

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19747 of 2014

With

I.A. No.2513 of 2015

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1. The North Bihar Power Distribution Company Limited through its Managing Director, Vidyut Bhawan, Patna.
 2. The Bihar State Power Holding Company Ltd. through its Managing Director, Vidyut Bhawan, Patna.
 3. The then Bihar State Electricity Board through it's the then Chairman Vidyut Bhawan, Patna.
 4. The Electrical Executive Engineer, Electric Supply Division, Purnea, District – Purnea.
 5. The Asst. Electrical Engineer, Electric Supply Sub - Division, Purnea.

.... Petitioner/s

Versus

1. The State of Bihar through Secretary, Energy Department.
2. Shri Nitesh Chaudhary, son of Sri Krishna Mohan Chaudhary at Mranga, P.S. + District – Purnea.
- Respondent 2nd Set.
3. The Electrical Ombudman through its President, Vidyut Bhawan II, Bailey Road, Bihar, Patna 21.

.... Respondent 1st Set.

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Appearance :

For the Petitioner/s : Mr. Vinay Kirti Singh
For the Respondent/s : Mr. Gyan Prakash Ojha, GP-22
For the Respondent no.2 : Mr. Yugal Kishore, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 25-06-2015

Heard Mr. Vinay Kirti Singh, learned counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Yugal Kishore, learned senior counsel appearing for the respondent no.2.

It is the power distribution company who is before this Court invoking the extraordinary jurisdiction under Article 226 of the Constitution of India to question the order dated 26.5.2014 passed by the Ombudsman in Appeal Case No.2 of 2013 in exercise



of power vested under section 42(6) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') whereby the Ombudsman while reversing the order dated 30.9.2013 of the Consumer Grievance Redressal Forum (hereinafter referred to as 'the CGRF') constituted under section 42(5) of 'the Act' has issued direction for modification of the bill.

A very short submission has been made by Mr. Vinay Kirti Singh, learned counsel appearing for the petitioner-power distribution company to question the order by submitting that in view of the provisions underlying the Bihar Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 (hereinafter referred to as 'the Regulations') which have been framed under sub-sections (5) (6) and (7) of section 42 of 'the Act' the jurisdiction of the CGRF as well as the Ombudsman to adjudicate on any matter arising from a proceeding initiated under section 126 of 'the Act', stands ousted and which legal position is manifest from Clause 2(f) (vii) of 'the Regulations'. He thus submits that not only the order of the CGRF is without jurisdiction but even the interference by the Ombudsman under section 42(6) of 'the Act' suffers from the same vice.

Although Mr. Yugal Kishore, learned senior counsel has endeavoured to contest the legal position to submit that since the entire proceeding is based on illegality hence the consequences

flowing therefrom are sufficient to invite the interference of the CGRF. He further submits that the final assessment order which is based upon the inspection report dated 21.9.2012 is not in tune with the provision underlying section 126(3) of ‘the Act’ inasmuch no opportunity of hearing has been provided to the consumer as mandated under such provision by the Assessing Authority.

I have heard learned counsel for the parties and I have perused the materials on record.

Since the challenge to the impugned orders rests on the issue of jurisdiction it would be necessary to consider the provisions relied upon by Mr. Singh to question the impugned order.

The Bihar Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2006 have been framed in exercise of powers vested under section 181 read with sub-sections (5), (6) and (7) of section 42 of ‘the Act’. Clause 2(f) of ‘the Regulations’ defines ‘complaint’ to mean any grievance made by any complainant on the aspects dealt in clause (i) to (vii) and reads as under:

“2 Definitions.

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- (f) “Complaint” means any grievance made by a complainant in writing on:-
- (i) defect or deficiency in electricity supply or

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- service provided by the licensee;
 - (ii) unfair or restrictive trade practices of licensee in providing electricity services;
 - (iii) charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;
 - (iv) errors in billing;
 - (v) erroneous disconnection of supply;
 - (vi) electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force; or
 - (vii) any other grievance connected with the supply of electricity by the licensee to the consumers except grievances arising under Sections 126, 135 to 139, 143, 152 and 161 of the Act”

On a plain reading of the definition of ‘Complaint’ as present in sub-clause (vii) of clause 2(f) of ‘the Regulations’ which is a residual clause it is manifest that all grievances connected with the supply of electricity has been included within the definition of ‘complaint’ except any grievance raised under Sections 126, 135 to 139, 143, 152 and 161 of ‘the Act’.

There is no dispute on facts between the contesting parties that the inspection conducted by the team on 21.9.2012, a report whereof is present at Annexure-1 to the writ petition was made under section 126 of ‘the Act’, the bill raised thereunder was issued pursuant thereto and the final assessment order was passed by the Assessing Officer –cum- Electrical Executive Engineer, Electric Supply Division, Purnea on 30.10.2012 placed at Annexure-2 to the writ petition also in exercise of power vested

under section 126(3) of 'the Act'. The foundation of the grievance thus raised by the consumer i.e. the respondent no.2 herein rested on the proceedings initiated under section 126 of 'the Act' and which position has also been fairly admitted by the CGRF at page 5 of the impugned order.

Unfortunately even while addressing itself as to the absence of jurisdiction to adjudicate upon any proceedings initiated under section 126 of 'the Act' and despite the records reflecting that the proceedings were initiated under section 126 of 'the Act', the CGRF acting in excess of jurisdiction has proceeded to adjudicate on the matter and to pass the order dated 30.9.2013 impugned at Annexure-4 and which illegality has been perpetuated by the Electricity Ombudsman while allowing the appeal bearing No.02 of 2013 filed by the consumer vide order passed on 26.5.2014 impugned at Annexure-7.

In view of the statutory provisions underlying clause 2(f) (vii) of 'the Regulations' apparently the order passed by the CGRF and the Electricity Ombudsman on the proceeding initiated under section 126 of 'the Act' is wholly without jurisdiction rather the two statutory authorities have acted in excess of the jurisdiction to adjudicate on such matters. On this sole account the two orders cannot be upheld and are accordingly set aside.

This would bring this Court to the issue raised by Mr.



Yugal Kishore questioning the final assessment order dated 30.10.2012 present at Annexure-2 on grounds that it has been passed without opportunity of hearing to the consumer and that the statutory duty cast upon the Assessing Authority under section 126(3) of 'the Act' has not been followed. A plain reading of the final assessment order placed at Annexure-2 confirms thus since although objection filed by the consumer has been taken note of by the Assessing Authority but no opportunity of hearing has been granted to the consumer. In fact a specific statement made by the consumer in the counter affidavit filed in the present proceeding has not been controverted.

In the circumstances existing where the final assessment order apparently is in violation of the provisions underlying section 126 (3) of 'the Act' the same also cannot be upheld. Law stands well settled and where the quashing of the order passed by the statutory authorities impugned at Annexures 4 and 7 has resulted in revival of the final assessment order which is patently illegal, it also requires to be set aside.

In view of such uncontested position the final assessment order dated 30.10.2012 placed at Annexure-2 passed by the Assessing Officer –cum- Electrical Executive Engineer, Electric Supply Division, Purnea is accordingly set aside. The final assessment proceeding is remitted back to the Assessing Authority

for passing a fresh assessment order but only after giving opportunity of hearing to the consumer as mandated under section 126(3) of 'the Act'.

The Consumer shall appear before the Assessing Officer –cum- Electrical Executive Engineer, Electric Supply Division, Purnea on or before 1.7.2015 and whereafter he shall proceed to pass a fresh order in accordance with law and after opportunity of hearing to the consumer. The consumer shall be at liberty to raise all issues as advised before the Assessing Authority at the stage of passing of the final assessment order.

The writ petition is allowed with the direction aforementioned. The interlocutory application stands disposed of.

(Jyoti Saran, J)

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