

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23210 of 2019

G. V. Mall Owners Association a Company registered under the provisions of Companies Act, 2013 having its Office at C/o Rajesh Chandra Jain, 403-R.P. Tower, Near JCT Building, Frazer Road, Patna through its Secretary, Rajesh Chandra Jain, Male, aged about 44 years, son of Sri Late Prem Chand Jain, Resident of 403, R.P. Tower, Near Jagat Trade Centre, Frazer Road, P.S. Kotwali, Town and District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Department of Energy, Government of Bihar, Patna.
2. The South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna through its Managing Director.
3. The Managing Director, South Bihar Power Distribution Company Limited, having its office at Vidyut Bhawan, Bailey Road, Patna.
4. The General Manager, H.T. Cell, South Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna.
5. The Electrical Superintending Engineer, Electricity Supply Circle, PESU (West), Patna.
6. The Electrical Executive Engineer, Electricity Supply Division, PESU (West), Patna.
7. Premshree Bhartiya (JV), having its Office at Lower Ground Floor, G.V. Mall, West Boring Canal Road, Patna through one of its partner Sri Rajesh Kumar Sureka.
8. Sri Praveen Kumar, Son of Sri Srinarayan Azad, Resident of A/38, Indirapuri Colony, Raza Bazar, P.S. Shastrinagar, Town and Dist-Patna, the Partner/Director of Premshree Bhartiya Construction (JV), having its office at Lower Ground Floor, G. V. Mall, West Boring Canal Road, Patna.
9. Rajesh Kumar Sureka, Son of Hari Prasad Sureka, Resident of F-2/C, Pushp Vihar Apartment, Exhibition Road, P.S. Gandhi Maidan, Town and District-Patna, being one of Partner/Director of M/s Premshree Bhartiya (JV).

... .. Respondent/s

Appearance :



For the Petitioner : Mr. S. D. Sanjay, Sr. Advocate
Mr. Mohit Agrawal, Adv.
For the Respondents State : Mr. Suresh Kumar, AC to GP-1.
For the Respondent SBPDCL : Mr. Ritesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 08-10-2021

1. The present writ petition has been filed by the petitioner seeking the following reliefs:-

“i) For issuance of a writ of Mandamus directing the Respondents, particularly, the Respondents Nos. 2 to 6 to effect the (Mutation) substitution of the name of the petitioner in the records of the Respondent Nos. 2 to 6 from the name of the builder, i.e. Respondent No. 7, in terms of the provisions of the Bihar Apartment Ownership Act, 2006;

ii) For a direction to the Respondents to effect the substitution of the name of the petitioner Association as the Security Deposits belonging to the members of the Association is already lying with the Respondent South Bihar Power Distribution Company Limited;

iii) For a direction to the Respondents to reduce the load of the H.T. Electricity connection of the petitioner from 535 KVA to 350 KVA or nearby because of which the



petitioner is liable to pay excess amount every month without any use of electricity;

iv) For a direction to refund the amount deposited by the Members of the Petitioner as Security for individual connection in their name in view of the fact that it is not required now”.

2. The petitioner is stated to be a registered Association of Owners who had purchased space for office and shops in commercial building known as G.V. Mall situated at Boring Road, Patna. It is the case of the petitioner that the building in question has been constructed by one M/S. Premshree Bhartiya (JV), who had later on sold the office space and shop premises to the members of the petitioner. The petitioner has levelled various allegations against the promoters/ builder, however, the same is not relevant to be gone into in the present proceedings. The petitioner's Association is stated to have taken over the management of the multi storied complex for its maintenance etc. w.e.f. 1st April, 2018. The petitioner had then sought to substitute its name in the records of South Bihar Power Distribution Company Ltd. inasmuch as the electricity connection in question, having a contract demand of 535 KVA, was existing in the name of the partner of the aforesaid firm



M/S Premshree Bhartiya (JV), namely Rajesh Kumar Sureka, respondent no. 9 herein, who had also issued a No Objection to the petitioner as far as substitution of the name in the records of the respondent company is concerned. The petitioner had cleared the outstanding electricity dues and had then written a letter dated 27.4.2018 to the respondent Electrical Executive Engineer, South Bihar Power Distribution Ltd. requesting for transfer of the electricity connection from the name of M/s Premshree Bhartiya Construction (JV) to the name of the petitioner Association. It appears that there have been various communications in-between the petitioner and the respondent Electrical Executive Engineer, Electric Supply Division, Patliputra, PESU (W), Patna, however, the petitioner has been informed by the respondent Company that change of name/transfer of connection and mutation of name is only allowed after application for mutation is filed in the prescribed application form with application fee by the transferor or the legal heir, accompanied by identity proof and authorization in the name of the applicant who is filing the application form and the agreement supported by documentary evidence for transfer or legal heir along with proof of no arrears on the head of electricity charges of the concerned connection. In fact, the



respondent Electrical Executive Engineer had also required the petitioner to deposit the security amount in the shape of a Bank draft in favour of South Bihar Power Distribution Company Ltd. whereafter the HT agreement was required to be executed. It appears that the petitioner had failed to comply with the formalities required to be entered into and, therefore, the change in the name/ transfer of the connection/ mutation has not been affected.

3. The learned Senior counsel appearing for the petitioner has submitted that there is no requirement in law to furnish fresh security in case of change of name/ transfer of the connection/ mutation of its existing consumer in the records of the respondent company.

4. The learned counsel for the respondent Electricity Company has refuted the said contention by relying upon Section 47 of the Electricity Act, 2003 and Clause 7.9, 7.13 and 7.15 of the Bihar Electricity Supply Code. It has also been stated that there is no provision for transfer of the security deposit and the same can only be refunded after termination of the earlier agreement and on production of the original receipt along with the “No Dues Certificate”. The Ld. counsel for the respondent Electricity Company has also raised the issue of



maintainability of the present writ petition.

5. This Court, at the inception, deems it appropriate to refer to Section 42(5) of the Electricity Act, 2003, which requires every distribution licensee to establish a forum for redressal of grievances of the consumers. It would be apt to reproduce Section 42(5) of the Electricity Act, 2003 herein below:-

“Section 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.”

6. The Bihar Electricity Regulatory Commission, in exercise of powers conferred on it by sub-sections (r) and (s) of Section 181 read with Section 42 of the Electricity Act, 2003 has framed regulations called the “Bihar Electricity Regulatory Commission (Consumer Grievance Redressal Forum, Electricity Ombudsman and Consumer Advocacy) Regulations, 2017” (hereinafter referred to as the “Regulations, 2017”), relevant provisions whereof are reproduced herein below:-

“Definitions-

1.5 In these regulations, unless the context otherwise



requires,

(e) 'Complainant' means-

- (i) a consumer of electricity supplied by the licensee including applicants for new connections;
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or under any other law for the time being in force;
- (iii) The Central Government or the State Government –who or which makes the complaint;
- (iv) one or more consumers, where there are numerous consumers having the same interest;
- (v) in case of death of a consumer, his legal heirs or representatives.

(f) 'Complaint' means any grievance made by a complainant in writing on: -

- (i) defect or deficiency in electricity supply or 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.

(g) '**Consumer**' means consumer as defined in Section 2(15) of the Electricity Act, 2003;]

(h) **Defect or 'Deficiency'** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance, which is required to be maintained under any law for the time being in force or has been undertaken to be performed by distribution licensee in pursuance of a contract agreement or otherwise in relation to electricity service or performance standard, violations of Electricity Supply Code, contraventions of Act, rules or regulations made there under with regard to consumer interest;

(j) '**Electricity Ombudsman**' means an authority to be appointed or designated by the Commission, under subsection (6) of Sect. 42 of the Act & these Regulations.

(k) '**Electricity Service**' means in particular and without prejudice to the generality of the term, electricity supply, metering, billing, maintenance of supply, maintenance of distribution system & all other attendant sub service, etc;

(l) '**Forum**' means 'Forum for redressal of grievances of consumers' to be constituted by the distribution licensee in terms of sub-section (5) of Section 42 of the Act and these Regulations.



(m) '**Grievance**' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a distribution licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of distribution licensees as specified by the Commission and includes billing disputes of any nature and matters related to safety of the distribution system having potential of endangering of life or property.

(n) '**Licensee**' means a distribution licensee authorized to operate and maintain a distribution system for supplying electricity to the consumers in his area of supply and shall include the deemed distribution licensee under the provisions to Section 42 of the Act.

(o) '**Representation**' means the representation made to the Ombudsman by the complainant in person or on behalf of such a complainant who is aggrieved by the outcome of the Forum's proceedings in respect of his/her grievance (including not issuing the order within the specified time limit, dissatisfaction with the order issued, partial or full dismissal of the grievance)

(k) '**Electricity Service**' means in particular and without prejudice to the generality of the term, electricity supply, metering, billing, maintenance of supply, maintenance of distribution system and all other attendant sub service, etc;

(l) '**Forum**' means 'Forum for redressal of grievances of consumers' to be constituted by the distribution licensee



in terms of sub-section (5) of Section 42 of the Act and these Regulations.

(m) '**Grievance**' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a distribution licensee in pursuance of a licence, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of distribution licensees as specified by the Commission and includes billing disputes of any nature and matters related to safety of the distribution system having potential of endangering of life or property.

Process for submission of grievance

2.31 The Complainant can submit his/ her grievance to the appropriate Forum under whose jurisdiction his/ her connection exists or a connection has been applied for. The Complainant can also submit his/ her grievance at the nearest complaint-receiving centre, already established by the licensee. The grievance may be submitted either in person or through post, email or fax.

2.32 All complaint-receiving centre shall accept the grievances from Complainants falling within the jurisdiction of the Forum. The grievance so received along with other supporting documents shall be forwarded to the relevant Forum within the next working day.

2.33 The grievance shall be submitted as per the format specified in ANNEXURE I of APPENDIX I:



Provided that the Forum shall take cognizance of any grievance submitted based on the merit of the case and will not reject any grievance for the sole reason of it not having been submitted in the format specified.

2.34 The Complainant shall be issued acknowledgement of the receipt of grievance by the complaint receiving centre. In case of submission of the grievance in person, the acknowledgment shall be issued immediately. In case of receipt of grievance by post, email or fax, the acknowledgement shall be dispatched latest by the next working day. In case of issuance of acknowledgment by a complaint-receiving centre, the contact details of the relevant Forum shall also be issued along with the acknowledgement.

Process

2.36 The Forum shall forward a copy of the grievance to the concerned officer of the licensee or the employee/employees/department named in the grievance (“respondent party”).

2.37 The respondent party shall furnish paragraph-wise comments to the Forum on the grievance within five days (grievance related to non-supply, connection or disconnection of supply) or 15 days (all other grievances) of the receipt of the grievance copy, failing which the Forum shall proceed on the basis of the material available on record.

2.38 The Forum may call for any record from the respondent party or from the Complainant as is relevant



for examination and disposal of the grievance, and both the parties shall be under obligation to provide such information, document or record as the Forum may call for. Where a party fails to furnish such information, document or record and the Forum is satisfied that the party in possession of the record is withholding it deliberately, it may draw an adverse inference.

2.39 The Forum may also direct the Licensee to undertake an inspection or engage a third party to undertake such inspection with regard to the Grievance, as may be required for expeditious redressal of the grievance. The Forum can also engage a third party (other than the licensee) at the instance and request of the Complainant, to undertake inspection and obtain an independent report. The Forum shall record the reasons for the need for such third-party inspection, which should generally be resorted to rarely and keeping in view the special circumstances of a case. The expenses of such third-party inspection, except expenses of inspection at the request of the Complainant, shall be borne by the licensee, and to the extent reasonable and justifiable, such expenses shall be allowed as pass through expense in the determination of tariff in accordance with the relevant Regulations of the Commission. In case inspection is taken up at the request of the Complainant, the expenses shall be deposited in advance by the complainant, which may or may not be refunded by the Forum depending on whether the grievance is found to be of substance or not.



2.40 The Forum may call the concerned officer of the Licensee for discussion in suitable cases, in order to seek redressal of the grievance filed before it. In case the matter is settled in discussion, it may be recorded as a decision and conveyed to the Complainant and the Licensee by order of the Forum.

2.41 In case the Forum comes to the conclusion that the Complainant and the concerned officer of the Licensee are required to be heard for redressal of the grievance, the Forum shall call the Complainant and the concerned officer with the details of the case and documents, if any, as may be necessary.

2.42 A Complainant, distribution licensee or any other person who is a party to any proceedings before the Forum may either appear in person or authorise any person other than an Advocate (within the meaning of the Advocates Act, 1961) to present his/ her case before the Forum and to do all or any of the acts for the purpose.

2.43 Where the Complainant or the Licensee or their representative fails to appear before the Forum on the date fixed for hearing on more than two occasions, the Forum may decide the grievance ex-parte.

2.44 No adjournment shall ordinarily be granted by the Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum.

2.45 The Forum shall be guided by the principles of natural justice, and subject to the other provisions of these regulations, the Forum shall have powers to



regulate its own procedure.

Office of the Electricity Ombudsman

Pre-conditions/ Limitations for entertaining representation:-

3.17. The representation may be entertained by the Ombudsman only if all of the following conditions are satisfied:

- a) It has been filed by the Complainant being the aggrieved consumer or the association representing the consumer's. For avoidance of doubt, a licensee is not allowed to file a representation before the Ombudsman against the order of the Forum
- b) The Complainant had, before making a representation to the Ombudsman, approached the Forum constituted under Section 42(5) of the Electricity Act, 2003 for redressal of his/ her grievance
- c) The representation by the Complainant, in respect of the same grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority; a decree or award or a final order has not been passed by any such court, tribunal, arbitrator or authority.
- d) The representation is not in respect of the same cause of action which was settled or dealt with on merits by the Ombudsman in any previous proceedings whether or not received from the same complainant or along with one or more complainants



or one or more of the parties concerned with the cause of action.

e) The Complainant is not satisfied with the redressal of his/ her grievance by the Forum or the Forum has rejected the grievance or has not passed the order within the time-limit specified.

f) The Complainant has filed the representation before the Ombudsman within 30 days from the date of receipt of the decision of the Forum or date of expiry of the period within which the Forum was required to take the decision, whichever is earlier Provided that the Ombudsman may entertain a representation after the expiry of the said period of thirty days if the Ombudsman is satisfied that there is sufficient cause for not filing it within that period.

g) The Complainant who claims compensation from the Distribution Licensee has paid such fees as may be stipulated by the Commission from time to time."

7. This Court finds from a bare perusal of the Regulations, 2017 that the same is a complete code in itself and has been enacted for the purposes of giving speedy reliefs to the consumer by constitution of Consumer Grievances Redressal Forum. In fact, the aforesaid Regulations, 2017 provides for an elaborate procedure for hearing as also filing of appeal and the same has been enacted to provide for better protection of the interest of the aggrieved persons. In terms of the provisions of



the said Regulation, 2017, the Forums are required to complete enquiry expeditiously and make an endeavour to pass appropriate orders on complaint normally within a maximum period of 45 days from the date of receipt of the complaint by the Forum. Thus, admittedly, the petitioner has an efficacious and expeditious remedy by way of approaching the Consumer Grievance Redressal Forum.

8. It is a trite law that when a statutory Forum is created by a law for redressal of grievances, a writ petition should not be entertained by the High Court ignoring the statutory rules. In this regard it would be apt to refer to a judgment reported in (2011) 14 SCC 337 [*Nivedita Sharma v. Cellular Operators Assn. of India*], paragraphs no. 11 to 13, 16 and 27 whereof are reproduced herein below:-

“11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation—*L. Chandra Kumar v. Union of India* [(1997) 3 SCC 261] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of



the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/ instrumentality or any public authority or order passed by a quasi-judicial body/ authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

12. In *Thansingh Nathmal v. Supdt. of Taxes* [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed:

“7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, & will leave the party applying



to it to seek resort to the machinery so set up.”

13. In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* [(1983) 2 SCC 433] this Court observed:

“11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

‘... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to.’

The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* [1919 AC 368 : (1918-19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd.* [1935 AC 532 (PC)] and *Secy. of State v. Mask and Co.* [(1939-40) 67 IA 222 : AIR 1940 PC 105] It has also been held to be equally applicable to



enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.”

16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in *Thansingh Nathmal v. Supt. of Taxes* [AIR 1964 SC 1419] and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field.

27. However, liberty is given to Respondent 1 and others to challenge the order of the State Commission by availing the alternative remedy of appeal under Section 19 of the 1986 Act. We also direct that if the respondents or any one of them file(s) an appeal within a period of 60 days from today, then the same shall be entertained by the National Commission and decided on merits. We also give liberty to American Express Bank Ltd. to amend the memo of appeal for the purpose of challenging the order of the State Commission on other grounds. It will also be open to Respondent 1 and others to apply for stay of the order of the State Commission. If any such application is filed, the National Commission shall decide the same on its own merits without being influenced by the observations contained in the impugned order.”



9. I have heard the learned counsel for the parties and gone through the materials on record. Having regard to the facts and circumstances of the case, this Court is of the considered opinion that the issues/ disputes raised by the petitioner in the present writ petition must be examined & conclusively decided by the statutory Forum(s) and only then the power of judicial review under Article 226 of the Constitution of India may be invoked, more so since the dispute in question may also require determination of the issue of privity of contract in between the parties as also enforcement of contractual rights and obligations of the parties, for which a Writ Court is not the proper forum. Admittedly, the petitioner has not exhausted the alternative remedy available to it under the law, as noticed above. In such view of the matter, since the petitioner has an efficacious remedy under the aforesaid Regulations, 2017, the present writ petition, in my considered view, should not be entertained and instead the petitioner should raise all the questions/ disputes before the learned Consumer Grievance Redressal Forum at the first instance. Accordingly, the writ petition stands disposed of with liberty to the petitioner to approach the appropriate authority(s)/ Forum(s) for redressal of its valid grievances and in case appropriate complaint is filed within a period of four



weeks from today, then the appropriate authority/ forum shall consider the grievance of the petitioner on merits.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	07.07.2021
Uploading Date	13-10-2021
Transmission Date	N/A

