IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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Reserved on: 25.09.2023.

Date of Decision: 03.11.2023.

(1) **CWP-17371-2022 (O&M).**

M/S BAJWA DEVELOPERS PVT. LTD.

... Petitioner

Versus

THE STATE OF PUNJAB AND OTHERS

... Respondents

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(2) **CWP-25590-2022 (O&M).**

HDFC BANK LTD

... Petitioner

Versus

PUNJAB STATE POWER CORPORATION LTD. AND OTHERS

... Respondents

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

PRESENT Mr. Baltej Singh Sidhu, Sr. Advocate, with
Ms. Gagandeep Kaur Sidhu, Advocate, and
Mr., Chandan Singh, Advocate,
for the petitioner in CWP-17371-2022.

Mr. Narender Hooda, Sr. Advocate, with
Mr. Rishab Raj Jain, Advocate, and
Mr. Naveen Sharma, Advocate,
for the petitioner-HDFC Bank Ltd. in CWP-25590-2022.

Mr. Pratap Singh Gill, Advocate,
for respondent No.1 in CWP-25590-2022.

Mr. Vikash Mohan Gupta, Addl. A.G. Punjab.

Mr. Samir Rathaur, Advocate, and
Mr. A.A. George, Advocate,
for respondent No.2 in CWP-25590-2022.

Ms. Anu Chatrath, Sr. Advocate, with
Ms. Divya Sharma, Advocate and
Ms. Samridhi, Advocate, for the respondents/PSPCL.

VINOD S. BHARDWAJ, J.

Both these writ petitions are being decided by a common order considering that the issue is inter-related.

CWP-17371-2022

The prayer made in the present writ petition is for seeking quashing of the impugned Memo No.2336/38 dated 19.07.2022 (Annexure P-4) issued by respondent No.5-the Assistant Executive Engineer, PSPCL, whereby the petitioner has been directed to deposit the outstanding bill allegedly by levying an illegal penalty and fine and without disclosing bifurcation of the outstanding bill, fine charged and the penalities imposed. A further prayer has been made for seeking directions to the respondents to not dis-connect the electricity supply as the same is likely to cause hardship to the residents of the locality.

The petitioner-Company was incorporated in the year 2001 and has been developing various projects/townships after obtaining sanctions/approvals from the competent Authority. Various projects are currently at different stages of development and certain connections for developing residential colonies have already been released by the respondent Distribution licensee. An agreement dated 22.06.2006 (Annexure P-3) was executed between the petitioner-Company and the State of Punjab as per which the Government of Punjab was to facilitate the provisions of power supply, road, accessibility, water and infrastructure after the petitioner-company has applied for the same with the concerned Department/Authority on fulfillment of various terms and conditions required therein. The petitioner-Company was granted temporary meters under various such contracts for supply of electricity to the allottees on temporary basis. It is claimed by the petitioner-Company that it was regularly paying the energy consumption charges, however, the allottees stopped the energy consumption charges with the onset of Covid – 19 Pandemic and as a result thereof, the petitioner-company was not able to release the pending payments. The PSPCL raised a demand without giving details/breakup of the calculations and also carried out dis-connections of electricity supply to many allottees. A demand showing the total outstanding amount of Rs.3,45,78,500/- as on 27.06.2022 was raised against the petitioner-company without disclosing the actual usage, fine and penalty. The petitioner-company deposited some amount on 19.07.2022 and also sought for details about the calculations. Respondent, however, carried out disconnection of electricity supply in case of non-payment. It is claimed that a demand notice sent by the respondent Distribution licensee is illegal and arbitrary and that the respondents have not given any details of the actual consumption and/or the various components of the demand raised from it. Hence, the present petition was filed.

A short affidavit on behalf of respondents No.2 to 4 of Er. Taranjeet Singh, Senior Executive Engineer, Operation Division (Special), PSPCL, Mohali, was filed, wherein it has been averred that the petitioner-company-consumer has outstanding payments in relation to 13 Accounts within the stipulated time i.e. on 30.8.2022. The detail list of 13 Accounts with its pending tentative energy charges along with a separate head of total energy charges inclusive of penalty has been attached as Annexure R-1. It is mentioned that there has been permanent disconnection of 03 Accounts mentioned at Sr. No.4, 5 and 6 in the list attached bearing Accounts No.3000329503, 300327301 and 3004876021 and that Account No.4 and 5 belongs to the builder own house and industry respectively. The sum total of the outstanding payments along with the late payment charges, unauthorized use of energy (UUE) and amount transferred to other accounts etc. has also been detailed. It is further averred that excess amount deposited by the petitioner-company in the pending account (out of the mentioned 13 Accounts) was adjusted against recovery of outstanding dues from the petitioner in other accounts. The credit of the outstanding amount was thus given to the petitioner in the other accounts/payments that were outstanding upon him. The details of the amounts transferred/adjusted in other Accounts is as under:-

> "a) *The consumer/petitioner made a payment of an excess amount of Rs. 53,06,312/-.which was due to 4 different accounts in a single account bearing account no. 3004716376 (serial no. 3) therefore, the excess amount from this account was transferred/ adjusted other 3 accounts mentioned at serial no. 1, 4 and 5 respectively,*
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> *b) Rs. 22,06,312/- transferred to account no.'s 3005632728 + 30000329503 amounting to Rs. 3,90,612/- + 18,15,700/- on 23.08.2021.*
>
> *c) Rs. 21,00,000/- transferred to account no.'s 3005632728 + 30000329503 + 3003327301 amounting to Rs. 6,00,000/- + 11,00,000/+4,00,000/- on 30.06.2021.*
>
> *d) Rs. 10,00,000/- transferred to account no. 3003327301 on 11.01.2022."*

It is submitted that the act of the distribution licensee is within the scope of the rules and regulations to recover the pending dues from the defaulting accounts under Regulations 36 and 37 of the Electricity Supply Code read with Section 126 of the Electricity Act, 2003. Some electricity connections were permanently disconnected on account of non-payment as per Regulation 91 of the Electricity Supply Instructions Manual and penalty has been calculated in accordance with Regulation 31.9 of the Electricity Supply Code.

CWP-25590-2022

Prayer in the present writ petition is for seeking issuance of directions to respondent No.1 to sanction new electricity meter connection in the name of the petitioner at the premises i.e. 1st, 2nd and 3rd Floor of C-110, Phase 7, Mohali, Punjab, i.e. the premises in possession of the petitioner vide registered lease deed dated 05.02.2018 without insisting on payment of the electricity dues accrued against respondent No.3-land owner for the entire building in question. A further direction has been sought for reconsidering the online application dated 03.06.2022 (Annexure P-16) for release of fresh electricity connection. The petitioner is a banking institution and had entered into an agreement with the owner i.e. respondent No.3 Jarnail Singh for taking the above said premises on lease. The said building was mortgaged by respondent No.3 Jarnail Singh to secure loan for a sum of approximately Rs.20 Crores but electricity supply to the aforesaid building has, however, been restrained by the respondent distribution licensee for the reasons that there are some unpaid electricity dues on the building and that respondent No.2-India Bulls Commercial Credit Limited has attached the above said building in terms of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short 'the SARFAESI Act'). The outstanding amount was not paid by the owner i.e. the respondent No.3 Jarnail Singh due to which the electricity supply was disconnected.

It is averred that the petitioner Banking Institution has been regularly paying its electricity dues and consumption charges and that notwithstanding the same, the electricity supply to the petitioner has been discontinued on account of the arrears which are to be recovered from the landlord/owner. Petitioner is thus constrained to run banking operations by generating electricity through Diesel Generator Set. The petitioner claims that it is at no fault and that it is ready and willing to pay all the electricity consumption charges and that the respondent distribution licensee ought to effect recovery from the owner of the premises and not to deny the release of electricity meter to the petitioner banking institution which the petitioner is not liable to pay. It is further averred that petitioner banking institution is paying Rs.12,00,000/- per month for the 1st, 2nd and 3rd Floor of C-110, Phase 7, Mohali, Punjab and that it may be ordered to deposit the above said arrears in installments. Various representations have been sent by the petitioner to the respondent agencies to release the new electricity connection, however, the same has failed to yield any result. The public services being offered by the petitioner are gravely prejudiced due to non-release of the electricity connection. Thus, the writ petition.

Short reply by way of affidavit on behalf of respondent No.1 of Er. Taranjeet Singh, Senior Executive Engineer, Operation Division (Special), PSPCL, Mohali, was filed, wherein it has been averred that there are 10 different electricity connections running that belongs to Jarnail Singh Bajwa and that he has defaulted to the extent of Rs.4,40,47,526/- as on 26.10.2022 against all accounts. The defaulting amount against the premises C-110, Phase 7, Mohali was Rs.1,24,99,197/-. It is averred that the electricity supply cannot be restored to the said site/premises until the entire defaulted amount is paid and/or the dues are cleared in view of Regulation 30.13 to 30.15 of the Electricity Supply Code. The said Regulations are extracted as under:-

> "*30.13 If a consumer vacates any premises to which electricity has been supplied by a distribution licensee without paying all charges due from him in respect of such supply, or for the provision of an electricity meter, electric line or electrical plant, the distribution licensee may refuse to give him supply at any other premises until he pays the amount due and also may refuse to connect such premises either on request from existing consumer or on application for new connection by any person till all dues are cleared.*
>
> *30.14 Once the final bill is raised under Regulation 30.12, the distribution licensee shall not have the right to recover any other charge(s) from the new occupant of the premises.*
>
> *30.15 In case of transfer of property by sale/inheritance, the purchaser/ heir shall be liable to pay all charges due with respect to such property and found subsequently recoverable from the consumer."*

Thus, it is averred that a mere change of the consumer does not prohibit the distribution licensee for raising a demand from the person who occupies the premises and that it may refuse to give supply until the amount is paid. It is averred that in view of the aforesaid statutory provision, it cannot reinstate the electricity supply or release the electricity connection until and unless the entire arrears are cleared.

A separate short reply had also been filed by respondent No.2- India Bulls Commercial Credit Ltd. wherein it is averred that the issue would be barred under Section 34 of the SARFAESI Act, 2002. A civil Court does not have any jurisdiction to grant any injunction and/or any other directions nor the property in question had been purchased by the said respondent.

Learned counsel appearing for the parties have reiterated their arguments noticed above and they claim that the operations of the banking institution are prejudicially affected by non-release of the electricity connection and that the details of the outstanding amount have not been informed. Consequently, the petitioners cannot be denied the release of the electricity connection on the frivolous context and that the respondents should review the amount demanded and grant sufficient time to the petitioner HDFC Bank, who is a tenant, to clear the dues.

Per contra, the contention of the learned counsel for the respondents is that the details of the outstanding amount against different accounts have already been furnished including the amount transferred from different accounts of the respondent landlord. Upon computing the outstanding amount/arrears and adjusting the excess amount received from the landlord, the outstanding amount, the payment received, the details of the amount transferred or other amounts are tabulated as under:-

Bifurcation

Invoices	21297362
LP/LM/GB	4487652
UUE	5896692
Payment	-19108436
Amount transferred from other accounts	27913041
Total	40486311

It is thus claimed that an amount of Rs.4,04,86,311/- is outstanding against the different accounts of the respondent landlord. He argues that the dispute regarding the computation and/or the demand raised is amenable to different alternative remedies. In so far as the demand against unauthorized use of electricity is concerned, the same is appealable under Section 127 of the Electricity Act, 2003 whereas the billing dispute as well as the consumption charges, if disputed, are subject to the jurisdiction of the Consumer Grievances Redressal Forum under Section 42 (5) of the Electricity Act, 2003. He contends that all these disputed questions of fact as are being sought to be agitated today are not to be gone into by a writ Court and that the petitioners should, if so advised, approach the competent alternative Dispute Redressal Forum for seeking resolution of their disputes.

I have heard the learned counsel for the respective parties and have gone through the Annexures appended along with the present petitions.

Before proceeding further into the matter, certain relevant provisions as are necessary for adjudication of the present writ petitions are being adverted to hereinafter below:-

> "**Electricity Act, 2003: Object**"
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> *"An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to development of electricity industry, promoting competition therein, protecting interest of consumers and supply of electricity to all areas, rationalisation of electricity tariff, ensuring transparent policies regarding subsidies, promotion of efficient and environmentally benign policies, constitution of Central Electricity Authority, Regulatory Commissions and*

establishment of Appellate Tribunal and for matters connected therewith or incidental thereto.

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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.

(2) The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:

Provided that such open access shall be allowed on payment of a surcharge in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

Provided also that such surcharge and cross subsidies shall be progressively reduced in the manner as may be specified by the State Commission:

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003 (57 of 2003), by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.

(3) Where any person, whose premises are situated within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access.

(4) Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.

(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.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.

43. Duty to supply on request.—(1) Save as otherwise provided in this Act, every distribution licensee, shall, on an application by the owner or occupier of any premises, give supply of electricity to such premises, within one month after receipt of the application requiring such supply:

Provided that where such supply requires extension of distribution mains, or commissioning of new sub-stations, the distribution licensee shall supply the electricity to such premises immediately after such extension or commissioning or within such period as may be specified by the Appropriate Commission:

Provided further that in case of a village or hamlet or area wherein no provision for supply of electricity exists, the Appropriate Commission may extend the said period as it may consider necessary for electrification of such village or hamlet or area.

Explanation.—For the purposes of this sub-section, "application" means the application complete in all respects in the appropriate form, as required by the distribution licensee, along with documents showing payment of necessary charges and other compliances.

(2) It shall be the duty of every distribution licensee to provide, if required, electric plant or electric line for giving electric supply to the premises specified in sub-section (1):

Provided that no person shall be entitled to demand, or to continue to receive, from a licensee a supply of electricity for any premises having a separate supply unless he has agreed with the licensee to pay to him such price as determined by the Appropriate Commission.

(3) If a distribution licensee fails to supply the electricity within the period specified in sub-section (1), he shall be liable to a penalty which may extend to one thousand rupees for each day of default.

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45. Power to recover charges.—(1) Subject to the provisions of this section, the prices to be charged by a distribution licensee for the supply of electricity by him in pursuance of section 43 shall be in accordance with such tariffs fixed from time to time and conditions of his licence.

(2) The charges for electricity supplied by a distribution licensee shall be—

(a) fixed in accordance with the methods and the principles as may be specified by the concerned State Commission;

(b) published in such manner so as to give adequate publicity for such charges and prices.

(3) The charges for electricity supplied by a distribution licensee may include—

(a) a fixed charge in addition to the charge for the actual electricity supplied;

(b) a rent or other charges in respect of any electric meter or electrical plant provided by the distribution licensee.

(4) Subject to the provisions of section 62, in fixing charges under this section a distribution licensee shall not show undue preference to any person or class of persons or discrimination against any person or class of persons.

(5) The charges fixed by the distribution licensee shall be in accordance with the provisions of this Act and the regulations made in this behalf by the concerned State Commission.

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50. The Electricity supply code.—The State Commission shall specify an electricity supply code to provide for recovery of electricity charges, intervals for billing of electricity charges, disconnection of supply of electricity for non-payment thereof, restoration of supply of electricity, measures for preventing tampering, distress or damage to electrical plant or electrical line or meter, entry of distribution licensee or any person acting on his behalf for disconnecting supply and removing the meter, entry for replacing, altering or maintaining electric lines or electrical plants or meter and such other matters.

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56. Disconnection of supply in default of payment.—(1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer:

Provided that the supply of electricity shall not be cut off if such person deposits, under protest,—

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

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126. Assessment.— (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed.

(3) The person, on whom an order has been served under sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person.]

(4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him:

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity

has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection

(6) The assessment under this section shall be made at a rate equal to the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.—For the purposes of this section, —
(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;
(b) "unauthorised use of electricity" means the usage of electricity–
(i) by any artificial means; or
(ii) by a means not authorised by the concerned person or authority or licensee; or
(iii) through a tampered meter; or
(iv) for the purpose other than for which the usage of electricity was authorised; or
(v) for the premises or areas other than those for which the supply of electricity was authorised.

127. Appeal to Appellate Authority.—(1) Any person aggrieved by the final order made under section 126 may, within thirty days of the said order, prefer an appeal in such form, verified in such manner and be accompanied by such fee as may be specified by the State Commission, to an appellate authority as may be prescribed.

(2) No appeal against an order of assessment under sub-section (1) shall be entertained unless an amount equal to 3 half of the assessed amount] is deposited in cash or by way of

bank draft with the licensee and documentary evidence of such deposit has been enclosed along with the appeal.

(3) The appellate authority referred to in sub-section (1) shall dispose of the appeal after hearing the parties and pass appropriate order and send copy of the order to the assessing officer and the appellant.

(4) The order of the appellate authority referred to in sub-section (1) passed under sub-section (3) shall be final.

(5) No appeal shall lie to the appellate authority referred to in sub-section (1) against the final order made with the consent of the parties.

(6) When a person defaults in making payment of assessed amount, he, in addition to the assessed amount shall be liable to pay, on the expiry of thirty days from the date of order of assessment, an amount of interest at the rate of sixteen per cent per annum compounded every six months.

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ELECTRICITY SUPPLY CODE

*"**30.12 CHANGE OF OCCUPANCY***

It shall be the responsibility of the owner/occupant of a premises to get a special reading done by the distribution licensee at the time of change of occupancy or on the premises falling vacant. The owner or occupier may request the distribution licensee in writing for a special reading at least 15 days in advance of such a change. The distribution licensee shall arrange a special reading and deliver the final bill, including all arrears till the date of billing, within 7 days of the *meter reading. The final bill shall also include payment for the period between the date of special reading and the proposed vacation of the premises on a pro rata basis.*

30.13 If a consumer vacates any premises to which electricity has been supplied by a distribution licensee without paying all charges due from him in respect of such supply, or for the provision of an electricity meter, electric line or electrical plant, the distribution licensee may refuse to give him supply at any other premises until he pays the amount due and also may refuse to connect such premises either on request from existing consumer or on application for new connection by any person till all dues are cleared.

30.14 Once the final bill is raised under Regulation 30.12, the distribution licensee shall not have the right to recover any other charge(s) from the new occupant of the premises.

30.15 In case of transfer of property by sale/inheritance, the purchaser/ heir shall be liable to pay all charges due with respect to such property and found subsequently recoverable from the consumer."

Further, the Punjab State Electricity Regulatory Commission notified the PSERC (Forum and Ombudsman) Regulations, 2016 vide notification dated 26.12.2016, for redressal of grievances of the consumers and the relevant regulations are extracted as under:-

"DEFINITIONS

1.5 In these Regulations, unless the context otherwise requires:-

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(f) "<u>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</u>

(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.

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<u>CONSUMER'S RIGHT TO APPROACH</u>

2.22 For expeditious resolution of the compliant 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.*

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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.

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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 pertains ;

(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

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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.

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***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."

Similar provisions have also been provided in relation to the powers vested with the Ombudsman.

A perusal of the above clearly shows that in so far as the grievance of the consumer relating to any billing dispute of any nature or recovery of charges by licensee etc. are concerned, the Consumer Grievances Redressal Forum is not only competent to look into the said issue but is also competent to grant interim relief. If a consumer is not satisfied with the outcome of the said decisions, he can prefer a representation before the Electricity Ombudsman.

Similarly, in matters pertaining to unauthorized use of energy in case there is no grievance pertaining to the assessment/the demand raised from a consumer, such orders are appealable under Section 127 of the Electricity Act, 2003 before the Appellate Authority.

Additionally, Regulation 30.12 makes it obligatory for the owner/occupant to get the special reading done by the distribution licensee at the time of change of occupancy and call for a final bill including the arrears. When a consumer vacates any premises without paying all the charges due from him, the distribution licensee is entitled to refuse to give him supply at any other premises until he pays the amount due and also may refuse to connect such premises either on request from existing consumer or on application for new connection by any person till all dues are cleared. Further, in the event of any transfer of property, even the successor is bound to clear all charges found recoverable from the consumer. No challenge to any of the provisions of the Statute/regulations have been raised. The dispute primarily relates to quantification of the demanded amount and challenge is raised to the assessment/computation thereof. The above said disputes are disputed questions of fact and as alternative efficacious remedies have been provided under the Electricity Act, 2003, there is no reason as to why this Court should exercise its inherent jurisdiction to exclude the statutory remedies.

In so far as the offer made by the petitioner HDFC Bank to clear the dues in installments and on waiver of surcharge is concerned, I do not find it a sufficient reason for invoking the writ jurisdiction of this Court as the petitioner Bank is undisputedly liable to pay rent to the respondent landlord. The distribution licensee cannot be compelled to extend any undeserving concession towards a defaulter and it is rather for the Bank to seek amenities from the owner and if any such amenities are not being provided, to seek compensation for such lapses from the owner. There is also no reason as to why the bank should not pay the entire arrears in one go and needs installments especially when it may, if so advised, recover the amounts so deposited from the landlord against the rent which it has to pay. Considering that the liability against the premises in occupation of the Bank is at Rs.1,90,00,000/- and the monthly rent is approximately Rs.12,00,000/-, it would not create any additional equity in favour of the Bank merely because it argues that despite paying huge rent to the owner, it does not get the benefit of electricity supply. There is no compulsion for the Bank to continue to occupy the said premises and/or any hindrance to pay the amount to the distribution licensee and to thereafter, treat the same as an advance to the landlord and effect recovery of the same along with interest from the landlord from the rent it has to pay to the landlord. Apparently, the present writ petitions seem to be aimed at seeking concessions without discharging liability to the distribution licensee under the garb of financial hardships. The petitioners have failed to refer to any provision in the statutory scheme as per which the distribution licensee is not within its rights to demand arrears before restoring/reconnecting the electricity supply.

Be that as it may, the dispute primarily being about the computation of the demand/penalty/surcharge/UUE and alternative remedies being available under the statutory scheme, both the present petitions are disposed of at this stage arising out of disputed questions of fact and that an alternative remedy is provided under the statutory scheme. The petitioner(s) may, if so advised, approach the competent statutory Forum which are authorized to decide the issues raised herein.

Needless to mention that in the event of the petitioner(s) preferring an appropriate petition before the competent Forum, an expeditious decision shall be taken thereupon after granting an opportunity of hearing to the respective parties.

The petitions are thus disposed of.

A photocopy of the order be placed on the file of connected case.

Pending misc. applications, if any, shall also stand disposed of accordingly.

November 03, 2023 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

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