

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.751 of 2022

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M/s Shankar Motors Private Limited, a Company incorporated under the provisions of the Companies Act, 1956, Sabour Road (Near Engineering College), Town and District Bhagalpur, through its Authorized signatory Indra Mohan Jha, aged about 51 years (Male), Son of Late Ram Kripal Jha, resident of Mithila Colony, Nasriganj, P.S.- Digha, District - Patna.

... .. Petitioner/s

Versus

1. The Bihar State Power (Holding) Company Limited Vidyut Bhawan, Bailey Road, Patna, through its Chairman -cum-Managing Director.
2. The North Bihar Power Distribution Company Limited, Vidyut Bhawan, Bailey Road, Patna, through its Managing Director.
3. The Electrical Executive Engineer, Electric Supply Division, Purnea.
4. The Assistant Electrical Engineer, Electric Supply Division, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate.

For the Respondent/s : Mr. Vinay Kirti Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY
ORAL ORDER

13 13-05-2024 Heard learned counsel for the parties.

2. The present Writ Petition has been filed for the following reliefs:-

“(i) For issuance of a writ order or direction in the nature of certiorari for quashing the order dated 27.12.2021 passed by the Ombudsman, Bihar Electricity Regulatory Commission, dismissing the complaint of the petitioner holding that the disputes raised by the Petitioner can be raised before the competent Consumer Grievance Redressal Forum having jurisdiction.



(ii) For issuance of a writ order or direction in the nature of mandamus commanding the respondent authorities to revise the punitive demand in accordance with the order of the Appellate Authority dated 10.08.2015 and also by adjusting the amounts paid by the petitioner from time to time to the respondents.

(iii) For issuance of a writ order or direction in the nature of mandamus commanding the respondents to raise to separate bills a) first for the punitive demand after deducting Rs. 7,31,580/- already paid by the petitioner, without levy of DPS ; b) second for the current energy charges based on actual consumption without levy of Energy Charge for Minimum Monthly Commitment demand, Fixed Charge, Electricity Duty, Meter Rent for the disconnection period i.e. from 01.03.2012- 01.11.2012 and from 22.01.2013 15.04.2015; and also to provide a detailed calculation for the same.

(iv) For a direction to the respondents to restore the electricity connection of the petitioner which has been disconnected on 09.12.2021 for alleged non-payment of incorrect electricity bills raised by the Respondent.”

3. Learned counsel appearing on behalf of the petitioner has assailed the order dated 27.12.2021 passed by the Ombudsmen, Bihar Electricity Regulatory Commission wherein



the Ombudsmen has held that he does not have the jurisdiction to decide the case and relegated the petitioner to approach the CGRF. Learned counsel has stated that the initial inspection of the premises of the petitioner took place on 11.11.2011 and in the inspection it was found that the petitioner was having a load of 105 HP against the sanctioned load of 70 HP. Even though the seals of the meter were found to be intact, the meter was found to be defective. Thereafter, the provisional assessment order dated 16.11.2011 was issued to the petitioner, to which the petitioner has filed his objections on 23.12.2011. Subsequently, the final assessment order was passed on 28.09.2012 confirming the provisional assessment. Aggrieved by the final assessment order dated 28.09.2012, the petitioner preferred an appeal under Section 126 of the Electricity Act, 2003. The appellate authority vide order dated 10.08.2015 has set aside the final assessment order dated 28.09.2012 passed by the authority and remanded the matter back to the authority for passing orders afresh. Thereafter, for the period of six years the authority concerned did not act and finally on 17.03.2021 a revised final assessment order vide Memo No. 457 was passed and the final assessment was fixed at Rs. 8,07,132/-. The petitioner was issued a bill dated 06.10.2021 showing an amount of Rs. 89,83,725/-



including energy charge for Minimum Monthly Commitment demand, Fixed charge, Electricity Duty, Meter Rent for disconnection and other charges. Aggrieved by the above bill, the petitioner has approached the Ombudsmen, however, the Ombudsman vide order dated 27.12.2021 impugned in the present writ petition has relegated the petitioner to approach the CGRE.

4. During the pendency of the proceedings, the electricity connection of the petitioner was disconnected multiple times and the petitioner had to approach this Hon'ble Court as well as the appellate court seeking re-connection of the line, as the said details are not germane for deciding the present issue they not being reiterated.

5. Learned counsel for the petitioner has stated that the petitioner is not aggrieved by the final assessment order dated 17.03.2021 vide Memo No. 457 wherein an amount of Rs. 8,07,132/- has been levied against the petitioner. Learned counsel has stated that the petitioner has paid the said amount pursuant to the various orders passed by this Hon'ble Court as well as at the time of filing the appeal. However, the authorities have issued the bill in the month of October including energy charge for Minimum Monthly Commitment demand, Fixed



charge, Electricity Duty, Meter Rent for disconnection and other charges and aggrieved by the same the petitioner has approached the Ombudsmen. However, the Ombudsmen by misconstruing the provisions of the Electricity Act has directed the petitioner to approach the CGRF. Learned counsel for the petitioner has drawn the attention of the Court to the various provisions of the electricity Act more specifically Section 42(5), 42(6), 126 and 127 to support his case that the Ombudsman had the necessary jurisdiction to adjudicate the case. Learned counsel has therefore prayed this Court to allow the present writ petition and set aside the order dated 27.12.2021 passed by the Ombudsmen and remand the matter back to the said authority for passing orders on merits.

6. Per contra, the learned counsel for the Respondent-Distribution Company has vehemently opposed the very maintainability of the present writ petition. Learned counsel has stated that in case, the petitioner had any grievance with regard to the final assessment order or the bills raised against the petitioner he has to approach the CGRF but not the Ombudsmen. Learned counsel has stated that the petitioner instead of filing an appeal against the final assessment order dated 17.03.2021 has approached the Ombudsmen, who does



not have the jurisdiction. That the order passed by the Ombudsman is correct and in consonance with the provisions of the Electricity Act and prayed this Court to dismiss the present writ petition.

7. In order to decide the issue in the present writ petition, it is necessary to extract the relevant provisions of the Electricity Act, 2003 more specifically Sections 42 (5) and 42 (6) and Section 127 which reads as under:

“S.42 (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.

S. 42 (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.

S. 127. Appeal to appellate authority:

(1) Any person aggrieved by a 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 [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.”

8. Admittedly, in the present case, the petitioner has categorically stated that he is not aggrieved by the final assessment order dated 17.03.2021 vide Memo No. 457 which was passed pursuant to the order dated 10.08.2015 passed by the appellate authority. The petitioner is aggrieved by the



subsequent bill raised in the month of October, 2021 which included energy charge for Minimum Monthly Commitment demand, Fixed charge, Electricity Duty, Meter Rent for disconnection and other charges. As per the provisions of the Electricity Act, in case, any person is aggrieved by the amounts/charges levied under any bill, they can either approach the CGRF or the Ombudsmen under Section 42 (5) of the Electricity Act. In this particular case the petitioner has approached the Ombudsmen as per Section 42(5) & Section 42(6), the Ombudsman is having the jurisdiction to decide the grievance of the petitioner. The conclusion reached by the Ombudsmen that he does not have the jurisdiction to decide the matter is not only misplaced but the same is contrary to the above provisions of the Electricity Act. When two forums are available for redressal of any grievance, it is prerogative of the petitioner to approach anyone of the forums. The forums cannot bar the aggrieved party from approaching it and relegating them to another forum.

9. Having regard to the same, the impugned order dated 27.12.2021 passed by the Ombudsman, Bihar Electricity Regulatory Commission is set aside and the matter remanded back to the Ombudsman for considering the grounds raised by



the petitioner and pass orders afresh. It is needless to mention that before passing any orders, the authority shall take into consideration the grounds raised by the petitioner, the judgments relied by the petitioner and also any other material that is placed by the petitioner and pass a reasoned order. The entire exercise shall be completed as expeditiously as possible preferably within a period of twelve weeks from the date of the receipt of the copy of this order.

10. This Court has not gone into the merits of the case and leaving all issues to be raised by the petitioner and to be decided in accordance with law.

11. With the above directions, the present writ petition stands allowed to the extent indicated.

(A. Abhishek Reddy, J)

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