

ORISSA ELECTRICITY REGULATORY COMMISSION

**BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012**

Present : Shri B. K. Das, Chairperson
Shri K.C. Badu, Member
Shri B.K. Misra, Member

Case No.136/2009

Premananda Patra **Petitioner**

Vrs.

E E, (Electrical), AED, Aska, **Respondent**

In the matter of: U/S. 86 (1) (a) of the Electricity Act, 2003.

For the petitioner: Mr. K. K. Jena, Advocate

Date of Hearing : 04.12.2009

Date of Order : 16.12.2009

ORDER

The Case is taken up for hearing on question of admission. The brief fact of the case is that the petitioner is a consumer of the licensee-SOUTHCO bearing consumer No.213101020172 with a contract demand of 1.5 KW. He has started a poultry firm by availing loan from Andhra Bank, Aska under the scheme formulated by NABARD. As per agreement signed between the petitioner and the respondent-SOUTHCO, the energy bills are issued under the commercial tariff for consumption of its poultry firm. The petitioner approached the respondent to change the tariff of its firm from commercial to agriculture as he has set up the firm by availing agricultural loan. But the respondent did not take any step on the complaint of the petitioner. Being aggrieved by the inaction of the respondent, the petitioner filed a writ petition bearing O.J.C No.9736/96 against the respondent before the Hon'ble High Court. The Hon'ble Court

disposed of the said O.J.C on 12.11.2007 by directing the petitioner to approach the GRF, Berhampur within 3 weeks and the GRF, Berhampur can finalize the matter after issuing the notice to the respondent. Till then the status quo should be maintained as on date with regard to billing process till the forum takes a decision. There after the petitioner filed a consumer complaint bearing C.C. Case No.10/09 before the GRF, Berhampur for redressal of his grievances. The said GRF, Berhampur disposed of the aforesaid C.C. Case after hearing the parties in the said case stating that the prevailing tariff structure of erstwhile OSEB, GRIDCO and now in SOUTHCO has been categorized under commercial unit.

2. In the mean while OERC in its fourth amendment 2007 introduced one new tariff category as per Regulation 80(5)(1) of Regulations, 2004. The said new category relates to supply of power for pisciculture, horticulture, floriculture, sericulture and other allied agricultural activities including Animal husbandry, poultry, cold storage etc specified as “Agro Industries” w.e.f. 1st April, 2008. Accordingly, the respondent asked to the petitioner to clear all the arrear dues amounting to Rs.36,000/- and to execute a fresh agreement with the respondent vide its letter No.4773(20) dated 11.04.2008 signed by DGM(Com.),SOUTHCO for tariff under “Agro Industries” tariff category . But the petitioner has not taken any step for execution of a fresh agreement for supply of power to its firm under “Agro Industries” tariff category.
3. Prior to this amendment of the above Regulation 80(5) of OERC (Conditions of Supply) Code, 2004, there was a provision on tariff for “agriculture” i.e. for lifting of water for cultivation of crops. Rearing of poultry, mushroom culture, dairy farm etc did not fall under the agriculture tariff as per Regulation 80 (5) of OERC (Conditions of Supply) Code, 2004. Such categories used to be classified under general purpose tariff which includes commercial purpose. Hence, the dairy farm, poultry farm were paying the tariff under the commercial tariff only. Since 01.04.2008

the Commission introduced a separate tariff for “Agro Industries” category and after the publication of the amended Regulation all the dairy farms, poultry farms, mushroom culture etc. were being classified under the said tariff category. Under this circumstances the GRF, Berhampur did not consider the complaint of the present petitioner for changing of tariff from commercial category to agricultural category prior to 01.04.2008 but the said GRF, Berhampur directed the petitioner to execute a fresh agreement with the licensee to pay the tariff under “Agro Industries” category from the date of amendment of Regulation 80(5) (1) of OERC (Conditions of Supply) Code, 2004 w.e.f . 01.04.2008.

4. The petitioner aggrieved by the above order of the GRF, Berhampur filed a consumer representation before the Ombudsman-II bearing C.R. Case No.(S)-02/2009. The Ombudsman–II disposed of the said case after hearing the parties as the dispute could not be settled by conciliation between the parties. The said order of the Ombudsman-II is reproduced bellow :

“The order passed by the GRF, Berhampur appears to be correct and any interference with the same is uncalled for.

Since the present representation has no merit, the same may be liable to rejected.

In result, therefore, the representation of the petitioner stands rejected on contest.

x x x x x x”.

5. Being aggrieved by both the aforesaid orders of the Forum and the Ombudsman on the grounds that they failed to appreciate the provisions of Regulation 80 (e) of 1998 Code and the provisions of Regulation 80 (5) of Conditions of Supply Code ,2004, which are similar and the benefit under the said Regulations have not been provided to the petitioner from the date of inception of its poultry farm, the petitioner filed a writ petition bearing W.P.(C) No.10387 of 2009 before the Hon’ble High Court seeking

the direction of the Hon'ble Court to the respondent to change the category of consumer of his poultry farm from commercial to agricultural from its inception and also quash the orders passed by the Forums. The said Writ Petition was dismissed by the Hon'ble Court with the observation that it is open to the petitioner to approach the Regulatory Commission if so advised. Hence this petition has been filed by the petitioner to quash the aforesaid orders of the Forums.

6. We have heard the petitioner on the question of admission and perused the case record. In accordance with Sec. 42(5) of the Electricity Act, 2003 and OERC (GRF & Ombudsman) Regulations, 2004, the Distribution Licensees have established Grievances Redressal Fora (GRFs) and a consumer aggrieved by an order of the GRF may file his representation before the Ombudsman established by the Commission u/S 42(6) of the said Act. These statutory bodies have been established with the objective of providing a prompt and effective mechanism for redressal of consumer grievances. After establishment of such statutory bodies it is not permissible on the part of the Commission to decide individual consumer disputes nor the statute stipulates any such provision. The Appellate Tribunal for Electricity *in case of BSES Rajdhani Power Ltd Vrs. Delhi Electricity Regulatory Commission* 2009 ELR (APTEL) 0363 has observed that Grievances Redressal Forum or the Ombudsman alone is a competent Authority to deal with the grievances of the consumers. The State Commission cannot usurp either the jurisdiction of Grievance Redressal Fora or Ombudsman. A consumer cannot approach the Commission for redressal of his grievances as there is a specific remedy available to him to approach the concerned Grievance Redressal Forum and the Ombudsman whose award is final and against which no appeal will lie with Commission. The Delhi High Court in the case of *Suresh Jindal Vrs. BSES Rajdhani Power Ltd. and Dheeraj Singh Vs. BSES Yamuna Power Ltd.* has decided that the GRF & Ombudsman are competent authorities for redressal of consumer disputes and State

Electricity Regulatory Commission is not to intervene in the matter. In the leading case *Maharashtra State Electricity Distribution Company Ltd. Vrs. Lloyds Steel Industries Ltd.*, AIR 2008 SC 1042 the Supreme Court has held that wherever a Forum/Ombudsman have been created the consumers can only resort to these bodies for redressal of their grievances.

7. In instant case the petitioner has already approached the GRF & the Ombudsman and these authorities had passed necessary orders after due consideration of the submissions of the parties. The GRF, Berhampur has given a clear finding vide its order of 09.4.2009. The petitioner being aggrieved by the findings of the GRF approached the Ombudsman-II who also made an Award on 25.5.2009. The petitioner has now approached the Commission and prays that the final orders of the GRF dt.09.4.2009 and that of the Ombudsman-II dt.25.5.2009 be quashed and adjudicate on the dispute on merits. In sum and substance, this is an appeal against the Orders of the GRF and the Ombudsman. As has been indicated in the foregoing paras by us, we are not an Appellate Forum for consumer grievances. Therefore, in the light of the observation of the Hon'ble Supreme Court, Delhi High Court and APTEL we are not inclined to intervene in the matter and admit this petition. In the result, the petition does not merit admission and the matter stands disposed accordingly.

Sd/-
(B. K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B. K. Das)
Chairperson