

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

(2 connected cases)

Reserved on : 13.12.2023.
Date of Decision : 05.01.2024.

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(1) CWP-26339-2018 (O&M)

DAKSHIN HARYANA BIJLI VITRAN NIGAM THROUGH SDO
CITY SUB DIVISION FATEHABAD

...Petitioner

Versus

FORUM FOR REDRESSAL OF CONSUMER GRIEVANCE AND
OTHERS

...Respondents

(2) CWP-8012-2020 (O&M)

K.D. BANSAL

...Petitioner

Versus

DAKSHIN HARYANA BIJLI VITRAN NIGAM AND OTHERS

...Respondents

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

ARGUED BY:

Mr. Puneet Jindal, Sr. Advocate, with
Ms. Navroop Jawandha, Advocate,
for the petitioner in CWP-26339-2018.

Mr. Rakesh Nehra, Sr. Advocate, with
Mr. Ankit Yadav, Advocate,
for the petitioner in CWP-8012-2020.

Mr. R.N. Lohan, Advocate,
for respondent No.2 in CWP-26339-2018.

Mr. Akash Lamba, Advocate, and
Mr. Samir Malik, Advocate,
for the respondents-DBVNL
in CWP-8012-2020.

VINOD S. BHARDWAJ. J.

Both these writ petitions are being disposed of by a
common judgment being interrelated.

Brief facts in CWP-26339-2018, titled as 'Dakshin Haryana
Bijli Vitran Nigam Through XEN (OP) Division, Fatehabad Vs. Forum
for Redressal of Consumer Grievance and others' are as under:-

The above case raises a challenge to the order dated
09.07.2018 passed by the Consumer Grievances Redressal Forum
(hereinafter referred to as 'CGRF') whereby the directions had been
issued to the petitioner distribution licensee to refund the amount
charged to a consumer on account of theft of energy and further ordering
that the same be recovered from the concerned Junior Engineer,
Incharge. A further prayer was made to seek a declaration that the CGRF
had no jurisdiction to hear/entertain any complaint in respect of an action

taken by the distribution licensee either under Section 126 or Section 135 of the Electricity Act, 2003 especially when a separate procedure/remedy had been provided for the same under the Act.

It is averred that respondent No.2-Zile Singh was a consumer of the petitioner distribution licensee having Electricity Account No.CC4D-1236/Meter Sr. No.992097 for domestic use. During the course of a meter replacement drive against the old meter by smart meters, the meter of consumer-respondent No.2 was replaced on 27.11.2017. The above said replaced meters were sent to M&T Lab Sirsa for checking on 15.3.2018 vide challan form No.735-738. After the checking of the meters on 16.3.2018, 11 meters including the meter of respondent No.2 were found tampered and were returned vide Memo No.404 with the report/remarks as 'seal tampered' and with a suggestion that the meters be sent to M&T Lab Hisar for a joint inspection. Hence, a notice vide Memo No.782 dated 20.03.2018 was issued to respondent No.2-Zile Singh directing him to appear at the M&T Lab Hisar on 22.3.2018 at 10:00 A.M. for checking of the meter in his presence. The said notice was received by daughter of the consumer. Despite receipt of the said notice, respondent No.2, chose not to appear at the M&T Lab Hisar, hence, the inspection was conducted by the Laboratory in the absence of the consumer, under videography. During the course of inspection both the round lead seals were found tampered and during internal inspection three numbers of extra resistance were found inserted in the circuit of the C.T. to manipulate the working of the meter. The above said inspection report established tampering of meter and making

it a case of theft of energy under Section 135 of the Electricity Act, 2003.

Hence, a provisional assessment-cum-notice dated 27.3.2018, was served upon respondent No.2 as per the provisions of the Electricity Supply Code calling upon the respondent to deposit a sum of Rs.26,184/- as per Section 135 1-A and a sum of Rs.4,000/- as compounding charges assessed under Section 152 of the Electricity Act, 2003. Simultaneously, a complaint was also sent to the concerned Station House Officer for registration of the FIR, which was registered at Police Station-Hisar, on 03.05.2018.

Instead of submitting any response to the assessment-cum-notice dated 27.03.2018 or depositing the amount as determined, the respondent No.2-consumer filed a civil suit in the Court of Mrs. Archana Yadav, Addl. Civil Judge (Sr. Divn.) cum Chief Judicial Magistrate, Fatehabad, with a prayer for interim relief against the disconnection of the supply. An interim relief was initially granted by the Civil Court and the petitioner distribution licensee was restrained from disconnecting the electricity connection subject to payment of 50% of the outstanding amount vide order dated 16.04.2018. An objection regarding lack of jurisdiction of Civil Court under the Electricity Act, 2003 was raised before the Civil Court by the petitioner whereupon the said Civil Suit was withdrawn vide order dated 03.07.2018. It is further averred that despite being apprised about the remedy before the Special Court against the action under Section 135 of the Electricity Act, 2003, the respondent

No.2-consumer submitted a complaint before the CGRF, Hisar, constituted under Section 42 (5) of the Electricity Act, 2003. The said complaint was entertained by the CGRF ignoring the scope and applicability of the Haryana Electricity Supply Code, 2014 framed by the Haryana Electricity Regulatory Commission. The Forum directed the petitioner distribution licensee to refund the deposit amount charged on the consumer towards theft of electricity and held that the above amount cannot be claimed since the meter was lying unattended with the junior engineer of the Nigam. The loss caused to the Nigam was held recoverable from the Incharge, Junior Engineer who was holding the meter.

Aggrieved of the said order, the present writ petition has been filed alleging that the jurisdiction exercised by the CGRF was not conferred upon it under Section 154 read with Section 151 of the Electricity Act, 2003.

Written statement has been filed by the respondent No.2-consumer wherein the preliminary objections have been taken to the effect that the meter had been replaced on 27.11.2017 and all the seals were found intact at the time of its replacement. No shortcomings or tampering were indicated by the staff at the time of such replacement. The meter was neither sealed nor packed in the presence of the consumer and was sent to the M&T Lab, Sirsa on 15.03.2018 i.e. after 3½ months of its removal from the premises. The consumer even though claimed to have been called upon to appear before the M&T Lab, Hisar but the said

notice had not been delivered and only the assessment cum notice dated 27.03.2018, demanding dues was served. It was averred that the assessment charges were in violation of the instructions No.8.1 of the Sales Manual wherein it has been mentioned that while inspecting and checking the premises, the raiding party or the team shall record the entire event by videography and signature of the consumer is also required to be taken on the checking report and memorandum of seizure is required to be prepared at the spot. The intimation regarding assessment proceeding has to be served within 24 hours and as per Instructions 8.1 (II) (12) of the Sales Manual, 5th Edition, the Inspecting Officer is required to prepare a checking report mentioning all details. The relevant instruction is extracted as under:-

“12. The functioning of the inspecting team shall be regulated as under: -

(A) In case of Theft (Where the evidence of theft or tampering of meter or any other act leading to pilferage of energy is available at site): -

a) On complete checking, the AIO shall immediately submit all papers, checking report, memorandum of seizure and other relevant details to the concerned assessing officer for issuing the order of assessment by the licensee indicating the amount assessed (loss suffered) by the licensee for the theft of electricity.

b) Within 2 working days of the checking of premises, the authorized assessing officer of the Nigam as per clause-(II)(13), shall issue the order intimating assessment by the licensee to the consumer as per the

provisions of clause-III under proper receipt (Annexure-I). In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy must be pasted at a conspicuous place in/outside the premises in the presence of two witnesses. Simultaneously, the order shall be sent to the consumer under registered post.

*c) **Disconnection:** - Whenever a case of theft of electricity by a consumer is detected at the time of inspection by invoking provisions contained in Section-135 (IA), the service of the consumer shall be disconnected forthwith by the designated officer concerned and entry in this regard shall be made in Inspection report served to the consumer. For the purpose of disconnection, following officers of the Nigam are authorized as per provisions of Electricity (Amendment) Act-2007, pending notification of the same by HERC under Electricity (Amendment), Act, 2007.*

<i>Type of connection</i>	<i>Officers/official authorized for disconnection of consumer service.</i>
<i>Domestic</i>	<i>AGM/SDO ‘OP’</i>
<i>Non-Domestic</i>	<i>-do-</i>
<i>Agriculture</i>	<i>-do-</i>
<i>L.T. Industrial Supply</i>	<i>-do-</i>
<i>H.T Industrial Supply / Bulk Supply/ Public lighting and rest of the categories.</i>	<i>DGM/Xen ‘OP’</i>

Note: - The officer in higher rank shall also be authorized for the disconnection.

*(d) **Reconnection:** - The supply of the consumer shall be restored by the licensee or supplier, as the case may be within 48 hours of the deposit of 100% amount of assessed amount. In case of default, the consumer is liable to pay the interest at the prevailing Reserve Bank of India prime lending rate for the period of default. The above reconnection shall be without prejudice to the obligation to lodge the complaint to the Police & Court i.e. for all the cases of theft of electricity under section-135; the complaint is to be filed either in police station having jurisdiction over the area or in the special court notified by the Govt. of Haryana vide notification dated 22th September, 2010 wherein the Courts of Senior-Most Additional District & Session Judge, Additional District & Session Judge-II & Additional District & Session Judge-III at each District Head Quarters in the State of Haryana, have been designated as Special Courts under Section-153 of the Electricity Act-2003 for the offence under Section-135 to 139 of the Electricity Act-2003.*

*(e) **Lodging of Complaint:** (SI 7/2013):*

i) SDO 'Operation' shall ensure to provide copy of assessment to respective SHO I&P police station within 12 hours of detection of theft and local field staff i.e. JE, FM, AFM, LM, ALM accompanying during checking with Vigilance Team shall be responsible for providing copy of LL1 and copy of assessment to the respective SHO I&P Police Station within 12 hours for lodging Complaint/DDR, in case if he fails to provide the same in time disciplinary action shall be initiated against him.

ii) In case of checking's done by Operation staff, concerned SDO 'Operation' shall be responsible for

providing copy of LL1 and copy of Assessment to the respective SHO I&P Police Station within 12 hours for lodging/DDR, in case if he fails to provide the same, disciplinary action shall be initiated against him.

iii) SHO I&P Police Station shall insure that compliant DDR must be lodged within 24 hours of theft Detection as per Indian Electricity Act 2003 in coordinate with concerned SDO 'Operation'.

iv) SHO I&P Police Station shall ensure that either realization of assessed amount or FIR registration shall be done within 48 hours. The provisions of Electricity (Amendment) Act-2007 are reproduced here under: -

151A. For the purpose of investigation or an offence punishable under this Act, the police officer shall have all the powers as provided in Chapter-XII of the Code of Criminal procedure, 1973”.

151B. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under Sections 135 to 140 or Section-150 shall be cognizable and non-bailable”.

151. Provided that the Court may also take cognizance of an offence punishable under this Act upon a report of a police officer filed under Section-173 of the Code of Criminal Procedure, 1973:

Provided further that a special court constituted in the Section-153 shall be competent to take cognizance of an offence without accused committed to it for trial.

Further, in view of the above provisions, the authorized officer may also file the complaint to the special court in

*case the Police does not lodge the FIR. (SI 6/2009)
Format of filing complaint to court is at Annexure-V.*

It is mandatory to lodge complaint in the nearby Police station within 24 hours after disconnection of connection on detection of theft of energy.

In case the consumer comes forward for depositing the compounding offence amount, the necessary compounding amount shall be got deposited and written communication shall be sent to SHO (as per format attached as Annexure-VIII) for not instituting any proceeding against the consumer in criminal court as per provision of Section 152(2&3) of EA, 2003. (SC 54/2007).

(f) Provided that the service of a person who is not a consumer of the Nigam shall not be restored and the payment of amount of assessment made by him shall not entitle such person to be a consumer of Nigam on such payment.

(B) In the case of suspected theft (broken/tampered/ fake seals of meter and / or metering cubicle / cut in incoming PVC Cable or any other instance where evidence is not available at site)

(a) In the cases of suspected theft, the inspection team shall not disconnect the supply and shall restore the supply through a new meter of appropriate rating after sealing the original metering equipments at site by Johnson's paper seals,. After inspection, the authorized inspecting officer shall prepare a checking report giving details such as connected load / MDI, conditions of seals, working of meter and mention other irregularities

noticed during checking. If needed, AIO shall remove the meter and put it in a properly sealed cardboard box in presence of consumer or his representative which shall be duly signed by checking team and consumer. Seizure memo would also be prepared. The AIO shall record the particulars of the same in the report before sealing and taking the meter /seals/ metering equipments for testing in M&T lab as per clause (d) or any other agency. The report must be signed by each member of the joint team.

(b) The consumer shall be served within 2 working days a notice (Annexure-II) signed by senior most officer of the inspecting team at the site as to why the case of theft of electricity should not be framed against him/her. The notice should clearly state the time, date and place at which the reply has to be submitted and the name of the designated officer to whom it should be addressed. The notice must be handed over to the consumer or his/her representative at site immediately under proper receipt. In case of refusal by the consumer or his/her representative to either accept or give a receipt, a copy of each must be pasted at a conspicuous place in/outside the premises. Simultaneously, the joint report and the notice shall be sent to the consumer under Registered Post. The designated officer for the above purpose shall be SE 'OP' for the CT/PT meters and XEN 'OP' for Whole Current Meter.

The consumer is at liberty to represent to the designated officer within 3 days from the date of receipt of notice.

(c) Within 4 working days from the date of submission of consumers' reply, if made within prescribed period, the designated officer shall give a personal hearing to the

consumer, if request in this regard has been received from consumer. After due consideration of the matter, the designated officer shall pass a detailed order within 15 days from the date of personal hearing or receipt of reply, as the case may be (Annexure-III) as to whether the case of suspected theft of Electricity is established or not. The order shall contain the brief of inspection report, submissions made by consumer in his written reply and during personal hearing and reasons for acceptance or rejections of the same and the amount of assessment, period of assessment as per clause-III.

*(d) **Testing of meter / seals /metering equipment:** - In cases of suspected Theft of Electricity through tampering of meters or metering equipments or seals, the meter / metering equipments shall be taken out from the premises in a sealed box duly witnessed by the consumer, for requisite testing in the M&T laboratories. The designated officer shall issue a letter to the consumer at least one week in advance, informing him about the date of meter testing, and requesting him to attend the same. If the consumer is not present during the testing on the scheduled date, the testing shall be carried out in the presence of the two officers of the Nigam not connected with the inspection.*

(e) Further, in case of suspected theft of electricity, if consumption pattern for last one year is reasonably uniform and is not less than 75% of the assessed consumption as per clause-III, no further proceedings shall be taken and the decision shall be communicated to the consumer under proper receipt within 3 working days and connection shall be restored through original meter.

(f) Where it is established that there is a case of theft of Electricity, then the procedure as prescribed under Clause-(II)(12)(A)(c to g) shall be followed.”

It was further averred that the police officials empowered as per Chapter XII of the Code of Criminal Procedure, are the authorized officers who are competent to file a complaint to the Special Court. It was further submitted that as the mandatory procedure has not been followed, initiation of proceedings under Section 135 of the Electricity Act, 2003 was unsustainable and demand could not have been raised. Since the jurisdiction of Civil Court was barred, hence, the grievance was espoused before the CGRF under regulation 2.33 of the HERC (Guidelines for Establishment of the Forum for Redressal of Grievances of the Consumers, Electricity Ombudsman and Consumer Advocacy Regulations, 2016). The grievance of the complainant could be examined by the CGRF under Regulation 2.35. The relevant clauses of the above said Regulations read thus:-

“i) “Complainant” means and includes the following who have a grievance as defined in these Regulations:

(i) A consumer as defined under Clause (15) of Section 2 of the Act; Provided that a member of the Group Housing Society having ‘Single Point Connection’ from the licensee” is also a deemed consumer for the purpose of this Regulation

(ii) A disconnected Consumer

(iii) *An applicant for a new electricity connection/modification in existing connection;*

(iv) *Any registered consumer association having ‘Single Point Connection’;*

(v) *Any unregistered association or group of consumers, where the consumers have common or similar interests; and*

(vi) *In the case of the death of a consumer, his legal heir(s) or representative(s).*

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l) “Grievance” or complaint means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which has been undertaken to be performed by a distribution licensee in pursuance of a license, contract, agreement or under the Electricity Supply Code or in relation to standards of performance of distribution licensees as specified by the Commission and includes billing disputes of any nature and matters related to safety of the distribution system having potential of endangering of life or property.

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Classification of grievances

2.33 As far as is possible and practical, the grievance shall be prioritized for redressal based on the following priority order:-

a) Disconnection of supply/ Re-connection of supply after Disconnection

b) Connection – Release of new Connection or modification in existing connection

c) Disconnection of Supply

d) Meter related issues

e) Billing and related issues

f) Other issues

Provided that it should be ensured that all grievances are disposed of within the time limit specified under these Regulations.

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2.35 All complaint-receiving centers shall accept the grievances from Complainants falling within the jurisdiction of the Forum and forward the same, along with other supporting documents to the appropriate Forum within the next two working days.

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2.39 The Forum may reject the grievance at any stage under the following circumstances:

a) In cases where proceedings in respect of the same matter and between the same Complainant and the Licensee are pending before any court, tribunal, arbitrator or any other authority, or a decree or award or a final order has already been passed by any such court, tribunal, arbitrator or authority;

b) In cases which fall under Sections 126, 127, 135 to 139, 152, and 161 of the Act;

c) In cases where the grievance has been submitted one year after the date on which the cause of action has arisen; and

d) In the case of grievances which are:

(i) frivolous, vexatious, mala fide;

(ii) without any sufficient cause; or

(iii) where there is no prima facie loss or damage or inconvenience caused to the Complainant or the consumers who are represented by an association or group of consumers.

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

e) The grievance pertaining to other Forum of Haryana shall be sent to the Appropriate Forum under intimation to the complainant.

2.40 Where a complaint is allowed to be proceeded with, under Regulation 2.35, the Forum may proceed with the complaint in the manner provided under these regulations.”

Referring to the above, it is contended that the CGRF had the jurisdiction under the above regulations to entertain the said complaint and has rightly examined the same and noticed that the mandatory procedure under the Electricity Act, 2003 had not been followed.

In so far as the facts of CWP-8012-2020 are concerned, the said writ petition seeks quashing of the chargesheet dated 24.03.2020 as well as the order dated 18.05.2020, whereby an inquiry Officer had been appointed against the Chairperson of the CGRF consequent to the order

passed by the CGRF, averring that the Inquiry proceedings have been ordered ignoring the Regulations of 2016. The petitioner joined services of the erstwhile Haryana State Electricity Board in the year 1993 and was thereafter, absorbed with the Dakshin Haryana Bijli Vitran Nigam. He was transferred and posted as a member of the CGRF vide order dated 10.02.2017. He took charge as Chairman of the CGRF, Hisar on 29.03.2017. It is submitted that Section 168 of the Electricity Act, 2003, provides for protection against actions or acts done in good faith. It is contended that as per the Statutory Scheme, the CGRF is a statutory body exercising the quasi-judicial powers. The Regulations of 2016 provide for the jurisdiction of the CGRF. Regulation 2.39 confers a discretion on the CGRF to reject a complaint at any stage in the cases that fall under Sections 126, 127, 135 to 139, 152 and 161 of the Electricity Act, 2003. It is also averred that the complainant-consumer, an employee of the Vigilance Department, had alleged that the old meter was removed maliciously and tampered at the behest of one Inder Singh ASI who had been implicated in the corruption case. The order was passed by the petitioner as Chairperson of the CGRF and in exercise of the powers conferred upon him. The distribution licensee had preferred an appeal against the said order before the Electricity Ombudsman, Haryana, which was dismissed since only a consumer can appeal to the Ombudsman. It is further averred that the petitioner had also been the President of the Haryana Power Engineers Association and had been raising various issues to protect the interests of the consumers as well as the employees of the distribution licensee highlighting the corrupt

practices prevalent in various quarters. A complaint dated 25.9.2017, was addressed by the petitioner to the Additional Chief Secretary (Power), Govt. of Haryana about the corrupt practices adopted in the purchase of electricity meters wherein combination of tampers was removed from the specifications to suit a private entity. The Whole Time Director of the petitioner distribution licensee had also considered the above said aspect and found that a lot of meters under inspection did not meet the specifications of the distribution licensee. 1,12,500 meters procured from M/s L & T were hence found to be prone to tampering and recommendation was made to de-empanel the firm from supply of single phase meters. However, the then Chief Engineer moved a noting for directing the supplier of the meter to consider the tampering issue and implement the same in all existing meters. Even though the above aspect was mandatory and had to be rectified, however, no action was taken against supplier regarding replacement or modification of the meters resulting in loss of Rs.11.25 crores to the Nigam. The complaint on investigation established that the meters were found not recording correct reading and prone to be tampered. Since the above said illegalities were highlighted by the petitioner, in his capacity as the President of the Haryana Power Engineer's Association, the disgruntled officers procured a false complaint against the petitioner and the instant proceedings have been initiated. The chargesheet dated 24.03.2020 was thus served upon the petitioner alleging that he had committed acts of omission and commission which were unbecoming of an officer of the Nigam. Reference is made to the decision in the case of Zile Singh (the

consumer), and alleged that the petitioner exceeded his jurisdiction amounting to a mis-conduct. It was also averred that even if it is assumed that the order passed by the Forum was without jurisdiction, the distribution licensee had a remedy to challenge the same and the said remedy has also been availed of by the distribution licensee. In case, the respondents are allowed to serve the chargesheet in such a manner, on officers discharging quasi-judicial functions for deciding cases in favour of a consumer, the same would jeopardize the working of the quasi-judicial entities and defeat the electricity reforms. Reference was also made to the regulations extracted earlier to contend that there was no transgression of jurisdiction or authority and that the exercise of said jurisdiction was bona fide and is protected under Section 168 the Electricity Act, 2003. It is also submitted that the chargesheet alleges that the petitioner had acted in violation of the regulations of 2004 ignoring that the regulations of 2016 which had already been notified and regulations of 2004 had been repealed. The memorandum of charge has thus been drawn on the strength of repealed regulations. It is further averred that no objection to the maintainability of the complaint was raised before the CGRF and there was no evidence to establish that any proceedings under Section 135 or Section 126 of the Electricity Act, 2003 had been initiated. The initiation of disciplinary departmental proceedings in such cases would set a wrong precedent and would hamper the functioning of the CGRF and thereby compromising the interests of the consumers rendering the functioning of the CGRF

subservient to the will of the distribution licensee. Prayer was thus made to set aside the charge-sheet and the proceedings arising therefrom.

Reply had been filed by the distribution licensee reiterating its earlier stand and averring that the chargesheet had been served on a complaint submitted against the petitioner and that the proceedings against him had been stayed by an interim order of this Court. It is averred that the scope of judicial review against initiation of departmental proceedings is limited and that impugning the chargesheet without even filing a reply was pre-mature. All the issues raised herein could be raised by the petitioner before the competent authority and that a chargesheet should not be quashed prior to conclusion of an inquiry.

The charges against the petitioner are as under:-

“i. Exceeding his jurisdiction by taking up and deciding the application of Sh. Zile Singh (consumer) related to the electricity theft in favour of the consumer even when he was not empowered to decide such case as per the extant Regulations.

ii. Giving undue benefit to the consumer.

iii. Causing corresponding loss to DHBVN

iv. Violating the instruction/Regulations of DHBVN in this regard.”

It is also submitted that the charge sheet had been served as per the regulations applicable to the employees of the distribution licensee. It is also averred that an employee does not enjoy immunity from the disciplinary proceedings qua matters decided by him in

exercise of quasi-judicial functions when such exercise of quasi-judicial powers is negligent or reckless or to confer undue favour on any person.

The disciplinary proceedings could be initiated in any of the following cases:-

“i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

iii) if he has acted in a manner which is unbecoming of the government servant;

iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

v) if he had acted in order to unduly favour a party;

vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

The above said instances are only illustrative and not exhaustive. It was also submitted that mere reference of a wrong regulation instead of the new regulation would not vitiate the exercise of power as it is a mere irregularity and disciplinary proceedings could nonetheless be continued and completed. It is also contended that even regulations of 2016 empowers a licensee to hold an independent inquiry

against the Chairman of the CGRF in case of his incurring certain disqualifications. The relevant regulations are extracted as under:-

“2.14 No person shall be appointed and/or be entitled to continue as a Chairperson/ Member if he/ she stands disqualified on account of his/her:

- a) Having been adjudged an insolvent;*
- b) Having been convicted of an offence which, in the opinion of the licensee, involves moral turpitude;*
- c) Having become physically or mentally incapable of acting as such a member;*
- d) Having acquired such financial or other interest as is likely to affect prejudicially his/her functions as a member;*
- e) Having so abused his/her position as to render his/ her continuance in office prejudicial to public interest; or*
- f) Having been guilty of proven misbehavior.*
- g) Having joined or accepted any other gainful post/position*

2.15. An existing Chairperson/ Member shall be liable to be removed from his office forthwith on account of any of the aforesaid disqualifications arising or being discovered. Provided that no Chairperson/ Member shall be removed from his/her office on any ground specified in the aforesaid sub-clauses unless the licensee has held an independent inquiry.”

The Chairperson being a member of the services of the licensee is governed by the service rules in terms of conditions of his appointment. It was also contended that the CGRF does not have power to examine the issues under Sections 135 of the Electricity Act, 2003 and hence Section 168 thereof does not protect the petitioner. The expression “public servant” used in Section 168 has to be read in the light of Section 169 which defines a “public servant.” It is also averred that the contention of the petitioner about not being apprised of the proceedings under Section 135 is incorrect since the order dated 09.07.2018 passed by the CGRF itself records that FIR had been registered and the Sub Divisional Officer had specifically apprised about the case being that of theft of energy. Both the said aspects find a mention in the order dated 09.07.2018, passed by the CGRF. Despite the same, the petitioner chose to venture in a prohibited area and passed the impugned order which was clearly beyond his powers and caused benefit to the consumer.

A rejoinder was filed by the petitioner controverting the averments and it was alleged that the distribution licensee maliciously implicated the petitioner in another charge sheet wherein he was suspended for certain misplaced and misconceived charges.

The impugned charges have also been perused and it shows that a complaint pertaining to the order passed by the petitioner in the complaint of consumer Zile Singh while functioning as the Chairperson of the CGRF lays the foundation of the allegations of the charge. The

other three charges are mere consequences of the order and hence are not about any other independent misconduct.

Learned counsel for the parties reiterated their respective submissions noticed above. While the distribution licensee has challenged the order passed by the CGRF on account of lack of jurisdiction and power with the CGRF to entertain cases arising out of and in relation to the proceedings under Section 135 of the Electricity Act, 2003, the consumer defends the same to be proper and in light of the authority vested in CGRF under the Regulations of 2016. Further, in so far as the chargesheet to the petitioner in CWP-8012 of 2020 is concerned, the same is sought to be impugned by referring to the Regulations of 2016 as well as Section 168 of the Electricity Act, 2003 claiming protection and also alleging and attributing malice against the petitioner which is opposed by the distribution licensee on the ground of maintainability of the proceedings as well as its authority to issue the chargesheet to its employees and pointed out that the protection of Section 168 would not be available to the petitioner since he is not amongst the protectees identified in Section 168 when read with Section 169 of the Electricity Act, 2003.

I have heard learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition.

The prime issue which requires consideration by this Court is as to whether the CGRF is empowered to adjudicate the complaints

arising out of and in relation to the initiation of proceedings under section 135 of the Electricity Act, 2003 or not. A reference is thus required to be made to the relevant statutory provisions of the Electricity Supply Code 2014 as well as the Regulations of 2016 that have already been reiterated in the preceding paragraphs of this judgment.

The Electricity code was notified by the Haryana Electricity Regulatory Commission (hereinafter referred to as 'HERC') in exercise of powers conferred on it by Section 50 read with Section 181 (2) (x) of the Electricity Act, 2003. The above said regulations provide for obligations of the licensee vis-a-vis the consumer and specifies set of practices to be adopted by the distribution licensee, to provide an efficient, cost effective and consumer friendly services to the consumers. Section 50 and Section 181 (2) (x) of the Electricity Act, 2003 reads thus:-

“Section 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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Section 181.
(Powers of State Commissions to make regulations):

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(2) In particular and without prejudice to the generality of the power contained in sub-section (1), such regulations may provide for all or any of the following matters, namely:

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(x) electricity supply code under section 50.”

ELECTRICITY SUPPLY CODE, 2014

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“1.2 These Regulations shall come into force from the date of publication in the official Gazette of Haryana.

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1.4 These Regulations detail the obligations of the licensee and consumers vis-à-vis each other and specify the set of practices that shall be adopted by the licensee to provide efficient, cost-effective and consumer friendly service to the consumers. These specifically detail the following:

- (1) The procedure for connection, disconnection, reconnection, assessment of load, changes in existing connections including load modifications, change of name and change of tariff category.*
- (2) Practices relating to consumer metering, billing and payment of bills.*
- (3) Theft and unauthorized use of Electricity.*

xxx xxx xxx

7.3 Assessment of energy consumption

7.3.1 Notwithstanding the criminal action taken under Section 135 of the Act for theft of electricity, the assessing officer of the licensee or supplier, as the case may be, as defined under Section 126 of the Act, but not below the rank of SDO, shall assess the energy consumption as per the assessment formula given in Annexure – II to these Regulations.

7.3.2 In case of a regular metered connection, where a case of theft of electricity is detected, units recorded in the meter for the period for which the assessment is made and for which bills have been raised by the licensee, shall be accounted for while working out the net assessment of theft of electricity.

7.3.3 After assessing the energy consumption as per the assessment formula given in Annexure – II to these Regulations, the licensee shall prepare a final assessment bill on two times of the tariff applicable and serve upon the consumer notices containing the following information.

(a) The details relating to the inspection carried out by the authorized officer including the dates and timings, list of material seized and any other relevant fact.

(b) Detail of the energy consumption assessed on account of theft of electricity, the period for which assessment has been made and the amount to be deposited by the consumer / person (amount calculated as per the assessment formula given in Annexure – II to these Regulations). ”

Section 50 of the Act of 2003 vests an authority on the State Commission to specify the Electricity 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. The scope of Section 50 is thus largely confined to specified issues in relation to electricity charges and other matters which relate to pre-conditions as well as the consequential measures required to be taken by the distribution licensee and its officers and for protecting its assets.

Regulation 1.2 of the Supply Code specifies the said practices in relation to theft and unauthorized use of electricity. However, the scope of regulation 1.4 has to be read in light of and in conformity with Section 50 which outlines the domain of the electricity supply code itself. Regulation 7 of the Electricity Supply Code, 2014 details out the procedure in a case of theft of electricity. Certain procedural safeguards have been provided thereunder including the list of authorized officers empowered to carry out inspection under Section 135 of the Electricity Act, 2003; the process to be followed on receipt of information regarding theft of electricity and the steps to be taken thereafter. Regulation 7.3 deals with assessment of energy consumption as per the assessment formula given in Annexure-II of the regulations and on the deposit of the said amount, the electricity supply shall be

restored. Failure to deposit the assessed amount as well as the compounding charges would entail initiation of criminal proceedings under section 135.

The HERC notified the Regulations of 2016 exercising the powers conferred upon it under Section 181 read with Section 42 (5) to (8) of the Electricity Act, 2003. A complainant as per the said regulations is competent to espouse his 'grievance' as defined in Regulation 1.6 (l) which is in the nature of any fault, any imperfection, shortcoming or inadequacy in the quality, nature and manner of performance of the agreement or in relation to satisfaction of performance of distribution licensee as specified by the Commission and includes billing disputes of any nature and matters relating to safety of the distribution system having potential of endangering a life or property. The CGRF has been constituted in terms of Chapter II of the above said regulations for disposal/adjudication of the grievances of the consumers. The jurisdiction, authority and powers of the CGRF are thus to be derived from a comprehensive reading and interpretation of definition of 'grievance' as provided in regulation 1.6 (l) of the Regulations of 2016. The classification of 'grievances' in Regulation 2.33 is for prioritization by the forum for their redressal. The said prioritization deals with meter related issues as well as other issues in clause (d) and clause (f) thereof which is admitted by the consumers as well as by the President of the Forum. The same is relied by them to contend that it incorporates even issues relating to theft of electricity.

Reference is also made to the limitations/pre-conditions for submission

of grievances and regulation 2.39 which uses an expression “may” and includes within its domain where acts falls under section 126, 127 and 135 to 159 to strengthen the argument. Regulation 2.40 stipulates that where a complaint is allowed to be proceeded with under Regulation 2.35, the Forum may proceed with the complaint in the said matter. The emphasis of the consumer as well as the then chairperson of the CGRF, Hisar is that the said regulation confers a discretion on the CGRF to examine the ‘meter related issues’ as well as the ‘other issues’ and that as the controversy in the present case relate to tampering of the meter, and a consequential theft of energy, the same being a ‘meter related issue/other issues,’ it could be entertained by the Forum. Reliance was made on clause 2.39 which uses the expression “may” to contend that discretion has been vested on the Forum to reject or entertain the grievances notwithstanding that a case may relate to the proceedings under Sections 126, 127, 135 to 139, 152 and 161 of the Electricity Act, 2003. Hence, by necessary inference, the discretion has been vested with the CGRF to examine the issue to its satisfaction and it may thereafter choose to proceed further or not and that in the event of the CGRF opting to proceed further in the matter, the proceedings would not be without jurisdiction or authority.

The above submission seemingly stems from a plausible interpretation of the clause, however, the above submission has to be understood, applied and interpreted in terms of the substantive powers that have been invoked by the appropriate commission for framing the Regulation/Electricity Supply Code as well as the definition of various

expressions used thereunder. Since the Regulations of 2016 have been notified in exercise of the powers conferred under Section 42 (5) to (8) of the Electricity Act, 2023, the said aspect needs to be referred. The same is extracted as under:-

“Section 42. (Duties of distribution licensee and open access): ---

xxx xxx xxx

(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.”

(Emphasis supplied)

The aforesaid section confers a duty on the distribution licensee to establish a forum for redressal of ‘grievance’ of the consumer

in accordance with the guidelines specified by the State Commission. The said provisions are without prejudice to the right which a consumer may have apart from the right conferred upon him by the sub sections. Even though the forum is to be established for redressal of 'grievances' however, the Electricity Act, 2003, does not define a "Grievance." The same has been defined in Regulation 1.6 (1) which is an exhaustive definition and confines 'grievance' to the fault, shortcomings or inadequacy in the quality, manner or nature of the performance of the services, duties and obligations undertaken to be performed by the distribution licensee under the license, contract, agreement or under the Electricity Supply Code and in relation to standards of performance of distribution licensees as specified by the Commission and includes billing disputes of any nature and matters relating to safety of the distribution system having potential of endangering of life and property. The above said definition has two separate parts. While the first part relates to defect, deficiency or imperfection in the nature, manner and quality of performance under the license, contract or agreement or under the Electricity Supply Code, the second part deals with the shortcomings, deficiency or fault in relation to standards of performance pertaining to quality, nature and manner of performance by the distribution licensee as specified by the Commission and also includes the billing disputes and matters pertaining to safety of the distribution system. A plain reading thereof shows that the above said definition of a 'grievance' has to be in relation to a deficiency, fault or inadequacy in the quality, and nature and manner of performance of an obligation by

the distribution licensee and does not extend to the issues relating to cases pertaining to the theft of energy or unauthorized use of energy. The said aspect would not fall within the confines of a shortcoming, deficiency or inadequacy in the quality, nature and manner of performance by the distribution licensee. The above said aspect is rather an aspect of an alleged abuse by the consumer and is not in relation to an inadequacy in performance of its obligation by the distribution licensee. While the definition of grievance relates to a shortcoming in the obligation/services offered by the distribution licensee, the acts falling in the category of unauthorised use of energy/theft of energy are not acts of any defect or deficiency on the part of distribution licensee and rather a breach by the consumer. The consumer grievances redressal forum does not empower or entitle the distribution licensees or its functionaries to initiate proceedings against a consumer and also do not provide for any remedy of appeal to the distribution licensee against an order passed by the CGRF or the Electricity Ombudsman. The remedy under the above regulations is provided only to the consumer against a deficiency/shortcoming by the distribution licensee in performance of its obligations as per the agreement or the Electricity Supply Code or as specified by the Commission.

The second aspect relates to a billing dispute and matter relating to the safety of the distribution system. The expression 'billing' has also not been defined under the Electricity Act, 2003 or even under the Regulations of 2016. The Electricity Supply Code, however, defines

the expression billing cycle or billing period. The same is extracted as under:-

“2.3 In these Regulations, unless it is repugnant to the context:

(12) “billing cycle or billing period” means the period for which regular electricity bills as specified by the Commission, are prepared for different categories of consumers by the licensee. This is the period between two consecutive meter reading dates.”

A plain reading of above shows that it relates to the period for which regular electricity bill, as specified by the commission, is prepared for different categories of consumers by the licensee. The word ‘billing’ has been defined in the Oxford Advanced Learners Dictionary 9th Edition to be ‘an act of preparing and sending bills to customers and was usually in relations to a bill which is a document that shows how much one owes for the goods and services.’ Thus, a ‘billing dispute’, when read in conformity with the billing cycle/billing period expressed in the Electricity Supply Code, 2014, and the definition of ‘billing’ read with Bill as defined in the Oxford Advanced Learners Dictionary 9th Edition concludes that the dispute in question should relate to the payments which a consumer is required to make for the use of the energy against a billing period/billing cycle. The same having been qualified by use of an expression “regular” in the Electricity Supply Code, the scope of jurisdiction is confined to the raising/demanding of a regular electricity bill depicting or denoting the dues to be collected from a

consumer in a defined billing cycle for the electricity/energy consumed by him in such billing cycle. Hence, it is evident that not each and every dispute can be examined by the grievance forum and that the jurisdiction of the Forum has been confined to 'grievances', which such definition is restricted and confined largely to deficiencies/shortcomings in the nature of services and obligations required to be discharged by a distribution licensee and in relation to matters regarding the safety of the distribution system having potential to endanger the life and property. The expression "distribution system" again has not been defined in the Electricity Act, 2003, the electricity code or even the regulations and has to be assigned a meaning in relation to the standards of performance of distribution licensee as specified by the Commission and prescribing standards for safety of the distribution system to avoid danger or harm to life or property. The said clause has callings of entertaining disputes by the CGRF where the standards for safety of the distribution system have not been adhered to by the distribution licensee thereby exposing a consumer to danger to his life or property. Chapter II of the Regulations of 2016 provide for establishing a Forum for redressal of 'grievances' of consumers. The very name establishes that the said Forum does not have plenary powers and has jurisdiction only with respect to 'grievances' of the consumers and for their redressal.

Further, regulation 2.39 of the Regulations of 2016, qualifies the grievances to be prioritized for redressal of the forum. The said priority order does not amount to enhancing the scope of grievance as defined in 1.6 (l) and only categorizes the grievance espoused in the

said order for priority redressal. Hence, the expression “meter related issues” and “other issues” referred to in 2.33 (d) and (f) respectively have to be understood in the context of definition of “Grievances.” Merely because clause (f) is in the nature of a residuary clause, it cannot be interpreted to encompass every conceivable issue even by ignoring the definition of the grievance as provided. The contention of the consumer as well as the chairman of the CGRF that the aforesaid clauses would also include any other issue in its widest form is thus not based upon correct understanding of the regulations.

The well established rules of interpretation recognize the importance of the Headings, Marginal Notes, Punctuations, Illustrations as well as the definitions – whether restrictive or extensive as internal aid to construction of meaning of the clause. It was held by the Hon’ble Supreme Court in the judgment of ‘Vanguard Fire and General Insurance Co. Ltd. Vs. Fraser and Ross, reported as AIR 1960 SC 971, that “when a word is defined to ‘mean’ such and such, the definition is prima facie restrictive and exhaustive. The above definition has been accepted in later judgments of the Hon’ble Supreme Court as well.

Further, as subsidiary Rules of Statutory Interpretation, when particular words pertaining to a class, category or genus are followed by general words, the general words are construed as limited to things of the same kind as those specified. The above has been held by the Hon’ble Supreme Court in the matter of Kavalappara Kottarathil Kochuni Vs. State of Madras, reported as AIR 1960 SC 1080 (page

1103). The above rule of ‘ejusdem generis’ reflects an attempt to ‘reconcile incompatibility between the specific and general words in view of other rules of interpretation that all words in a Statute are to be given effect if possible, that a Statute is to be construed as a whole and that no words in a Statute are presumed to be superfluous.” This position and rule has been reiterated in the judgment of **Housing Board of Haryana Vs. Haryana Housing Board Employees Union, reported as AIR 1996 SC 434** by the Hon’ble Supreme Court of India. Hence, ‘other matters,; has to derive meaning from specific categories mentioned earlier.

The same now leads to the next regulation i.e. regulation 2.39, reliance whereupon was much emphasized on the use of expression “may” under the regulations to contend that the discretion having been conferred, it would, by necessary inference, amount to empowering the forum to examine the said issues as well. It is hence required to be understood as to what is the import of the expression “may” and as to whether the same is in the nature of a discretion or has to be read as mandatory.

It is a well settled position in law that even though the expression “may” often denotes a discretion to have been vested with the authorities, however, as per the 14th Edition of “Principles of Statutory Interpretation” by Justice G.P. Singh, the ordinary use of word “may” implies a discretion but under certain circumstances, it can be given meaning of “shall” and thus conferring an obligation on said authority.

The principle was enunciated by Lord Cairns in **Julius Vs. Lord Bishop of Oxford, 1874 (80) ALL.E.R. 43**, in the following words; ---“there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty and make it a duty of the person in whom the power is reposed to exercise the power when called upon to do so.

Where a power is deposited with a public office for the purpose of being used for the benefit of persons specifically pointed out with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised and the Court will require it to be exercised.

The enabling words are construed as “compulsory whenever the object of the power is to effectuate a legal right.”

The said aspect was also examined by the Hon’ble Supreme Court of India, in the matter of **State of Uttar Pradesh Vs. Jogender Singh, reported as AIR 1963 SC 1618**, to contend that there is no doubt that the word “may” generally does not mean “must” or “shall”. It is well settled that the word is capable of meaning “must” or “shall” in the light of the context. Where discretion is conferred upon an authority coupled with an obligation, the word “may” which denotes discretion should be construed to mean a command. Sometimes, the Legislature

uses the word “may” out of deference to the status of the authority on whom the power and the obligation are intended to be conferred and imposed.

In an oft quoted passage, Lord Campbell said..... “no universal rule can be laid down as to whether the mandatory enactments shall be construed directory only or obligatory within implied nullification for disobedience.” It is the duty of the Courts of justice to try to get at the real intention of the Legislature by carefully attending to the whole scope of the Statute to be considered.

The Hon’ble Supreme Court of India applied the said principles and held that the question as to whether a Statute is mandatory or directory depends upon the intent of the Legislature and not upon the language in which intent is clothed. The meaning and intention of the Legislature must govern and these are to be ascertained not only from the phraseology of the provision, but also by considering its nature, its design and the consequences which would follow for construing it the one way or the other. In the matter of **Lalaram Vs. Jaipur Development Authority, reported as (2016) 11 SCC 31** where the holding of an expression as mandatory causes serious general inconvenience to innocent persons, such phrase has to be construed as directory. The prescribed parameter is thus the nature and intent of the Legislation, the consequences that flow from the construction, the duty and obligation cast and as to whether the construction is likely to cause grave general inconvenience or not.

In the above said Rules of Construction, it is required to examine as to whether the circumstances for rejection of a grievance under regulation 2.39 are in the nature of a mandatory requirement or confer a discretion on the Forum.

A consideration of the circumstances under which a Forum may reject the 'grievance' at any stage shows that the same are in relation to the grievances qua which the disputes are pending before any Court, Tribunal or an Arbitrator or where a decree or award has been passed by the such Court, Tribunal or an Arbitrator or an Authority or where the cases fall under Sections 126, 127, 135 to 139 and 152 and 161 of the Act or where they are submitted beyond the period of one year from the accrual of the cause of action and also in cases where the grievance is frivolous, malicious, mala fide and is without any sufficient cause or does not reflect any prima facie loss or damage. In such an eventuality, the decision of rejection is required to be taken only after grant of an opportunity of hearing. Clause (e) of Regulation 2.39 covers the grievances pertaining to other Forums of Haryana are required to be sent to the appropriate Forum under intimation to the complainant. Where a complaint is allowed to be proceeded under Regulation 2.39, the same has to be examined in terms of the regulations.

A perusal of the circumstances in which the said power may be invoked reflect that the first two categories relate to the nature of orders/disputes qua which an order/award has been passed by a Court, Tribunal, Arbitrator or an Authority. All such cases where proceedings

are pending before the said Authority and/or where the award/order has been passed are amenable to a hierarchical system where such proceedings/orders/awards can be challenged on all aspects including maintainability. Hence, the efficient and effective remedy has been provided to any person aggrieved by the said proceedings/orders and not just to one party to such dispute, as is the case under Section 42 (5) or 42 (7). The category (b) relates to cases that fall under the definition of unauthorized use of energy or in matters relating to theft and compounding of offences where the alternative remedy of appeal under Section 127 or determination by the Special Court has been provided under Section 154 of the Electricity Act, 2003/the Statutory Scheme. The said Statutory Forums have been prescribed in the same statutory scheme and the Statute, while being conscious of different nature of disputes has clearly provided for separate dispute redressal mechanism and without any over-lapping. The Electricity Act, 2003 provides for dispute redressal/grievance redressal mechanism in the form of CGRF and Electricity Ombudsman for one set of cases; the appropriate Commission – Appellate Tribunal for another. Similarly, there is an Assessing Officer and Appellate Authority for unauthorized use of electricity related cases and the Special Court and its appellate remedy for theft related issues. All these Forums have a remedy of appeal against primary order. Hence, the Scheme under the Electricity Act, 2003 is comprehensive and caters to grievance redressal for each nature of grievance without any over-lapping The Statutory Scheme thus created a separate redressal mechanism with prescribed boundaries to be

respected by each of them. The Scheme would not have provided for different authorities and could have confined itself to one Forum only, if the Legislature intended that one Forum would be competent to hear and decide all issues.

Similarly, in matters pertaining to Section 161 of the Electricity Act, 2003, a procedure for assessment of injuries and notices has also been provided. Thus, efficient, effective and alternative remedy has already been stipulated in the Statutory Scheme. Once the specific procedure, against a specific action has been provided, as per settled law, such procedure under the specific clause would override a general procedure.

It would be improper to construe that notwithstanding a specific special appellate/redressal procedure prescribed in the specific clauses, yet, the forum would have the jurisdiction on the basis of a remote inference drawn on loose construction and interpretation of the classification of priorities and ignoring the definition of “grievance.” If such an explanation or construction as propagated by the consumer/K.D. Bansal is accepted, the same may give rise to mutually contradictory or conflicting decisions by the specified authority and the consumer grievance redressal forum. Similarly, where a proceeding is pending before a court, arbitrator, tribunal or authority and governed by the hierarchy prescribed thereunder, it is likely to end in the same result.

It is also incomprehensible as to how an incomprehensible harm shall be caused to a consumer, if the aforesaid remedy is taken

away from him, considering the aforesaid classification of disputes have their well defined and established channel of grievance redressal. The effective remedies already having been classified for the said nature of disputes, there is no occasion to hold that the appropriate commission intended to confer an absolute discretion on the CGRF to determine whether it chose to proceed with such class of cases or not. Apparently, it appears that the Commission conscious of the fact that a Superior Officer is likely to hold the said office, chose to use the expression 'may' instead of issuing a command as a measure of showing respect to the authorities. The said respect shown by Appropriate Commission couples itself with the belief that the forum shall exercise fine judicial discretion and restraint and not venture beyond the above said classified disputes and refrain from causing a conflict with the executable judgments/decrees or with the powers of the specified statutory authorities empowered to hear such disputes.

The other two categories pertain to the grievances brought beyond the prescribed period of limitation and where initiation of such grievance is apparently an abuse of the process of law. I am unable to find myself in agreement with the contention advanced by the counsel for the consumer as well as K.D. Bansal (the then president of the CGRF), that a discretion ought to be construed to have been vested in the Forum and I am of the view that the expression "may" used in regulation 2.39 of the regulation of 2016 is in the nature of mandate to the Forum to reject the said complaint espousing grievances in the nature classified thereunder, at any stage, and to relegate the parties to pursue

their remedies provided under the statutory scheme. The fact that the aforesaid clause has been incorporated under the heading “limitations,” it was an indicator good enough for the forum to exercise such fine judicial restraint and pass orders rather than imposing an absolute prohibition. The appropriate commission was also seemingly conscious of the fact that all nature of disputes pertaining to “grievances” defined under clause 1.6 (l) are not conceivable and there may be certain grey areas as well and has chosen to use a mild expression instead of directing the command so as to allow the authority to exercise fine discretion and cull out the predominant nature of the dispute and to pass appropriate orders. Clause 2.40 of the regulations of 2016 is thus to be read in the context of cases where the predominant dispute/proceeding does not fall in the said categories.

The acceptance of the interpretation suggested by the consumer and K.D. Bansal is likely to vest a power on the forum over the subjects by a Regulation over and above the power vested in a ‘statutory authority’ under in the Statute. The Regulations cannot take away substantive jurisdiction of a statutory authority under the Act and the provision of regulation has to be read in conformity with the substantive Statute.

Hence, considering it from any of the aforesaid angles, the contention of the consumer Zile Singh and the Chairperson – K.D. Bansal about the CGRF being conferred with the powers to deal with the issues arising out of unauthorized use of energy as well as theft of

electricity etc. despite statutory remedy of appeal provided under Section 127 or the remedy of special Court (rank of District Judge) having been prescribed in the Electricity Act, 2003 cannot be accepted. It is thus held that the CGRF does not have the discretion to decide the 'grievance' pertaining to the circumstances/class of cases mentioned in Regulation 2.39 and is obligated to refer the parties to the appropriate statutory remedy prescribed for the same.

It is thus held that the order passed by the CGRF dated 09.07.2018 (Annexure P-1) and impugned in CWP-26339 of 2018 instituted by the distribution licensee deserves to be set aside and the writ petition is liable to allowed. It is further held that the CGRF does not have jurisdiction to hear/entertain the complaints arising out of and in relation to the proceedings under Sections 126 and/or 135 of the Electricity Act, 2003.

Since this Court has held that the CGRF does not have the jurisdiction to entertain the said dispute relating to Sections 126 and 135 of the Electricity Act, 2003 under the context of a "grievance" as per Regulation and held that the said proceedings were not maintainable before the CGRF and could have been agitated only before the specified statutory forum, I refrain myself from entering into the merits of the case as the same would amount to commenting on the validity, admissibility and merit of the defence taken by the consumer. Any such observation is likely to prejudice and impact the merits of the claim of the parties. The consumer/respondent No.2 Zile Singh may, if so advised, take recourse

to his remedies prescribed in law for seeking adjudication and determination of the dispute. Hence, the questions as regards whether the procedure for theft of energy under Section 135 of the Electricity Act, 2003 and the defence as to whether it was an inspection of the premises under Section 135 of the Electricity Act, 2003 etc. are thus not being examined or adjudicated upon at this stage, as the said issue would not arise for any further consideration.

The same would now lead to the grievance espoused by the K.D. Bansal - Chairman of the CGRF against the charge sheet issued to him for passing of the above said order in CWP-8012-2020.

The legal defence of protection under Section 168 of the Electricity Act, 2003 is thus being taken up before referring to the other issues. Counsel for the petitioner K.D.Bansal has laid much emphasis on the above said section and contends that the order having been passed by the petitioner in exercise of quasi-judicial powers and in good faith would be protected under Section 168. He refers to the expression “any public servant.” The objection taken by the distribution licensee is that a “public servant” has to be read as defined under Section 169 of the Electricity Act, 2003 and that as the petitioner is not a member of the authorities or officials mentioned thereunder, the protection under Section 169 of the Electricity Act, 2003, would not be available to the petitioner – K.D. Bansal. I find that the defence taken by the distribution licensee is misconceived. Section 168 of the Electricity Act, 2003, extends protection to action taken in good faith by any “public servant.”

A “public servant” has been defined under Section 21 of the Indian Penal Code to include every judge including any person empowered by law to decide, whether by himself or as a member of any body of persons, any adjudicatory functions. The CGRF exercises an adjudicatory functions and would fall within the 3rd description of Section 21 of the Indian Penal Code. The expression “public servant” is a protection extended to the “public servant” whereas section 169 gives rise to a legal deeming clause that the officers/employees mentioned therein shall be deemed as “public servants” when acting or purporting to act in pursuance of any of the provisions of the Electricity Act, 2003. Thus, Section 169 of the Electricity Act, 2003 is a deeming clause conferring status of a “public servant” on the defined category of persons mentioned thereunder and does not mean that any “public servant” used in Section 168 has to be interpreted in terms of deeming clause under Section 169. The relevant statutory provisions are extracted as under:-

THE ELECTRICITY ACT, 2003

“Section 168. (Protection of action taken in good faith):

No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government, or any Member, Officer or other employees of the Appellate Tribunal or any Members, officer or other employees of the Appropriate Commission or the assessing officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.

Section 169. (Members, officers, etc. of Appellate Tribunal, Appropriate Commission to be public servants):

The Chairperson, Members, officers and other employees of the Appellate Tribunal and the Chairperson, Members, Secretary, officers and other employees of the Appropriate Commission and the assessing officer referred to in section 126 shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act to be public servants within the meaning of section 21 of the Indian Penal Code.”

INDIAN PENAL CODE, 1860

“21. “Public servant”.—The words “public servant” denote a person falling under any of the descriptions hereinafter following, namely:—

** * * * **

*Second.—Every Commissioned Officer in the Military, 6 [Naval or Air] Forces 7 [8 *** of India]; 9*

Third.—Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;

Fourth.—Every officer of a Court of Justice 10[(including a liquidator, receiver or commissioner)] whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially authorised by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of 1 [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;

*Ninth.—Every officer whose duty it is as such officer, to take, receive, keep or expend any property on behalf of 1 [the Government], or to make any survey, assessment or contract on behalf of 1 [the Government], or to execute any revenue-process, or to investigate, or to report, on any matter affecting the pecuniary interests of 1 [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of 1 [the Government], or to prevent the infraction of any law for the protection of the pecuniary interests of 1 [the Government]
2 ***;*

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of the rights of the people of any village, town or district;

Eleventh.—Every person who holds any office in virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;

Twelfth.—Every person—

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956).”

I am further strengthened in my above said opinion by the fact that Section 169 extends to the members/officers etc. of the Appellate Tribunal and Appropriate Commission as well as the assessing officers which such expression has also been used in Section 168. The Legislature would not have chosen to use the expression or “any public servant” once the first part of Section 168 was incorporated in the category of persons mentioned in Section 169 itself. Any such interpretation would amount to reading the expression “public servant” in Section 168 of the Electricity Act, 2003 to be confined to as defined in Section 169 and to be a repetition. Since the expression “all” has been used before “any public servant”, hence, the above said expression denotes a separate class other than the categories/classes mentioned in the preceding part of Section 168 which have been deemingly conferred status of a “public servant” under Section 169.

Since the language of Section 168 of the Electricity Act, 2003, extends the protection of action taken in good faith to public servants which would include the petitioner as well, it is only if an action is taken maliciously or mala fide or is an abuse of authority to cause wrongful loss to the distribution licensee or a wrongful gain to the beneficiary that such an act cannot be construed as an act taken in good faith and the protection under Section 168 of the Electricity Act, 2003 would not extend. The distribution licensee in such a circumstance would be entitled to initiate proceedings against such “public servant” and merely because the order was adjudicatory in nature would not serve as a defence against a mala fide, dishonest, illegal and perverse actions of such “public servant” under the Electricity Act, 2003. The aspect of good faith, however, has to be seen on case to case basis and cannot be defined in a straightjacket formula.

The same thus leads to the next objection taken by the distribution licensee that the respondents having only issued a chargesheet, the power of judicial review ought not to be exercised under Article 226 of the Constitution of India. It is held that the above said limitations on the powers of Constitutional Courts are not absolute. A Constitutional Court would always be empowered to exercise its powers where failure to do so would amount to travesty of justice and breed injustice. Evidently, the initiation of departmental action by the respondents is based on an understanding that protection under Section 168 is not available to the petitioner – K.D.Bansal, by a misplaced reading of Section 169. Hence, the said fundamental legal aspect has not

been properly appreciated. A mere passing of an order by an adjudicatory authority, which is unpalatable to the distribution licensee, cannot be outrightly construed as a mala fide action. Since the power to initiate proceedings is restricted to a circumstance when such exercise of power lacks bona fide, hence, before initiation of such a proceeding, the charge must disclose the necessary ingredients establishing that the act attracting initiation of disciplinary proceedings was on account of a mala fide exercise of power by the Authority.

It has been held by the Hon'ble Supreme Court in numerous cases that where the cases involve questions of law or where relegating a person to the alternative remedy would defeat the ends of justice, the High Court would be empowered to entertain writ petitions in such circumstances notwithstanding the availability of alternative remedy. It was held by the Hon'ble Supreme Court in the matter of **Union of India Vs. R.S.Desai, reported as (1993) 2 SCC 49**, that a disciplinary action would not lie merely on account of erroneous decision taken by virtue of an office but would lie if such a decision was taken pursuant to a corrupt or improper motive which would depend on facts of each case. Further, in the matter of **Zunjarrao Bhikaji Nagarkar vs. Union of India, reported as 1999 (7) SCC 409**, it was held by the Hon'ble Supreme Court that vague or indefinite information cannot be the basis of a disciplinary proceedings. Suspicion would have no role to play and there must exist reasonable basis for disciplinary authority to proceed against an employee. A failure to exercise quasi-judicial power properly or adjudication based on wrong application/interpretation of law is by itself

is not a mis-conduct since a wrong decision itself is subject to a judicial supervision in appeal. Something more i.e. extraneous considerations influencing quasi-judicial order, a deliberate act or actuated by mala fide has to be alleged before maintaining a chargesheet against a quasi-judicial authority. A mere carelessness, inadvertence or omission but a culpable negligence would not constitute a mis-conduct. It was observed that the entire system of administrative adjudication would fall into disrepute if officers performing quasi-judicial functions are inhibited in performing their functions without fear or favour by subjecting them to constant threat of disciplinary proceedings. The relevant extract of the judgment is reproduced hereinbelow:-

“40. When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness inadvertance or omission but as culpable negligence. This is how this court in State of Punjab & Ors. & Ors. vs. Ram Singh Ex-Constable [(1992) 4 SCC 54] interpreted 'misconduct' not coming within the purview of mere error in judgment, carelessness or negligence in performance of the duty. In the case of K.K. Dhawan (1993 (2) SCC 56), the allegation was of conferring undue favour upon the assesseees. It was not a case of negligence as such. In Upendra Singh's case (1994 (3) SCC 357), the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of K.S. Swaminathan (1996 (11) SCC 498), was not where the respondent was acting in any quasi judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the Court to see whether

they support the charge of the alleged misconduct. In M.S. Bindra's case (1998 (7) SCC 310) where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Choudhary (1999 (3) SCC 396), which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In K.N. Ramamurthy's case (1997 (7) SCC 101), it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd.'s case (AIR 1970 SC 253), it was said that where proceedings are quasi judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty will not also be imposed merely because it is lawful so to do. In the present case, it is not that the appellant did not impose penalty because of any negligence on his part but he said it was not a case of imposition of penalty. We are, however, of the view that in a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that Patna High Court while interpreting Section 325 IPC held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different

matter altogether if it is deliberate and actuated by mala fides.

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42 Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.

43 If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge- sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are

inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

44 Considering whole aspects of the matter, we are of the view that it was not a case for initiation of any disciplinary proceedings against the appellant. Charge of misconduct against him was not proper. It has to be quashed.”

The above said proposition of law was reiterated by the Hon’ble Supreme Court in the matter of **Krishna Prasad Verma (dead) through Legal Representatives, reported as (2019) 10 SCC 640**. The relevant extract reads thus:-

*7. In **Ramesh Chander Singh Vs. High Court of Allahabad & Anr., (1992) 3 SCC 124** a three-judge Bench of this Court, after considering the entire law on the subject, including the authorities referred to above, clearly disapproved the practice of initiating disciplinary proceedings against the officers of the district judiciary merely because the judgment/orders passed by them are wrong. It was held thus:-*

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based

on judicial orders, The High Court must take extra care and caution."

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*17. In **Zunjarrao Bhikaji Nagarkar v. Union of India, (1999) 7 SCC 409**, this Court held that wrong exercise of jurisdiction by a quasi judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grass root level.*

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11. The main ground to hold the appellant guilty of the first charge is that the appellant did not take notice of the orders of the High Court whereby the High Court had rejected the bail application of one of the accused vide order dated 26.11.2001. It would be pertinent to mention that the High

Court itself observed that after framing of charges, if the non-official witnesses are not examined, the prayer for bail could be removed, but after moving the Lower Court first. The officer may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct. It would be pertinent to mention that the enquiry officer has not found that there was any extraneous reason for granting bail. The enquiry officer virtually sat as a court of appeal picking holes in the order granting bail.

12. It would be important to mention that it seems that later it was brought to the notice of the appellant that he had not taken note of the order of the High Court while granting bail on 11.07.2002. Thereafter, he issued notice to all the three accused on 23.08.2002 i.e. within less than two months and cancelled the bail granted to all the three accused on 11.07.2002. If he had made the mistake of not seeing the whole file, on that being brought to his notice, he corrected the mistake. After the appellant cancelled the bail and the accused were again arrested, they again applied for bail and this bail application was rejected by the appellant on 18.12.2002.

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16. We would, however, like to make it clear that we are in no manner indicating that if a judicial officer passes a wrong order, then no action is to be taken. In case a judicial officer passes orders which are against settled legal norms but there is no allegation of any extraneous influences leading to the passing of such orders then the appropriate action which the High Court should take is to record such material on the administrative side and place it

on the service record of the judicial officer concerned. These matters can be taken into consideration while considering career progression of the concerned judicial officer. Once note of the wrong order is taken and they form part of the service record these can be taken into consideration to deny selection grade, promotion etc., and in case there is a continuous flow of wrong or illegal orders then the proper action would be to compulsorily retire the judicial officer, in accordance with the Rules. We again reiterate that unless there are clear-cut allegations of misconduct, extraneous influences, gratification of any kind etc., disciplinary proceedings should not be initiated merely on the basis that a wrong order has been passed by the judicial officer or merely on the ground that the judicial order is incorrect.”

Applying the aforesaid position in law to the facts of the present case and to the statement of allegations leveled in the chargesheet served upon the petitioner, it is evident that there is no allegation of misconduct against the petitioner for extraneous considerations. The irregularities noticed are arising out of and in relation to the decision by the adjudicatory authority itself and are not substantiated by any evidence of malicious exercise of power or the order being actuated for extraneous consideration. A mere suspicion or unsubstantiated allegations for having suffered a loss would not ex facie be sufficient to construe that it was a case of misconduct. Besides, it has to be kept in mind that the petitioner is a technocrat and not a man of law. He cannot be expected to understand the finer nuances and to carve out the legal distinction and apply the principles of law and the legal

maxims governing interpretation before understanding the scope of his powers. The expressions used in the regulations had some room for confusion in the mind of an adjudicatory authority and benefit of such gap in the Legislation would ordinarily extend in favour of the employee being charged. The distribution licensee has failed to refer to any judicial pronouncement which has affirmatively held that the CGRF did not have the jurisdiction to examine the said issues and/or that the provision incorporated in Regulation 2.33 and regulation 2.39 of the Regulations of 2016 would not confer any discretion or confer any authority on CGRF. Hence, the said argument could at best be considered as an objection and defence against the claim on which discretion had been exercised by the Presiding Officer after interpreting the provisions as he understood them to mean. I am thus of the opinion that issuance of the chargesheet for an alleged misconduct for having passed an order in its adjudicatory capacity would be ill-conceived and unsustainable. **The writ petition No.8012 of 2020 is thus allowed. The chargesheet dated 24.03.2020 (Annexure P-13) served upon petitioner K.D.Bansal is set aside.** Liberty, however, is granted to the distribution licensee to re-examine the entire issue and to take a fresh decision considering the issues decided above and to examine whether any material reflecting misconduct – other than erroneous adjudication is available or not. The impugned chargesheet is thus set aside with liberty to the distribution licensee as above.

The present writ petitions are allowed accordingly.

Pending, misc. application(s), if any shall also stand(s)

disposed of accordingly.

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

January 05, 2024
raj arora

(VINOD S. BHARDWAJ
JUDGE

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