

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.5716 of 2010**

Superintending Engineer(O&M), Through, Harsh Gautam, S/o Late Shri S.B. Sharma, Aged about 51 years, Working as Superintending Engineer (O&M), Circle, CSPDCL, Raipur (CG) ---- **Petitioner**

Versus

M/s Indo Lahri Bio Power Ltd., Village and Post Jarauda, District Raipur(CG) --- **Respondent**

For Petitioner	:	Mr. Sunil Otwani, Advocate
For Respondent	:	None appears

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order on Board**09/01/2020**

Heard.

1. This Petition, under Article 226 read with Article 227 of the Constitution of India, is preferred against orders dated 31.12.2009 & 30.03.2010 passed by the Electricity Consumers Grievance Redressal Forum, Raipur (CG).
2. The petitioner is a Licensee under Section 14 of the Electricity Act, 2003, who is engaged in distribution of electrical energy to the public at large. The respondent has established a power plant based on rice husk and generating electricity. A power purchase agreement was executed between the petitioner and the respondent in the matter of purchase of electricity by the petitioner from the respondent. The respondent had paid an amount of Rs.29,68,769/- to the petitioner for transmission of electricity by the respondent under the power purchase agreement. The aforesaid facts are undisputed between the parties.
3. In course of time, a dispute arose between the petitioner and respondent when the petitioner used the transmission lines laid at the cost of respondent, for being used for transmission of electricity to other consumers of the petitioner. This gave rise to the grievance and respondent submitted a complaint before the Electricity Consumers Grievances Redressal Forum.

Notices were issued to the petitioner and reply was obtained and the Forum passed an order on 31.12.2009 whereby directed the petitioner to refund an amount of Rs.9,59,044/- along with simple interest of 9% per annum from the date of completion of the work till date and also directed to connect the electricity supply to the respondent from independent 33 KV feeder from Saragaon S/s. within stipulated period. The petitioner preferred a review petition before the Forum which was partly allowed in so far as the rate of interest is concerned.

4. The aforesaid two orders are now under challenge in this petition. An order passed by the Forum both original and review are sought to be challenged mainly on the ground that the order passed by the Forum is without jurisdiction. Even though, the jurisdiction of the Forum was not specifically challenged by the petitioner before the Forum, according to learned counsel for the petitioner, issue of jurisdiction can be raised at any stage as it goes to the root of the matter. According to him, the jurisdictional issue is not with regard to any illegality or irregularity in exercise of jurisdiction but total want of jurisdiction as the Forum has not been conferred jurisdiction to adjudicate upon dispute as between a licensee and generating company. Elaborating his submission, learned counsel for the petitioner contended that the creation of Electricity Consumers Grievances Redressal Forum is intended to provide redressal mechanism for consumers in the matter of supply of Electricity and other connected matters to them by the licensee. Referring to the definition of words "consumer", "generating company", licensee" as defined under Section 2(15), 2(28), 2(39) respectively, it has been contended that the present dispute between the petitioner and respondent is not a dispute between a licensee and its consumer but essentially a dispute between a licensee and generating company. He would argue that even though, the respondent is consumer of electricity supply to it by the licensee, it also generates electricity and sales and supplies electricity to the petitioner/licensee. In so far as generation and supply of electricity by respondent to petitioner is concerned, the respondent stands in the capacity as the generating company and the petitioner as licensee. The present dispute is not with regard to Consumer of electricity by the respondent but supply of electricity by the respondent to the petitioner Company. Further submission is that the provision contained in Regulation (4) of Chhattisgarh State Electricity Regulatory Commission (Redressal of Grievances of Consumers) Regulations, 2007 read with Section 42(5) of the Electricity Act, make it clear that the Forum has limited jurisdiction to deal with grievance of a consumer on

specific category of complaint exhaustively enumerated in clause (f) thereof. It is therefore, submitted that the Forum had no jurisdiction under the law to deal with a dispute relating to supply of Electricity by the generating Company to the licensee.

5. There is no representation made by the respondent.

6. After going through the orders which have been passed by the Forum on two different dates, referred to above, it is clear that the petitioner has not specifically questioned the jurisdiction of the Forum to decide the complaint of the respondent. However, legal position in this regard is well settled that challenge to an order and proceeding of any authority can be raised on the ground of jurisdiction at any stage even though at initial stages of proceeding, such challenge was not raised. In **Chiranjilal Shrilal Goenka (deceased) Through Lrs. Vs. Jasjit Singh & Ors., 1993(2) SCC 507**, it was held :

“18. It is settled law that a decree passed by a court without jurisdiction on the subject matter or on the grounds on which the decree made which goes to the root to its jurisdiction of lacks inherent jurisdiction is a coram non judice. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the very authority of the court to pass decree which cannot be cured by consent or waiver of the party.”

In another decision, in **Harshad Chiman Lal Modi V. D.L.F. Universal Ltd. and another, AIR 2005 SC 4446**, also a contention was raised that objection to jurisdiction was not raised at the earliest possible opportunity and therefore, subsequently it could not be raised. That was found to be a case not involving an objection to territorial or pecuniary jurisdiction but an objection to jurisdiction over the subject matter. Holding that non-challenge to jurisdiction at early stage would not come in the way of the Court in examining whether the Court had jurisdiction over the subject matter, as it goes to the root of the matter, it was held as below :

“28. We are unable to uphold the contention. The jurisdiction of a court may be classified into several categories. The important categories are (i) Territorial or local jurisdiction; (ii) Pecuniary jurisdiction; and (iii) Jurisdiction over the subject matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed

to be taken at a subsequent stage. Jurisdiction as to subject matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is nullity.

29. In Halsbury's Laws of England, (4th edn.), Reissue, Vol. 10; para 317; it is stated;

317. Consent and waiver. Where, by reason of any limitation imposed by statute, charter or commission, a court is without jurisdiction to entertain any particular claim or matter, neither the acquiescence nor the express consent of the parties can confer jurisdiction upon the court, nor can consent give a court jurisdiction if a condition which goes to the jurisdiction has not been performed or fulfilled. Where the court has jurisdiction over the particular subject matter of the claim or the particular parties and the only objection is whether, in the circumstances of the case, the court ought to exercise jurisdiction, the parties may agree to give jurisdiction in their particular case; or a defendant by entering an appearance without protest, or by taking steps in the proceedings, may waive his right to object to the court taking cognizance of the proceedings. No appearance or answer, however, can give jurisdiction to a limited court, nor can a private individual impose on a judge the jurisdiction or duty to adjudicate on a matter. A statute limiting the jurisdiction of a court may contain provisions enabling the parties to extend the jurisdiction by consent."

30. In Bahrein Petroleum Co., this Court also held that neither consent nor waiver nor acquiescence can confer jurisdiction upon a court, otherwise incompetent to try the suit. It is well-settled and needs no authority that 'where a court takes upon itself to exercise a jurisdiction it does not possess, its decision amounts to nothing.' A decree passed by a court having no jurisdiction is non-est and its validity can be set up whenever it is sought to be enforced as a foundation for a right, even at the stage of execution or in collateral proceedings. A decree passed by a court without jurisdiction is a coram non iudice.

31. [In Kiran Singh v. Chaman Paswan](#), (1955) 1 SCR 117 : AIR 1954 SC 340, this Court declared;

"It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties." (emphasis supplied)

7. Therefore, even though, the petitioner did not specifically raise the issue of jurisdiction of the Forum, since the challenge in the present petition is

that the Forum has no jurisdiction under the law to deal with the complaint of respondent, this Court is required to decide the issue upon merits.

8. Undisputed facts, as are adumbrated from the pleadings of the respective parties and the order passed by the Forum is that the petitioner is a licensee under Section 14 of the Electricity Act and is engaged in distribution of electricity to consumers and other consumer at large. The respondent is not only a consumer of Electricity but at the same time, it also generates electricity which is also not disputed. Further, it is the case of both the parties that the petitioner entered into a power purchase agreement with the respondent for purchase of power generated by the respondent in its captive power plant.

9. The aforesaid undisputed position reveals that the respondent stands in dual capacity. While consuming electricity from the petitioner licensee, the respondent is Consumer as defined under Section 2(15) of the Electricity Act, 2003 (for short 'the Act of 2003'). However, under power purchase agreement, the respondent has agreed to selling and supplying electricity to the petitioner.

10. Section 2(28) defines 'generating company' as below :

“S.2(28). “generating company' means any company or body corporate or association or body of individuals, whether incorporated or not, or artificial juridical person, which owns or operates or maintains a generating station;”

11. The definition of a generating company is wide. The word 'Company' used therein not only includes any company or body corporate which owns or operates or maintains a generating station but also an association or body of individuals, whether incorporated or not, or even an artificial juridical person which owns or operates or maintains a generating station. Therefore, the respondent, admittedly generating electricity and selling electricity to the petitioner under power purchase agreement would be a generating company in its activity of generating and supplying electricity to the petitioner.

12. The aforesaid dual capacity of the respondent, one as consumer and the other as generating company while dealing with the petitioner has important bearing on whether or not the Consumer Forum will have jurisdiction to deal with the complaint made by respondent before it.

13. The petitioner being licensee, can hardly be disputed in view of definition of licensee as incorporated under Section 2(38) and admitted factual assertion made by the petitioner that it is a licensee under Section 14 of the

Act of 2003.

14. As to who is a Consumer is also defined under the Act of 2003 in Section 2(15) thereof. It reads thus :

“S.2(15). “ consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;”

15. The aforesaid definition, in the context of the petitioner and respondent would mean that in so far as supply of electricity by the petitioner to the respondent is concerned, a dispute between the petitioner and respondent which relates to supply of electricity by the petitioner to the respondent, it would be a dispute between a licensee and the consumer.

16. But in the matter of a dispute between the petitioner and the respondent which is relating to supply of electricity by the respondent to the petitioner under the power purchase agreement, it would essentially fall within the domain of dispute between the licensee and a generating company.

17. As to what is a nature of dispute between the parties which has led the respondent to file a complaint before the Forum is easily discernible from the complaints of the respondent made before the Forum. A copy of that complaint has been placed on record as Annexure P/3 made by the respondent before the Electricity Consumers Grievances Redressal Forum. The complaint is not with regard to any grievances of respondent qua Consumer of electricity by him but qua supplier of electricity by it to the petitioner. The dispute is that after entering into power purchase agreement under which, respondent was to supply electricity to the petitioner, the petitioner was required to lay transmission line for transmission of electricity generated by respondent to be transmitted to the petitioner. For this purpose, respondent paid Rs.29,68,769/-. The dispute arose when respondent prayed for refund of the aforesaid amount towards line laying charges as, according to the respondent, they were entitled to be provided with separate and dedicated line.

18. A perusal of the complaint clearly reveals that the dispute touches upon the rights and obligation of the parties as licensee and generating company under the power purchase agreement and not a dispute between the

petitioner and respondent as licensee and consumer.

19. Section 42(5) provides for establishment of a redressal Forum for consumer. The provision being relevant is extracted herein below :

“S.42(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.”

20. A rational, fair and logical interpretation of the aforesaid provision leads to conclusion that the Act seeks to establish a redressal Forum for consumers. The legislative intent is clear from the phrase “establish a Forum for redressal of grievances of the Consumers” that the establishment of the Forum is for redressal of grievances of Consumers. Therefore, creation of the Forum under the statute is only aimed at redressal of grievance of consumers. As a logical corollary thereto, a dispute between the Consumer and the licensee alone could be adjudicated upon by the Forum. By no stretch of imagination, much less intended expressly or by necessary intendment, the Forum can be said to have been invested with the jurisdiction of deciding all kinds of disputes including a dispute between distribution/ licensee and a generating company.

21. The legislature having laid down skeleton provision regarding creation of Forum, the State Electricity Regulation Commission, in exercise of its statutory powers under the Electricity Act, framed regulations known as Chhattisgarh State Electricity Regulatory Commission (Redressal of Grievances of Consumers) Regulations, 2007 [published vide notification No.24/CSERC/2007 dated 22nd December, 2007] as reported in Chhattisgarh Law Times 2008 Part II. Consistent with and in accord with the legislative intent contained in Section 42(5) of the Act of 2003, the regulations provide for regulating redressal mechanism meant for the consumer. For this purpose, the regulation defined 'aggrieved person' or 'complainant' as below :

4(1)(b) - “Aggrieved person” or “complainant”
means and includes the following who have a grievance or a complaint as defined in (f) below :

(i) A consumer as defined under clause (15) of Section 2 of the Act;

(ii) An applicant for a new electricity connection;

(iii) any registered consumer association;

(iv) any unregistered association or group of consumers, where the consumers have common or similar interest; and

(v) in case of death of a consumer, his legal heir(s) or representative(s).

22. The grievance or complaint which could be brought for decision making of the Forum has also been exhaustively enumerated in clause 4(f) as below :

“4(1)(f) - “Grievance” or “Complaint” means a grievance or complaint regarding any of the following :

(i) Interruption in power supply;

(ii) voltage related complaints;

(iii) load shedding (unscheduled outage);

(iv) meter-related complaints;

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

(vi) disconnection and reconnection of power supply;

(vii) delay in new connection;

(viii) non-achievement of standards of performance as laid down by the Commission for distribution licensees; and

(ix) other grievances relating to damage to consumer's equipment/network/premises; requests for reduction/enhancement in load/demand; non payment of interest on security deposit or recovery of excessive charges for any service; etc.”

23. A perusal of the aforesaid provision leaves no manner of doubt that the aggrieved person or complainant is one who is covered under any of the clause (i) to (v) under clause (b). That means, it essentially has to be a consumer of electricity supplied to it.

24. The grievance or complaint, as meant under clause (i) to (ix) under clause (f) also unequivocally shows that it essentially means grievance or complaint in the matter of supply of power by the distribution licensee to a consumer of electricity.

25. The provisions contained in Section 42(5) of the Act of 2003, read along with the relevant provision contained in Regulation 4 of the Regulation of 2007 clearly establish that the jurisdiction of the Forum created thereunder

is confined to adjudicating upon complaint made by the Consumer against the distribution licensee and not to deal with all kinds of dispute irrespective of whether one of the parties to the dispute is consumer or not.

26. It is well settled legal position that the statute conferring jurisdiction have to be strictly construed. It is also equally well settled that though all Courts are tribunals, all tribunals are not Courts. Tribunals which are creature of statute do not exercise unlimited jurisdiction but sphere of jurisdiction is limited and circumscribed by the provision of the Act of which, they are creature. The Tribunal being creature of statute cannot travel beyond the scope and ambit of the jurisdiction conferred upon it under the law. In **Smt. Shrisht Dhawan V. M/s. Shaw Brothers**, AIR 1992 SC 1555, it was held that :

“19.No statutory authority or tribunal can assume jurisdiction in respect of subject-matter which the statute does not confer on it and if by deciding erroneously the fact on which jurisdiction depends the court or tribunal exercises the jurisdiction then the order is vitiated. Error of jurisdictional fact renders the order ultra vires and bad [Wade Administrative Law]. [In Raza Textiles v. Income Tax Officer, Rampur](#) (1973) 1 SCC 633 : (AIR 1973 SC 1362) it was held that a Court or Tribunal cannot confer jurisdiction on itself by deciding a jurisdictional fact wrongly.....
Error in assumption of jurisdiction should not be confused with mistake, legal or factual in exercise of jurisdiction. In the former the order is void whereas in the latter it is final unless set aside by higher or competent court or authority. An order which is void can be challenged at any time in any proceeding.....”

In the case of **D. Ramakrishna Reddy and others Vs. Addl. Revenue Divisional Officers and others and another connected matter**, 2000 (7) SCC 12, while dealing with the issue regarding payment of compensation for the standing trees or any other forest produce on the land vested in the State Government in terms of A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 and considering the fact that there was no provision under the said Act or in the Rules made thereunder for payment of any such compensation and considering Section 15 of the Act which makes provision regarding the amount payable for any land vested in the Government under the said Act which is to be calculated at the rates specified in the Second Schedule to the Act as well as Section 16 makes provision regarding claims of amount payable which is to be determined by the Tribunal, and Rule 11 which incorporated the provision for fixation of value for fruit-bearing trees and structures, it was observed that;

“22.There being no provision in the Act or Rules for payment of any sum for the trees (other than fruit bearing trees) or any other forest produce on the vested land, no claim for compensation for the trees or other forest produce standing on the surplus land surrendered or deemed to have been surrendered arises under the provisions of the Act or the Rule. The tribunals are creatures of the Act and it is not open to them to travel beyond the provisions of the statute.....”

27. In the present case, apparently, the complaint which was made by the respondent was not in its capacity as the consumer of electricity supplied to it by the petitioner but in its capacity as the generating company and the dispute being one arising out of power purchase agreement between the petitioner and the respondent where the petitioner stand in the legal capacity as distribution licensee/purchase of power and the respondent stand in the legal capacity as the generating company selling and supplying electricity to the petitioner.

28. Apparently, the Forum, created under Section 42(5) and conferred with jurisdiction therein, read with provision contained in Regulation of 2007, does not have the jurisdiction to deal with a dispute between a distribution licensee and a generating company. In fact, resolution of such dispute between a generating company and distribution licensee is regulated by the provision contained in Section 86(f) of the Electricity Act which provides as below :

“86(f). adjudicate upon the disputes between the licensees and generating companies and to refer any dispute for arbitration;”

29. From the aforesaid provision, it is vividly clear that under the statutory scheme of the Act of 2003, as far as dispute between the distribution licensee and generating company are concerned, they are to be dealt with by the commission itself. It would only be a case of grievance raised by the Consumer in the matter of supply of electricity to it that the Forum will have jurisdiction to enquire into such complaint and give its decision thereon.

30. In view of aforesaid consideration, this Court has no hesitation to hold that the Forum had no jurisdiction to entertain the nature of complaint which was raised by the respondent as a generating company against the petitioner, a distribution licensee. The orders passed by the Forum are, therefore, without jurisdiction, nullity and non-est in the eye of law. Therefore, it cannot be sustained in law, liable to be set aside and is accordingly set aside.

31. It will, however, leave the respondent to seek redressal of his grievance before appropriate Forum as may be available to him under the law.

32. No order as to costs.

Sd/-

(Manindra Mohan Shrivastava)
Judge

Rekha