

COURT-1

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APL No. 127 OF 2021 & IA No. 1826 OF 2019

Dated: 29th October, 2024

Present : Hon`ble Mr. Justice Ramesh Ranganathan, Chairperson
Hon`ble Ms. Seema Gupta, Technical Member (Electricity)

In the matter of:

Jharkhand Bijli Vitran Nigam Ltd. Appellant(s)

Versus

Jharkhand State Electricity Regulatory Commission & Anr. Respondent(s)

Counsel on record for the Appellant(s) : Kumar Anurag Singh
Anup Kumar for App. 1

Counsel on record for the Respondent(s) : Farrukh Rasheed for Res. 1

Hemant Daswani
Saumya Bajpai
Pranjal
Kunal Prakash
Amandeep Singh
Camellia Nandi for Res. 2

ORDER

The Appellant, a distribution licensee in the State of Jharkhand, has filed the present appeal aggrieved by the order passed by the Jharkhand State Electricity Regulatory Commission (for short "JSERC") in Case No. 8 of 2017 dated 24.07.2019. The 2nd Respondent in this appeal, a cement manufacturing company, is a consumer of electricity supplied to them by the Appellant.

On certain disputes having arisen between the 2nd Respondent and the Appellant, the former invoked the jurisdiction of the Vidyut Upbhokta

Shikayat Niwaran Forum (“the Forum” for short) in Case No. 5 of 2010. In its order, in Case No. 5 of 2010 dated 11.04.2011, the Forum framed five issues. On issue No.1, ie whether the order of the Chief Engineer (C & R) dated 04.06.2009 should be set aside along with the bill-cum-statement dated 21.05.2009, the Forum observed that the said bill cum statement was not prepared in terms of the order of C.E. dated 04.06.2009 and, therefore, the bill cum statement dated 21.05.2009 was liable to be quashed. After answering all the five issues, and the suo-moto issues framed by it, the Forum concluded holding that the reliefs granted, and the directions, to the parties had been incorporated in the decision with respect to the issues and sub issues recorded in the said order. Both the parties were directed to act strictly in accordance with the manner and directions indicated in the decision on the issues and sub issues framed by the Forum.

Aggrieved thereby, the Appellant - distribution licensee preferred an appeal to the Electricity Ombudsman. As Section 42(6) of the Electricity Act provides for an appeal, to the Ombudsman, to be preferred only by a consumer, we asked Mr. Kumar Anurag Singh, learned Counsel for the Appellant, as to how an Appeal, preferred by a distribution licensee, would lie to the Ombudsman. Learned Counsel then drew our attention to the Jharkhand State Electricity Regulatory Commission (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Electricity Ombudsman), Regulation 2005 (the “2005 Regulations” for short). Regulation 13 of the 2005 Regulations relates to appeals and, thereunder, the licensee or any consumer, aggrieved by an order made by the Forum or for non-implementation of the order of the Forum by the licensee, may prefer an appeal, against such an order, to the Electricity Ombudsman within a period of 30 days from the date of the order.

The 2005 Regulations, which were made by the Commission in the exercise of its powers under Section 181 read with Section 42 (v to viii) of the Electricity Act, are in the nature of subordinate legislation. Regulation 13 of the 2005 Regulations appears to fall foul of Section 42(6) of the Electricity Act, as it provides for an appellate remedy both to a licensee and a consumer, though Section 42(6) of the Electricity Act restricts the right of appeal only to a consumer, and does not confer an appellate remedy, against the order of the Forum, to a licensee. However, in the light of the law declared by the Supreme Court, in **PTC India Limited vs CERC: (2010) 4 SCC 603**, the validity of the 2005 Regulations cannot be examined by this Tribunal in appellate proceedings under Section 111 of the Electricity Act.

In its order dated 30.09.2011, the Electricity Ombudsman expressed its opinion on the 12 issues framed by it, including on issue No.10 which related to whether the application of the consumer/Respondent dated 25.05.2009 under OTS Scheme could be ordered or not. On this issue, the Ombudsman observed as under:

“25. The Hon'ble High Court of Jharkhand, Ranchi in W.P.(C) No. 2472/2002 has passed an order dated 11.07.2007 that.

" The Hon'ble High Court of Jharkhand, Ranchi in W.P. (C) No. 2472/2002 has passed an order dated 11.07.2007 that “If it is found that the petitioner is liable to pay any amount he will pay the main amount except D.P.S. and make a representation before the board for waiver of the D.P.S. and make a representation before the board for waiver of the D.P.S. in view of the policy/scheme/rule of the board within one month from the date of the order. The board will take a decision on the same within six weeks thereafter and communicate the same to the petitioner.”

The appellant/J.S.E.B. has mentioned at para 5(f) at page 25 of memo appeal that "Even now the petitioner/company may approach the office of the ESE, Hazaribagh for settlement under the "O.T.S." scheme on the bill as finally assessed by the C.E. (C&R), J.S.E.B., Ranchi."

26. The order dated 06.04.2009 of the C.E. (C&R) and the bill cum statement of the E.S.E., Hazaribagh dated 21.05.2009 have been quashed while deciding issue No. VIII of this Judgement. Therefore it is directed that if the consumer/respondent would be ready to pay the energy dues in terms of the revised bill which will be prepared in accordance with this Judgement, then the appellant/J.S.E.B. shall dispose of the respondent's application dated 25.05.2009 under "O.T.S." scheme. Accordingly this issue is decided in favour of the consumer/respondent."

Thereafter, the Ombudsman concluded holding that there was no merit in the appeal; and the judgment and order of the Forum, dated 11.04.2011 in Case No. 5 of 2010, was so perfect that it did not require interference. The order of the Forum was upheld, and the appeal filed by the Appellant was dismissed.

Aggrieved thereby, the Appellant herein filed W.P (C) No. 1469 of 2012 before the Jharkhand High Court, wherein they sought to have the judgment of the Electricity Ombudsman, in Case No. 5 of 2010 dated 11.04.2011, quashed. A learned single Judge of the Jharkhand High Court, in his judgment in W.P (C) No. 1469 of 2012 dated 13.08.2012, observed that the Ombudsman had considered the appeal, and discussed every aspect in detail issue-wise; and the Ombudsman was justified in recording the finding that a proper decision had been taken, and

appropriate directions had been given, by the Forum while deciding the issues framed, and there was no merit in the appeal. The High Court further held that the Forum had recorded elaborate reasons in decided each issue involved in the case; and the Ombudsman had properly reviewed the appeal and also independently recorded its finding on each issue affirming the findings and judgment of the Forum, which is an expert body and is specially constituted to decide such type of issues. The learned Single Judge found no ground to interfere with the concurrent findings and judgments of the Forum and the Ombudsman, and the writ petition was dismissed.

Consequent on the dismissal of W.P (C) No. 1469 of 2012 by the judgement of the Jharkhand High Court dated 13.08.2012, both the orders passed by the Forum and the Ombudsman have attained finality. Consequently, the correctness or otherwise of the said orders cannot be canvassed in the present appeal, since this Tribunal is also bound by the judgment of the Jharkhand High Court.

The 2nd Respondent appears to have, thereafter, invoked the jurisdiction of the JSERC under Section 142 of the Electricity Act. By its order dated 29.11.2016, the Commission appointed Mr. Ajoy Chhabra & Co. Chartered Accountants to evaluate the statement of accounts submitted by the parties. Mr. Chhabra & Co then finalised the first report dated 29.10.2018 which was followed by the second report dated 18.01.2019. The Appellant herein appears to have filed their objections to the reports submitted by the said Chartered Accountant.

Curiously the JSERC, in its order dated 24.07.2019, brushed aside the said objections holding that, since it had already passed an order on 29.11.2016 requiring the parties to discharge their liabilities as per the

evaluation report of the Chartered Accountant, they were not inclined to go into the objections raised by the Respondent (Appellant herein) at this stage. As the Chartered Accountant was appointed by the JSERC, in the Section 142 proceedings instituted before it by the Respondent-Consumer herein, it was always open to either party to file their objections, to the said reports, before the Commission in the proceedings pending before it. The JSERC was obligated in law to examine the objections so raised by the parties, and record its findings on the validity or otherwise of such objections.

While Mr. Hemant Daswani, learned Counsel for the 2nd Respondent, would contend that the objections filed by the Appellant are devoid of merit, these are all matters which the JSERC ought to have considered in the first instance, after giving both the parties a reasonable opportunity of being heard. Failure of the JSERC to examine the objections raised by the Appellant, and to record its findings on such objections, would require the impugned order to be set aside on this score.

We consider it appropriate, in such circumstances, to set aside the impugned order, and remand the matter to the JSERC. The JSERC shall, after giving both the parties a reasonable opportunity of being heard, examine the objections raised by the Appellant, bearing in mind that the both the orders of the Forum and the Ombudsman have attained finality, consequent on the Writ Petition filed by the Appellant before the Jharkhand High Court being dismissed. The Commission shall pass a reasoned order afresh dealing with the rival submissions, urged by learned Counsel on either side, on the objections filed by the Appellant before it earlier, and dispose of the matter in accordance with law. It goes without saying that the JSERC is only required to examine the validity or otherwise of the objections hitherto filed by the Appellant ie only with

respect to the objections referred to in the impugned order. Needless to state, that the Appellant shall not be entitled to raise any fresh objections consequent on remand.

Since the matter is pending for the past more than a decade, we request the JSERC to hear both the parties and pass appropriate orders on the objections which the Appellant had filed, and which forms part of the record of the JSERC, with utmost expedition preferably within a period of four months from the date of receipt of a copy of this order. It is made clear that we have not expressed any opinion on merits, and the order of the JSERC in Case No. 8 of 2017 dated 24.07.2019, in so far as it related to continued supply of electricity to the 2nd Respondent for a period of one year, has neither been considered nor interfered with in these appellate proceedings. These aspects shall not be reopened by the JSERC while passing orders afresh consequent on the present order of remand.

With the above observations, the appeal is disposed of to the extent indicated above.

(Seema Gupta)
Technical Member (Electricity)

(Justice Ramesh Ranganathan)
Chairperson

ts/skj