

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5271 of 2009

Executive Engineer, Electrical, Petitioner
Keonjhar Electrical Division, NESCO,
Keonjhar

Mr. A.K. Mishra, Advocate

-versus-

Ombudsman No.II, Orissa Electricity Opposite Parties
Regulatory Commission and another

Mr. A.K. Nath, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
24.02.2022

Order No.

10. 1. The challenge in the present petition is to an order dated 17th January 2009 passed by the Ombudsman No.II, Orissa Electricity Regulatory Commission in Consumer Representation Case No.OM-II (N)-11 of 2008 filed by the Opposite Party-Company whereby the Petitioner-Electricity Distribution Company has been asked to revise the energy bill for the period February to July 2006 on the basis of actual energy consumed and for the Opposite Party-Company to make payment of such revised amount. Thereby the Ombudsman set aside an earlier order dated 21st December 2006 of the Grievance Redressal Forum, Balasore.
2. The Opposite Party-Company sought waiver of the minimum guaranteed amount payable by it to the Petitioner-Electricity Distribution Company invoking the force majeure clause in Regulation-107 of the Orissa Electricity Regulatory Commission

Distribution (Conditions of Supply) Code, 2004 (Code). The ground on which it was so invoked was that there was a strike by local people and the industry could not operate after 31st January 2006 for about six months. There was a road block by the villagers and there was no approach to the plant for the working personnel and materials.

3. The case of the Petitioner-Electricity Distribution Company was that Regulation-107 is not applicable since it has not satisfied the requirement of “force majeure”. It is also pointed out under Regulation-110, benefits were not extendable to the Opposite Party-Company since the damage caused to the equipment was not as a result of failure of the power supply. Also, the strike of the local people did not prevent the supply of electricity.

4. Having heard learned counsel for the parties, the Court is satisfied that the Ombudsman was in error in invoking Regulations 107 and 110 in situations which did not come within the ambit of the ‘force majeure’ clause. The mere fact that the local people may have gone on strike and during such strike, damage was caused to the equipment of the Opposite Party-Company would not justify their avoiding the liability of the minimum guaranteed payment under the agreement with the Electricity Company. The Court therefore accepts the plea of the Petitioner that neither Regulation 107 nor Regulation 110 could apply in the facts and circumstances of the case.

5. The impugned order being unsustainable in law is hereby set aside. The writ petition is allowed. But, in the circumstances, with no order as to costs. An urgent certified copy of this order be issued as per rules.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

S.K. Guin

