

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P. (C) No. 23273 of 2013

The Executive Engineer ***Petitioner***
(Electrical), NESCO,
Anandpur, Keonjhar

Mr. S.C. Dash, Advocate

-versus-

Ombudsman (II) of ***Opp. Parties***
Electricity, Khurda &
another

Mr. F.R. Mohapatra, Advocate for O.P. No.2

CORAM:
JUSTICE S. TALAPATRA
JUSTICE M. S. SAHOO

ORDER

Order No.

17.10.2022

- 10.** **1.** This matter is taken up through hybrid mode.
- 2.** Heard Mr. S.C. Dash, learned counsel appearing for the petitioner and Mr. F.R. Mohapatra, learned counsel appearing for the opposite party no.2-consumer.
- 3.** By means of this writ petition, the petitioner-Executive Engineer (Electrical), NESCO has challenged the award/order dated 04.06.2013 passed by the Ombudsman-II (Electrical), Bhubaneswar in Consumer Representation Case No. Omb(II) No-67 of 2012 as, according to the petitioner, the said order is erroneous, illegal and an outcome of arbitrary exercise of power U/s.42(6) of the Electricity Act, 2003.
- 4.** The Consumer Representation Case No.67/2012 has been registered as per the direction of the Orissa Electricity Regulatory Commission (in short 'OERC') as

passed in Case No.70 of 2012. The said case, before the OERC, was filed by the Consumer for non-implementation of the order of the Ombudsman-II dated 25.06.2012 passed in Case No. N-25 of 2012, which was instituted at the instances of the consumer. The said order of the Ombudsman-II dated 25.06.2012 has not been challenged by the petitioner. The Ombudsman-II by the order dated 25.06.2012 has directed the petitioner, inter alia as follows:

“The petitioner’s 5th complaint is for reduction of his Contract Demand from 4000 KVA to 2000 KVA. The respondent confessed that, he has already forwarded the load reduction application of the petitioner to his higher authorities for further action as per the regulations in force. But the action should be regulated as per regulation 69 of Supply Code 2004. As per Regulation 69 of OERC Supply Code 2004 “no permission shall be granted to reduce the Contract Demand if on a consideration of the investment made by the licensee for effecting power supply to the consumer, the reduction is likely to result in the investment becoming non-remunerative according to the norms fixed by the licensees with the approval of the commission, unless the consumer is agreeable to bear the financial burden of making the investment viable to such reduction.” However, the Respondent should act promptly to effect reduction of Contract Demand from 4000 KVA to 2000 KVA by re-calculating the scheme to be remunerative and obtaining consent from the Petitioner to bear the financial burden of making the investment viable due to such reduction. This burden of the Petitioner should be linked with serial

number '2' above."

[Emphasis added]

5. The said order was interfered to a limited extent and remanded to the Ombudsman-II for reconsideration. Pursuant thereto by the order dated 04.06.2013 as passed in Consumer Representation Case No.67 of 2012, the Ombudsman-II has passed the following directions on the petitioner. For the purpose of reference, para-4, which reads as follows, is reproduced:

"4. Voltage at Petitioner's unit is well within the permissible limit. Hence there is no dispute is left over on this subject.

From the above findings it is concluded that:

A. Remunerative calculation for 2000 KVA is to be done by the Respondent taking the estimated amount of Rs.70,77,992/- as the capital cost and revenue for the cost of power of 12 months by putting per month maximum consumption of Petitioner's unit recorded since it's beginning or as per the norms of the regulation whichever is less. If the calculation becomes non-remunerative then the portion of the capital cost to be met by the beneficiary to make it remunerative, has to be mentioned in the calculation sheet and if the Petitioner agrees and meets to the share amount, then load reduction shall be activated.

B. As the remunerative calculation for 4000 KVA was remunerative prior to availing power supply, the Respondent is to refund the estimated amount so collected from the

Petitioner by way of adjustment of the share amount for reduction of Contract Demand to 2000 KVA or else to be adjusted in subsequent bills of the Petitioner.

- C. Bill claimed for April 2010 on LI category is not acceptable to this Forum and is to be withdrawn.*

Demand charges for the whole month and energy charges for final meter reading of 288237 units are to be claimed in the bill for the month of April 2010 on MI Category.

- D. Basing on the order dated 11.05.2010 in Case No.01 of 2010 of the Hon'ble OERC for operation of order (protocol) on power regulation, Demand Charges is to be pro-rated beyond 60 hours in May 2010 from 01.05.2010 to 10.05.2010 considering as per restriction, taking in to account power failures for more than half an hour at a time to maximum four hours in morning and evening peak hours from 6 AM to 10 AM and 6 PM to 10 PM respectively.*

- E. Reduction of Contract Demand from 4000 KVA to 2000 KVA should be made effective giving retrospective effect with three months moratorium period (towards process of the application with the designated authority of the licensee) from the date of Petitioner's complete application and 30 days after compliance of OERC regulations in force and soon after the clauses A and B above are complied.*

- F. Precautions should be taken to avoid interruptions.*

- G. Claim of compensation by the Petitioner is denied."*

6. On the basis of the above finding, the Ombudsman has directed the petitioner that the finding 'A' to 'G' be implemented and the petitioner shall serve a revised bill to the consumer within a period of 45 days from the date of receipt of the letter of acceptance from the opposite party [the consumer]. The petitioner shall report compliance to the Forum within 60 days. It is further directed that the opposite party [the consumer] shall have to pay the revised bill amount within 15 days from the date of receipt of the revised bill from the petitioner herein. It is apparent that directions are contemplative and clarificatory to the direction of the GRF.

7. Mr. Dash, learned counsel for the petitioner has quite categorically submitted that the petitioner is aggrieved by the findings 'B' and 'C' above. At this point, we asked Mr. Dash, learned counsel for the petitioner that whether they are aggrieved by the order of the Grievance Redressal Forum dated 03.03.2012 as delivered in G.R.F.C.C. No.28/2012 (Annexure-3 to the writ petition), he has clearly stated that the petitioner has no grievance or objection against those directions. It gets further buttressed from the fact that no challenge was carried out from the order of the GRF. The GRF had, in the context of dispute, directed the petitioner as follows:

“(a) The billing to the complainant’s unit for the month of April-2010 (33KV Supply) should be

strictly made as per the actual account of the meter and in line with the applicable tariff.

(b) The complainant shall be ensured that, the laid down procedure for determination of remunerative norms forming part of OERC Supply Code-2004 as Appendix-I has been strictly followed under intimation of the all cost components to be involved vis-à-vis benefits to be accrued.

(c) During the period when, the load restriction protocol of OERC were not in force, the Opposite Party shall strictly follow the regulation 85(3) of the SUPPLY Code-2004 with regard to Demand Charges billing to ensure the quality power at requisite voltage at the complainant's unit end."

8. Mr. Dash has categorically submitted that the petitioner does not have, ever, any reservation to implement those directions as reproduced under para-7.

9. That apart, it has come to the fore from the order dated 25.06.2012 [see para-4] that the load reduction application has been forwarded to the competent authority for taking decision as per regulation in force. Such decision be taken within 15 days from today, if not taken already.

10. Mr. F.R. Mohapatra, learned counsel appearing for the opposite party no.2-consumer has submitted that the said opposite party will be satisfied if the direction of the GRF is implemented in letter and spirit.

11. This, thus, forms a consensus between the parties. On the basis of the said consensus, this writ petition is disposed of with the following further directions that within 7 days from today, any requisite, if required to be filed by the opposite party that shall be intimated. On such requisite being filed by the petitioner as would be required by the petitioner, the order of the GRF shall invariably be complied with within 30 days from the day of acceptance of requisites, if required, otherwise it has to be complied within 30 days directly from today.

12. It is made absolutely clear that no such plea or controversy shall be raised by the petitioner which will frustrate the very direction or the order of the GRF

13. Having observed and directed thus, the writ petition is disposed of.

Urgent certified copy of this order be issued on proper application.

No order as to costs.

(S. Talapatra)
Judge

(M.S. Sahoo)
Judge