

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No.11156 of 2014

The Executive Engineer (Elect.) NESCO,
Balasore Electrical Div. At./P.O./Dist. Balasore
& Another

Petitioners
Mr. S.C. Dash, Adv.

-Versus-

Niranjan Khandelwal & Another

Opp. Parties
Mr. D. Sarangi, Adv.
(for O.P. No.1)

CORAM:

JUSTICE S. TALAPATRA

JUSTICE M.S. SAHOO

ORDER

16.08.2022

Order No.

08.

1. This matter is taken up through Hybrid Arrangement (Virtual/Physical Mode).
2. Heard Mr. S.C. Dash, learned counsel appearing for the petitioner as well as Mr. D. Sarangi, learned counsel appearing for the Opp. Party No.1.
3. The Opp. Party No.2 is the OMBUDSMAN whose order dated 03.07.2013 passed in Consumer Representation Case No.39 of 2013 has been challenged by means of this writ petition. The OMBUDSMAN has exercised the powers conferred by Section 42 (6) of the Electricity Act, 2003.
4. Briefly stated the facts as relevant in this writ petition are that the petitioners had raised the bill, dated 15.09.2012 for the

consumption month of August, 2012 to the extent of Rs. 1,55,242/-. It is not in dispute that the petitioner filed a complaint to the Grievance Redressal Forum, being GRFCC No. 31 of 2013 stating that his usual consumption was 56 to 59 units. In the complaint, he made a specific reference to consumption for the month of May, 2009, when the consumer was shown to have consumed 59 units and accordingly, the bill for consumption was raised at Rs. 498.

5. The petitioner has also referred 3 bills for the year 2012, where the monthly consumption was around 50 to 60 units. Suddenly, in the bill dated 15.09.2012 as challenged in the writ petition, the consumption was shown exorbitantly higher i.e. 2375 units and thus, the billed amount to be Rs. 1,55,242/-, which, according to the petitioner, was unusual. Hence, the Opp. Party No. 1 sought inference of the GRF.

6. The GRF by their order dated 22.03.2013 has observed as follows:

“In counter, the opposite party stated as under;

In meter bearing Sl. No. 008152 make palmohan was installed at the complainant's premises during February, 08 with I/R-01kwh. The said meter was tested by the Sub-divisional squad on 06.08.2012, found the meter reading recorded as 24110kwh. The meter accuracy [was] also found OK. Taking into account of the meter reading on [dated] 06.08.2012 the unbilled 21735 units amounting to Rs. 1,53,377/- was claimed to the complainant to mention herewith that the complainant has another connection bearing consumer No. A29-0001(Dom.) which was also verified on [dated] 06.08.2012 and Rs. 54,918/- was

assessed under Section 126 of the Act due to unauthorized use of the electricity. Again the meter was verified on 04.02.2013, found the meter OK.”

7. Having recorded that the GRF has further observed that the Opp. Party (the writ petitioner herein) raised a demand differential of 21735 units, which remained unbilled by the billing agency. As such, an amount of Rs.1,53,377/- was debited in the bills of the complainant [the Opp. Party No.1]. It, therefore, clearly transpires that the said unit as mentioned in the communication dated 30.01.2013, Annexure-2 to the writ petition, is not taken for purpose of raising the bill. If we are to go by the observation of the GRF.

8. It has been further observed by the GRF that the meter was tested in presence of the writ petitioner and it was discovered that 21735 units were suppressed by ‘the meter readers’ of the billing agency. The petitioner herein, has raised the demand for the unbilled units as recorded in the meter by serving a formal bill. The Electricity Act, 2003 does not lay or prescribe a time limit for raising such demand. It has been observed by the GRF that it cannot be held that the demand of Rs.1,53,377/- against unbilled suppressed meter reading of 21735 units by the Opposite Party No.1 is barred by time.

9. Having observed thus, the complaint filed by the Opp. Party No.1 was dismissed. Then, being aggrieved, the Opposite Party No.1 filed a Case being Consumer Representation Case (CRC) No.OMB(II) 39 of 2013. The said representation case was disposed of by the OMBUDSMAN by his order dated 03.07.2013 on returning the following direction:

“The respondent is directed to revise bill of the petitioner for the month of August, 2012 by taking

succeeding three months' consecutive billing cycle's consumption of the existing meter, as mandated in Regulation 97 of the OERC Supply Code 2004 and serving a copy of the revised bill along with its abstract to the petitioner within 30 days from the date of receipt of the letter of acceptance of the petitioner and report compliance to this Forum within 45 days."

10. It has been stated that the Opposite Party No.1 has communicated the letter of acceptance, but the writ petitioner being aggrieved by the said order of the OMBUDSMAN has filed this writ petition. According to the writ petitioner, the said order is against the provisions of Odisha Electricity Regulatory Commission, Distribution (Conditions of Supply), 2004 and hence the said order is illegal.

11. Mr. S.C. Dash, learned counsel has submitted that the Opposite Party No.1 did not raise any objection or any claim regarding the functioning of the meter. He has further stated that it would be apparent from the action of the Opposite Party No.1 that even he did not ask for any check meter to be installed at his own expenses in his incoming line by the site of the licensed meter. Therefore, there was no question of raising the alternative claim. That apart, it was not contended the meter reading based on which the bill for consumption of the month of August, 2012 was raised, is unsustainable. According to Mr. Dash, learned counsel that Regulation 57 of Orissa Electricity Regulatory Commission Distribution Condition (Conditions of Supply Code) 2004 provides that in the event of any complaint regarding malfunctioning of the meter, the consumer either shall ask for the testing of the meter and/or simultaneously may place a check meter.

12. Mr. Dash, learned counsel for the petitioner has also referred to the provisions of Section 59 of the said Code and contended that the consumer raising the dispute regarding the accuracy of any meter which is not his own property, he may, upon giving notice and paying the required fee, get the same tested in a Government Laboratory within a period of 1 month from the date of deposit of such fee. Having referred to the said provision, Mr. Dash, has contended that no such act was embarked upon by the Consumer (the Opposite Party No.1). Mr. Das, learned counsel, has pointed to us that in the event of any dispute on the billed amount, the consumer may lodge complaint before the designated Officer/Agency as selected by the licensee and pay the average of the last 6 months' consumption of the billed amount, whichever is less, within due date, pending settlement of the dispute. The licensee shall resolve the dispute or communicate his decision with reason to the consumer within a maximum period of one month, as per Regulation 92 of the said Code.

13. Mr. Dash, learned counsel has emphasized that no such attempt was made by the consumer after receipt of the above referred bill dated 15.09.2012. According to Mr. Dash, the consumer had approached the GRF and asked for direction for issuance of a revised bill. The GRF has rightly dismissed the said complaint by the order dated 22.03.2013. As stated earlier, the said order was challenged before the OMBUDSMAN under Section 42 (6) of the Electricity Act, 2003 and the OMBUDSMAN has reversed the finding of the GRF by directing the Opposite Party (the petitioner herein) to revise the bill of the petitioner for the month of August, 2012 by taking average of the succeeding 3 months billing cycles as consumption as per Regulation 97 of the OERC Supply Code, 2004 and serve the

copy of the revised bill along with its abstract to the petitioner within 30 days. To arrive at that inference, the OMBUDSMAN has observed that “from the dealing pattern of the petitioner, this Forum understands that the consumption of electricity of the petitioner is well within 50-60 units per month prior to the disputed bill [served on [dated] 15.09.2012] and 38 units/month after the disputed bill up to 15.02.2013. The bill so prepared on dated 15.09.2012 seems to be wrong as because the recorded consumption might have been generated due to *any malfunctioning of electric parameter of the meter*, as the preceding and succeeding billing pattern is within 50 to 60 units/month and the readings for billing were taken by the respondent or his staffs in each billing cycle. So the disputed bill was not generated due to any cause of the petitioner that will counter to Section 56 (2) of the Act. This Forum denies to accept the bill for the Month of August 2012 to be correct and hence denied. The said bill is required to be revised basing on the succeeding three months consecutive billing cycles as mandated in Regulation-97 of the OERS Supply Code, 2004.”

14. Mr. S. Sarangi, learned counsel appearing for the Opposite Party No.1 has submitted that the order challenged in this writ petition is well-reasoned and the grounds as raised in this writ petition are not tenable in as much as the facts on the basis of which the representation case was instituted before the OMBUDSMAN have been squarely admitted by the petitioner herein. The amounts as recorded for consumption of the units as in the preceding bills and the succeeding bills have not been contradicted or denied by the writ petitioner. The OMBUDSMAN was well within his jurisdiction to

look into or examine those facts for purpose of arriving at his inference.

15. Having appreciated the rival contentions of the counsel for the parties we may revisit the provisions of regulation 97 of the said Code which has been invoked by the OMBUDSMAN for passing the impugned order. For this purpose, we reproduce Regulation 97 of the said Code, which reads as follows:

***97. Billing with defective meter-** For the period the meter remained defective or was lost, the billing shall be done on the basis of average meter reading for the consecutive three billing periods succeeding the billing period in which the defect or loss was noticed. It shall be presumed that use of electricity through defective meter was continuing for a period of three months immediately preceding the date of inspection in case of Domestic and Agricultural consumers and for a period of six months immediately preceding the date of inspection for all other categories of consumers, unless the onus is rebutted by the person, occupier or possessor of such premises or place.*

16. In our considered opinion the OMBUDSMAN has committed serious error by invoking the provisions of Regulation 97 of the said Code in as much as the meter in the present case is not defective, not lost and no other malfunctioning had been proved. Therefore, by invoking that provision, the OMBUDSMAN has committed a material irregularity and as such, we are persuaded to interfere with the impugned order. Moreover, while reading the Regulation 97 of the said Code, the OMBUDSMAN has omitted to read the element of

onus on the consumer. It provides unambiguously that unless the onus is rebutted by the person, occupier of the possessor of such premises or place, those provisions cannot be implied for purpose of granting the benefit as provided thereunder.

17. We have noticed in this case that on 06.08.2012 a group of meter examiners tested the meter in presence of the Opposite Party No.1 and they recorded the reading available in the meter. On the basis of that, the bill of the month of August, 2012 was raised and that bill was communicated to the Opposite Party No.1 by the bill dated 15.09.2012. Even after the complaint on the allegation of exorbitant consumption the meter was again tested in presence of the petitioner but no defect was found. That apart, the meter verification report dated 06.08.2012, Annexure-3 to the writ petition has not been challenged by the Opposite Party No.1. Subsequently, the questioned meter was tested in presence of the Opposite Party No.1 twice, firstly by on 13.12.2012 and secondly by on 04.02.2013 as reflected in the final order passed by the GRF. In both the tests, the meter was found to be absolutely in perfect condition of functioning. The OMBUDSMAN did not appreciate that aspect of the matter and arrived at the inference which according to us, cannot be sustained. What has surprised us is that the GRF of its own has observed that there was suppression of reading while raising the bills till 06.08.2012. We are also of the view that there might be suppression of reading while raising the bills and it may have so happened for collaboration of the meter readers. But, on discovery of such suppression, the consumer was not communicated expressly. But in the other meter, that is installed in the same premises of the consumers, the authority could find tweaking of reading by tampering

the meter, and accordingly, the amount they raised with penalty was paid by the petitioner.

18. Having noted the above facts, we are persuaded to observe that the onus upon the consumer was not discharged. If the meter was malfunctioning or found otherwise defective, it was the onus of the consumer to show the consumption as recorded is the result of malfunctioning or defects. Whether the evidence is suppression or not, it is a remote question in such disputes. Therefore, we are of the view that by reversing the order of the GRF dated 22.03.2013, the OMBUDSMAN has caused failure of justice. Hence, the order as passed by the OMBUDSMAN cannot be held to have been passed in accordance with law. Accordingly, the order of OMBUDSMAN dated 07.06.2013, delivered in C.R. Case No.39 of 2013 is set aside.

19. In the result, the writ petition stands allowed.

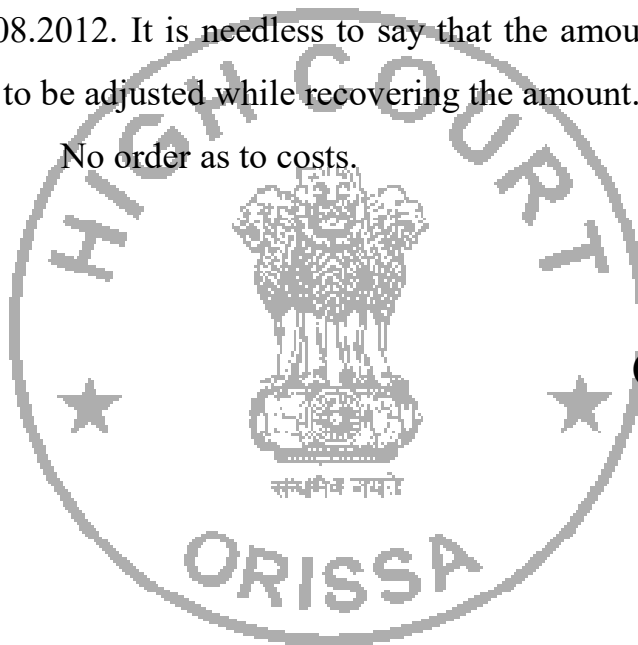
20. But before parting with the records, we would like to express that the petitioners should have taken appropriate disciplinary action against the persons who read the meter for their behalf and raised the bills by suppression, as contended by Mr. Dash, learned counsel appearing for the petitioner.

21. We also direct the petitioners to realize the billed amount for the month of August, 2012 in 10 equal installments from the consumer because the petitioners cannot be absolved from the responsibility of communicating suppression to the consumer. So far as the application of Section 56 (2) of the Electricity Act, 2003 is concerned, we would observe that since the bill was raised within a month from the detection and non-payment within two years is for litigations at the instance of the Opposite Party No.1, the said provision will have no application in the present context, as Sub-

Section 2 of Section 56 of the Electricity Act, 2003 provides that notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this Section shall be recoverable after the period of two years from the date *when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.*

22. In this case, no account has been produced for the Opposite Party No.1 for arrears and as such the due date has to be treated as 06.08.2012. It is needless to say that the amount, if any, as deducted has to be adjusted while recovering the amount.

23. No order as to costs.



(S. Talapatra)
Judge

(M.S. Sahoo)
Judge



