

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

129

CWP-9901-2023 (O&M).
Date of Decision: 08.05.2023.

HARMIT SINGH AND ANOTHER

.. Petitioner

Versus

STATE OF PUNJAB AND OTHERS

... Respondents

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

Present: Mr. Davinder Singh Khurana, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

The instant writ petition had been filed for seeking issuance of directions to the respondents to release electricity connections in favour of the petitioners in the light of the judgment passed in the matter of “**Heena Yadav Vs. The State of Punjab and others,**’ bearing CWP No.11735 of 2010, decided on 02.08.2011 along with a bunch of petitions (Annexure P-2).

2. The petitioners have pleaded that they have built their houses in Mullanpur and have been requesting the respondents to supply electricity. They moved a representation dated 12.05.2022 and subsequent reminder dated 25.05.2022. However, despite the petitioners being ready and willing to fulfill all requirements and respondents being bound under Section 43 of the Electricity Act, 2003, to release the connection, the needful has not been

done and no explanation has also been furnished for such non-compliance. It is contended that that the petitioners are entitled to release of the electricity connection in light of precedent judgments.

3. Learned counsel for the petitioners has been confronted with the provisions of Section 42 (5) and (7) of the Electricity Act, 2003 and Regulations framed thereunder which provide for an efficacious alternative remedy to the petitioners and person seeking release of electricity connection.

4. 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.”

5. The Punjab Electricity Regulatory Commission in exercise of the powers conferred upon it by Section 181 read with Sections 43, 44, 45, 46, 47, 48, 50, 55, 56, 57, 58, 59, 126, 127, 135, 152, 154 and 163 of the Electricity Act, 2003 notified the **Punjab State Electricity Regulatory Commission (Electricity Supply Code and Related matters), Regulations 2014**. Clause 25 of the aforesaid Electricity Supply Code deals with the complaint's redressal system. The relevant provision reads thus:-

“25.3 Forum for Redressal of Grievances of the Consumers

Any complainant aggrieved by non-redressal of his grievance by the distribution licensee and/or under the Consumer Complaint Handling Procedure, as the case may be, may himself or through his authorized representative, approach the Forum established by the distribution licensee as per PSERC (Forum and Ombudsman) Regulations, 2005 as amended from time to time, in writing for the redressal of his grievance. Provided that the complainant shall have the right to approach the Forum directly in respect of matters falling under the jurisdiction of the Forum.

25.4 Redressal of Grievances by Ombudsman

25.4.1 A complainant aggrieved by an order of the Forum or non-redressal of grievance by the Forum within the prescribed period shall have the right to submit an appeal to the Ombudsman.

25.4.2 A consumer may submit a representation to the Ombudsman if any order passed by a Dispute Settlement

Committee, Forum or Ombudsman is not implemented within 30 days of the receipt of such order.

6. The Punjab State Electricity Regulatory Commission has also approved the guidelines for handling of consumer complaints and speedy resolution of consumer grievances relating to supply of electricity by the distribution licensee to the consumers in a transparent and expeditious manner and vide notification dated 04.10.2013 approved “**Consumer Complaint Handling Procedure (CCHP)**” as well. The relevant provisions are reproduced as under:-

“3. Nature of Complaints

Consumer complaints may pertain to;

- *Billing*
- *Metering*
- *Interruption/failure of power supply*
- *Voltage variations*
- *Load shedding/scheduled outages*
- *Disconnection/Reconnection*
- *Any other matter concerning supply of electricity*

4. Dispute Settlement Committees

(1) Complaints relating to the supply of electricity by the licensee involving monetary disputes arising due to wrong billing, application of wrong tariff or difference of service connection charges/general charges or security against consumption, metering and or CT/PT errors, 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 will be disposed of by the Dispute Settlement Committees constituted by the distribution licensee.”

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“8. Consumer’s right to approach the Forum

A complainant aggrieved due to non-redressal of his complaint under the “Consumer Complaint Handling Procedure”, may approach the Forum established by the licensee under sub-section (5) of Section 42 of the Act read with “PSERC (Forum & Ombudsman) Regulations, 2005” as amended from time to time.”

7. Detailed procedure for institution of complaint and redressal of the complaint had also been provided under the above said guidelines.

8. Thereafter, the Punjab State Electricity Regulatory Commission vide notification dated 26.12.2016, in exercise of the powers conferred under Section 181 and other provisions of the Electricity Act, 2003 notified **The Punjab State Electricity and Regulatory Commission (Forum & Ombudsman) Regulations of 2016** which provide for detailed mechanism for adjudication of disputes. The grievance for release of New Connection is within the scope of such authorities. The relevant provisions of the said Regulations are reproduced:

(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.*

(f) **“consumer”** *for the purpose of these Regulations shall be a consumer as defined under sub-section (15) of Section 2 of the Act and shall also include a person applying for new connection;*

(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 matters 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.

9. The aforesaid Regulations specify the Consumer's Right to approach and the Jurisdiction of the Commission. It also specifies the Consumer Complaint Handling Procedure. The relevant excerpt of the same are reproduced as under:-

Consumer's right to approach

2.22 For expeditious resolution of the complaint of a complainant at the local level, the Commission may approve a procedure namely "Consumer Complaint Handling Procedure" [in short CCHP] which shall perform such functions and shall have such jurisdiction as may be approved by the Commission. Provided that the complainant shall have the right to approach the Forum directly in respect of matters falling under the jurisdiction of the Forum. Provided further that the Commission may dispense with the "Consumer Complaint Handling Procedure" or amend it without any notice in case the continuation of such procedure is found to be detrimental to the interests of the consumers or the licensee.

2.23 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 licensee and/or under the Consumer Complaint Handling Procedure, as the case may be, may himself or through his authorized representative, approach the Forum in writing for the redressal of his grievance.

Jurisdiction

2.24 The Forum shall have the jurisdiction to entertain all the monetary/non-monetary complaints/grievance filed by the complainants or to take up the matter suo-moto with respect to the electricity services provided by the distribution licensee if the same fulfils the requirements specified in sub-regulation (e) read with sub-regulation (g) of Regulation 1.5 or against the decision of a Dispute Settlement Committee constituted under CCHP.

2.25 The Forum shall entertain only those complaints where the representation is made within 2 years from the date of cause of action in case the complainant approaches the Forum directly or within 2 months from the date of receipt of the orders of respective Dispute Settlement Committee constituted under CCHP.

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

2.26 In case a complainant approaches the Forum directly for redressal of his monetary dispute under first proviso to regulation 2.22 above, the consumer shall be required to deposit following amount (inclusive of amount already deposited on this account), with the Licensee, in cash or cheque (subject to realization) or through demand draft payable at the headquarters of the concerned sub-division, pending disposal of any dispute between the complainant and the Licensee and attach a copy of the receipt with the complaint:

- a) *Disputed current electricity bill amount (covered under Reg.35 of Supply Code): payment as per Regulation 35.1 of Supply Code, 2014 Regulations, as amended from time to time.*
- b) *Cases Other than that covered under (a) above: 20% of the disputed amount other than the current bill amount.*

Provided that in case the consumer is unable to make payment as specified above, the Chairperson of the Forum shall be competent to fix the amount to be deposited before consideration of the grievance by the Forum.

2.27 The Forum may reject the grievance at any stage, through a speaking order, under the following circumstances:

- a) *In cases where proceedings in respect of the same matter and between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;*
- b) *In cases which fall under Sections 126, 127, 135 to 140, 142, 143, 146, 152 and 161 of the Act or the matters relating to open access granted under the Act.*
- c) *In cases where the grievance has been submitted two years after the date on which the cause of action has arisen or after two months from the date of receipt of the orders of DSC; and*
- d) *In the case of grievances which are:*
- *Frivolous, vexatious, malafide;*
 - *Without any sufficient cause; or*
 - *Where there is no prima facie loss or damage or inconvenience caused to the Complainant or the consumers who are represented by an association or group of consumers.*

Provided that no grievance shall be rejected unless the Complainant has been given an opportunity of being heard.

Grievance filing

2.28 Every grievance to the Forum must be submitted in writing to the Forum stating-

- a) the name of the individual or the organization, complete postal address, telephone number, fax number and the E-mail address (if any) of the complainant;*
- (b) the name of licensee's office viz. sub-division, division or circle office to which the grievance pertain;*
- (c) a full description of the matter, which is the source of the grievance, including copies of any relevant and supporting documents, if any;*
- (d) the relief prayed for;*
- (e) that the matter is not pending before any other court, authority or forum.*

2.29 A copy of response, if any, from the licensee shall be enclosed.

2.30 The Forum may seek additional information and details from the complainant(s).

2.31 The Forum may receive complaints through e-mail or facsimile mode and also during its sittings at places other than its headquarters subject to fulfillment of such requirements as the Forum may consider appropriate.

2.32 The grievances shall be prioritized for redressal based on the following priority order:

- a) Non-Supply*
- b) Connection*

- c) Disconnection of supply*
- d) Meter-related issues*
- e) Billing-related issues*
- f) Other issues viz deficiency in service &/or performance &/or safety norms etc.*

2.33 In case of grievances related to non-supply, connection or disconnection of supply, the Forum shall pass the order within 15 days of filing of the grievance.

Provided also that in the event of grievance being disposed of after the maximum period specified above, the Forum should record in writing, the reasons for the same at the time of disposing the said grievance and inform the Ombudsman.

Grievance handling procedure

2.34 On receipt of the consumer grievance, the Secretary to the Forum shall make an endorsement on the grievance subscribing his dated initial.

2.35 Consumer grievances received shall be registered and serially numbered for each year, and shall be referred e.g. C.G. No. 1/2005, 1/2006 and so on. Within 3 working days of receipt of a consumer grievance, the Secretary to the Forum shall send an acknowledgement to the applicant showing serial number and date of receipt of the complaint/grievance. He shall also be responsible to inform the complainant of the status of his complaint in the Forum in case of inquiry by the complainant in this regard.

2.36 A copy of the grievance shall be forwarded simultaneously to the concerned officer of the licensee for redressal or to file

objection, if any, in writing in case the licensee is not agreeable to the request of the complainant.

2.37 The employee nominated/authorized in this regard by the licensee or the employee named in the complaint shall furnish the parawise comments on the grievance within 10 days from the date of receipt of the letter from the Forum, failing which the Forum shall proceed on the basis of the material available on record.

2.38 In addition to the record of the concerned Dispute Settlement Committee (if applicable), the Forum may call for further information or record from the Licensee or the complainant that it considers relevant for examination and disposal of the grievance and the parties shall be under obligation to provide such information or record as the Forum may call for. The concerned party will send the same to the Forum within 7 days of receipt of its requisition. Where a party fails to provide such information, document or record within the stipulated time and the Forum is satisfied that the party in possession of the record is withholding it deliberately, it may draw an adverse inference.

*2.39 On receipt of the comments from the licensee or otherwise and after conducting or having such inquiry or local inspection conducted as the Forum may consider necessary, and after affording reasonable opportunity of hearing to the parties, the Forum shall pass appropriate orders for disposal of the grievance, as far as possible, within 45 days of filing the complaint. The complaint/grievance by senior citizens, physically challenged or person suffering from serious ailments shall be disposed of on priority. **However the order in case of grievance relating to non-supply, connection or disconnection***

of supply shall be issued by the Forum within 15 days of the filing of the grievance.

2.40 The Forum may direct the Licensee to undertake an inspection with regard to the grievance, as may be required for expeditious redressal. The Forum may also engage a third party (other than the licensee) at the instance and request of the Complainant, to undertake inspection and obtain an independent report. The Forum shall record the reasons for the need for such third-party inspection, which should generally be resorted to rarely and keeping in view the special circumstances of a case. The expenses of such third-party inspection shall be payable by the Complainant and got deposited in advance.

2.41 The decisions of the Forum will be recorded duly supported by reasons. The Order of the Forum will be communicated to the complainant, Licensee and the concerned Dispute Settlement Committee, if applicable, in writing within 7 days of the passing of the Order. The Licensee shall comply with the order of the Forum within 21 days from the date of receipt of the order. In appropriate cases, considering the nature of the case, the Forum, upon the request of the Licensee, may extend the period for compliance of its order up to a maximum of three months. In case of non-compliance of the Order of the Forum or that of a Dispute Settlement Committee, the aggrieved consumer may approach the Commission who will provide the consumer as well as the Licensee an opportunity of being heard. The Commission may initiate proceedings under section 142 of the Act for violation of the Regulations framed by the Commission.

2.42 The Forum may, subject to the Electricity Supply Code and Related Matters Regulations made by the Commission in this regard, award such compensation to the complainants as it considers just and appropriate in the circumstances of the case.

Provided that the interest payable on recoverable/ refundable amount if any, by either party shall be as under:

- i) **Cases covered under 2.26 (a) above** : as per Regulations 35.4 & 35.5 35.1.3 & 35.1.4 of Supply Code Regulations, as amended from time to time, as the case may be.*
- ii) **Cases covered under 2.26 (b) above:** at SBI Base Rate prevalent on 1st of April of the relevant year plus 2%. 13*

2.43 Where the complainant or the licensee fails to appear before the Forum on the date fixed for hearing on more than two occasions, the Forum may decide the complaint ex-parte.

2.44 The Forum may evolve procedure conforming to the principles of fair play and justice for efficient discharge of its functions. It shall also follow the guidelines, if any, given by the Commission regarding the procedure to be adopted by it for handling the complaints.

2.45 Any complainant aggrieved by orders of the Forum may prefer a representation before the Ombudsman appointed / designated by the Commission.

10 The Forum has also given powers to issue interim directions pending final disposal of 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.

- 11 A reasoned order has to be passed by the Forum. Similar provisions for Ombudsman have also been prescribed therein.

Redressal of Grievances by Ombudsman

Filing of representation

3.16 Any complainant, aggrieved by orders of the Forum may himself or through his authorized representative make a representation in writing including through email or facsimile mode to the Ombudsman. The representation of the complainant shall be

acknowledged within 3 days of its receipt clearly indicating the date of receipt & unique case number assigned to it.

3.17 The representation shall state clearly:

(i) the name/s and address of the consumer/s, service connection number, category, the name of the licensee's office, against which the representation is made, the facts giving rise to the representation, the grounds thereof, the relief sought from the Ombudsman.

(ii) the name of the Forum, date of order or decision of the Forum, as the case may be, along with a copy thereof.

3.18 No representation to the Ombudsman shall lie unless:

(i) The consumer had, before making a representation to the Ombudsman approached the Forum constituted under sub-section (5) of Section 42 of the Act, for redressal of his grievance;

(ii) The representation is made within one month from the date of receipt of the order of the Forum: Provided that the Ombudsman may entertain a representation beyond one month on sufficient cause being shown by the complainant that he/she had reasons for not filing the representation within the aforesaid period of one month.

(iii) The person filing the representation makes a deposit of 40% (forty per cent) of the amount assessed by the Forum (inclusive of amount already deposited on this account), with the Licensee, in cash or through demand draft payable at the headquarters of the concerned sub-division and submit documentary evidence of such deposit.

(iv) The representation by the Complainant, in respect of the same grievance, is not pending in any proceedings before any court, tribunal or arbitrator or any other authority; a decree or award or a final order has not been passed by any such court, tribunal, arbitrator or authority.

(v) The Ombudsman may reject the representation at any stage if it appears to him that the representation is:

a) Frivolous, vexatious, mala fide;

b) Without any sufficient cause'

c) There is no prima facie loss or damage or inconvenience caused to the Complainant;

Provided that the decision of the Ombudsman in this regard shall be final and binding on the Complainant and the Distribution Licensee.

Provided further that no representation shall be rejected in respect of subclauses (a), (b) and (c) unless the Complainant has been given an opportunity of being heard.

Hearing of Representation

3.19 The Ombudsman shall, within seven days of registration of a representation, call for the relevant record from the concerned Forum which will forward such record within seven days from the date of receipt of notice from the Ombudsman.

3.20 The Ombudsman may, at the same time, also call for a written statement/parawise comments of the Licensee on the representation. The Licensee will furnish the written statement/parawise comments within fifteen days from the date of receipt of such letter. Any other document required and called for by the Ombudsman will also be furnished by the Licensee/ consumer within the stipulated period. In case the Licensee fails to furnish the written statement/parawise comments within the stipulated period, the Ombudsman may impose costs as are considered reasonable and sufficient. The concerned consumer may also be liable for similar action in the event of failure to furnish any additional document called for by the Ombudsman.

3.21 The Ombudsman may hear the parties and may direct the parties to submit written statements of submissions in the matter.

3.22 No adjournment shall ordinarily be granted by the Ombudsman unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Ombudsman.

12 Similar provisions of interim orders have also been retained therein.

The same are extracted as under:-

Special Provision: Interim Order:

3.23 Upon request of the Complainant, the Ombudsman 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 Ombudsman thinks fit.

Provided that the Ombudsman 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 Ombudsman 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 Ombudsman 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 Ombudsman 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 Ombudsman on an application made by any party if it is found that the complainant has made a false or misleading statement.

13 A reference to the aforesaid Regulations show that Statute has prescribed for Consumer Grievances Redressal Mechanism. The above statutory authorities have been duly constituted and are required to decide complaints in a time bound manner. Even powers of granting interim directions have been conferred upon the authorities under Statutory framework.

14 Moreover, Government of India vide dated 31.12.2020, notified the Electricity (Rights of Consumers) Rules, 2020. Rule 15 which provides for Grievance Redressal Mechanism is reproduced below for reference:-

"15. "Grievance redressal mechanism (1) The distribution licensee shall establish Consumer Grievance Redressal Forum (CGRF) under sub-section (5) of section 42 of the Act at different levels to cater the needs of the sub- division, division, circle, zone, company level. The forum shall be headed by an officer of the licensee of appropriate seniority. The forum shall consist of officers of the licensee and have not more than four members as consumer and prosumer representatives. The Appropriate Commission shall nominate one independent member who is familiar with the consumer affairs. The forum may be assigned different types of grievances depending on the nature of the grievance and the level at which it can be best resolved.

Provided that the manner of appointment and the qualification and experience of the persons to be appointed as member of the forum and the procedure of dealing with the grievances of the consumers by the Forum and other similar matters would be as per the guidelines specified by the State Commission.

(2) The licensee shall specify the time within which various types of grievances by the different levels of the forums are to be resolved. Normally, a grievance shall be decided within a period of thirty days and in any case not exceeding forty five days from the date of receipt of such grievance. The consumer aggrieved by the decision of sub-divisional or divisional or circle forum will have the option to approach the company level forum before making an appeal to the Ombudsman.

(3) If a grievance is not redressed by the company level forum within the specified time or the consumer is not satisfied with the disposal of his grievance, he will be free to approach the Ombudsman appointed by the Commission.

(4) The distribution licensee shall give wide publicity of the forum office, its complete address, contact details and procedure for registration of grievances through print and electronic media and notice boards of its various offices and also intimate the same to the consumers through electricity bills.

(5) The distribution licensee shall set up a mechanism for monitoring of the grievances redressal.

(6) The licensee will send quarterly reports to the Ombudsman and to the Commission, in respect of standards of performance, other performance parameters and consumer grievances related information showing the extent to which the time schedule has been followed in redressing the consumer grievances.

(7) The performance of CGRF shall be monitored by the Commission."

15. It is well settled provision in law and often reiterated and also relied

by the Hon'ble Supreme Court in the matter of ' **N.P. State Agro Industries**

Development Cooperation Vs. Johan Khan' reported as (2007) 10 SCC

88 that the power of the High Court under Article 226 of the Constitution of India is plenary in nature, not limited to any other provision of the Constitution. Prior exhaustion of alternate remedy is a rule of prudence and not of compulsion. In appropriate cases, the High Court may in its discretion, entertain the writ petition prior to availing alternative remedial measures. Some of the circumstances where the Hon'ble Supreme Court has upheld the maintainability of a writ petition despite existence of an alternative remedy are categorized as under:

- (i) Where the petitioner seeks to highlight the violation of fundamental rights and press for enforcement of the same; or*
- (ii) Where there is blatant violation of principles of natural justice; or*
- (iii) Where the impugned order or action has been passed without jurisdiction; or*
- (iv) Where the vires of the concerned Act itself have been assailed; or*
- (v) Where the Court or the Tribunal against which the grievance is espoused lacks inherent jurisdiction; or*
- (vi) Where the act in question suffers from blatant arbitrariness, discrimination, abuse of authority of power or disregards settled law; or*
- (vii) Where the alternative remedy does not provide for the immediate, emergent or the interim relief that has been prayed for and in the absence of grant of such interim indulgence/emergent or immediate relief, the litigant suffers irreparable loss and injury or where the composition of the remedy renders it unfit for functioning.*

16. In the absence of the circumstances noticed above, a writ jurisdiction would not be panacea for all the maladies which a litigant may suffer. It was

also held by the Hon'ble Supreme Court in the matter of '**Commissioner of Income Tax & Others Vs. Chhabil Dass Agarwal**' reported as 2014 (1) SCC 603 that the High Court will not entertain a writ under Article 226 of the Constitution of India if an effective alternate remedy is available to the aggrieved person in the statute under which the action complained of has been taken or the statute itself contains a mechanism for a redressal of grievance and it still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. The burden lies on the person approaching the Writ Court to explain as to why, despite existence of a specialized statutory remedy, the High Court still ought to exercise its writ jurisdiction.

17. *The Hon'ble Supreme Court in the matter of **Radha Krishan Industries Versus State of Himachal Pradesh and others**, reported as (2021)6 SCC 771 held as under:-*

“27. 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 or 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.”

18. The circumstances of the present case fairly establish that there are no compelling circumstances on the basis whereof it may be held that the rights of the petitioner would be gravely prejudiced or defeated in case the writ Court does not intervene into the matter. I do not find any satisfactory reasons as to why the petitioner ought not exhaust their alternative remedy(ies) and prefer an appeal before the Appellate Authority under Section 127 of the Electricity Act, 2003 and the Regulations thereunder.

19. Undisputedly, the Regulations of 2016 are currently in force. Definition of complainant as provided therein, when read with the definition of complaint; consumer and consumer grievances clearly establish that a person who is desirous of release of a new electricity connection can also

approach the Forum for redressal of his grievances including non-release of connection. Further, the consume complaint handling procedure under the above Regulations prescribe second priority to the grievance relating to release of connection under Clause 2.32. Such dispute is required to be examined and order is to be passed within 15 days of submission of such grievance. Some time period has also been prescribed for grievances. Power to grant interim order has also been vested under Regulation 2.46 thereof. Similar provisions have also been created for the Electricity Ombudsman and he too has been given power to issue interim orders under Regulation 3.23. Hence, it is evident that efficient and alternative dispute resolution procedure is duly provided under the Statute.

20 As a matter of fact, notwithstanding that the efficacious remedy has been prescribed under the Statutory Scheme, learned counsel for the petitioners has made an averment in the present petition that there is no other efficacious alternative remedy available to the petitioners except by means of filing the present petition in paragraph No.10 of the present petition. Such an averment which is not based on correct reference to the statutory provisions is clearly an attempt to mislead this Court. The non-disclosure of information including the statutory remedies available is clearly an attempt to mislead this Court and may be viewed as interference in the due process of administration of justice.

21 The position of law as regards entitlement of a citizen to seek electricity connection is not disputed. However, recognition/declaration of such a right does not also mean that jurisdiction under Article 226 of the

Constitution of India, is the only remedy available in law and there is no need to take recourse to the Statutory remedy.

22 This court would ordinarily be inclined to impose heavy costs upon a litigant for concealing the aforesaid information and exhaustive grievance redressal mechanism. The petitioner was informed about the alternative remedies and conveyed about approaching the said Forum. However, the petitioner counsel insisted of complete absence of alternative remedy and for adjudication of his case on merits. Apart from the above remedy available under the Electricity Act, 2003, the grievance for release of electricity connection can also be raised before the Permanent Lok Adalat (Public Utility Services) under the Legal Services Authorities Act, 1987; the Right to Service Commission as well as under the Consumers Protection Act. Hence, numerous avenues, all conferred with power to issue interim orders are available to the petitioners. The insistence was thus not only misplaced but also undesired especially when a jurisdiction had already been pointed out to him. The present petition is accordingly dismissed, imposing a cost of Rs.20,000/- (Rupees Twenty Thousand only) on the petitioners. The cost be deposited with the High Court Legal Services Committee, Chandigarh.

23 Dismissal of the petition would, however, not operate as a bar to the petitioners to take recourse to the Statutory remedies.

May 08, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned
Whether reportable

: Yes/No
: Yes/No