IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 1709 of 2011

Executive Engineer, Puri Electrical Division, CESU, Puri	....	***Petitioner***
		Mr. S.C. Dash, Advocate

-versus-

Ombudsman No.1 and Another	....	***Opposite Parties***
		Mr. Bikas Jena, Advocate

CORAM:
THE CHIEF JUSTICE
JUSTICE R.K. PATTANAIK

<u>Order No.</u>

<u>ORDER</u>
28.03.2022

06. 1. The Executive Engineer, Central Electrical Supply Utility (CESU), Puri has filed this petition challenging an order dated 17th September, 2009 passed by the Ombudsman No.1 in Consumer Representation Case No.OM-(I)-34 of 2009.

2. By the impugned order, the Petitioner was asked to determine the share of contribution of the Petitioner and the Opposite Party No.2 after calculating the remunerative scheme and if the investment made by the Opposite Party No.2 was found to be excess of its share it was to be refunded by way of adjustment in the next bills. While issuing notice in the present petition on 1st February, 2011, this Court stayed the operation of the impugned order of the Ombudsman.

3. The background facts are that Opposite Party No.2, for the purpose of running Hotel/Resort in the name and style of Brahmadeva Vanijya Care Limited applied to CESU on 4th April, 2007 for supply of power with 70 kilowatt (KW) load. Since the Unit of Opposite Party No.2 was 2.4 kilometers away from the existing 25 KVA substation of CESU at Sipasarubali and there was no provision for supply of power beyond the substation, the concerned Junior Engineer and the Sub-Divisional Officer advised Opposite Party No.2 to construct line at its own cost using own materials purchased from the market. Opposite Party No.2 states that it had already invested a huge amount in the project but since CESU was the only electricity distribution company, Opposite Party No.2 had no choice but to agree to construct the line at its own cost. It is stated that the Petitioner-CESU made an estimate thereafter of Rs.7,72,604/- towards the cost of work including Rs.43,732/- towards 6% supervision charges. This was approved by the Superintending Engineer (SE) of CESU. On 1st June, 2007 CESU should have permission letter for execution of the work by Opposite Party No.2 at its own cost for availing the power supply. Finally, the permission letter was formally issued on 21st June, 2007.

4. According to Opposite No.2 though the estimate was for Rs.7,72,604/- it ended up spending more than Rs.11 lakh for completion of the work. According to Opposite Party No.2 subsequently CESU started supplying power to other commercial establishments set up in the same locality. It was then that the

Opposite Party No.2 realized that for supplying power to it, CESU could have upgraded the existing 11 KV 34mm2 line to 55 mm2 insulated conductor with a load of 70KW.

5. Opposite Party No.2 on several occasions requested CESU to refund the amount invested by it and when its request went unheeded, it approached the Grievance Redressal Forum (GRF), Bhubaneswar with a complainant case i.e. C.C. Case No.35 of 2009 (PED).

6. The GRF disposed of the aforesaid mentioned complaint case by an order dated 22nd June, 2009. The GRF held that the 11 KV line erected by Opposite Party No.2 is the property of CESU and it can extend the power supply to other consumers using the said line as and when required. The GRF also observed that if the scheme is found to be remunerative, Opposite Party No.2 is eligible to get back the expense incurred by it. The GRF also granted the Petitioner the relief of installation of HTTV meter and reading unit within sixty days of the order of the GRF.

7. However, since there was no specific direction by the GRF to CESU to calculate the cost on remunerative norms in the manner provided under Appendix-I of the OERC Distribution (Conditions of Supply) Code, 2004 ('Code') within a stipulated time in order to refund Opposite Party No.2 the excess amount invested by it, Opposite Party No.2 approached the Ombudsman No.1,

Bhubaneswar with Consumer Representation Case No.OM(I)-34 of 2009 challenging the order of the GRF.

8. By the impugned order dated 17th September, 2009 the Ombudsman directed CESU to determine a share of each of the parties after calculating the remunerative scheme in the manner indicated hereinbefore.

9. Mr. S.C. Dash, learned counsel appearing for the Petitioner referred to Clause 27 of the Code which provides that the entire service line, notwithstanding that whole or a portion thereof has been paid for by the consumer, shall be the property of the licensee. It states that the licensee, in this case CESU, shall have the right to use the line for supply of energy to any other person, unless the line has been provided for the exclusive use of the consumer through any arrangement agreed in writing. Since in the instant case there was no such agreement regarding exclusive use of the line by Opposite Party No.2, CESU was not prevented from using the line for supply of electricity to other consumers.

10. Mr. Dash next submitted that the Opposite Party No.2 was never forced to construct 11 KV line at his own cost. There was no provision in the Regulations for refund of the investment cost to the consumer.

11. Mr. Bikash Jena, learned counsel appearing for Opposite Party No.2, on the other hand, referred to the fact that the GRF's order

was never challenged by CESU as is done by it in certain other cases when writ petitions are filed in this Court for that purpose. He submitted that Opposite Party No.2 had no issue with the proposition that in terms of Regulation 27, CESU can use the same 11 KV Line to supply electricity to other consumers. However, in view of Regulation 13 read with Appendix-I of the Code, if the Scheme is found to be remunerative CESU was obliged to refund the excess amount.

12. The above submissions have been considered. At the outset, it is required to be noticed that there is no contradiction in the orders of the GRF and the Ombudsman. In both orders, the right of Opposite Party No.2 to get the benefit of remunerative scheme has been recognized. While the GRF's order recognizes the right of Opposite Party No.2 to the benefit of the Scheme on a collective reading of Section 43 of the Electricity Act, 2003 and Regulation 13 of the Code, the Ombudsman issued specific directions in that regard.

13. There is merit in the contention of Opposite Party No.2 that CESU is bound by the GRF order since it was never challenged by it. Once the GRF recognized the right of Opposite Party No.2 to benefit from the remunerative scheme, CESU could not have turned around and questioned the order of the Ombudsman which more or less concurred with the order of the GRF.

14. The contention on behalf of the CESU that the Petitioner never asked for specific orders under the remunerative scheme is not acceptable for the simple reason that CESU is bound act in terms of Section 43 of the Act read with Regulation 13 of the Code. While it is not in dispute under Regulation 27 CESU can use the 11 KV line constructed by the Opposite Party No.2 to supply to the other consumers, CESU is not relieved of the obligation to extend the benefit of the remunerative scheme to Opposite Party No.2. That is part of the Code itself.

15. Consequently, the Court finds no error having been committed by the Ombudsman in passing the impugned order.

16. The writ petition is accordingly dismissed. The interim order is vacated.

(Dr. S. Muralidhar)
Chief Justice

(R.K. Pattanaik)
Judge

S.K. Jena/P.A.