

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

208

CWP-24661-2017 (O&M).
Date of Decision: 03.08.2023.

THE CLOSE NORTH APARTMENT OWNERS ASSOCIATION
TCNAOA

.. Petitioner

Versus

STATE OF HARYANA AND OTHERS

... Respondents

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

Present: Mr. Shekhar Verma, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Haryana.

Mr. R.D. Bawa, Advocate,
for respondents No.2 and 3.

Respondents No.5 and 6 ex parte.

Mr. Abhinav Sood, Advocate, for
Mr. Vardaan Malhotra, Advocate,
for respondent No.7.

Mr. Rajat Khanna, Advocate,
for respondent No.8.

VINOD S. BHARDWAJ, J. (ORAL)

Challenge in the present petition is to the order dated 29.11.2016 (received on 24.01.2017) passed by respondent No.5. with a prayer for issuance of directions to the respondents for making necessary correction in the sanctioned load category and apply correct bulk supply (DS) tariff to the account of the petitioner Society instead of bulk supply (NDS) for the period 25.12.2010 to 24.09.2014.

Learned counsel for the petitioner contends that the impugned order was passed by the Electricity Ombudsman without adhering to the mandatory provisions of the Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum and redressal for Grievance of Consumers) and (Electricity Ombudsman) Regulations 2004. Regulation 21 and 22 thereof read thus:-

“ 21. Settlement of complaint by agreement

(1) As soon as it may be practicable to do, but not later than one week from the date of receipt of representation, the Electricity Ombudsman shall serve a notice to the nodal officer of the distribution licensee along with a copy of the complaint and endeavour to promote a settlement of the complaint by agreement between the complainant and the Distribution licensee named in the complaint through conciliation or mediation.

(2) For the purpose of facilitating settlement of the representation, the Electricity Ombudsman may follow such procedures, as he/she may consider appropriate. The process of mediation should be completed within 30 days from the date of issue of such notice.

(3) When a representation is reported settled through mutual agreement with both the parties in writing, the Electricity Ombudsman shall make a recommendation, in terms of the agreement. The copies of the case recommendation shall be sent to the complainant and the Distribution licensee concerned not later than 7 days from the date of recording / receipt of the mutual agreement.

(4) If a complainant accepts the recommendation of the Electricity Ombudsman, he shall send a communication in writing within 15 days from the date of issue of the recommendation confirming his acceptance to Electricity Ombudsman and state clearly that the settlement reached is in full and final settlement of complaint.

(5) The Electricity Ombudsman shall send the acceptance letter received from the complainant to the Distribution licensee to comply with the terms of the recommendations immediately but not later than 21 days of the receipt of such recommendation and the Distribution licensee shall inform the Electricity Ombudsman of its compliance within 7 days of the implementation of such recommendation.

22. Hearing of the matter and award

(1) Where the complaint is not settled by agreement under regulation 21, the Electricity Ombudsman may determine the manner, the place, the date and the time of the hearing of the matter as he considers appropriate.

(2) The Electricity Ombudsman may hear the pleadings of the parties and direct the parties to submit written statement of submission in the matter.

(3) The Electricity Ombudsman shall pass a speaking order giving reasons for his findings and award.

(4) The Electricity Ombudsman shall pass an award within a period of three months from the date of receipt of the complaint and send a copy of the award to the complainant, distribution licensee and HERC within 7 days. The distribution licensee/ Complainant shall inform the Electricity ombudsman of its compliance within 7 days of the implementation of the award .”

(Emphasis supplied)

It is submitted that from the procedure prescribed in the regulations for settlement of a complaint mandates the Electricity Ombudsman to initiate proceedings for settlement of a complaint by mutual agreement and mediation under Regulation 21 and it is only in the event of the settlement not being arrived at that the adjudication under Regulation 22 thereof can be undertaken by the Electricity Ombudsman.

He contends that the above said mandatory procedure had not been followed. Further reliance is placed on the judgment of the Hon'ble Supreme Court in the matter of **Canara Bank Vs. G. Jairam reported as 2022 SCC Online SC 656** wherein the Hon'ble Supreme Court, while examining similar provisions relating to Legal Services Authorities Act, 1987, has held that the procedure laid down in law has to be strictly followed and the exercise of adjudicatory power ought to be taken only after the settlement proceedings as provided have been exhausted.

Learned counsel submits that, at this stage, he would be satisfied in case the impugned order passed by the Electricity Ombudsman is set aside and the matter is remanded to the Electricity Ombudsman for reconsideration as per the regulations.

Learned counsel appearing on behalf of respondent-distribution licensee has no serious objection to the same.

Learned counsel for respondent No.7, however, submits that the proceedings against him arise out of the order passed by the National Company Law Tribunal in exercise of inherent powers which have not attained finality and are pending before the Hon'ble Supreme Court wherein a moratorium has already been ordered. He, however, could not dispute the fact that so far as the issue involved in the present case is concerned, the adjudication thereof would not adversely prejudice the moratorium ordered by the Hon'ble Supreme Court.

Learned counsel for the petitioner further points out that respondents No.7 is not even a party before the Electricity Ombudsman.

Be that as it may, without going into the said controversy on merits at this stage, and taking into consideration that the contesting parties

have no serious objection to the petition being allowed and the matter being remanded to the Electricity Ombudsman for adjudication in terms of Haryana Electricity Regulatory Commission (Guidelines for establishment of Forum and redressal for Grievance of Consumers) and (Electricity Ombudsman) Regulations 2004, the present petition is allowed. Order dated 29.11.2016 (received on 24.01.2017) passed by respondent No.5 i.e. the Electricity Ombudsman is set aside. The matter is remanded to the respondent No.5 for fresh determination keeping in view the Regulations 21 and 22 of the aforesaid Regulations of 2004. The parties shall appear before the Electricity Ombudsman on 05.09.2023 and thereafter appropriate proceedings in accordance with law shall be undertaken by the Electricity Ombudsman.

In view of above, there is no occasion for adjudication of the other prayers that have been raised. The parties would be at liberty to seek redressal of their grievances by way of an appropriate petition.

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

August 03, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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