

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.15637 of 2011

Executive Engineer (Electrical) Petitioner
WESCO Bolangir Electrical Division,
Bolangir

Mr. S. C. Dash, Advocate

-versus-

OMBUDSMAN-II(electricity), Opposite Parties
Bhubaneswar and another

Mr. T. Nanda, Advocate for Opposite Party No.2

CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK

ORDER
29.03.2022

Order No.

07. 1. The challenge in the present petition is to an order dated 26th March, 2011 passed by the OMBUDSMAN-II, Orissa Electricity Regulatory Commission, Bhubaneswar, remanding the Complaint Case No.575 of 2010 to the Grievance Redressal Forum (GRF) Bolangir.
2. This petition has a long history. The Opposite Party No.2-M/s. Utkal Laxmi Rice Mill Pvt. Ltd. had a contracted demand of 113.33 KVA. By a letter dated 11th March, 1997, Opposite Party No.2 requested the Executive Engineer, WESCO, Bolangir for a fresh agreement in medium industry class since one drawer and one par boiling unit of the rice mill had been closed. In terms of a joint verification report on 29th April, 1997, the load was found to be 78.62 KW. As the load reduction was not reflected, Opposite Party No.2 approached the Bijili Adalat in 2000. By an order dated 29th September, 2000, the Adalat directed the WESCO to reconnect the

line which had been disconnected on 30th August, 2000 due to non-payment of arrears, subject to payment of 30% of the arrears. Since in a joint verification done on 11th October, 2000 the load was found to be 95.80 KW, it was recommended by the Superintending Engineer that it would be proper to reduce the output 95.80 KW.

3. On 17th April, 2001, a meter test was conducted and there was tampering found in one of the CTs. A penalty bill of Rs.7,594/- was served on the consumer. When the disputes arising out of the penalty bills were unable to be resolved, Opposite Party No.2 approached the GRF with Case No.16-05-06.

4. In an order dated 11th November, 2005 the GRF noted that the complainant agreed to settle the penal bill at the reduced amount of Rs.1,80,000/-. On 26th October, 2002, it ordered that load deduction to 78.62 KW will be permitted with effect from 1st April, 1997; since additional load was detected on 11th October, 2000, a penal bill for the additional load shall be levied and the contract demand would be enhanced to 95.80 KW with effect from 11th October, 2000. The revised bill from 1st April, 1997 to October, 2005 will be served on the consumer within one month.

5. It appears that during this time, Opposite Party No.2 was represented by Shri Makhanlal Agarwal who was described as its Director. According to the Petitioner, despite Mr. Agarwal having resigned as Managing Director on 5th September, 2003, he continued representing the Opposite Party No.2 in all litigations involving it even thereafter. A consolidated petition being CR Case No.5 of 2010 was filed before the OMBUDSMAN on 19th April, 2010. On 25th August, 2010, the said case was rejected by the OMBUDSMAN. It was held that since Mr. Agarwal had no

authority to represent Opposite Party No.2, the case was not being entertained on merits. It was however left open to Opposite party No.2 to raise a dispute afresh before the GRF “in lawful and regular manner.”

6. It appears that in December, 2010, a fresh Complaint Case No.575 of 2010 was filed before the GFR again through Mr. Makhanlal Agarwal and again questioning the same penal bill. The GRF rejected this complaint case on 7th January, 2011 on account of none appearance of the complainant as well as lack of authority of Mr. Agarwal. Against this order, Opposite Party No.2 approached the OMBUDSMAN for relief. The said CR Case No.2 of 2011 has been disposed of by the impugned order dated 26th March, 2011 remanding Complaint Case No.575 of 2010 to the GFR for a fresh decision.

7. The grievance of the present Petitioner i.e. WESCO is that the remand of the case has been made unmindful of the fact that on the same issue an earlier petition had already been rejected by the OMBUDSMAN and without going into the question of limitation and maintainability of the complaint or jurisdiction of the GRF , the case had been remanded to it.

8. It may be noted here that while directing notice to issue in the present petition on 30th May, 2011, this Court stayed further proceeding in Complain Case No.575 of 2010 before the GFR, Bolangir. Despite notice being issued to it, Opposite Party No.2 has till date not filed any reply.

9. Having heard learned counsel for the parties, the Court is of the view that the complaint before the GRF, Bolangir was badly time-barred. It pertained to a penal bill dated 11th May, 2001 in the sum

of Rs.7,47,593/-. In the initial round of litigation, challenge to the said bill before the GRF was raised in 2005. That complaint had been disposed of by the GRF in the manner indicated hereinbefore. In the first round itself the OMBUDSMAN had rejected the case filed by the Opposite Party No.2. Consequently, the OMBUDSMAN in the second round could not have simply remanded the case to the GRF without examining if the complaint itself on the same cause of action was maintainable for the second time before the GRF.

10. Considering that what is an issue is a bill of 2001, clearly a complaint filed in 2010, would be time barred. This basic issue was lost sight of by the OMBUDSMAN and in the impugned order it has mechanically remanded the matter to the GRF for a fresh decision.

11. The Court consequently is satisfied that the impugned order is unsustainable in law and is hereby set aside.

12. The writ petition is allowed in the above terms, but in the circumstance, with no order as to costs.

(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge

M. Panda