

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10230 of 2014

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1. The Bihar State Electricity Board – cum – Bihar State Power (Holding) Company Ltd. Through its Chairman – cum – Managing Director
 2. The General Manager-cum- Chief Engineer, Area Electricity Board, Mayaganj, Bhagalpur.
 3. The Electrical Superintending Engineer, Electric Supply Circle Mayaganj, Bhagalpur.
 4. The Electrical Executive Engineer, (Rural) Electric Circle, Mayaganj, Bhagalpur.

... .. Petitioner/s

Versus

1. M/s Shiv Kumar Kishore Puria and Ors Son of Late Sagarmal Kishore Puria, D.N. Singh Road, Bhagalpur.
2. The Consumer Grievance Redressal Forum through its Chairman, Vidyut Bhawan II, Patna.
3. The Electricity Ombudman, through its Chairman Regulatory Commission Vidyut Bhawan-II, Patna

Respondent 1st set

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 13605 of 2014

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1. The Bihar State Electricity Board – cum – Bihar State Power (Holding) Company Ltd. Through its Chairman – cum – Managing Director
 2. The General Manager- cum- Chief Engineer, Area Electricity Board, Mayaganj, Bhagalpur.
 3. The Electrical Superintending Engineer, Electric Circle, Mayaganj, Bhagalpur.
 4. The Electrical Executive Engineer, (Rural) Electric Circle, Mayaganj, Bhagalpur.

... .. Petitioner/s

Versus

1. M/s Binod Kumar Kishore Puria Son of Late Sagarmal Kishore Puria D.N. Singh Road, Bhagalpur.
2. The Consumer Grievance Redressal Forum through its Chairman, Vidyut Bhawan II, Patna.

Respondent 1st Set

... .. Respondent/s



Appearance :

(In Civil Writ Jurisdiction Case No. 10230 of 2014)

For the Petitioner/s : M/s Vinay Kirti Singh, Sr. Advocate
Venkatesh Kirti
Akhileshwar Singh, Advocates

For the Respondent No. 1: M/s Gautam Kejriwal
Atal Bihari Pandey,
Alok Kumar Jha
Mukund Kumar
Akash Kumar
Aditya Raman, Advocates

(In Civil Writ Jurisdiction Case No. 13605 of 2014)

For the Petitioner/s : M/s Vinay Kirti Singh, Sr. Advocate
Venkatesh Kirti
Akhileshwar Singh, Advocates

For the Respondent/s : M/s Gautam Kejriwal
Atal Bihari Pandey,
Alok Kumar Jha
Mukund Kumar
Akash Kumar
Aditya Raman, Advocates

**CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA
CHAKRAVARTHY
ORAL JUDGMENT
Date : 14-05-2024**

Since the orders impugned, issues involved and the prayers made in both the writ petitions are identical, both of them have been heard together and are being disposed of by a common order.

2. The writ petitions are filed for quashing of the order dated 21.02.2013 passed by the Respondent no. 3, by which the Learned Electricity Ombudsman directed the petitioners to comply the order of Respondent no. 2 passed in Case No. 21 of 2009 and Case No. 22 of 2009 within 2 months from the date of order, failing which necessary recommendations shall be made to the Commission for taking



action against the Board and others as per Rule and Law in Misc. Case No. 4 of 2011. Further for quashing the order dated 29.06.2009 passed by the Respondent no. 2 in Case No. 21 of 2009 and Case No. 22 of 2009 filed on behalf of the respondent no. 1 before the Respondent no. 2 by which the learned CGRF ignoring the decision of this Hon'ble court dated 5.07.2002 passed in CWJC No. 1485 of 2002 and CWJC No. 1532 of 2002 illegally held that the petitioners had wrongly raised a bill against Respondent no. 1 under NDS Tariff and had directed the petitioners to revise the bill of the Respondent no. 1 under LTIS Tariff. Petitioners has further sought to stay the operation of the impugned orders contained in Annexures 1 and 2, which has been passed by the Respondent nos. 2 and 3 relying on the two orders passed by this Hon'ble Court passed in CWJC No. 14142 of 2004 and CWJC No. 14143 of 2004, which was disposed of vide order dated 11.11.2004, fixing suitable installments as the petitioner was ready to deposit the due amount. Petitioners have also prayed to punish the respondent no. 1 for suppressing the two orders passed by this Hon'ble Court in CWJC No. 1485 of 2002 and CWJC No. 1532 of 2002 before the Respondent no. 2, the Learned CGRF, Patna and the order dated 07.01.2005 passed by this Hon'ble Court in LPA Nos. 944 of 2002 and 945



of 2002 which were filed against the order dated 25.07.2002 passed in CWJC Nos. 1485 of 2002 and 1532 of 2002.

3. The brief facts culled out of the petitions are that petitioner no.1 is a Power Distribution Company, erstwhile known as Bihar State Electricity Board, indulged in selling of power as licensee, where as other petitioners are office bearer of the company. Respondent no. 1 of CWJC No. 10230 of 2014 is own brother of Respondent no. 1 of CWJC No. 13605/2014 and are consumers of electricity. The respondent no. 2 is a Forum established under the Electricity Act, 2003 and is statutory in nature and respondent no. 3 is Electricity Ombudsman of Electricity Regulatory Commission.

4. It is contended on behalf of the petitioners that on 10.09.1999 the Electrical Executive Engineer, Bhagalpur (Rural) inspected the premises of M/s SCI Ltd. a sister concerned of the Respondent no.-1 under HTSI category and Inspection report was accordingly prepared. During course of inspection it was found that the Respondent No.- 1 of CWJC No. 10230 of 2014 having consumer No. JP326 and Respondent No. 1 of CWJC No. 13605/2014 having Consumer no. JP 327 were using using their agricultural connections to supply water in M/s SCI Ltd. and thereafter, it was considered



that the agriculture connection of respondent No. 1 (Sheo Kumar Kishore Puria) in CWJC No. 10230 of 2014 and his brother Respondent No. 1 (Binod Kumar Kishore Puria) in CWJC No. 13605/2014, who are partners of M/S S.C.I. Ltd., having their sanctioned load of 20 HP and 15 HP respectively situated in village Raipura, Mauza Johara, P.S. Rajon, District-Banka comes under Non Domestic Tariff.

5. It is the contention of the petitioners that the Respondent no.-1 and his brother who is also Respondent no. 1 in analogous writ petition were informed by letter no.-452 dated 23.03.1999 by the petitioner no. 4 that as they are using the electric connection for NDS purposes therefore, they are liable to pay the energy Bill under non domestic Tariff and supply Bill of past period were also issued. The Assistant Electrical Engineer, Bhagalpur (Rural) issued monthly energy bill of April 1999 for Rs. 9876.60 and its due date of payment was 29.05.1999. The Assistant Electrical Engineer, Bhagalpur (Rural) also served a Suppl. Bill of Rs. 5,12,024/- and Rs. 3,71,102/- for the entire period from the date of connection of both the agricultural connections. The consumers requested the Assistant Electrical Engineer, Aliganj on 30.08.1999 and 30.03.2000 to correct the bills as they are liable for payment of



energy bill under agricultural Tariff but nothing was done.

6. It is submitted by the petitioners that the consumers also made representation to the Respondent No. 2 (G.M-cum-C.E Bhagalpur) to resolve the dispute.

7. It is the specific contention of the petitioners that the Electrical Executive Engineer, Bhagalpur (Rural) enclosing the statement of details of calculation issued a legal notice to the consumers directing them to pay Rs. 9,89,920.17 and Rs. 13,08,132.59 connections to commercial connection and due to non payment of said bill, the agricultural connections of the consumers were disconnected on 05.11.2001. It is further contended that the consumers further filed petition before the officers of the Board to take action and to issue bill, according to Board's Tariff but of no use.

8. It is contended by the petitioners that the bill so raised by the petitioner no. 4 was challenged by the respondent no. 1 of CWJC No. 10230/2014 and respondent no. 1 of CWJC No. 13605/2014 before this Hon'ble Court in CWJC no.- 1485 of 2002 with CWJC No.- 1532 of 2002 respectively. Both the aforesaid writ petitions were taken up together and after hearing the parties, this Hon'ble Court vide its order dated 25.07.2002 (Annexure-5) dismissed the writ petition.



9. It is further contended by the petitioners that after initiation of certificate proceeding before the Certificate Officer, Bhagalpur as Certificate Case nos. 14 and 15 of 2003-04 for recovery of energy dues, the Respondent no.-1 and his brother filed CWJC Nos. 14142 and 14143 of 2004 in the name of M/s SCI India Ltd. and another before this Hon'ble Court against the order of Certificate Officer, Bhagalpur for payment of certificate amount.

10. The Hon'ble Court was pleased to dispose of the writ petitions as follows:

“ It is, therefore, directed that the petitioners may make payment of the entire dues amount of Rs. 23,32,770.26 in the following manner. The petitioners shall pay to the Electricity Board Rs. Six lac by December 31, 2004 as the first installment. The balance amount shall be paid @ Rs. 3,00,000/- per month with the first payment falling due in the first week of February, 2005 and the succeeding payments in the first week of the next succeeding months. The payment of the dues in installments shall be subject to the charge of interest as provided under section 17 of the Public Demands Recovery Act and the last payment shall be made taking into account the amount interest concord from the date of the certificates till the last date of payment.

As long as the payment schedule is adhered to the the proceedings before the certificate officer shall remain stayed and shall stand abated as and when the final payment is made.

However, in case of any default in



payments as per the schedule, the proceedings before the certificate officer shall stand automatically revived and it will be open to the certificate officer to take all coercive measures against the petitioners for realization of the certificate amounts. “

11. Against the order dated 11.11.2004 passed in CWJC Nos.- 14142/2004 and 14143 of 2004, respondent No. 1, herein, in both the Writ petitions preferred L.P.A. Nos. 1232 of 2004 and 1236 of 2004. A Division Bench of this Court has disposed of the LPAs with following observation:

“Admittedly, certificate proceedings are pending before the Certificate officer. It is also an admitted fact that certain amount is due. The controversy is with regard to the corrected amount as according to the appellants on recalculation lesser amounts will be liability. In our view, the Certificate Officer is competent to go into this matter and he will recalculate the amount and it on recalculation he finds that lesser amount is due and the petitioner had paid excess amount then it should be adjusted. The Certificate Officer will not keep the proceeding pending for an indefinite period and will dispose of the same expeditiously. The petitioner will go on paying the amount till recalculation is made and the proceedings is disposed of.”

12. It is contended by the Counsel for the petitioner that after disposal of LPA Nos.-1232 of 2004 and 1236 of 2004, the respondent No. 1 in gross violation of the



order contained in Annexure-6 stopped making payment of the installments fixed by the Hon'ble Single Judge. On the basis of request made by the counsel for the firm of Respondent no.-1 and his brother namely M/s SCI. two complaints bearing Case Nos. 21 of 2009 and 22 of 2009 were filed before the CGRF, Patna constituted under section 42 (5) of the Electricity Act, 2003 and by suppressing the order dated 25.07.2002 and the order passed in LPA Nos.-944 and 945 of 2002 by which this Hon'ble Court had held that there was no infirmity in reusing supplementary demands under the commercials Tariff and had dismissed the Writ application and the order passed in the Writ application was affirmed in appeal which wrongly asked the Respondent no.- 2 to hold and declare that pursuant to inspection dated 10.03.1999, the action of the Bihar State Electricity Board charging the complainant under NDS Category is not correct and it cannot be charged from the date of issuance of connections.

13. The petitioners have further contended in the petitions that the two orders passed by this Hon'ble Court in CWJC Nos. 14142/2004 and 14143/2004, the orders of 2002 has been found mentioned in para 2 of the order that the supplementary bills were upheld upto the Division Bench in



Appeal even then the respondent no.-2 vide his said order dated 26.09.2009 wrongly determined that conversion of both agricultural connections into commercial Tariff is incorrect and illegal. The order dated 26.09.2009 amounts to committing contempt of this Hon'ble Court and thus liable to be punished for overriding the effect on the orders of this Hon'ble Court.

14. The CGRF, in its observation and finding, asking the petitioners to implement their order within 45 days is against the direction of this Hon'ble Court and thus stands vitiated.

15. It is specific contention of the petitioners that the Learned Ombudsman had no jurisdiction to direct the Writ petitioners to comply the illegal order of the Respondent no.-2 by which he has directed the Board and its official to implement the order of Learned CGRF which is against the orders earlier passed by this Hon'ble Court in annexures 4 and 5.

16. It is also contended on behalf of the petitioners that the order contained in Annexures 1 and 2 of this Writ petition are against the directions of this Hon'ble Court passed in CWJC No. 1485 of 2002 and 1532 of 2002, which has been affirmed by Hon'ble Division Bench of this Hon'ble Court in LPA nos. 944 of 2002 and 945 of 2002. While passing the



impugned order contained in Annexures 1 and 2 of the Writ application, the Respondents no. 2 and 3 failed to take note of the orders of this Hon'ble Court as contained in Annexurs 5 and 6, as in both the orders the Respondents no.-1 and his brother were directed to deposit their certificate amount in installments. As per the report submitted by the petitioner no. 4 dated 9.03.2007 against the Account no.-326 CS in Certificate Case no.-15 of 2003-04 standing in the name Sheo Kumar Kishore Puria (Respondent no. 1 of CWJC No. 10230/2014) upto 07.05.2005 Rs. 9 lacs has been deposited against the amount of Rs. 10,07,561/- excluding interest under Section 17 of the Public Demand Recovery Act, whereas in Certificate Case no. 14 of 2003-04, the respondent no.1 of CWJC No. 13605 of 2014 has deposited Rs 9 lacs upto 07.05.2005 against the amount of Rs. 13,25,209.26 excluding interest under section 17 of the Public Demand Recovery Act. Therefore, the Writ petitioners have filed both the writ applications for granting the reliefs prayed for in paragraph no.1 of the writ petitions.

17. A detailed counter affidavit was filed by 1st respondent of CWJC No. 10230/2014 and his brother, who is respondent No. 1 in CWJC No. 13605/2014 seeking leave of this Hon'ble court to treat the present reply as common for both



the aforesaid writ application as the issues of facts , law, proceedings, correspondences and orders passed by various authorities are same.

18. The contents of the counter affidavit disclose that the writ applications filed by the petitioners is not maintainable on grounds of the petitioners having challenged the order dated 29.06.2009 passed by the CGRF, after a gap of long period of five years in 2014. Secondly the petitioners never challenged the jurisdiction of the Learned Forum at the threshold and contested the case of the respondent number 1 on merits by placing all the documents and materials before Learned Forum. Besides, the petitioners would appear to have accepted the order passed by the CGRF in view of the petitioners silence for continuous five years and therefore, the petitioners cannot now be allowed to challenge the said orders.

19. However, respondent No. 1 brought some factual matrix involved in the dispute in the counter affidavit which are as follows:

“a) The answering respondent number 1 and his brother had 2 agricultural connections of electricity in the district of Banka bearing number JP-327 and JP-326.

b) The answering respondent number one and his brother are also associated with a company namely SCI India Ltd. which is in close vicinity to the said electric connections existing in the name of the answering



respondent. The said company had electric connection in the category of HTS-1.

c) It was on 10.03.99 that the premises of the aforesaid company was inspected by the executive engineer (rural) of the electricity board and it was allegedly found that the agricultural connections of electricity supply was being used to supply water to the said company and therefore said agricultural connections were decided to be considered under non-domestic tariff of the board.

d) The concerned executive engineer through letter number 451 dated 23.03.99 informed the answering respondent number 1 that in light of the alleged use of agricultural connections for non domestic purposes the energy bills in future would be served on non domestic tariff basis

e) The concerned executive engineer further through letter number 836 dated 20.05.99 issued monthly bill for the month of April 1999 for a sum of ₹ 9, 876.60/- on the basis of nondomestic tariff.

f) The executive engineer also through his letter number 779 dated 31.05.99 served a supplementary bill for a sum of 5,12,024.00/- for the entire period since the date of connection of the agricultural supply line having connection number JP-327 and for a sum of 3,71,102/- for the connection JP-326.

g) A request through letter dated 30.08.99 and 30.03.2000 was made to the Assistant Electrical Engineer at Bhagalpur to rectify the bills and to issue the same on the basis of agricultural tariff so that the bills could be paid. However nothing was done.

h) Ultimately a representation was made to the General Manager cum Chief Engineer at Bhagalpur on 27.05.2000 to intervene in the matter and issue necessary directions for correction of the bills.

i) Upon such a request the said General



Manager cum Chief Engineer through letter number 4008 dated 22.06.2000 requested the Secretary of the Electricity Board to take necessary decision in light of three basic points by way of guidance indicated in the letter by the said General Manager cum Chief Engineer, Bhagalpur which are as follows: -

the charging of the revenue from the date of connection by the Electrical Executive Engineer/ Bhagalpur (rural) was wrong.

The bill should have been charged from past six months only as per clause 16.9 (iv) of the tariff 1993.

The consumer should be served with a notice to integrate the instant agricultural connection with hypertension connection as far as the future billing is concerned.

j) In compliance of the said letter of the General Manager, the Joint Secretary cum Director (PRD) of the petitioner Electricity Board vide his letter number 590 dated 30.06.2000.

k) In the meanwhile the Electrical Executive Engineer/Bhagalpur (rural) issued a legal notice through letter number 15 dated 04.01.2002 upon the answering respondent to make payment of the demands of Rs. 9,89,920.174 for connection number JP/326.

l) Besides issuance of the legal notice seeking payment of the energy bills calculated illegally, direct city supply of both the agricultural connections were disconnected by the authorities of the petitioner Electricity Board on 05.11.2001.

m) The answering respondent number 1 and his brother being another consumer in the same agricultural connection approached this Hon'ble court in C.W.J.C. No. 1485 of 2002 and 1532 of 2002 challenging the bills and action of the petitioner Electricity Board and its authorities at Bhagalpur.



n) However, this Hon'ble court vide an order dated 25.07.2002 dismissed but that it applications and held that the use of both the agricultural connections was being made for industrial and commercial use. Accordingly no interference was made into the action of the authorities of the petitioner Electricity Board. (Annexure-5 to the writ application)

o) The answering respondent number 1 and his brother being aggrieved by the said order dated 25.07.2002 challenged the same in appeal before division bench vide LPA number 944 of 2002 and 945 of 2002 but even the said appeals were dismissed by the division bench vide an order dated 09.02.2002. (Annexure-4 to the writ application).

p) Because the authorities of the petitioner Electricity Board had already instituted Certificate Case number 14 of 2003-04 and 15 of 2003-04, the answering respondent number 1 and his brother once again had to approach this Hon'ble court in C.W.J.C. No. 14142 of 2004 and 14143 of 2004 challenging the proceedings of Certificate Case.

q) The aforesaid writ applications challenging the proceedings of certificate case were disposed of by a bench of this Hon'ble court vide an order dated 11.11.2004 whereby the answering respondent number 1 and his brother were directed to deposit the amount in demand being subject matter of the proceedings of certificate case in installments and in the meanwhile the certificate proceedings were stayed with further directions of revival of the certificate proceedings in case of default committed in payment of installments. As such while the said order was passed, the issue of incorrect calculation of the amount required to be paid by the respondent number 1 and his brother was not interfered with. (Annexure 3 to the writ application)



r) Being aggrieved by the order dated 11.11.2004, once again the answering respondent number 1 and his brother challenged the said order in appeal vide LPA number 1232 of 2004 and 1236 of 2004 which was disposed of on 07.01.2005 whereby it was clearly held that the correctness of calculation of the amount sought to be recovered by the petitioner Electricity Board could be very well gone into by the certificate officer and accordingly it was directed that the certificate officer will recalculate the amount and in case excess is found recovered from the answering respondent no. 1 and his brother it would be adjusted. It was also observed that the certificate officer will not keep the proceeding pending foreign undefined period and will dispose of the same expeditiously. (Annexure 6 to the writ application)

s) the answering respondent number 1 and his brother accordingly placed the order dated 07.01.2005 before the concerned certificate officer at Bhagalpur where the certificate cases instituted by the petitioner Electricity Board were pending.

(t) In compliance of the directions of this Hon'ble court as contained in the order dated 07.01.2005 passed in LPA number 1232 of 2004 and 1236 of 2004, the certificate officer through letter number 378 dated 21.06.2006 directed the concerned Assistant Electrical Engineer, Electric Supply Subdivision Aliganj, Bhagalpur to submit clear detailed recalculation/statement of assessment of the certificate amount sought to be recovered from the answering respondent number 1 and his brother.

u) In fact on 02.08.2006, in course of proceedings of the certificate case, the certificate officer at Bhagalpur advised the advocate of the petitioner Electricity Board to submit a clear report by 04.09.2006 as regards the relevant clause of the tariff of the petitioner board under which the answering respondent number 1 and his brother



were assessed and the basis of billing of the amount in light of the order dated 07.01.2005 and the objection pointed out by the answering respondent number 1 and his brother.

v) However the authorities of the petitioner electricity board at Bhagalpur did not comply the directions of the certificate officer in spite of such directions of the certificate officer being to carry out the directions of division bench of this Hon'ble court.

w) On the other hand the certificate officer was pressing hard upon the answering respondent number 1 and his brother to keep making payment of the amount sought to be recovered by the petitioner board.

x) The answering respondent number 1 and his brother had basically two grievances one being the illegal and arbitrary categorisation of the electricity supply line to CS - III category and raising of Bill for six years that is from the date of collection till the date of detection.

y) The answering respondent number 1 and his brother having no other way left in their hands to get their grievances redressed proceeded to file applications before this Hon'ble court vide MJC number 1462 of 2005 and 1463 of 2005 seeking initiation of proceedings of contempt against the concerned authorities for non-compliance of the order dated 07.01.2005 passed by division bench of this Hon'ble court,

z) The contempt applications remained pending but the answering respondent number 1 and 2 otherwise had to secure the amount required to be paid against the alleged use of agricultural connections for industrial/commercial purposes and therefore the answering respondent number 1 and his brother were advised to approach the learned forum for proper assessment of the said amount in accordance with relevant provisions of the tariff.

aa) The answering respondent number 1 and his brother accordingly filed case number 21 of 2009 and 22



of 2009 before learned forum for limited relief in the shape of assessment of the amount required to be paid on account of industrial/commercial use made of the agricultural connections.

bb) It was after several directions of the learned forum that the authorities of the petitioner electricity board find their written version in the aforesaid two cases wherein the entire background of the case and factual history was placed. It was stated on behalf of the petitioner board that because the answering respondent number 1 and his brother had agreed before this Hon'ble court in course of proceedings of writ application to make payment of the certificate amount in installments, there could be no question of any further interference by the learned forum for the purpose of classification of the actual category and other aspects relating to the period for which bill could be raised.

cc) The learned forum after hearing the parties at length proceeded to decide the controversy on point of actual tariff applicable to the case of answering respondent number 1 and his brother for the purpose of calculation of the exact amount payable and also the period for which billing could be done and accordingly passed the order dated 29.06.2009 holding that as per the tariff orders, the answering respondent number 1 and his brother had to be charged in LTIS - 1 tariff for a period of six months prior to the month of inspection of March 99 that is from the month of October 1998 to the month of March 1999. It was on the basis of the said finding that the learned forum very specifically spelt out the whole computation of the amount required to be paid by the answering respondent number 1 and his brother.

dd) The petitioner board had to comply the said order dated 26.09.2009 within a period of 45 days of the order but the petitioner Electricity Board chose not to comply the order dated 26.09.2009 passed by learned forum.



ee) It was under such compelling circumstances that the answering respondent number 1 and his brother had to further approach learned Electricity Ombudsman vide miscellaneous Case number 04 of 2011 and 02 of 2012 seeking compliance of the order of learned forum.

ff) Before learned Ombudsman, but the petitioner board and answering respondent number 1 and his brother were heard. It was submitted on behalf of the petitioner board that though a letter was forwarded to the higher authorities seeking guidelines in the matter of compliance of the order passed by learned forum but the response was still awaited. The submissions of the petitioner board and its authorities were fully considered by the learned Ombudsman and after having examined the entire aspects of the matter afresh, the learned Ombudsman found the order of learned forum to be proper. The learned Ombudsman held that the after having examined the entire aspects had all rights to approach learned forum for resolution of the dispute regarding actual categorisation of the use of agricultural connection and the period for which billing could be done in light of the order passed by this Hon'ble court in C.W.J.C. No. 18528 of 2008 (M/s Bikaner Plastoflex Pvt Ltd. versus the State of Bihar). The learned Ombudsman further held that the order passed by learned forum has been in accordance with the directions of this Hon'ble court and also that the petitioner board and its authorities were under obligation to ensure compliance of the directions made by learned forum in the order. (Annexure - 1 to the writ application)."

20. Counter affidavit reveals that the petitioner Electricity Board has approached this Hon'ble Court challenging the order of Learned Ombudsman on 26.02.2013 issued vide



Memo No. 20 and not against the order dated 26.09.2009 passed by the Forum way back in the year 2009 and this conduct of petitioner Board would suggest that the present Writ applications are filed with the sole intention to harass the respondent No. 1 and his brother, who is also respondent no. 1 in CWJC No. 13605 of 2014.

21. The contents of the counter affidavit disclose that the petitioner Board never challenged the order dated 07.01.2005 passed by Division Bench of this Hon'ble Court rather accepted the same. The said order would show that it was clearly directed by the Hon'ble Division Bench that the Certificate Officer at Bhagalpur would look into and examine the matter of calculation of the amount actually required to be paid by the respondent No. 1 and his brother. Such examination of the issue of calculation and assessment of true and proper amount payable by the respondent No. 1 and his brother would indispensably require two things one being the category of tariff on the basis of which the billing had to be done and the other being the period for which billing could be done.

22. The counter affidavit of respondent no. 1 disclose that the petitioner Board and its authorities did not respond to the specific direction of the Certificate Officer at



Bhagalpur as would be evident from the letter number 378 dated 21.06.2006 and even did not bother to follow the advice given in course of proceedings on 02.08.2006 by the Certificate Officer to ensure production of details of calculation made by the authorities as regards the billing of the respondent No. 1 and his brother.

23. Counter affidavit also disclose that the main order that remain after proceedings of both the rounds of writ applications had been the order dated 07.01.2005 passed in appeal by the Division Bench wherein the issue of the calculation of the amount of fresh was specifically made open so that the respondent No. 1 and his brother could not be subjected to imposition of charges not recoverable as per relevant rules.

24. It is the specific contention of the respondent No.1 that the CGRF has not recorded any finding much less has issued any direction which is contrary to the findings and directions of this Hon'ble court in any of the orders and the respondent no. 1 and his brother did not commit any intentional default in payment of the amount of installments and have paid Rs. 9 lakhs each against both the connections till 07.05.2005 but due to financial crisis and indifferent attitude of the petitioner



Board and its authorities the respondent no. 1 and his brother could not arrange further amount to make payment against the demanded sums.

25. The contents of the counter affidavit disclose that the petitioner Board and its authorities have intentionally defaulted in carrying out the direction of this Hon'ble Court as contained in the order dated 07.01.2005 and therefore, the writ application may be dismissed by imposing heavy cost and to direct the petitioner Board and its authorities to comply the directions of this Hon'ble court as well as the findings recorded by Learned Forum.

26. Heard the Learned counsel for the petitioners as well as the Learned counsel for the respondents and perused the record.

27. On perusal of the entire record of the case as well as the facts enumerated hereinabove, it appears that the respondent no. 1 of both the writ petitions had earlier moved before this Court by filing writ petitions and Letters Patent Appeals. Respondent No. 1 had challenged the supplementary bill in CWJC No. 1485 of 2002, which is dismissed vide order dated 25.7.2002 (Annexure-5) holding that "I see no infirmity in the action of the Board in raising supplementary demands



under the commercial tariff.” Respondent No 1 of both the writ petitions have challenged the aforesaid order (Annexure-5) of the Learned Single Judge by filing LPA Nos. 944 of 2002 and 945 of 2002. The Division Bench has affirmed the order of the Learned Single Judge vide order dated 09.09.2002 (Annexure-4). Respondent No. 1 of both the writ petitions have filed CWJC Nos. 14142 of 2004 and 14143 of 2004 against Certificate Case Nos. 14 of 2002-04 and 15 of 2003-04. The Learned Single Judge of this Court vide order dated 11.11.2004 disposed of the aforesaid writ petitions with direction to Respondent No. 1 to pay the certificate amount in installments. Respondent No. 1 preferred LPA Nos. 1232 of 2004 and 1236 of 2004 against the order dated 11.11.2004 (Annexure-3). The Division Bench of this Court vide order dated 07.01.2005 disposed of the appeals as follows:

“In our view, the Certificate Officer is competent to go into this matter and he will recalculate the amount and it on recalculation he finds that lesser amount is due and the petitioner had paid excess amount then it should be adjusted. The Certificate Officer will not keep the proceeding pending for an indefinite period and will dispose of the same expeditiously. The petitioner will go on paying the amount till recalculation is made and the proceedings is disposed of.”



28. Respondent No. 1 has informed about the order dated 07.01.2005 passed in appeals and in compliance of the directions contained in order dated 07.01.2005, the Certificate Officer directed the concerned Assistant Electrical Engineer Bhagalpur to submit clear detailed recalculation / statement of assessment of the certificate amount sought to be recovered from the respondent No. 1 and his brother. In the meanwhile, Consumer Grievance Redressal Forum was constituted under Section 42(5) of Electricity Act, 2003. Respondent No. 1 of both the writ petitions have filed Case Nos. 21/2009 and 22/2009 against supplementary Bill requesting determination of actual tariff and period of billing. The Forum vide its order dated 29.06.2009 has held as follows:

“1. The conversion of both agricultural connection having Account no JP/326 and JP/327 to commercial Tariff; is being determined as "Incorrect and illegal".

2. Both agricultural connections should be converted in LTIS-I Tariff schedule; in place of commercial/NDS Tariff schedule.

3. The Supplementary bills raised/served to the petitioner/consumer of both Accounts of JP/326 and JP/327 for Rs 3,71,102-00 and Rs 5,12,024-00 are being determined as revisable, as per observations and finding of the Forum-as detailed in the body of this order.

4. The monthly energy bills served to both the consumers/petitioners for the period of April 1999 to Nov/2001, in commercial Tariff, are being



determined as "erroneous and illegal"; accordingly; the concerned field officials of Electric Supply Division/Bhagalpur (Rural) is being advised to prepare the consolidated revised monthly energy bill for the period on LTIS-I Tariff; and during preparation of consolidated monthly energy bills; no any amount of monthly delayed payment surcharge be levied,

5. After preparation/recalculation of the supplementary energy bills and monthly energy bills; (as para 3. and 4. of this order); the details of recalculation and amounts thus arrived for both connections/accounts; should be submitted to the certificate officer/Bhagalpur; in the light of letter no 378 dated 21.06.2006 of certificate officer/Bhagalpur.

6. In the light of order of Hon'ble Patna High Court of dated 04.02.2009, in CWJC No 188528 of 2008; the dispute raised before the Forum, is accordingly resolved, vide this order.

7. As per this resolution of disputes of both connections; the Forum finds that the amount of filed both certificate proceedings, is much higher than the amount; thus resolved; and it is very much clear that the petitioners have made excess payments; the amount of such excess payment made; should be refunded to the concerned both petitioners.

8. In the light of this passed order; resolving the disputes of both petitioners the certificate proceedings no 14/2003-04 and 15/2003-04, should proceed accordingly.

After implementation of this order within 45 days of this order, the compliance report should be submitted to the Forum within 5 days of its implementation.”



29. According to the order dated 26.09.2009 of CGRF, the petitioner Board had to comply the said order within a period of 45 days of the order but the petitioner Electricity Board chose not to comply the order dated 26.09.2009 passed by Forum,. The Respondent No. 1 of both Writ petitions have filed Misc. Case Nos. 04/2011 and 02/2012 for securing compliance of the said order passed by CGRF. The Ombudsman passed following orders:

“In the facts and circumstances mentioned above, OP’s are directed to comply the order of the CGR passed in Case No. 21 & 22/2009, within two months from the date of order, failing which necessary recommendation shall be made to the Commission for taking action against the OP Board and others as per rule and law

So far dispute relating to correctness of the recalculation chart submitted by OP’s before the Certificate Officer, the petitioners are at liberty to raise it before the Certificate Officer, Bhagalpur.”

30. In the aforesaid discussion, this Court is of the considered view that the Consumer Grievance Redressal Forum has passed a reasoned order in view of the directions of this Court directing the petitioners that the higher amount which have been paid by the respondent nos. 1 and 2 has to be refunded to the respondents by resolving the dispute which are subject to Certificate Proceeding Nos. 14/2003-04 and 15 of



2003-04. As the orders of the CGRF was not complied with the respondents were constrained to approach the Ombudsman and the Learned Ombudsman has also directed the respondents to raise before the Certificate Officer, Bhagalpur as to the correctness of the recalculation chart, therefore, this Court finds that there is no error and irregularity in the orders passed by the CGRF or the Learned Ombudsman. Furthermore, as per the judgment of this Court reported in **(2009) 3 PLJR 12 (M/s Bikaner Plasto Flex Pvt. Ltd. Vs. State of Bihar and Ors.)**, 'right' was given to the consumer under the scheme of Section 42 of the Act and the term 'consumer' was also defined as per the said judgment. 'Consumer' means any one supplied with electricity from the Board, therefore, the respondents comes under the term 'Consumer' and, therefore, it could not be prejudiced to the right which the consumer may have apart from the right conferred thereunder.

31. Therefore, this Court hold that the respondent no. 1 of both the writ petitions have rightly approached the designated fora for redressal of their dispute/grievance and once such a dispute is resolved then the certificate proceedings would, accordingly, proceed.

32. Interlocutory Application(s), if any, shall stand



disposed of.

33. Accordingly, with the aforesaid observation, both the writ petitions are dismissed as they are devoid of merits.

(G. Anupama Chakravarthy, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	15.03.2024
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Transmission Date	

