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IN THE HIGH COURT OF ORISSA AT CUTTACK

W.A. No.551 of 2013

Executive Engineer (Electrical) Appellant
Central Electricity Supply Utility of
Odisha, Bhubaneswar Electrical
Division, Khurda

-versus-

Srinibash Sahoo Respondent

Advocates appeared in the cases:

For Appellant : Mr. Debaranjan Ray, Advocate

For Respondent : None

CORAM:
THE CHIEF JUSTICE
JUSTICE CHITTARANJAN DASH

JUDGMENT
15.09.2022

Dr. S. Muralidhar, CJ.

1. This writ appeal by the Executive Engineer (Electrical) Central Electricity Supply Utility of Odisha (CESU), Bhubaneswar Electrical Division, Khurda is directed against the order dated 16th December, 2013 passed by the learned Single Judge dismissing the writ petition i.e. W.P.(C) No.26788 of 2013 filed by the Appellant.

2. The above writ petition had been filed by the Appellant to challenge the order dated 12th June, 2013 passed by the learned Ombudsman, CESU in Consumer Representation Case No.OM(1)-28 of 2013 reversing an order dated 4th March, 2013 passed by the Grievance Redressal Forum (GRF), Bhubaneswar in C.C. Case No.3 of 2013.

3. The background facts are that the Respondent is a consumer of the Appellant under General Purpose Tariff having a contract demand (CD) of 60 KW load. An agreement was entered into by the Respondent with the Appellant on 22nd July, 2010 and a static meter was installed. At the time of initial power supply, a tested new meter was installed as provided under the Electricity Act, 2003 ('the Act'). According to the Appellant, the meter worked well to the satisfaction of everyone.

4. A dispute arose between the parties on 4th December, 2012 when a routine checkup was conducted by the Meter Relay Test Department of the Appellant in the premises of the Respondent. The checkup of the meter was undertaken in terms of the Odisha Electricity Regulatory Commission Distribution (Condition of Supply) Code, 2004 (hereafter the 2004 Code). It was observed by the team of experts that the Y-phase voltage in the meter showed '0' volt and, therefore, it was concluded that the said meter was not sensing Y-phase Power Transformer supply. It was further concluded that the meter was recording 1/3rd less of the actual consumption.

5. A dump report of the meter was undertaken and it was suggested that a new LTCT meter must be installed. It was claimed that the Respondent was present throughout this exercise and appended his signature on the report of the experts, which was converted into a verification report.

6. After the Testing Report dated 4th December, 2012 was forwarded to the Sub-Divisional Officer, who in turn passed it on to the Deputy General Manager, the Executive Engineer (EE) made a calculation of the escape energy loss and called upon the Respondent to pay Rs.4,85,477/- for the additional bill, failing which he would have to face disconnection.

7. Then, the Respondent filed a representation before the EE for revision of the bill stating that non-recording of Y-phase Power Transformer was a deliberate attempt for collecting revenue and, therefore, the demand was barred by limitation. The Respondent suggested that the meter be tested at a Standard Testing Laboratory (STL) at Bhubaneswar, the cost of which would be borne by the Appellant.

8. It is claimed that some of the claims of the Respondent were acceded to and the bill was revised by requiring the Respondent to make a deposit of Rs.2,07,202.25 as well as testing fee for the test of the meter.

9. The Respondent then approached the GRF challenging the additional bill served on him. The GRF by the order dated 4th

March, 2013 directed the Appellant to revise the additional energy bill after testing the meter in the STL, Bhubaneswar. It was directed that if the meter is found correct for the revision of the bill from 22nd July, 2010 to November 2012, it shall be done on the basis of the escaped units. In case the meter is defective, the demand will be revised by relying on the provisions of Regulation-97 of the 2004 Code.

10. The Respondent then approached the Ombudsman challenging the order of the GRF. The Ombudsman has by the impugned order dated 12th June, 2013 differed from the findings of the GRF and held that if the meter was found okay after the testing by the STL then the question of billing of additional units at the rate of extra 1/3rd over and above the actual consumption, would not arise. On the other hand, if the meter was found defective, billing would be done on the basis of average meter reading for three billing periods after installation of a new meter and would be limited to six months only prior to the detection of the defect. Thus, the Ombudsman allowed the claim of the Respondent and modified the order of the GRF as under:

“Hence ordered that the Respondent shall send the sealed old meter (SL. 2496018) to the authority of Standard Testing Laboratory, on deposit of the cost by the petitioner testing result will be decoded as follows :

a. if meter is found okay the old bills will remain as such and the additional bill of Rs.4,85,477/- will be withdrawn.

b. if the meter is found to be defective then as envisaged in Regulation-97 the bills shall be revised for back 06 months period i.e. from July, 2012 to December, 2012 on average consumption of January, 2013 to March, 2013. Regarding the other claims like benefits under OYT, adjustment of excess meter rent and re-assessment of MMFC charges since already provided by the Respondent and communicated to the petitioner this Forum treats such claims as settled and does not like to pass any order.”

11. This led to the Appellant filing W.P.(C) No.26788 of 2013 before the learned Single Judge. This was dismissed by the learned Single Judge on 16th December, 2013.

12. The impugned order is a short one and the operative portion reads as under:

“Perused the records. It is seen that while passing the order the learned Ombudsman, Central Electricity Supply Utility, Odisha has specifically observed as follows:-

“Therefore GRF has preferred to resolve the issue by sending the old meter for accuracy test to the STL for which the Petitioner has no objection. This Forum also endorses the decision of GFR in sending the meter to STL for accuracy test with deposit of cost by the Petitioner. However after test by STL the mode of determination of revised bill as observed by GFR appears to be erroneous. This Forum is inclined to hold that if the meter is found to be okay after testing by STL then the question of billing relating to additional units @ extra 1/3rd over and above actual consumption does not arise.”

On perusal of the impugned order, it is found that the learned Ombudsman, Central Electricity Supply Utility, Odisha has not committed any error apparent on the face of the record

by coming to such conclusion. Therefore, I am not inclined to interfere with the same. Accordingly, the same is dismissed.”

13. This Court has heard the submissions of Mr. Debaranjan Ray, learned counsel for the Appellant and has perused the impugned orders of the GRF, the Ombudsman and the learned Single Judge.

14. It was first submitted that under Regulation 59(5) of the 2004 Code, the disputes arising out of the accuracy of any meter would be decided only by the Electrical Inspector upon an application made by either party. This, according to learned counsel for the Appellant, was not considered by the learned Single Judge.

15. What was the issue before the learned Single Judge was the correctness of the order of the Ombudsman and at no point in time any such plea appears to have been raised by the Appellant either before the GRF or the Ombudsman about the Electrical Inspector alone being competent to decide such dispute. In any event, there appears to be concurrent findings by the Appellate Authority and the learned Single Judge, which does not call for interference. The entire matter turned on facts with the reports bearing out the decisions taken by the Ombudsman as well as the learned Single Judge.

16. The Court is, therefore, unable to find any error having been committed by the learned Single Judge in dismissing the Appellant's aforementioned W.P.(C) No.26788 of 2013.

17. The appeal is accordingly dismissed, but in the circumstances,
with no order as to costs.

(S. Muralidhar)
Chief Justice

(Chittaranjan Dash)
Judge

M. Panda

