

**IN THE HIGH COURT OF Haryana & HARYANA
AT CHANDIGARH**

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CWP-2931-2023

Date of decision: 14.02.2023

M/S NAVYUG ENTERPRISES

.....Petitioner

VERSUS

UTTAR HARYANA BIJLI VITRAN NIGAM LIMITED AND ORS.

.....Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present:- Mr. Vineet Kumar Jakhar, Advocate
for the petitioner.

Mr. Vivek Saini, Advocate
for respondent-UHBVN.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed for seeking issuance of a writ in the nature of Mandamus directing the respondent-Department to adjudicate the application/representation of the petitioner dated 18.08.2022 (Annexure P-8) and 26.10.2022 (Annexure P-16).

2. Learned counsel appearing on behalf of the petitioner contends that the petitioner is an Agriculture Waste Research and Development Centre engaged in processing agriculture waste and has an electricity connection bearing meter No. 574375, Account No. 1282311000. On 13.09.2021. The respondent-department issued electricity bill to the petitioner amounting to Rs. 24, 352/- for the period from 01.08.2021 to 01.09.2021 and later on 14.10.2021, another

electricity bill was issued to the petitioner amounting to Rs. 46,449/- for the period 01.09.2021 to 01.10.2021 (including the arrears/outstanding dues of Rs. 24,709/- from 01.08.2021 to 01.09.2021). However, it was verbally intimated by the petitioner to the respondent-Department about the error/fault committed by them. On 11.10.2021, the respondent-department disconnected the electricity connection of the petitioner whereupon it submitted a letter to the SDO (Bijli Board Israna, Panipat) with a request for checking the meter recording of the aforesaid account.

3. The respondent-department raised another bill dated 12.11.2021 to the tune of Rs. 29,764.57/- for the period from 01.10.2021 to 01.11.2021 despite the electricity meter having been disconnected. The Bill showed the meter to be active.

4. Yet another bill was issued on 14.12.2021 notwithstanding the disconnection of October, 2021 and also for the successive months despite representation being submitted by the petitioner to rectify the same.

5. It is further submitted that the dues were eventually deposited & re-connection was sought but the needful has not been done. It is however, not disputed by the counsel for the petitioner that the Electricity Act, 2003 scheme already provides for an efficacious alternative remedy of an Electricity Ombudsman under Section 42(7) and Consumer Grievance Redressal Forum under Section 42 (5) of Electricity Act, 2003.

6. Section 42 of the Electricity Act, 2003 provides for establishment of a Forum for redressal of grievances of consumers and

the authority to be known as Ombudsman. The relevant provisions of Section 42 of the Electricity Act are reproduced hereinafter below:-

“Section 42. (Duties of distribution licensee and open access): --- (1) It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.

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(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.”

7. The Haryana Electricity Regulatory Commission notified the Electricity Supply Code in exercise of the powers conferred upon it by Section 50 and Section 181(2)(x) of the Electricity Act, 2003 notified the Haryana Electricity Regulatory Commission (Electricity Supply Code) Regulations 2014 repealing the Code of 2014. Clause 15 of the aforesaid Electricity Supply Code deals with the complaint's redressal system. The relevant provision reads thus:-

“15. Complaints redressal system

1) Any aggrieved person, electricity consumer, consumer association or legal heirs or authorized representatives (in case of death of a consumer) may file a complaint in the respective Consumer Grievances Redressal Forums (CGRF) established by the licensee, for settlement of their grievances in case:-

(i) there exists defect of deficiency in electricity service provided by the distribution licensee;

(ii) an unfair or restrictive trade practice has been adopted by the distribution licensee in providing electricity services;

(iii) the distribution licensee has charged a rate in excess of that fixed by the Commission, for supply of electricity and related services;

(iv) the distribution licensee has recovered expenses, in excess of charges approved by the Commission, in providing any electric line or electric plant or electric meter;

(v) the electricity services provided by the distribution licensee is unsafe or hazardous to public life and is in contravention to the provisions of any law in force;

except the complaint pertaining to-

(i) Unauthorized use of electricity as defined under explanation to Section 126 of the Electricity Act 2003;

(ii) Offences and penalties as specified under Sections 135 to 139 of the Electricity Act 2003;

(iii) Accidents and inquiries as specified under Section 161 of the Electricity Act 2003 unless prescribed by the state govt. by general/special order.

The Forum shall pass order within a maximum period of 3 months from the date of receipt of complaint.

2) Any consumer aggrieved by the order of the Forum, non implementation of the order of the Forum by

the distribution licensee and non-disposal of complaint by the Forum within the prescribed period may lodge his complaint with the Electricity Ombudsman within 30 days from the date of receipt of order of the Forum. The Electricity Ombudsman shall pass the award within 03 months from the date of receipt of the complaint.”

8. Still further the Haryana Electricity Regulatory Commission had vide Notification dated 29.03.2019, in exercise of the powers conferred on it by Section 181 read with sub-sections 5 to 8 of Section 42 of the Electricity Act, 2003, notified with the HERC (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy) Regulations 2019. The relevant provisions of the said Regulations are reproduced as under:-

*“i) **“Complainant”** means and includes the following who have a grievance as defined in these Regulations:*

(i) A consumer as defined under Clause (15) of Section 2 of the Act;

Provided that a member of the Group Housing Society having “Single Point Connection’ from the licensee” is also a deemed consumer for the purpose of this Regulation.

*j) **“Electricity Ombudsman”** means an authority appointed or designated by the Commission, under sub-section (6) of Section 42 of the Act.*

*l) **“Grievance” or complaint** means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a distribution licensee in pursuance of a license, contract, agreement or under the*

Electricity Supply Code or in relation to standards of performance of distribution licensee as specified by the Commission and includes billing disputes of any nature and matters related to safety of the distribution system having potential of endangering of life or property **by which the complainant is aggrieved.**

m) **“Forum”** means the Forum for redressal of grievances of the consumers required to be established by distribution licensees, pursuant to sub-section (5) of Section 42 of the Act and these Regulations.

p) **“Representation or complaint”** shall mean the representation/complaint made to the Ombudsman by the complainant or on behalf of such a complainant who is aggrieved by the outcome of the Forum's proceedings in respect of his/her grievance (including not issuing the order within the specified time-limit, dissatisfaction with the order issued, partial or full dismissal of the grievance).

Classification of grievances

“2.31 As far as is possible and practical, the grievance shall be prioritized for redressal based on the following priority order:-

a) Disconnection of supply/Re-connection of supply after Disconnection

b) Connection—Release of new Connection or modification in existing connection

c) Non-supply

d) Meter related issues

e) Billing and relates issues

f) Other issues

Provided that it should be ensured that all grievances are disposed of within the time limit specified under these Regulations.

Process for submission of grievance

2.32 *The Complainant can submit his/her grievance to the appropriate Forum under whose jurisdiction his/her connection exists or a connection has been applied for. The Complainant can also submit his/her grievance at the nearest complaint-receiving centre, already established by the licensee. The grievance may be submitted either in person or through post, or email or fax.*

2.33 *All complaint-receiving centers shall accept the grievances from Complainants falling within the jurisdiction of the Forum and forward the same, along with other supporting documents to the appropriate Forum within the next two working days.*

2.34 *The grievance shall be submitted as per the format specified in Annexure-1 and Annexure-2 respectively for Dakshin Haryana Bijli Vitran Nigam Ltd. and Uttar Haryana Bijli Vitran Nigam Ltd. The complainant can nominate any person (not necessarily to be an Advocate) to present his case on the prescribed format which is at Annexure-3. Nomination can be filed at any time before or on the date of hearing.”*

9. Chapter 3 of the aforesaid Regulations deals with the office of the Ombudsman. It is significant to point out that both the aforesaid statutory Forums i.e. The Consumer Grievances Redressal Forum as well as the Electricity Ombudsman are duly constituted and are functional.

10. It is also relevant to point out that the Haryana Electricity Regulatory Commission notified the HERC (Forum and Ombudsman) Regulations, 2020 in supersession of the earlier Regulations on 24.01.2020. The relevant Clauses of the said Regulations read thus:-

“(d) “Complainant” means & includes any of the following who have a grievance as defined in these regulations and makes a complaint;

(i) a consumer as defined under sub-section 15 of section 2 of the Act;

(ii) any consumers association registered under any law for the time being in force;

(iii) any un-registered association or group of consumers where the consumers have common or similar interest;

(iv) in case of death of a consumer, his legal heirs or authorized representative;

(v) any other person claiming through or authorized by or acting as agent for the consumer and affected by the service or business carried out by the distribution licensee;

(vi) an applicant for a new electricity connection.

(e) “complaint” means any grievance in writing made by a complainant that :

(i) an unfair trade practice or a restrictive trade practice has been adopted by the licensee in providing electricity service;

(ii) the electricity services hired or availed of or agreed to be hired or availed of by him suffer from defect or deficiency in any respect;

(iii) a licensee has charged for electricity services mentioned in the complaint, a price in excess of the price fixed by the Commission;

(iv) electricity services which are hazardous to life and safety when availed, are being offered for use to the public in contravention of the provisions of any law for the time being in force or of any licence;

(v) violation has occurred of any law or licence requiring the licensee to display the information in regard

to the manner or effect of use of the electrical services; or

(vi) breach has occurred of any obligation by the licensee which adversely affects any consumer or which the Forum may consider appropriate to be treated as a complaint.

(g) “consumer grievance” means & includes any complaint relating to any fault, imperfection, short coming, defect or deficiency in the quality, nature and manner of service or performance in pursuance of a licence, contract, agreement or under Electricity Supply Code or in relation to Standards of Performance specified by the Commission including payment of compensation or billing disputes of any nature or recovery of charges by the licensee and matters relating to the safety of the distribution system having potential of endangering the life or property. However, the matter pertaining to Open Access granted under the Act and Section 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act shall not form grievance under these regulations.”

11. The aforesaid Regulations specify the consumer complaint handling procedure as well as the jurisdiction of the Commission. The Forum has also been given powers to issue interim directions pending final disposal of such grievance under Regulation 2.46 thereof. The same is extracted herein-after-below:-

“Special Provision : Interim Order:

2.46

Upon request of the Complainant, the Forum may issue such interim orders pending final disposal of the grievance as it may consider necessary including but not restricted to grant of temporary injunction to stay or prevent or restrain such act as the Forum thinks fit.

Provided that the Forum shall have the powers to pass such an interim order in any proceeding, hearing or

matter before it, as it may consider appropriate if the Complainant satisfies the Forum that prima facie, the Distribution Licensee has threatened or is likely to remove or disconnect the electricity connection, and has or is likely to contravene any provisions of the Act or any rules and regulations made thereunder or any order of the Commission, provided that the Forum has jurisdiction on such matter. Provided further that, except where it appears that the object of passing such the interim order would be defeated by delay, no such interim order shall be passed unless the opposite party has been given an opportunity of being heard.

Provided also that where any injunction has been granted by the Forum without notice to the opposite party, the Forum shall make efforts to finally dispose of the application within 30 days from the date on which the injunction was granted.

Provided also that any interim order may be reviewed/set aside by the Forum on an application made by any party if it is found that the complainant has made a false or misleading statement.”

12. A reasoned order is to be passed by the Forum. Similar provisions for Ombudsman have also been prescribed therein. The aforesaid Regulations were amended vide Notification dated 06.04.2022, however, the same has in no way diluted the authority of the Consumer Grievances Redressal Forum and has merely prescribed that the Consumer Grievances Redressal Forum shall be established to cater to the needs of Circle(District/Zone and Company level) in accordance with the Regulations and would also establish one or more Corporate Consumer Grievances Redressal Forum. A special mechanism for resolution of Corporate Consumer Grievances has been

provided for under Regulation 2.4. Similar provisions of interim orders and monitoring of consumer grievances have also been retained therein. The said Regulations provided for redressal of monetary complaints on the basis of pecuniary jurisdiction as well in Regulation 2.8 thereof. The same is extracted as under:-

“2.8 Monetary Complaints

Complaints relating to the supply of electricity by distribution licensee involving monetary disputes including but not limited to wrong billing, application of wrong tariff or difference of service connection charges/general charges or security (consumption), overhauling of account due to defective/inaccurate metering, levy of voltage surcharge, billing of supplementary amount or any other charges except those arising on matters pertaining to Open Access granted under the Electricity Act, 2003 and Sections 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act shall be disposed of by the respective Forum in accordance with these Regulations as per the monetary limits specified in Regulations 2.8.1 and 2.8.2 hereunder;

2.8.1 Corporate Forum

(i) The Corporate Forum shall have the jurisdiction to dispose of all the monetary disputes of an amount exceeding Rs. Three lakhs (Rs.3,00,000/-) in each case. Provided that the complaint/representation is made within two years from the date of cause of action.

(ii) Any complainant aggrieved by non-redressal of his grievance within the time period specified by the Commission or is not satisfied with the redressal of the complaint by the Zonal or Circle Forum may himself or through his authorized representative, approach the Corporate Forum in writing for the redressal of his grievance.

Provided that the Corporate Forum shall entertain only those complaints against the orders of Zonal or Circle Forum, as the case may be, where the representation is made within 2 months from the date of receipt of the orders of respective Zonal/Circle Forum, as the case may be.

Provided further that the Corporate Forum may, for reasons to be recorded in writing, entertain a complaint which does not meet the aforesaid requirements.

2.8.2 Zonal/Circle/Divisional Forum:

(i) Zonal Forum:

The Zonal Forum shall have the jurisdiction to dispose of the complaints involving monetary disputes of an amount exceeding Rs.One lakh (Rs.1,00,000/-) and up to Rs. Three lakh (Rs.3,00,000/-) in each case.

(ii) Circle Forum:

The Circle Forum shall have the jurisdiction to dispose of the complaints involving monetary disputes of an amount up to Rs.One lakh (Rs.1,00,000/-) in each case.”

13. A reference to the aforesaid Regulations shows that the statute has prescribed for Consumer Grievances Redressal mechanism for redressal of consumer issues. The above statutory authorities have been duly constituted and are required to decide the complaints in a time-bound manner. Even the powers of granting interim directions have been conferred upon the authorities under the statutory framework.

14. The Hon'ble Supreme Court had referred to the judgment in the matter of Whirl pool Corporation Versus Registrar of Trademarks (1998) 8 SCC 1, Mumbai and Harbanslal Sahni Versus Indian Oil Corporation Limited (2003) 2 SCC 107 as well as in the

matter of **Radha Krishan Industries Versus State of Himachal Pradesh, 2021 SCC OnLine SC 334** and summarized the principles governing exercise of writ petition in the presence of alternative remedy. The same are extracted as under:-

*“25. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in **Whirl pool Corporation Versus Registrar of Trademarks, Mumbai** and **Harbanslal Sahni Versus Indian Oil Corporation Limited**. Recently, in **Radha Krishan Industries Versus State of Himachal Pradesh**, a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:*

“28. The principles of law which emerge are that:

(i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

*(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) **the order or proceedings are wholly without jurisdiction**; or (d) the vires of a*

legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right of liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

15. It is thus evident from the perusal of the above judicial precedents that even though writ jurisdiction of High Court under Article 226 is not ousted on a mere existence of an alternative remedy and the High Court may exercise its discretion to entertain the writ petitions in appropriate cases which seek enforcement of the fundamental rights protected by the Constitution of India or the proceedings are wholly without jurisdiction and/or in circumstances where there is a blatant violation of principal of natural justice. However, at the same time the Hon'ble Supreme Court states that when a right is created by a statute which also prescribes the remedy or procedure for enforcing the right, resort must be had to that particular statutory remedy before invoking the discretionary remedy under

Article 226.

16. Undisputedly, the power of the Court to entertain a writ despite availability of an alternative remedy is not a rule but an exception. Ordinarily, the litigant must exhaust the statutory remedies available to him and simply cannot knock the High Court at his discretion merely for the sake of his convenience. The object of providing statutory remedies would be defeated if convenience of the party is to be equated to a right and a writ Court takes upon itself the responsibility as a forum at the first instance only to obliterate the projected hardship by the petitioners or to give primacy to the convenience of a litigant. The Courts have always emphasized that the legislature should always provide for statutory remedies so that litigant is not forced to directly approach the High Court. The provision of the statutory remedies is thus in furtherance of the intent of the statute to provide efficacious and affordable remedy which is more convenient to a litigant and is within the object to ensure that the factual aspects of the dispute are looked into by those statutory authorities and the issues which require judicial pronouncement are then left for final adjudication of the High Court. By passing of the statutory remedy makes the High Court as the forum of first instance to adjudicate the factual aspect of a case which was neither desired nor required. This Court has no reasons to hold or to believe that the the grievances espoused by the petitioners in the present petition cannot be looked into or examined by the statutory forums and also fails to find any valid explanation for not approaching the said statutory forums.

17. No such compelling grounds arise as would necessitate the determination of the issues in exercise of the writ jurisdiction alone. The present petition is accordingly dismissed *in limine*. Liberty is, however, granted to the petitioners to take recourse to the alternative remedies available to the petitioners as per the statute or before a Forum so advised, for seeking redressal of its grievances. Nothing stated herein should be construed as an expression on the merits of the claim of the petitioners and the competent authority/forum shall take a decision after assessing the merits of the respective claim made by the competent parties.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 14, 2023

Vishal sharma

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No