

IN THE HIGH COURT OF JHARKHAND AT R A N C H I

W.P(C) NO.3637/2009

M/s. Shah Hitech Auto Alcast Company(P) Ltd. Petitioner.

Versus

Jharkhand State Electricity Board and Anr. Respondents.

CORAM : HON'BLE THE CHIEF JUSTICE
HON'BLE MR.JUSTICE D.K.SINHA

For the Petitioner: M/s.P.D.Agarwal & S.L.Agarwal.
For the Respondents: M/s. S.Shrivastava & V.K.Prasad.

03/08.09.2009

This writ petition has been filed challenging Regulation 13 of the Guidelines for Establishment of Forum for redressal of grievances of the consumers and Electricity Ombudsman Regulation, 2005 which envisages 50 per cent of the demand to be deposited with the Forum before filing an appeal. A declaration has been sought for treating it to be ultra vires to Section 181 of the Electricity Act, 2003 and also violative of Article 14 of the Constitution of India as it has been contended that the condition imposing payment of 50 per cent of the amount can be prescribed by the parent Act and not by way of delegated legislation so as to frame a Regulation.

Having heard the counsel for the petitioner we do not find substance in the plea raised in this petition contending that the requirement of payment of 50 per cent of the disputed amount before an appeal is filed be declared ultra vires, since the same is clearly in consonance with the provisions of Section 181 of the Electricity Act, 2003 which clearly permits the framing of Regulation in this regard.

The argument advanced by the counsel, while challenging the provision to the aforesaid Regulation, is based on the plea that the petitioner had already paid the entire amount as per the bills raised earlier but, additional payment was claimed by way of a supplementary bill after seven and a half years of the payment made by the petitioner-Consumer to the Board.

But in our view, this alone cannot be a substantial reason to entertain the challenge to the provision which envisages 50 per cent of the payment prior to filing of an appeal since a particular plea in a given case can be appreciated even without declaring a



provision as *ultra vires*. It is no doubt true that in appropriate cases it may be permissible for the consumer to claim exemption from payment of 50 per cent of the amount of the total claim in order to prefer an appeal by making payment of less than 50 per cent of the amount under the existing facts and circumstances of the case. But, to make a sweeping generalisation claiming exemption by challenging the Regulation itself on the basis of certain facts in order to suit a litigant's interest, is legally not sustainable specially when the Regulation cannot be held to be contrary to the provisions of Section 181 of the Electricity Act, 2003 nor it can be held to be violative of Article 14 of the Constitution of India as this condition is applicable in all cases provided exemption is sought in appropriate cases.

We are, however, conscious of the fact that there may be situations when the petitioner-Consumer may come out with a strong *prima facie* case in his favour including a situation where the consumer comes up with a clear proof that he had paid the entire amount against the bill which had been raised by the Board but, after unlimited long number of years, a supplementary bill is raised, the same would clearly be a cause for the consumer to assail the same before the appellate forum and in that event, it might be legally permissible for him to urge that he should not be saddled with the liability to pay 50 per cent of the entire amount by claiming exemption from payment in appropriate cases. We are also aware of similar situations in cases of excise and income tax matters where a similar provision exists for payment of 50 per cent of the amount claimed by way of excise duty before a manufacturer assessee is permitted to prefer an appeal and in appropriate cases, the Courts including the Supreme Court have interfered by reducing the statutory amount of 50 per cent to a lower figure so that the appeal of the assessee could be considered on merit. But the facts of individual cases alone cannot be a reason to challenge the Regulation in absence of reasons of constitutional and legal violation.

In the instant matter, the petitioner has come up with a case that he has paid the entire amount which had been raised towards electricity consumption seven and half years ago and after seven and half years a supplementary bill has been raised claiming additional payment from the petitioner, as it was alleged by the respondent-Board that the assessment was not made correctly and it was short of correct assessment made by the Board.

This contention, although might justify the subject matter for consideration by the appellate forum and it would be unjust to preclude the petitioner from even contesting this part by way of an appeal by directing the petitioner to make the entire payment which has been claimed by the respondent-Board after more than seven years of the original bill without any scrutiny by the appellate forum, the same cannot be treated to be a reason weighty enough to treat the entire Regulation as ultra vires and a much more weighty reason establishing constitutional violation would be required.

Hence, we although do not entertain the challenge of striking down the Regulation as ultra vires and unconstitutional, we permit the petitioner to file an application before the appellate authority known as 'Ombudsman' where it would be at liberty to file an application establishing that there is a prima facie case claiming exemption from making the entire deposit and should be allowed to pay an amount less than 50 per cent if he succeeds in making out a strong case in his favour for non-payment of the amount raised in the supplementary bill. If such an application is filed, the 'Ombudsman' shall dispose of that application by a reasoned order and any party affected by that order obviously would be at liberty to challenge the same by way of a fresh writ petition.

Hence, this writ petition, in so far as the blanket challenge to the Regulation 13 of the Guidelines for Establishment of Forum for redressal of grievances of the consumers and Electricity Ombudsman Regulation, 2005 is concerned, is dismissed, liberty is granted to the petitioner to take recourse to the remedy, as indicated hereinbefore.

However, since the petitioner is suffering the threat of disconnection, it is ordered that the order of disconnection shall not be made effective for a period of two weeks from the date of receipt of this order so as to enable the petitioner to approach the 'Ombudsman', as indicated hereinbefore.

Ld. C. Ryan Sudha Misra, C. J.
Ld. D. K. Sinha, J.

Certified to be true Copy

[Signature]
19/11/10
Copying Officer

Designated under Rule 22(1) of J.H.C. Rules
Authorised by Act 1872

For 22th Amendment to