IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No.18973 of 2009

Executive Engineer, CESU, Athagarh Electrical Division	....	***Petitioner***
		Mr. B.K.Nayak, Advocate

-versus-

GRF, Cuttack and others	....	***Opp. Parties***
		Mr. Karunakar Jena, Advocate for O.P.No.3

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K.PATTANAIK

ORDER
15.03.2022

Order No.

6. 1. The challenge is the present petition is that an order dated 30th July, 2009 passed by the Grievance Redressal Forum of CESU, Cuttack ('GRF') in C.C. Case No. AED/ 57 of 2009 filed by the Opposite Parties seeking return of the money spent towards inspection fees of the Electrical Inspector (E & D) and also to allow discount @ 10 paise per unit for consumption of energy in the off-peak hours.

2. The Opposite Party complainant was a large industrial consumer having a contract demand of 2 MVA. It had constructed a 33 KV line spending Rs.4,72,320/-. It also deposited with the Petitioner Rs. 26,735/- towards inspection charges.

3. In terms of Regulation 13 of the O.E.R.C. Distribution (Conditions of Supply) Code, 2004 ['the OERC Code, 2004'] the licensee is to make 'remunerative calculation' in order to

determine the share of the complainant and licensee. The case of the Opposite Party was that after making such remunerative calculation the balance amount, if any, should be returned to it by the Petitioner after deducting its share.

4. On the aspect of discount, it was stated that by the complainant although there was a static meter, the complainant should be given the benefit of the discount/concession on consumption during off-peak hours i.e. between 10 A.M. to 6 A.M. as per the tariff made effective from 1st April, 2007.

5. Before the GRF, Petitioner appeared and filed its response a copy of which is enclosed with the present petition at Annexure-6. It was admitted therein that the Opposite Party had deposited the supervision charge of Rs. 26,735/- and action was also been taken to provide Time of the Day (TOD) facilities in the meter to record consumption during off peak hours. However, the Petitioner was not prepared to make the remunerative calculation.

6. Referring to Regulation 13 of the OERC Code, 2004 the GRF determined that the Petitioner was obliged to make the remunerative calculation, determine the share of the each of the parties and in the event it was found that the consumer had invested more than its share, the excess should be refunded.

7. Having heard learned counsel for the parties, the Court finds that no prejudice has been caused to the Petitioner by the above direction, since it is based entirely on Regulation 13 of the O.E.R.C. Code, 2004. On the second aspect of allowing discount i.e. @ 10 paise per unit, again a direction was to permit such adjustment to be made in the subsequent bills.

8. Learned counsel for the Petitioner vehemently argued that the directions issued by the GRF were beyond its jurisdiction and that the GRF was not empowered to entertain this kind of a matter at all. Learned counsel referred to Sections 42(5) and 42 (6) of the Electricity Act, 2003. He also referred to a Circular dated 19th October, 2004.

9. On perusal of the reply filed by the Petitioner before the GRF, it is seen that no objection as to jurisdiction and powers of the GRF was taken by the Petitioner. As it transpired, since the Petitioner did not implement the order of the GRF, the Opposite Party was constrained to go before the Ombudsman with Case No. 43 of 2009 in which an order was been passed by the Ombudsman on 19th November, 2009 which again has been challenged in the present petition. The Ombudsman has asked the Petitioner to implement the order of the GRF within a month.

10. While issuing a notice in the present petition on 16th December, 2009, the impugned order was stayed by this Court. For over 12 years now, that interim order has continued.

11. With the Petitioner not raising any objection as to the maintainability of the complaint before the GRF, the Court is not inclined to permit the Petitioner to raise such an objection at this stage. Likewise, the plea of limitation cannot be permitted to be raised for the first time at this stage. Secondly, the Court finds the direction issued by the GRF is consistent with Regulation 13 of the O.E.R.C. Code 2004 and therefore, does not call for interference. The direction regarding extending to the Petitioner the off-peak hour discount also does not appear to be unreasonable. Consequently, this Court finds no reason to interfere with either the order of the GRF or the Ombudsman. The interim order is accordingly vacated and the writ petition is dismissed.

12. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

Kabita/Tudu