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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5057/2013 & CM APPL. 11398/2015

BSES RAJDHANI POWER LTD. Petitioner

Through Mr. Sunil Fernandes with Mr. Deepak
Pathak and Ms. Mithu Jain,
Advocates

versus

RATNA BHAT

..... Respondent

Through Mr. Mohit K. Sharma, Advocate

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Date of Decision: 21st September, 2015

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed under Articles 226 and 227 of the Constitution challenging the notice dated 22nd March, 2012 and the order dated 9th April, 2013 passed by the Consumer Grievance Redressal Forum (BRPL) [for short “CGRF”].

2. Mr. Sunil Fernandes, learned counsel for petitioner submits that CGRF had no jurisdiction to entertain the petition filed by the respondent inasmuch as Regulation 8 of Delhi Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers And Ombudsman) Regulations, 2003 [for short “Regulations,

2003”] prohibits CGRF from entertaining grievances arising under Sections 126, 127, 135, 139, 143, 152 and 161 of the Electricity Act, 2003 [for short “Act, 2003”].

3. Mr. Fernandes further submits that the impugned notice and order are contrary to the Division Bench’s judgment in ***B.L. Kantroo vs. BSES Rajdhani Power Ltd., 154 (2008) DLT 56 (DB)***.

4. On the other hand, Mr. Mohit K. Sharma, learned counsel for respondent contends that as respondent had filed an application for change of meter on 10th June, 2008 under the BSES Amnesty Scheme, 2008, he was immune from any criminal/legal proceedings. He states that in ***B.L. Kantroo*** (supra), the said petitioner had not applied under any amnesty scheme.

5. Mr. Sharma submits that as the complaint of theft had not been lodged within twenty-four hours under Section 135(1A) of the Act, 2003, the allegation of theft cannot be looked into.

6. In rejoinder, Mr. Fernandes denies that the petitioner had ever applied under any amnesty scheme. He also points out that a Coordinate Bench of this Court in a number of cases has set aside similar orders passed by the CGRF on the ground of jurisdiction.

7. Having heard learned counsel for parties, this Court is of the view that it is first essential to refer to Section 42(5) of the Act, 2003 and Regulations 7 and 8 of the Regulations, 2003. The said provisions are reproduced hereinbelow:-

A) Section 42(5) of the Act, 2003:-

“42. Duties of distribution licensees and open access-

xxxx xxxx xxxx xxxx

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.”

B) Regulations 7 and 8 of Regulations, 2003:-

*“7. **Jurisdiction of the forum** (1) The Forum shall have the jurisdiction to entertain the complaints filed by the complainants with respect to the electricity services provided by the Distribution Licensee and to take up a matter suo-moto if the same fulfils the requirements specified in Regulation clauses (i) to (vi) of sub-regulation (f) of Regulation 3.*

(2) The Forum shall entertain only those complaints where the complainant has approached the appropriate authority of the licensee as prescribed in the complaint handling procedure of the distribution licensee approved by the Commission from time to time and either is not satisfied with the response of the distribution licensee or there is no response within the time prescribed therein or within reasonable time:

Provided that no complaint shall be entertained unless it is filed before the Forum within three months from the date the consumer exhausted the remedy under the complaint handling procedure or when no action is taken by the authority prescribed in that procedure within the period prescribed therein, from the expiry of such period as aforesaid, whichever is earlier:

Provided further that the Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements;

(3) The Forum shall not entertain a complaint if it pertains to the same subject matter for which any proceedings before any court, authority or any other Forum is pending or a decree, award or a final order has already been passed by any competent court, authority or forum or is frivolous or vexatious in nature:

8. Grievance filing (1) The Forum shall take up any kind of grievance concerning with electricity supply to the consumers except the grievances arising under sections 126, 127, 135, 139, 143, 152 and 161 of the Act.”

(emphasis supplied)

8. Keeping in view the aforesaid provisions, it is apparent that once an allegation of theft of electricity is levelled, the CGRF would have no jurisdiction to entertain a complaint of a consumer.

9. The CGRF in the impugned order to reach the conclusion that it has jurisdiction, has first held that Section 135 of the Act, 2003 is not attracted to the proceedings before it. In the opinion of this Court, CGRF could not have given a finding that Section 135 of the Act, 2003 is not attracted as such a finding can only be rendered by a Special Court under Section 153 of the Act, 2003.

10. Consequently, the impugned notice and order are set aside. However, it is clarified that this Court has not expressed any opinion on the merit of the controversy and respondent is at liberty to file appropriate proceedings in accordance with law. With the aforesaid observations and directions, present petition and application stand disposed of.

MANMOHAN, J

SEPTEMBER 21, 2015

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