

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (Art. 227) No.622 of 2010

1. Executive Engineer (O&M) Division-1, CSPDCL, Akaltara, Distt. Janjgir-Champa (C.G.)
2. Executive Engineer (Vigilance), CSPDCL, Janjgir-Champa (C.G.), Distt. Bilaspur (C.G.)
3. Assistant Engineer, CSPDCL, Akaltara, Distt. Janjgir-Champa (C.G.)
(Non-applicants)
---- Petitioners

Versus

Sanjay Kedia, S/o Prakash Chandra Kedia, Proprietor Ganesh Minerals, Latia Road, Akaltara, Distt. Janjgir-Champa (C.G.)
(Applicant)
---- Respondent

For Petitioners: Mr. Sunil Otwani, Advocate.
For Respondent: None present though served.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

31/07/2017

1. Respondent Sanjay Kedia was found involved in unauthorized use of electricity within the meaning of Section 126 of the Electricity Act, 2003. He made a complaint to the Electricity Consumer Disputes Redressal Forum, Bilaspur for redressal of his grievance. The said Forum entertained the dispute and issued certain directions by the impugned order. Feeling aggrieved against that order, this writ petition has been preferred by the licensee Company stating inter alia that under Section 42 (5) of the Electricity Act, 2003, the Chhattisgarh State Electricity Regulatory Commission (Redressal of Grievances of Consumers) Regulations, 2007 has been enacted in which

unauthorized use and theft of electricity is covered under Section 126 of the Electricity Act, 2003 and Section 135 of the Electricity Act, 2003 is not covered by the grievances to be raised in the Forum constituted under Section 42 (5) of the said Act and therefore, the said Forum had no jurisdiction to entertain the complaint and issue certain directions to the petitioner Company.

2. Mr. Sunil Otwani, learned counsel for the petitioners, would submit that unauthorized use of electricity is covered under Section 126 of the Electricity Act, 2003 and therefore the Forum has no jurisdiction in view of clause (f) of Regulation 4 (1) of the Regulations, 2007 under which “grievance” or “complaint” has been defined. Therefore, the order passed by the Electricity Consumer Disputes Redressal Forum is without jurisdiction and without authority of law.
3. No one has appeared for the respondent, though served.
4. I have heard learned counsel for the petitioners and perused the order impugned.
5. For the sake of convenience, in order to decide the dispute, it would be appropriate to notice certain provisions of the Electricity Act, 2003. Section 42 of the said Act refers to duties of distribution licensee and open access. Sub-section (5) of Section 42 of the Electricity Act, 2003 reads as follows: -

“(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.”

6. The Chhattisgarh State Electricity Regulatory Commission (Redressal

of Grievances of Consumers) Regulations, 2007 has been framed in exercise of power conferred under sub-sections (5), (6) and (7) of Section 42 of the Electricity Act, 2003 in which the definition of “grievance” or “complaint” has been defined. Sub-clause (v) of clause (f) of Regulation 4 (1) of the Regulations, 2007 reads as under: -

“(f) **“Grievance”** or **“Complaint”** means a grievance or complaint regarding any of the following :

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(v) electricity bill related complaints not relating to unauthorized use and theft of electricity covered under sections 126 and 135 of the Act;

*** *** ***”

7. Section 126 of the Electricity Act, 2003 provides for assessment.
- Sub-section (1) of Section 126 reads as follows: -

“126. Assessment.—(1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.”

8. A careful perusal of the aforesaid provisions would show that the Forum constituted under Section 42 (5) of the Electricity Act, 2003 is not conferred with the jurisdiction to entertain the dispute relating to unauthorized use of electricity. The complete procedure has been prescribed therein and there is a provision of appeal to the appellate authority under Section 127 of the Electricity Act, 2003. Thus, the grievance of the consumer/respondent, particularly of unauthorized use of electricity was not cognizable by the Forum constituted under Section 42 (5) of the Electricity Act, 2003 in view of the definition

contained in sub-clause (v) of clause (f) of Regulation 4 (1) of the Regulations, 2007, since the said Forum has not been conferred with the jurisdiction to entertain the complaint with respect to unauthorized use of electricity.

9. In the matter of **Maharashtra State Electricity Distribution Co. Ltd. v. Lloyds Steel Industries Ltd.**¹, the Supreme Court has held that the State Electricity Regulatory Commission has no jurisdiction to hear complaints of individual consumers and the Forum constituted under Section 42 of the Electricity Act, 2003 has jurisdiction to hear the customer's grievances.
10. In the matter of **U.P. Power Corporation Ltd. and others v. Anis Ahmad**², Their Lordships of the Supreme Court have held that unauthorized use of electricity does not fall within the meaning of "complaint" under Section 2 (1) (c) of the Consumer Protection Act, 1986 and, therefore, the "complaint" against assessment under Section 126 of the Electricity Act, 2003 is not maintainable before the Consumer Forum. Their Lordships observed in para 46 of their Report as under: -

"46. The acts of indulgence in "unauthorized use of electricity" by a person, as defined in clause (b) of the Explanation below [Section 126](#) of the Electricity Act, 2003 neither has any relationship with "unfair trade practice" or "restrictive trade practice" or "deficiency in service" nor does it amounts to hazardous services by the licensee. Such acts of "unauthorized use of electricity" has nothing to do with charging price in excess of the price. Therefore, acts of person in indulging in 'unauthorized use of electricity', do not fall within the meaning of "complaint", as we have noticed above and, therefore, the "complaint" against assessment under [Section 126](#) is not maintainable before the Consumer Forum. The Commission has already

1 AIR 2008 SC 1042

2 2013 AIR SCW 4342

noticed that the offences referred to in [Sections 135 to 140](#) can be tried only by a Special Court constituted under [Section 153](#) of the Electricity Act, 2003. In that view of the matter also the complaint against any action taken under [Sections 135 to 140](#) of the Electricity Act, 2003 is not maintainable before the Consumer Forum.”

11. In view of above-stated analysis, the Electricity Consumer Disputes Redressal Forum, Bilaspur is absolutely unjustified in entertaining the complaint made by the respondent and in issuing certain directions. The order impugned dated 27-7-2009 is accordingly quashed.
12. The writ petition is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge