IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

102+201 **CM-3754-CWP-2023 IN/AND**
CWP-6204-2021 (O&M)
Date of Decision: 10.03.2023

M/S SKY TECH ESTATES PRIVATE LIMITED

... Petitioner

VERSUS

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Jagdish Manchanda, Advocate and
Mr. Nischal Chetanya, Advocate
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. B.R. Mahajan, Sr. Advocate with
Mr. Vivek Saini, Advocate, Haryana
for respondents No.2 to 5.

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VINOD S. BHARDWAJ, J. (ORAL)

CM-3754-CWP-2023

This is an application for placing on record the additional affidavit of Mehtab Singh, Executive Engineer, (Operations), Uttar Haryana Bijli Vitran Nigam, Rohtak alongwith Annexures R-A1 to R-A6 on behalf of the respondents No.2 to 5.

For the reasons mentioned in the application, the same is allowed subject to all just exceptions.

The additional affidavit alongwith the annexures are ordered to be taken on record.

Registry is directed to tag the same at appropriate place of the paper book and page mark the same.

MAIN CASE

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 for issuance of a writ in the nature of Certiorari raising a challenge to order dated 08.02.2021 passed by respondent no.5 as well as letter dated 23.02.2021 issued by respondent No.3. A further prayer has also been sought by the petitioner for claiming grant of waiver of interest/surcharge charged over the bills for the period of lockdown since March 2020 as well as the period prior thereto. He further contends that it is a mall that had been constructed in Rohtak after purchasing land from the Haryana Urban Development Authority in 2007 and upon completion of all types of formalities. A temporary electric connection had also been obtained by the petitioner prior to raising construction whereafter regular connection bearing account No.0092260000 was released. The petitioner claims to be regularly paying the electricity charges since the very inception of the electric connection and the Mall becoming operational. However, on account of the spread of COVID-19 pandemic the Mall had been shut down. The petitioner was thus forced to stop the operation of the Mall with immediate effect and cash transactions were severely impacted. A request was thereafter submitted by the petitioner to the respondent-Authorities for not disconnecting the electricity connection of the Mall and to provide some time to pay the departmental dues for the period till the pandemic came under control. It is submitted that the respondent-Distribution Licensee generated the bill only on the basis of average monthly consumptions notwithstanding the fact that the Mall in question had been completely shut down for the period from March 2020 till August 2020. A representation was accordingly submitted by the petitioner on 17.10.2020 requesting the respondent-Distribution Licensee to look into the grievance and to rectify the bills generated by the respondent-Department for the said period i.e. from March 2020 to August 2020. Resultantly, an additional representation was submitted by the petitioner on 19.10.2020. The petitioner thereafter received a new bill on 18.11.2020 and a sum of Rs.8,00,000/- was imposed despite the petitioner having made a representation to rectify the amount of Rs.13.14 lacs plus interest/surcharge claimed by them. He further submits that the electricity supply of the petitioner remained disconnected for the entire month. A representation giving all details was submitted by the petitioner to the Executive Engineer whereafter, a sum of Rs.2,00,000/- was deposited by the petitioner with the respondent-Distribution Licensee on an understanding that the electricity connection shall be restored. Despite the aforesaid amount having been deposited, the electricity supply had not been restored and the respondent-Distribution Licensee demanded the entire outstanding amount. He submits that a subsequent representation in continuation to the earlier representation was also sent by the petitioner, as per which a consumption of only 64 units was being reflected for the period during 13 October, 2020 to 15 October 2020, which shows that there was huge gap in the consumption pattern and that the consumption/billing reflected in the amount demanded by the respondent-Distribution Licensee was inaccurate, discrepant and showed huge difference. Repeated reminders were thus submitted. As no action was taken thereupon, CWP No.1320 of 2021 was filed by the petitioner before the High Court. The said petition was disposed vide order dated 21.01.2021 with a direction to the respondents to pass a speaking order within a period of ten days from the date of receipt of certified copy of the said order. The representation had, thereafter, been decided vide impugned order dated 08.02.2021 which is a subject matter of challenge in the present petition.

The respondents, in their reply have specifically stated that the representation submitted by the petitioner was duly considered by the respondent-Distribution Licensee and as per the sale instructions No.U-9-2020 of the respondent-Distribution Licensee, 25% of the fixed charges in the bills of March, April and May 2020 were waived off. It was further averred that the petitioner is a chronic defaulter and has always been making part payments of consumption of electricity since the year 2016 and the dispute does not relate to the corona period alone. Supply of the petitioner could not be disconnected on account of spread of COVID-19 and the bill was rectified in the month of March 2021. A complete ledger alongwith the copy of the speaking order has been appended alongwith the reply. A notice was sent to the petitioner by the SDO (Operation) Sub Division No.1, UHBVNL, Rohtak vide memo No.288 dated 23.02.2021 raising a demand for an outstanding amount Rs.42,56,847/-. The details of the payments made by the petitioner since January 2018 to October 2020 has also been mentioned in paragraph No.9 of the aforesaid short reply filed by Mehtab Singh, Executive Engineer, Operation Sub-Urban City Division, UHBVNL and an outstanding amount pending in the month of October 2020 was Rs.47,71,111/-. It was pointed out that the benefit of all amounts deposited by the petitioner as well as concession admissible to him was duly taken into consideration by the respondent-Authority while passing the order on the representation submitted by the petitioner and in compliance to the order passed by this Court. There is no access amount deposited by the petitioner with the respondent-Department and that the claim of the petitioner for waiver to the tune of Rs.68,62,961/- would be admissible if the petitioner is ready to pay the balance amount outstanding against him.

Thereafter, a detailed written statement was also filed by the Executive Engineer, Operation Division, UHBVNL, Rohtak giving complete details about the dues and receipts against the account of the petitioner. It was also pointed out in the aforesaid written statement that pursuant to the decision dated 08.02.2021, a separate representation was submitted by the petitioner on 17.02.2021 which was decided on 23.02.2021, wherein it was specifically stated that an amount of Rs.42,56,847/- is outstanding against the account of the petitioner. The petitioner requested to deposit the same within a period of seven days. He failed to do the needful whereupon, the electricity supply was disconnected. The petitioner thereafter approached this Court and vide order dated 16.03.2021 passed in the present petition, the petitioner was required to deposit an amount of Rs.10,00,000/- against the restoration of electricity connection. The aforesaid order dated 16.03.2021 in the present petition was challenged by the petitioner in LPA No.965 of 2021, which was decided on 08.10.2021, whereby the Division Bench ordered the petitioner to pay Rs.5,00,000/- within a period of fifteen days and the remaining Rs.5,00,000/- within a period of four weeks failing which the respondent-Department would be at liberty to disconnect the electricity supply. In terms of the order passed by the Division Bench and on deposit of Rs.50,00,000/- on 21.20.2021, the electricity supply was restored on 22.10.2021. The remaining amount of Rs.5,00,000/- was also deposited by him on 08.11.2021. Since 08.11.2021, the petitioner has not deposited any bill and repeated notices have been sent to the petitioner and the outstanding amount as per the aforesaid statement filed on 29.08.2022 was Rs.68,62,961/-.

An application bearing No.CM-9252-CWP-2022 was thereafter submitted by the petitioner for seeking directions to respondents to consider the

Annexures P-15 to P-17 with regard to refund/reimbursement of access payment to the tune of Rs.1,39,00,000/- plus interest to the petitioner and to not disconnect the connection of electricity during the pendency of the present petition. The petitioner claimed to have deposited an access amount and that the documents ought to be taken into consideration and that the access amount should be refunded to the petitioner alongwith interest. A separate application bearing No.CM-9253-CWP-2022 for praying an interim relief was also submitted by the petitioner.

The respondent-Distribution Licensee, however, filed additional affidavit alongwith CM-3754-CWP-2023. The relevant extract of the same reads thus:

> *"1. That vide interim order dated 16.03.2021, this Hon'ble Court had directed that the electricity connection to the petitioner's premises be restored upon provisional deposit of Rs.10 lakhs and which would be subject to the adjustment as also outcome of the instant writ petition. The order dated 16.03.2021 reads as under:-*
>
> > *"Matter has been taken up through Video Conferencing via WebEx facility in the light of the Pandemic Covid-19 situation and as per instructions.*
> >
> > *One of the contentions raised by counsel is that the petitioner had made due payments against electricity bills raised for the period 2010 till March 2020 and as such has not been in default Further submission advanced is that the default, if any, would be pertaining toMarch, 2020 onwards when Covid-19 situation had commenced.*
> >
> > *Counsel is directed to place on record the relevant documents/material to substantiate such assertion.*
> >
> > *Notice of motion, returnable for 19.04.2021*
> >
> > *In the meanwhile, electricity connection to the petitioner's premises would be restored upon provisional*

deposit of Rs10 lakhs and which would be subject to adjustment as also outcome of the instant writ petition."

However, instead of complying with the order passed by the Hon'ble Court, the petitioner filed C.M.No.6123 of 2021, praying that electricity connection be restored without deposit of Rs.10 lakhs as has been directed. However, the said C.M. was dismissed by this Hon'ble Court vide order dated 16.07.2021 The relevant part of the order dated 16.07.2021 reads as under-

"CM No.6123-CWP of 2021

Prayer in this application is for modification of order dated 16.3.2021 to the extent that electricity connection be restored without deposit of Rs. 10 lakh as has been directed.

After hearing learned counsel for the parties, I do not find any ground to modify said order. It is specifically mentioned in order dated 16 3.2021 that electricity connection to petitioner's premises be restored upon provisional deposit of Rs. 10 lakh which would further be subject to adjustment as well as outcome of the instant writ petition.

No ground is made out for any modification of said order at this stage.

In case said deposit is made by the petitioner, electricity connection to the petitioner's premises be restored immediately

Application is accordingly dismissed"

2. That thereafter, the petitioner filed LPA No.965 of 2021 challenging the order dated 16.3.2021. The said LPA was disposed of vide order dated 08.10.2021, allowing the petitioner to deposit Rs 5 lakhs within a period of 15 days and the electricity connection be restored and remaining amount of Rs 5 lakhs within 4 weeks, failing which, liberty was given to disconnect the electricity connection. The order dated 08.10.2021 reads as under-

"Present appeal has been preferred challenging the order dated 16 03.2021 whereby a condition was imposed that in case the appellant deposits an amount of Rs 10,00,000/-, electricity connection to the premises in question would be restored provisionally and the said amount would be adjusted subject to the outcome of the writ petition An application for modification of the said order was moved which has also been dismissed on 16.07.2021 which order has also been challenged by the petitioner in the present appeal.

Learned Counsel for the appellant submits that keeping in view the fact that because of Covid-19, the premises which is a mall was closed there has been no income from any source Now, permissions have been granted for opening the malls. Because of paucity of funds, the appellant is unable to deposit the amount ofRs. 10,00,000/- in one go and prays relaxation with regard to the deposit of the said amount for some Counsel for the appellant states that an amount of Rs.5,00,000/- will be deposited by the appellant within the period of two weeks from today and the remaining amount ofRs.5,00,000/- in another four weeks. He further prayed that on deposit of an initial amount of Rs.5,00,000/-, the electricity connection may be provisionally restored subject to the deposit of the remaining amount within further period of four weeks.

The prayer made by the counsel for the appellant appears to be just and reasonable and therefore, we accept the same and dispose of the present appeal by permitting the appellant to deposit an amount of Rs.5,00,000/- within a period of 15 days from today on which the electricity connection shall be restored provisionally. In case the remaining amount of Rs.5,00,000/- is deposited by the appellant within a further period of four weeks. The interim arrangement shall continue Failing which the respondents

> *will be at liberty to disconnect the electricity connection so granted in pursuance to this order."*

In compliance of the order passed, the petitioner deposited Rs.5 lakhs on 21.10.2021 and the connection was restored. The remaining amount of Rs. 5 lakhs as per order in LPA was also deposited by the petitioner on 08.11.2021.

3. That after restoration of electricity connection as per orders passed by the Hon'ble High Court, though electricity was being used, but the petitioner did not make any payments to the department of electricity bills/consumption charges. The consumption charges payable from December 2021 to January 2023, after making permissible adjustments, are Rs.51,84,359/- out of which the petitioner has deposited only Rs.4,00,000/- on 30.11.2022 and Rs. 3,00,000/- on 10.02.2023.

4. That it would be pertinent to mention here that the petitioner was already a defaulter of an amount of Rs.50.41.751/- as on November 2021 and after restoring the electricity connection in October 2021, he has not been making payments of electricity consumption charges/bill.

5. That it is humbly submitted that petitioner's electricity connection bearing Account No.092260000 was released in year 2011 and the petitioner has paid regular bills from year 2011 till September 2015. Thereafter, the petitioner started making part payments from September 2015 till January 2023. And at present the petitioner is a defaulter of an amount of Rs.1,15,84,781/- (One crore fifteen lakhs eighty-four thousand seven hundred eighty one) as on dated 21.01.2023.

6. That the representations made by the petitioner have been considered and all the electricity bills issued on provisional basis of petitioner were rectified. Even the ledger account of all the bills since July 2011 up till 21.01.2023 has also been handed over to the petitioner. For the kind perusal of the Hon'ble Court the same is annexed as (Annexure R-A1). It is further submitted that, the *relaxation of Covid-19 period has also been provided to the petitioner as per UHBVNL sale instructions 4/21(Annexure R-A2).*

7. That as per UHBVNL Sale Circular Usws-12/2022 (Annexure R- A3)regarding Surcharge Waiver Scheme, 2022 a consumer must fulfill the certain conditions to become eligible for consideration. The consumers whose cases are pending in any judicial forum, on account of billing disputes are not covered under the scheme, however if the consumer withdraws his case, he will be eligible to take the benefit of the Scheme. The scheme was valid till 31 January 2023. The petitioner was duly apprised about all the conditions required to become eligible for the scheme, vide Memo No. SWS-2 dated 12.10.2022 (Annexure R-A4) however, he did not comply with the requisite conditions, and therefore, he is not considered for surcharge waiver scheme.

8. That the Nigam has given several notices to the petitioner for making payments of electricity bills but the petitioner did not made payments, Copies of the notices served to petitioner are annexed as (Annexure R-A5). It is further submitted that due to some internal fault in electricity infrastructure of the petitioner, even the department had faced frequent breakdown of feeder several times, therefore, vide Memo No.234 dated 31.01.2023 (Annexure R-A6), the petitioner was asked to get the internal faults rectified so that the breakdown of Nigam feeder be avoided.

9. That the petitioner is himself not settling the accounts with the Nigam. Since, the petitioner is in default of Nigam dues therefore, he is not entitled to claim any relief from this Hon'ble Court.

10. That for the kind perusal of the Hon'ble Court the detail of total bill raised and amount received from July 2011 to January 2023 are tabulated as under:-

Total amount of bills payable from July 2011 to January 2023	*A*	*Rs.10,67,24,756/-*
Total provisional adjustments	*B*	*Rs.65,63,470/-*

made from July 2011 to January 2023.		
NET amount payable from July 2011 to January 2023	*A-B*	*10,01,61,286/-*
Total payment received from July 2011 to January 2023.	*C*	*Rs.8,85,76,505/-*
Total amount due from July 2011 to January 2023	*A-B-C*	***1,15,84,781/-"***

It is evident from the perusal of the above that the respondent-Distribution Licensee has pointed out that the filing of the present petition and the successive litigation only a ploy to delay the depositing the dues that are being claimed by the petitioner.

Per contra, the learned counsel for the petitioner contends that his accounts as well as the payments made by him are not being taken into consideration.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Evidently, the dispute in question relates to the bills and the payments, if any, deposited by the petitioner. While the petitioner claims that he has deposited an access of Rs.1,39,00,000/- with the respondents, the respondents in their detailed additional affidavit have given the details as per which an amount of Rs.1,59,00,000/- approximately is due to be recovered from the petitioner. They further reiterated that after availing the interim order from this Court, the petitioner has chosen not to deposit the bills that accrued thereafter. It is suggested that the pendency of the present petition is only used as a ploy by the petitioner to not pay the dues of the respondent-Distribution Licensee.

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.*
>
> *xx xx xx xx*
>
> *(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."*

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 exits 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."

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).*

<u>Classification of grievances</u>

"2.31 As far as is possible and practical, <u>the grievance shall be prioritized for redressal</u> 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) ***<u>Billing and relates issues</u>***

f) ***<u>Other issues</u>***

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

<u>Process for submission of grievance</u>

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."

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.

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 <u>payment of compensation or billing disputes of any nature or recovery of charges by the licensee and matters relating to the safety of the</u> 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.”*

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."

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*** ***<u>Monetary Complaints</u>***

<u>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),</u> 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 <u>Act shall be disposed of by the respective Forum in accordance with these Regulations</u> 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."

32. The billing related issues are dealt with under Regulation 2.22 of the said Regulations as well and the special provision for interim order has been kept intact under Regulation 2.37.

> "***Special Provision: Interim Order:***
>
> ***2.37*** *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."*

A reference to the aforesaid Regulations shows that the statute has prescribed for Consumer Grievances Redressal mechanism where a tariff is being demanded over and above the tariff approved by the appropriate

Commission. 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.

The Hon'ble Supreme Court had 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** summarized the principles governing exercise of writ petition in the presence of an 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."

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.

The law as laid down by the Hon'ble Supreme Court does not prohibit the High Court(s) from exercise of its writ jurisdiction in an appropriate case, however, it emphasizes the need of exhortion of the statutory remedies in circumstances where the right claimed is itself founded in the statute. The petitioners have failed to point out as to how the remedy prescribed under the statute is not efficacious or appropriate. Surprisingly, the averment contained in the present petition is that there is no remedy of appeal of revision against the impugned actions which such averment is incorrect. There can be no presumption that the statutory forums shall not discharge their duties dispassionately, impartially and upon appreciation of *inter se* merits of the claim lodged by the respective parties. Thus, it cannot be said at this juncture that circumstances exists in which exercise of writ jurisdiction is the only efficacious remedy available to a person and that any recourse to the statutory remedies would be defeating the rights of a litigant.

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 are the statutory remedies available to him and simply cannot knock the High Court at his discretion merely for the sake of his convenience. Conferment of jurisdiction and 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 obliviate 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.

In view of aforesaid statutory mechanism available and dispute being in the nature of a billing dispute, there is no occasion for this Court to exercise its writ jurisdiction. The present petition is accordingly dismissed.

Liberty is, however, granted to the petitioners to approach to take recourse to the alternative remedies available to the petitioners as per the statue or before a Forum so advised, for seeking redressal of their 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

10.03.2023.
rajender

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