IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C). No.11923 of 2004

Siba Prasad Panda. .... ***Petitioner***

M/s. Prafulla Kar, D. Rath, Advocate, Advocates

-versus-

Chairman, Orissa Electricity Regulatory Commission & others. .... ***Opposite Parties***

M/s. H.M. Dhal, B.B. Swain, A.K. Pattanayak, N. Mishra, Advocates – For O.P. Nos.2 to 4.

CORAM:
JUSTICE S. PUJAHARI

ORDER
19.01.2022

Order No.

14. **1.** This matter was directed to be listed on 12th of January, 2022 under the heading of "Delivery of Orders". But, since this Court did not function on that date, this matter is listed today under the same heading.

2. This writ petition has been filed by the Petitioner seeking quashment of the letters dated 14th September, 2004 and 8th October, 2004 issued by the Opposite Party No.2-Superintending Engineer (Commercial), WESCO, Burla, Sambalpur and Oppposite Party No.4-Executive Engineer, Electrical, K.WE.D., Bhawanipatna under Annexures-7 and 8 of the writ petition respectively asking him to execute a fresh agreement with a demand for further security deposit, or in alternative for issue of writ of mandamus directing the Opposite Party No.1-Chairman, Orissa Electricity Regulatory Commission, Bhubaneswar to dispose of the appeal filed by him.

3. As it appears, the Petitioner has entered into an agreement with a contract demand of 86 K.W. for rice milling to his Rice Mill on 31.12.1998. As per the said agreement, power supply was made. However, subsequently, the contract demand of the Petitioner was enhanced to 97 K.V.A. During the subsistence of such agreement, in the month of July, 2004, the Petitioner is stated to have consumed power of 118.3 K.V.A. against contract demand of 97 K.V.A. which was found on 2.8.2004 during verification. Since the Petitioner was stated to have consumed more than the contract demand, he was asked to execute a fresh agreement with Opposite Party No.2 in an enhanced load within fifteen days from the date of issue of letter and deposit the additional security of Rs.2,28,455/-. The Petitioner while admitting that the aforesaid consumption exceeded the contract demand, took a plea that the same was attributable to repair work or maintenance work of the mill.

4. Learned counsel appearing for the Petitioner has fairly submitted that he consumed power supply more than the contract demand during the aforesaid period and vide representation dated 18.8.2004 and 25.8.2004, he stated the reasons that due to break down of the mill, he engaged some motors and other machineries for repair work, for which, the contract demand was exceeded and, as such, the aforesaid excess consumption should be considered as the single incident of consumption of electricity exceeding the contract demand within the terms of the agreement. However, without considering the same, the Opposite Partes No.2 and 4 issued letters dated 14.09.2004 and 08.10.2004 respectively asking him for reclassification of his consumer categorically and execution of agreement of large industry category by deposing the additional security of Rs.2,28,455/- with a threat of disconnection.

5. Being aggrieved with the same, on 5th October, 2004, the Petitioner has preferred appeal before the Opposite Party No.1-OERC, which though was acknowledged, was not taken up for hearing, and in the meanwhile, the Opposite Party-Supply Company having extended threat of disconnection, the Petitioner has filed this writ petition seeking the aforesaid relief, on the ground, inter-alia, that there was no excess consumption in the months of July and August, 2004 for the reasons above. According to him, the Regulations 53 and 82 of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2004 (in short, the Code, 2004") is not applicable to him, and that his representation dated 18.08.2004 and 25.08.2004 having not been considered, the demand of additional security and for execution of an agreement to recategorize his Rice Mill as a heavy consumer is illegal and arbitrary. Furthermore, the Petitioner claims to be not coming under the definition of large industries category and challenges the letters issued to him to be without any justification and liable to be quashed.

6. Counter affidavit reportedly filed by the Opposite Parties No.1 to 4 being not found on record, a copy of the same is made available to this Court by the learned counsel for the Opposite Parties No.1 to 4. Therein it has been reiterated that during the verification, as the consumption was found to have exceeded the sanction of the contract demand and the consumption was coming under the large category, the Petitioner was asked to execute a fresh agreement for enhancing the load and to deposit additional security. In the month of August, 2004, the Petitioner confessed the excess consumption and appeared before the authority for discussion with regard to execution of a fresh agreement. Again in the month of September, 2004, he sought for time to execute the agreement and deposit the security amount, and though sufficient opportunity was given, the Petitioner did not enter into the required agreement. The O.E.R.C. was also clarified in this regard through their letter No.1794 dated 3.10.2004. In exercise of the power conferred under Section 181(2) read with Part-VI of the Electricity Act, 2003, Orissa Electricity Reform Act, 1995, the Orissa Electricity Regulatory Commission has framed the Regulation known as I Distribution (Condition of Supply) Code, 2004 to govern distribution and supply of electricity and obligations of the distribution licensees and/or supplies and the rights and obligation of the consumers. Tough Regulation 53 of the Code, 2004 mandates addition and altercation of consumer, installation shall be made only by a licensed electrical contractor, if the same relates to increase of the connected or contract load of the consumer. Prior approval is required to be taken as per Regulations 72, 73 and 74 of the Code, 2004, but the Petitioner without taking any approval increased his contract load. Hence, there was non-compliance of Regulation 53 of Code, 2004. So also Regulation 82 of Code, 2004 empowers the engineer concerned to reclassify a consumer under appropriate category after issuing notice to him for execution of a fresh agreement on the basis of altered classification, and if the same is not complied with by the consumer, the supply company is authorized to disconnect the power supply. Since in this case there was violation of Code 74 read with 82 of the Code, 2004 and other non-compliance, action shall be taken under the Code. In spite of the relaxation allowed by the authority with regard to deposit of the security amount, the petitioner without exhausting the remedies available under the statute, has approached this Court by filing this writ petition and has taken an interim order. So also the claim of the Petitioner that due to repair of the Rice Mill and operating welding machine, there occasioned excess consumption is without any substance. So also for the purpose of welding machine, he had not taken temporary permission and since the consumption resulted in enhancement of power load, he was required to be reclassified as heavy industry consumer. Furthermore, it is submitted that the electricity company has not received any communication from the O.E.R.C. and the maintainability of the writ petition has also been challenged on the ground that the petitioner having not exhausted the statutory forum has directly come to this Court.

7. In the rejoinder affidavit, it has been reiterated by the Petitioner as to the circumstances under which the consumption exceeded contract demand which was about 6 to 8 K.V.A. and further reiterated that never before and never after the said solitary occasion he exceeded the contract demand. It has also been stated that Regulations 53, 72 and 74 of the Code, 2004 are not applicable to the Petitioner inasmuch as he was not placed as L.T. or H.T. industrial category in December, 2004 to July, 2014.

8. So far as the statutory remedy is concerned, it is stated by the learned counsel for the Petitioner that the Petitioner has made a representation to the Opposite Party No.1 vide Annexure-9, but the same having not been entertained, he having no alternative remedy has approached this Court by filing this writ petition under Article 226 of the Constitution of India. However, it has been averred that rice mill of the Petitioner having been closed in the month of July, 2014 and thereafter, the aforesaid fact having been admitted, Opposite Party-Supply Company has already disconnected the power supply to his unit and the same has already been accepted. In such premises, the Petitioner is entitled to get back the security deposit and, as such, in this writ petition, this Court may direct the Opposite Party-Supply Company to refund the security deposit.

9. During the course of hearing, learned counsel for the Petitioner has submitted that except the stray incident in the month of June and July, 2004, which was for the reason of welding machine, the Petitioner has not exceeded the consumption permissible to the category to which he belongs and the said fact is not disputed. The demand of the authority for additional security and to categorize him as heavy consumption for such consumer is illegal and arbitrary, as such, the notice is liable to be quashed. Furthermore, in the meanwhile, the Petitioner having cleared all the tariff dues and nothing being pending, and the power supply to his unit having been closed, he is entitled to refund of the security deposit, which are there with the Opposite Party-Supply Company and, as such, necessary direction be issued to him.

10. However, learned counsel appearing for the Opposite Party-Supply Company has submitted that the writ petition filed by the Petitioner is misconceived inasmuch as he has not exhausted his statutory remedy. When alternative remedy is available to the Petitioner, he could not have come to this Court seeking extraordinary relief under Article 226 of the Constitution of India. Furthermore, it is submitted by him that since it is admitted by the Petitioner that there was excess of the contract demand and the Petitioner has consumed more power than the permissible for the category of consumption, even if for two months, he was asked to execute a fresh agreement and deposit the additional security as a consumer. However, the Petitioner did not pay the same and by virtue of an interim order, he enjoyed the power supply till 2014. Since he is liable to pay the additional tariff and other charges, only after payment of the same, the question of refund of security may arise. Since the Petitioner has not done so, his prayer to quash aforesaid letters is misconceived so also his claim for refund of the security deposit.

11. Before addressing the contention of the parties, it would be apposite to mention here that though law is well settled that this Court should be loathed in entertaining the writ petition under Article 226 of the Constitution, while there is an alternative statutory remedy, but there is no absolute bar of the same. The aforesaid is a matter of convenience. Furthermore, in this case, this Court being aware of the same has admitted this writ petition in the year 2004 and the writ petition is pending since then. In the facts and circumstances, and at this stage, I am inclined to accept the submission of the learned counsel for the Opposite Parties No.2 to 4 to dismiss the writ petition on the ground of non-availability of an alternative remedy.

12. Now, coming to the merit of the case, the sole contention of the Petitioner is that he has fairly admitted for two months power consumption exceeded the category to which he belongs. However, Petitioner has given explanation as to the circumstances under which the aforesaid consumption exceeded. Furthermore, it is the case of the Petitioner that since there was no consistent increase in consumption during the entire period, and even in the peak season before and after the period of verification the consumption continued within the contract demand load, he cannot be re-categorized for the stray incident. The Opposite Party-Supply Company could not have asked him to enter into a fresh agreement to be recategorized as heavy industry consumer and pay the additional security. The authority having not considered his representation in this regard and not taken into consideration the subsequent record of consumption, for the reason of the excess consumption of power supply for stray two months only, the demand made for re-categorization and execution of agreement is without any substance and, as such, liable to be quashed. More so, when the Petitioner's Rice Mill has since been closed, he is entitled to refund of the security amount. However, the learned counsel for the Opposite Party-Supply Company has strenuously argued that since there is excess consumption and step was taken in accordance with Code, 2004, the explanation of the Petitioner cannot be accepted as an excuse. The submission so made by him merits consideration.

13. The Petitioner in all fairness of the things could have entered into an agreement by depositing the additional security and thereafter, if consumption had, in fact, become reduced, he could have further applied for converting him to the original category. The Petitioner having not done so in conformity with the Code, 2004, this writ petition is liable to be dismissed.

14. Accordingly, the writ petition stands disposed of being dismissed.

15. As restrictions due to resurgence of COVID-19 situation are continuing, learned counsel for the parties may utilize a printout copy of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25th March, 2020 as modified by Court's Notice No.4798, dated 15th April, 2021 and Court's Office order circulated vide Memo Nos.514 & 515 dated 7th January, 2022.

(S.Pujahari)
Judge

MRS