

CWP No. 18952 of 2014

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IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CWP No. 18952 of 2014

Date of decision : July 13, 2017

Uttar Haryana Bijli Vitran Nigam and another

..... Petitioners

Versus

The Presiding Officer, Consumer Grievances Redressal Forum and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

**Present:- Mr. Parveen Chauhan, Advocate
for the petitioners.**

**Mr. Akshay Bhan, Senior Advocate with
Mr. Abhishek Sanghi, Advocate
for the respondents.**

RAKESH KUMAR JAIN, J (oral).

This petition is preferred at the instance of Uttar Haryana Bijli Vitran Nigam in order to challenge the order dated 24.10.2013 (Annexure P-6) passed by the Consumer Grievances Redressal Forum on a complaint made by the consumer-respondent No.2 regarding excess short assessment of Rs.28,10,204/-.

At the time of issuance of notice of motion on 15.9.2014 the following order was passed.

“Notice is issued subject to the maintainability of the writ petition to challenge an order passed by the forum at the instance of the petitioners-Nigam, for hearing on 16.12.2014.”

Learned counsel for respondent No.2, at the threshold, has submitted that the impugned order has been passed by the forum which

comprised of the experts of the distribution licensee who have recorded a finding of fact on the basis of consideration of the available documents before them while allowing the complaint directing the petitioner that meter of respondent No.2 be got overhauled for the period 19.5.2012 to 29.5.2013 considering the meter as defective. Respondent No.2 be charged for this period the maximum consumption recorded when the meter was OK from 3.11.2010 to 22.10.2011 plus 15% on account of improved availability of power during the defective period of the meter i.e. respondent No.2 be charged for 98220 units for the defective period of the meter. It is submitted by respondent No.2 that the forum has been constituted in terms of notification dated 12.10.2004 by which the Haryana Electricity Regulatory Commission, exercising its power under Section 181 (5) to (8) of Section 42 of the Electricity Act, 2003, framed the Haryana Electricity Regulatory Commission by which it framed regulations called “Haryana Electricity Regulatory Commission (Guidelines for Establishment of Forum of Redressal of Grievances of the Consumers) and (Electricity Ombudsman) Regulation 2004” (hereinafter called' Regulations').

It is further submitted that these regulations are applicable to all distribution & retail supply Licensees in their respective licensed areas and the regulations could extend to the State of Haryana.

It is further submitted that the “consumer” is defined under Section 2 (j) of the regulations which means any person who is supplied with electricity for his own use by a distribution licensee or the Government or by any other person engaged in the business of supplying electricity to the public under the Applicable Legal Framework.

“Distribution licensee” is defined under Section 2 (l)

which means a licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply and includes a deemed license.

“Forum” is defined under Section 2 (r) which means 'Forum for redressal of grievances of the consumers' to be constituted by each distribution Licensee.

It is further submitted by respondent No.2 that Part-II of the regulations deals with establishment of Forum for Redressal of Grievances of the Consumers.

Section 3 deals with 'Constitution of forum(s) which provides that every Distribution Licensee shall within six months from the appointed date or date of grant of license, whichever is earlier, establish a Forum or Forums for Redressal of Grievances of the consumers in accordance with these regulations.

Section 10 deals with the procedure to be followed by the Forum on admission of complaint. Section 11 deals with findings of the Forum. Section 12 deals with Appeal which provides that any consumer aggrieved by an order made by the Forum or non implementation of the order of the Forum by the licensee may prefer an appeal against such order to the Electricity Ombudsman within a period of 30 days from the date of the order, in such form and manner as may be laid down in the regulations made by the Commission.

It is in this background that learned counsel for the respondent No.2 has submitted that since the right to appeal is only provided to the consumer, therefore, the order dated 15.9.2014 passed by this Court at the time of notice was issued was subject to maintainability of

the writ petition to challenge the order passed by the forum at the instance of the petitioner-Nigam.

It is submitted that appeal could have been filed against the order of the forum by the consumer and not by the distribution licensee, if distribution licensee is aggrieved against the order of the forum, the same can be challenged before the civil court because the forum records finding of fact which can be assailed only before the civil court as it requires evidence to prove that the findings recorded are perverse or based upon mis-reading of evidence.

On the other hand, counsel for the petitioners has submitted that the writ petition is also maintainable as it can be decided on the basis of documents which may be brought on record.

I have heard learned counsel for the parties and perused the record and after examining the facts and circumstances of the case, I am of the considered opinion that the appeal is provided to the consumer before the ombudsman but in terms of Section 14 of the Regulations insofar as the distribution licensee is concerned, it has not been given right to appeal under Section 12 against the order of the forum. If there is a violation of law per se, then the writ petition could be maintainable but if the court records a finding of fact then the civil court is the only forum where the said order can be challenged on the ground that the findings recorded by the forum are not based upon appreciation of evidence or are based upon the evidence which does not exist.

In this case, the forum has recorded numerous findings before concluding that the consumer has been charged a huge amount of recovery, therefore, the appropriate forum for the petitioner is to approach

the civil court and not by way of a writ petition.

With these observations, the present petition is disposed of with liberty to the petitioner to challenge the impugned order before the Civil Court, if so advised.

(RAKESH KUMAR JAIN)
JUDGE

July 13, 2017
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No