ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAVAN
UNIT – VIII, BHUBANESWAR – 751012
****

Present: Shri D.C. Sahoo, Chairman
Shri H.S. Sahu, Member
Shri B.C. Jena, Member

Case No.27/2002

Popular Nursing Home & Hospital, represented through its Managing Partner Mrs. Prativa Pattanaik, W/o. Dr. D.K. Pattanaik, At. Mallaha Sahi, Ring Road, P.O. Buxibazar, P.S. Mangalbag, Town/Dist. Cuttack. …. **Petitioner**

- Vers. -

1. Superintending Engineer, Electrical Circle, CESCO, At/P.O. Badambadi, P.S. Madhupatna, Dist. Cuttack

2. Executive Engineer (Elect.), City Distribution Divn. No.I, CESCO, At/P.O. Ranihat, Town/Dist. Cuttack.

3. Junior Engineer, City Distribution Divn. No.I, (Sub-Divn. No.I), At/P.O. Ranihat, Town/Dist. Cuttack

… **Opp. Parties**

For the petitioner : Shri R.K. Patnaik, Advocate
For the opp. parties : Shri D.R. Ray, Advocate

Date of hearing : **17.08.2002**
Date of order : **10.10.2002**

O R D E R

1. The petitioner is a private Nursing Home represented through its Managing Partner. It is situated at Cuttack which is within the jurisdiction of CESCO. The O.Ps. are the authorities of CESCO and they were supplying electricity to the Nursing Home on the basis of an agreement. The petitioner states that they had been regularly paying energy bills

raised by the O.Ps. from time to time. On 14.3.2002 at about 11.00 A.M., the O.Ps. suddenly came to the Nursing Home and inspected its premises in the presence of its Manager. The O.Ps. disconnected power supply at the time of inspection and took signatures of the Manager on some printed formats giving him to understand that the power supply to the Nursing Home would be restored after he signed the printed formats. But, power supply was not restored after he signed the formats. On 15.3.2002, O.Ps. served field testing report dt.14.3.2002 (Annexure-1) on the petitioner alleging that the meter of the Nursing Home was tampered. Vide their letter No.1825 dt.18.3.2002, the O.Ps. served on the petitioner a penal bill amounting to Rs.2,40,850/- (Rupees two lakh forty thousand eight hundred fifty) only (Annexure-2) alleging that the meter was tampered and there was theft of power. As power supply to the Nursing Home was not restored, the petitioner instituted C.D. Case No.24 of 2002 before the State Consumer Disputes Redressal Commission, Orissa, Cuttack. In that case, the Commission held that the disconnection was not proper and was arbitrary and directed the CESCO authorities to immediately restore power supply to the Nursing Home. The Commission further directed that restoration of power supply will be subject to the petitioner depositing a sum of Rs.25,000/- being part of the penalty amount without prejudice to his case. In view of such order of the Commission, the petitioner deposited Rs.25,000/- and the O.Ps. restored power supply to the Nursing Home. The Commission further directed the petitioner to move the complaint handling procedure under the 1998 Regulations or, if so advised, the appellate authority, as the case may be, against the imposition of penalty which the appropriate authority shall decide as per rules. So, the petitioner has filed this case in this forum to quash the penal bill referred to above.

2. According to the petitioner, the penal bill is liable to be quashed due to the following reasons:-

a) The action of the O.Ps. is violative of the principles of natural justice in as much as the petitioner was not given any prior notice for inspection and disconnection.

b) The inspection is a unilateral action of the O.Ps. and no independent witness was present at the time of inspection.

c) The power supply to the Nursing Home was made through the meter and the meter was not at all tampered. It has been falsely alleged that the meter of the Nursing Home was tampered and there was theft of electricity. Such allegation is based on no evidence to that effect.

d) In the matter of inspection and preparation of penal bill, the assistance of the Electrical Inspector was not taken in contravention of Sec. 26(4) & (6) of Indian Electricity Act, 1910. In absence of the report of Electrical Inspector and on account of non-compliance of the above provisions of law, the penal bill is liable to be set aside.

e) The calculation of penalty is not in accordance with law. In this connection, the petitioner has relied upon the decision reported in AIR 1998 SC 1715 (M/s Hyderabad Vanaspati Ltd., appellant Vrs. Andhra Pradesh Electricity Board and others, respondents).

f) The O.Ps. cannot become judge of their own case.

3. The O.Ps. have filed counter-affidavit and contested this case. It is pleaded by them that the present petition filed by the petitioner is not maintainable in this forum in view of the provisions of Regulation 110 (2) of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998 (hereinafter referred to as “Supply Code”). The O.Ps.

have acted on the basis of the power conferred upon them under the statute and as such, the question of their becoming judge of their own cause does not arise. In support of such submission, they have placed reliance on the decision reported in AIR 1996 CALCUTTA 449 (Sri Hanuman Steel Rolling Mill and another, Petitioners v. C.E.S.C. Ltd., Respondent). On 14.3.2002, an inspection party of CESCO inspected the meter installations in the premises of the petitioner and found that the petitioner was stealing power by tampering the meter installed in its premises. As there was stealing of power by tampering the meter, penal charges were calculated according to the provisions of the Supply Code. The penal bill has been correctly prepared as per the provisions of Reg. 105 of the Supply Code. No notice was required to be served upon the petitioner for disconnection as there was theft of power by tampering the meter. Presence of Electrical Inspector at the time of inspection was not at all necessary. The petitioner indulging himself in committing theft of energy cannot claim to refer the matter to the Electrical Inspector as a matter of right. The O.Ps. accordingly claim that the penal bill (Annexure-2) is lawful and correct and the petition under consideration is liable to be rejected.

4. At the outset, we propose to deal with the question of maintainability as it has been categorically argued on behalf of the O.Ps. that the present petition is not maintainable in this forum at this stage since the petitioner without exhausting the remedy provided under Regulation-110(2) of the Supply Code has directly approached this forum for the relief. The provisions of Reg.110 of the Supply Code are reproduced below to appreciate the above contention raised on behalf of the O.Ps.

> *"110. (1) A consumer aggrieved by any action or lack of action by the Engineer under this Code may file a representation within one year of such action or lack of action to the designated authority of the licensee,*

above the rank of Engineer who shall pass final orders on such a representation within thirty days of receipt of the representation.

(2) A consumer aggrieved by the decision or lack of decision of the designated authority of the licensee may file a representation within forty-five days to the Chief Executive Officer of the licensee who shall pass final orders, on such a representation within forty-five days of receipt of the representation.

(3) In respect of orders or lack of orders of the Chief Executive Officer of the licensee on matters provided under Section 33 of the Act, the consumer may make a reference to the Commission under Section 37(1) of the Act."

A plain and simple reading of the above provisions makes it abundantly clear that a consumer aggrieved by any action by the Engineer under the Supply Code may file a representation before the designated authority above the rank of Engineer to get the relief and if he is aggrieved by the decision of the Designated Authority of the licensee, he may file a representation before the Chief Executive Officer of the licensee. Moreover, if aggrieved by orders of the Chief Executive Officer on matters provided u/s 33 of the OER Act, 1995, the consumer may make a reference to the Commission u/s 37(1) of the OER Act, 1995.

5. In the present case, an inspection party of CESCO inspected the metering installations of the Nursing Home and found tampering of meter. Relying upon the inspection report submitted by the inspecting party, O.P. No.2 has raised the penal bill in question against the petitioner. There is no material on record to show that the designated authority of CESCO above

the rank of O.P. No.2 was a member of the inspecting party and was actually present at the time of inspection. So, the petitioner should have filed a representation to quash the penal bill before the designated authority of CESCO above the rank of O.P. No.2 in accordance with the provisions of Regulation-110(1) of the Supply Code. If he would have been aggrieved by the decision of that designated authority, he was at liberty to file a representation before the Chief Executive Officer of CESCO against the decision of the designated authority. Thereafter, he may approach this Commission in case he is aggrieved by the decision of the Chief Executive Officer. But without ventilating his grievances against the penal bill before such authorities, he has directly approached this Commission to get the penal bill quashed. Therefore, we are clearly of the view that the present petition is not maintainable at this stage in this forum. It is, accordingly, noticed that there is enough force in the above contention raised on behalf of the O.Ps.

6. On behalf of the petitioner, several points as enumerated in para 2 above have been raised to get the penal bill quashed. But at this stage it appears premature to record any finding on such points as we are inclined to advise the petitioner to take shelter under the provisions of Regulation-110 of the Supply Code to redress his grievances.

7. Thus, we dispose of the present petition and direct the petitioner to move the designated authority of CESCO, above the rank of O.P. No.2, against the imposition of penalty which the said authority shall decide as per rules.

(B.C. Jena)	**(H.S. Sahu)**	**(D.C. Sahoo)**
MEMBER	**MEMBER**	**CHAIRMAN**