality of the State" under Article 12, the Appellant-Licensee (WBSEDCL) functions under a Public Trust Doctrine, where every unit of energy billed must be anchored in evidentiary certainty, failing which it offends the touchstone of reasonableness enshrined in our Constitutional scheme.

2. This intra-court appeal is directed against the judgment and order dated June 7, 2022, passed by a Learned Single Judge of this Court in W.P.A. No. 8916 of 2022. It presents a classic conflict between the statutory recovery powers of a State-armed monopoly and the fundamental right of a citizen to be protected from arbitrary, speculative, and retroactive billing.
3. The Respondent, an owner of rice mill situated at Jamalpur, in Purba Bardhaman. The dispute traces its genesis to a transformer replacement carried out by the Appellant-Licensee (WBSEDCL) on July 12, 2019. For the subsequent four months, energy consumption was recorded by the existing meter, and bills were raised based on actual readings. The Respondent consistently discharged these liabilities via RTGS, and the Licensee accepted these payments without demur.
4. The harmony of this relationship was upended in November 2019, when the Licensee unilaterally refunded the Respondent's payments and issued "Revised Bills" totalling Rs. 55,80,653/-. This supplemental demand was predicated upon a technical inspection conducted on November 29, 2019, which allegedly detected a "polarity reversal" at the Potential Transformer (PT). The Licensee contended that this defect

caused the meter to under-record consumption for 140 days. Invoking Regulation 3.6.1 of the WBERC Regulations, the Licensee sought to "regenerate" bills on an average basis.

5. Aggrieved by the demand, the Respondent approached the Electricity Ombudsman. In the order dated April 26, 2022, the Ombudsman recorded a categorical finding that the Forum was "not satisfied" with the Licensee's evidence regarding the proof of rectification of the defect. Yet, in a startling departure from logic—a *non-sequitur* that offends the fundamental principles of judicial reasoning—the Ombudsman proceeded to affirm the demand for average billing.
6. The Learned Single Judge, in the impugned judgment, has rightly identified this order as a case of "patent perversity." An order is perverse when the conclusion reached is diametrically opposed to the findings recorded therein. The Writ Court correctly held that if the date of "rectification" (the return to normalcy) was not proven, the entire basis for calculating an "average" was legally untethered and anchored in mid-air. The Licensee has now preferred this appeal.
7. Upon the rival contentions, the following points arise for our adjudication:
 - a. Whether the "establishment of a defect" constitutes a jurisdictional condition precedent for invoking the power of bill regeneration.
 - b. Whether the Licensee met the mandatory burden of proof under Regulation 3.3.1 to displace the statutory presumption of a "correct meter."

- c. Whether the Ombudsman's order survives the doctrine of perversity as articulated in *State of U.P. v. Johri Mal*.
 - d. Whether an accessory liability, such as Late Payment Surcharge (LPSC), can survive once the principal demand is quashed as a "legal corpse."
- 8.** Central to this controversy is the interplay between Regulations 3.3.1 ("*All energy supplied by a licensee to a consumer shall be measured by a correct meter... and the licensee shall have the right to satisfy itself that the meter is correct,*") and 3.6.1 ("*In the event of any meter being found prima facie to be incorrect... the licensee may prepare and submit a revised bill on the basis of average consumption... after the defect is established*") of the WBERC Regulations. While Regulation 3.3.1 establishes the bedrock presumption of a "correct meter," Regulation 3.6.1 provides a narrow, contingent window for "bill regeneration" based on average consumption. However, this power is not a roaming commission; it is strictly predicated upon the "establishment of a defect." We hold that the Potential Transformer (PT), being an inseparable component of the metering circuit, falls squarely under the statutory protection of a "correct meter." The doctrine of *onus probandi* dictates that the Licensee must establish the *terminus a quo* (birth of defect) and the *terminus ad quem* (rectification) with clinical precision.
- 9.** A meticulous perusal of the records reveals that the Licensee's demand was built upon a foundation of sand. The on-site Meter Reading Card contained no contemporaneous entry of defect, and the Technical Inspection Report (TIR) lacked the requisite consumer verification. Most

damagingly, the Licensee failed to produce any verified documentation regarding the "rectification" of the alleged polarity reversal. In the absence of a proven *terminus ad quem* (the point of return to normalcy), the calculation of an "average" becomes a mathematical fiction—an anchor cast into mid-air.

- 10.** The proceedings before the Electricity Ombudsman were marked by a startling departure from logic. Despite recording a categorical finding of "not satisfied" regarding the evidence of rectification, the Ombudsman proceeded to affirm the penal demand. This constitutes a "patent perversity" as articulated in Paragraph 28 of *State of U.P. v. Johri Mal* (2004) 4 SCC 714, which provides that -

"A decision would be perverse if it is so quite absurd that no reasonable person could have reached that conclusion... It should not be based on a non-existent fact."

- 11.** An order is perverse when the conclusion reached is diametrically opposed to the findings recorded therein. A quasi-judicial authority cannot find the factual basis "unproven" yet hold the citizen "liable" in law.

- 12.** Furthermore, we must address the Licensee's attempt to bolster a crumbling administrative order through subsequent affidavits filed in Court. Per the Constitution Bench held in paragraph 8 of *Mohinder Singh Gill v. Chief Election Commissioner* (1978) 1 SCC 405 that-

"When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of

affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out." (Emphasis supplied).

13. A statutory order must stand or fall by the reasons mentioned therein at the time of its inception. It cannot be resuscitated by supplemental grounds later brought out in litigation. As the underlying order is a jurisdictional nullity, it constitutes a "legal corpse" that no amount of administrative maneuvering can breathe life into.
14. Regarding the Late Payment Surcharge (LPSC) of Rs.32.72 Lakhs, the principle of *accessorium non ducit sed sequitur suum principale* applies with full force. Interest and surcharges cannot breathe life into a void debt. Since the supplemental demand is a jurisdictional nullity, void *ab initio*, the LPSC has no host upon which to subsist. *Quod ab initio non valet, in tractu temporis non convalescit*—that which is void from the beginning does not become valid by the lapse of time.
15. In view of the aforesaid analysis, we conclude that the Rule of Law does not permit "Taxation by Inference." A citizen's liability to the State must be certain, documented, and transparent. We also conclude that the presumption of meter accuracy cannot be displaced by speculative reports lacking contemporaneous verification, the average billing mechanism is an exception that triggers only upon clinical proof of both the onset and the cure of a defect and a non-sequitur in a quasi-judicial order renders the entire proceeding *coram non iudice*.

16. Therefore, in the absence of jurisdictional prerequisite, the supplemental demand is *coram non judice*, void *ab initio*, and a nullity.

17. Accordingly, the Appeal (F.M.A. 179 of 2023) is dismissed. We uphold the Learned Single Judge's decree in its entirety and issue the following directions:

- a. The principal supplemental demand (crystallized at Rs.47,06,213/-) is declared null and void.
- b. The Licensee shall delete and waive the entire LPSC of Rs. 32.72 Lakhs and all associated interest.
- c. The sum of Rs.11,70,855/- deposited under protest shall be adjusted against future bills.
- d. All disconnection notices are quashed.

18. CAN 1 of 2022, CAN 2 of 2022 and CAN 3 of 2025 are disposed of accordingly.

19. No order as to costs.

I AGREE

(RAJARSHI BHARADWAJ, J.)

(UDAY KUMAR, J.)