

**ORISSA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
UNIT-VIII, BHUBANESWAR - 751 012

Present : Shri K.C. Badu, Member
 Shri B. K. Mishra, Member

Case No.14 /2010

Shri Narayana Sahoo	Petitioner
Vrs.		
SDO, (Elect), CESU, BBSR.	Respondent

In the matter of: **Application under S.142 of the Electricity Act, 2003.**

For Petitioner: Shri Narayana Sahoo

For Respondent: SDO, (Elect), CESU, BBSR

Date of Hearing: 11.05.2010

Date of Order : 31 .05.2010

ORDER

Brief fact of the case is that one Smt. Santilata Kar, W/o. Gayadhar Kar has given on lease Plot No. 4770 of Mouza-chakeisihani to M/s Reliance Telecom for erection of mobile B.T.S. tower. As the power is required to run the tower M/s Reliance telecom applied for supply of power to the CESU authority. After approval of the application it has installed 25KVA-11KV/0.4KV transformer just adjacent to the plot of the petitioner namely Narayan Sahoo. The line was drawn without providing sufficient clearance as per electrical rules for providing power supply to the M/s Reliance Telecom. One 11KV wire is passing over the compound wall of the petitioner's homestead land, which would cause damage for his future construction as well as danger to human life. The matter was brought to the notice of the SDO (Elect), Rasulgarh Sub-Division but no action was taken by the licensee.

2. The authorized representative of the petitioner stated that permission was given to M/s Reliance Telecom at Chakeisihani, Plot No. 4470/4771

for installation of 11KV/0.4KV, 25KVA DP mounted Sub-Station and 0.02Km HT line using 55mm² conductor after deposit of 6% of estimated amount towards supervision charges. After completion of the work and with submission of report of Electrical Inspector, the 25 KVA, 11/0.4KVA transformer and HT line 0.02Km was energized on 29.04.07. After getting the complaint from the petitioner, the GM(Elect) visited the site and intimated to M/s Reliance Telecom Ltd. vide letter No. 56 dtd. 21.01.2009 and also letter No. 473 dtd. 02.06.2009 to shift the 11KV line or to provide XLP cable in place of bare 11 KV line.

As neither the Licensee-CESU nor the M/s Reliance Telecom Ltd shifted the said 11KV line, the petitioner had filed a complaint before the GRF, Bhubaneswar for redressal of his grievances. The said complaint was registered as CC Case No. 58/2008 (BED) and was disposed on 04.08.2009 with the following orders:-

“The Respondent is directed to shift the 11KV lines and 11/0.4KV, 25KVA transformer observing the Indian Electricity Rules 1956 inside the plot No. 4770 of Smt. Santilata Kar, W/o. Gayadhar Kar and the above shifting work will be completed within 60 days of this order.

The CC Case No. 58/2009 (BED) is thus disposed of.

x x x x x x x x x x

3. The aforesaid order was not implemented within the stipulated time i.e., 60 days; the petitioner had filed a consumer representation before the Ombudsman-I against the respondent for non-implementation of the order of the GRF, Bhubaneswar. The said representation was registered as CR Case No. OM(I)-50/2009 and was disposed of by the Ombudsman-I on 14.12.2009 with the following observations.

“x x x x x x x x x x

On a careful scrutiny of the materials filed by both the parties, it is crystal clear that the respondent has not yet complied the orders passed by the GRF in true nature and spirit. Since the petitioner has ventilated his grievances regarding non-compliance of the orders, however, for the ends natural justice I feel it proper to direct the respondent to comply the orders of the GRF within 30 days from the date of receipt of the orders,

failing which the complainant would be at liberty to take necessary action as provided u/s 142 of the Electricity Act, 2003.

Hence, the case is disposed of accordingly”

As the above order of the ombudsman-I has not been complied with within the stipulated time, the petitioner has filed this case before the Commission seeking direction to the respondent to implement the aforesaid orders of the GRF & Ombudsman-I and penalty may be imposed on the respondent for violation of the above orders.

4. Sri D. Mohanty, learned Counsel for the respondent stated that the respondent has complied the order dated 14.12.09 of the Ombudsman-I within time. Regarding implementation of order of the GRF, BBSR, the said order was merged with the order of the Ombudsman-I, the respondent has not violated the order of the GRF so also the order of the Ombudsman within time. According to the order of the ombudsman-I, the respondent has dismantled the constructions etc works, which was admitted by the petitioner during hearing. Hence the proceeding u/s 142 of the Electricity Act, 2003 may be dropped.
5. During hearing the Advocate for the respondent also has raised a point that the petitioner has no locus-standai as he is not a consumer of the respondent to file this petition u/s 142 of the Electricity Act, 2003 as both the orders of the GRF and Ombudsman-I were without jurisdiction. It is pertinent to mention here that as per S.42(5) & (6) of the Electricity Act, 2003 the GRF of Distribution licensee shall entertain grievances of the consumer. Hence, it is confined and limited to non redressal of the grievances of the consumers as defined u/s 2(15) of the said Act. Besides Regulation 7(1) read with Regulation 17 of OERC (GRF & Ombudsman) Regulations, 2004 requires prior determination of definition of consumer which shall if not carried out amount to contravention of the Regulation for the purpose of S.142 of the said Act. Therefore it is necessary for the Commission to determine first, whether the petitioner is a consumer under the Act, or not. He has submitted that the petitioner is not the consumer of the Distribution licensee because, still then the GRF, Bhubaneswar and thereafter the Ombudsman-I have

entertained the grievances of a non-consumer. Both the Forums were without jurisdiction, while passing awards. Thus those orders are nullity being without jurisdiction. It is settled principle of law, any order passed by an authority without jurisdiction is not enforceable and non-est. In support his above submissions he has cited the judgment of the Hon'ble Supreme Court of India, AIR 1996 SC 1819 passed in Civil Appeal No. 6963 of 1996: Urban Improvement Trust Vrs. Gokul Narayan and another vide para 16 which is give below:-

“x x x x x x x x x x

As regards the nullity or lack of inherent jurisdiction, this Court observed that the decree can be said to be a nullity if it is passed by a Court having no inherent jurisdiction. Erroneous decree cannot be said to be a nullity; nor can a decree based on an error be a nullity. Nullity has to be understood in the sense that it is ultra vires the power the power of the Court passing the decree and not merely avoid the decree. As stated earlier, if the decree strikes at the jurisdiction of the Court or the Court lacks jurisdiction it strikes at the very root of the authority to pass the order or the decree. As seen, the Amendment Act, 68 of 1984 has no application to the lands acquired under the Act. It was amended only w.e.f. 1st August, 1987 and it was made applicable only to the pending proceeding. It would, therefore, be clear that the order awarding additional benefits is clearly without jurisdiction and thereby it is a nullity. Its nullity can be assailed at any stage including at the execution or in a collateral proceedings since it strikes at the very jurisdiction and authority of the Court.”

The Advocate of the respondent has stated that in view of the above point of law the petition filed u/s 142 of the Electricity Act, 2003 read with Regulations 7(1) & 17 of OERC (GRF & Ombudsman) Regulations, 2004 is not maintainable and the Commission may dismiss the same with cost.

6. The Electricity Act,2003 has express provision for non-redressal of grievances of the consumers by the licensees under S.42(5) and 42(6) of the said Act. Similarly S.142 of the Electricity Act,2003 empowers the

Regulatory Commissions to enforce the provisions of the Act through positive action. In the instant case GRF and Ombudsman have similar directions to the licensee after hearing both the parties at length. In the mean time licensee has also complied with the directions issued under the said Order. Section 142 of the Electricity Act, 2003 authorises the Commission to ensure the compliance of direction of GRF or Ombudsman if a complaint is filed before it. The licensee could have raised the issues what is being raised here before the GRF and Also before the Ombudsman. We have neither the scope to reopen the issues once settled by the GRF nor have mandate to hear appeal against them. However, while appreciating the clarification given by the learned advocate for the respondent based on judgment of the Apex Court. We want to make it clear that the licensee while doing their work must see that the general public is not put into inconvenience. This inconvenience in the mean time of course has been removed by the licensee.

7. After, hearing the parties, perusal of the case records and submissions made, we find as the licensee has already complied the orders of the GRF and the Ombudsman and the petitioner present in the hearing has also admitted that the CESU authorities have already shifted the 11 KV line over his plot, we are not inclined to proceed further in the matter u/s. 142 of the Electricity Act, 2003. With regard to the contention of the respondent that the petitioner is not a consumer of the licensee-CESU is no more relevant in the present circumstances of the case and we are not also inclined to enter in to the merit of the Orders of the GRF and Ombudsman.
8. With the above observation made in paras- 6 & 7 the case is accordingly disposed of.

Sd/-
(B. K. Misra)
Member

Sd/-
(K. C. Badu)
Member