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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 725/2007

AJAYA GUPTA

.....Petitioner

Through: Mr. Ujjwal Jha and Mr. Rohan Gupta,
Advs.

versus

B.S.E.S.RAJDHANI POWER LTD. &

.....Respondent

Through: Mr. Sharique Hussain and Mr.
Raghav Awasthi, Adv.

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+ W.P.(C) 726/2007

SANJAY GUPTA

.....Petitioner

Through: Mr. Ujjwal Jha and Mr. Rohan Gupta,
Advs.

versus

B.S.E.S.RAJDHANI POWER LTD. &

.....Respondent

Through: Mr. Sharique Hussain and Mr.
Raghav Awasthi, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV

ORDER

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24.07.2024

1. On 11.07.2024, this Court has passed the following order:-

“1. Learned counsel for the petitioner seeks time to examine as to whether in view of the fact that there exists an alternate remedy in terms of Consumer Grievance Redressal Forum and ombudsman with respect of grievance of the consumer. Let the aforesaid position be



examined and necessary submissions to be made by learned counsel for the petitioner.

2. *Interim order to continue.*

3. *List on 24.07.2024."*

2. Learned counsel appearing for the petitioners has raised an apprehension as to whether the grievance of the petitioners can be redressed under the scheme enshrined in Section 42(5) of the Electricity Act, 2003 ["Act"] as in the instant case, the respondent has taken action pursuant to an FIR stated to have been registered against the petitioners.

3. The Court has considered the aforesaid submission and perused the relevant provisions of the Act.

4. This Court, while dealing with a similar issue decided today in W.P.(C) 10079/2024, refused to entertain the writ petition on the ground of availability of alternate and efficacious remedy, however, granted liberty to the petitioner therein to approach the competent authority. The relevant extracts of the said order are culled out as under:-

8. *At this juncture, it is significant to take note of the decision passed by this Court in the case of **Ram Kishan v. N.D.P.L.** While dealing with a dispute regarding an electricity bill, the Court in paragraph no.10, has recorded a note of caution in entertaining petitions where an alternate statutory remedy exists in the following words:-*

'If this Court entertains writ petition regarding disputes relating to electricity, water, telephones bills, etc. even though there is an alternative remedy provided by the statute before some Forum, this Court will be flooded with lacs and lacs of such writ petitions and will be doing no other work except deciding such writ petitions'.

9. *In paragraph nos.14 to 19 in the case of **Ram Kishan (supra)**, it has been further held as under:-*



"14. Learned Counsel for the appellant submitted that disputes regarding the tariff cannot be raised before the Forum or the Ombudsman as they are creatures of the statute. We are of the opinion that while the consumer cannot challenge the validity of the tariff before these bodies, the Forum and Ombudsman can certainly go into the question of interpretation of the tariff. There is a clear distinction between interpretation of a tariff and validity of a tariff.

15. Some electricity consumers may have the grievance that an exorbitant bill may be pressed against them with the threat of disconnection of electricity supply. We are of the opinion that both the Forum under Section 42(5) as well as Ombudsman under Section 42(6) have inherent powers of passing interlocutory orders pending the decision of the representation before them including interlocutory orders for stay of the bills apart from the specific power under Regulation 9(8) of the Regulations contained in the notification dated 11.3.2004.

16. As regards the representation before the Ombudsman under Section 42(6), there is a requirement of pre-deposit of 1/3rd of the amount assessed by the Forum in cash or by way of bank draft.

17. Learned Counsel for the appellant submitted that this may cause hardship but we are afraid we cannot interfere in this matter as the requirement of such pre-deposit before the Ombudsman amounts to delegated legislation, with which we cannot interfere.

18. Learned Counsel for the appellant then submitted that there is no mechanism to implement the orders of the Forum under Section 42(5) or Ombudsman under Section 42(6) and he has submitted that in many cases the orders of the Forum and Ombudsman are not complied with by the electricity department. This has been denied by the learned Counsel for the respondent, but in any case we clarify that it is implicit in Sections 42(5) and 42(6) that the orders of the Forum and Ombudsman have to be complied with by the parties (including the consumer as well as the electricity department) unless the said order has been stayed or set aside by this Court or the Supreme Court.

19. The appeal is disposed of with liberty to the appellant to approach the Forum under Section 42(5) and the Ombudsman



under Section 42(6), if he is aggrieved by the order of the Forum. We also make it clear that the Forum as well as Ombudsman can devise their own procedures and mechanisms for adjudication of the complaints of the consumers. However, we make it clear that although there is no specific provisions about the procedures to be followed by the Forum and Ombudsman, these authorities must follow the rules of the natural justice."

10. Admittedly, in the instant case, neither the petitioner has approached the Consumer Grievance Redressal Forum ['CGRF'] as envisaged under Section 42 (5) of the Act of 2003, nor he has approached the Ombudsman as provided under Section 42 (6) of the Act of 2003.

11. Undoubtedly, the grievance which has been put forth by the petitioner can still be examined by the CGRF in an effective manner. It is also equally well settled that a writ petition is a discretionary remedy which can be declined if there is an equally efficacious alternate remedy.

12. The aforesaid position of law has been settled by the Supreme Court in a series of judicial pronouncements. The decision of the Supreme Court in the case of **M/S Radha Krishan Industries v. The State Of Himachal Pradesh** vividly encapsulates the aforesaid position and the relevant extract of the said decision is culled out as under:-

"The principles of law which emerge are that:

- (i) The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well;*
- (ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;*
- (iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction or (d) the vires of a legislation is challenged;*
- (iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;*



(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and
(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.”

13. In the case of **Maharashtra Electricity Regulatory Commission v. Reliance Energy Ltd.**, the Supreme Court held that since the Act of 2003 has created CGRF, all the individual grievances of consumers have to be raised before such forum only. While affirming the decision passed by this Court in **Suresh Jindal v. BSES Rajdhani Power Ltd. & Ors.** and **Dheeraj Singh v. BSES Yamuna Power Ltd.**, wherein, it was held that the CGRF and the Ombudsman has the authority to pass an interim order as well, the Supreme Court further held that Sections 42(5) and 42(6) provide a complete machinery for redressal of grievances of the consumers. The Supreme Court in the said case remitted the matter back to the CGRF for adjudication on merits. The relevant paragraphs of the decision in **Reliance Energy (supra)** are extracted as under:-

“33. As per the aforesaid provision, if any grievance is made by a consumer, then they have a remedy under Section 42(5) of the Act and according to sub-section (5) every distribution licensee has to appoint a forum for redressal of grievances of the consumers. In exercise of this power the State has already framed the Maharashtra Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Ombudsman) Regulations, 2003 (hereinafter referred to as “the 2003 Regulations”) and created Consumer Grievance Redressal Forum and Ombudsman. **Under these 2003 Regulations a proper forum for redressal of the grievances of individual consumers has been created by the Commission. Therefore, now by virtue of sub-section (5) of Section 42 of the Act, all the individual grievances of consumers have to be raised before this forum only.** In the face of this statutory provision we fail to understand how could the Commission acquire jurisdiction to decide the matter when a forum has been created under the Act for this purpose. The matter should have



been left to the said forum. This question has already been considered and decided by a Division Bench of the Delhi High Court in *Suresh Jindal v. BSES Rajdhani Power Ltd.* [(2006) 132 DLT 339 (DB)] and *Dheeraj Singh v. BSES Yamuna Power Ltd.* [Ed. : (2006) 127 DLT 525 (DB)] and we approve of these decisions. It has been held in these decisions that the forum and ombudsman have power to grant interim orders. **Thus a complete machinery has been provided in Sections 42(5) and 42(6) for redressal of grievances of individual consumers. Hence wherever a forum/ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances. Therefore, not much is required to be discussed on this issue. As the aforesaid two decisions correctly lay down the law when an individual consumer has a grievance he can approach the forum created under sub-section (5) of Section 42 of the Act.**

34. In this connection, we may also refer to Section 86 of the Act which lays down the functions of the State Commission. Sub-section (1)(f) of the said section lays down the adjudicatory function of the State Commission which does not encompass within its domain complaints of individual consumers. It only provides that the Commission can adjudicate upon the disputes between the licensees and generating companies and to refer any such dispute for arbitration. This does not include in it an individual consumer. The proper forum for that is Section 42(5) and thereafter Section 42(6) read with the Regulations of 2003 as referred to hereinabove.”

[emphasis supplied]

14. Notably, the decision of this Court in the cases of ***Abhijit Anand v. Chairman Delhi Electricity Regulatory Commission*** and ***Ashok Yadav v. BSES Rajdhani Power Limited*** also aid to the similar position of law as has been rendered in the case of ***Ram Kishan*** (*supra*).

15. It is thus safely discernible from the aforementioned decisions that the submissions which have been made by the petitioner in the instant petition can also be looked into by the concerned authority which is provided under the Act of 2003.

16. In view of the aforesaid, leaving all contentions open to be raised before the appropriate authority, the Court is not inclined to entertain the instant petition and the same is dismissed alongwith pending



applications.

17. At this stage, learned counsel for the petitioner prays that the concerned authority be directed to decide his application as expeditiously as possible.

18. In view of the facts and circumstances, the Court deems it appropriate to direct the concerned authority to decide the petitioner's application as expeditiously as possible."

5. A bare perusal of the provision in question would indicate that any grievance of the consumer shall be entertained by the CGRF created under Section 42(5) of the Act. The said provision does not create any distinction which would suggest that in case of any grievance, wherein, any criminal case is registered against the consumer or otherwise, the CGRF is deprived of its power to deal with the complaint.

6. In the considered opinion of this Court, the petitioners are well within their right to approach the said forum and the CGRF is also not incapacitated to adjudicate the issue at hand. Accordingly, the instant petition stands disposed of granting liberty to the petitioners to approach the concerned forum under Section 42(5) of the Act.

7. Till the petitioner's complaint is decided, the interim order dated 29.01.2007 passed by this Court shall remain in force.

8. The petition stands disposed of alongwith pending application(s), if any.

9. All rights and contentions of the parties are left open.

PURUSHAINdra KUMAR KAURAV, J

JULY 24, 2024/P