

**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. 55/2010

Shri Rasananda Sahoo	Petitioner
Vrs.		
E.E., CED, Cuttack, CESU	Respondent

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

For the petitioner : Shri Rasananda Sahoo

For the respondent : Shri J.K. Khuntia, Advocate

Date of Hearing: 30.8.2010

Date of Order : 30.09.2010

ORDER

Shri Rasananda Sahoo stated that the respondent has not implemented the order of the GRF and issued wrong and erroneous bill in the name of his wife Smt. Sanjukta Sahoo, who is the consumer of the respondent. Being aggrieved by the inaction of the respondent-CESU the petitioner has filed the case u/S. 142 of the Electricity Act, 2003 for non-compliance of the order of the GRF, Cuttack passed in C.C. No. CED/02/10. The Commission after hearing the parties, vide its order dated 21.06.2010 has admitted the petition and directed as follows :-

“After hearing the parties, we admit the petition. The licensee is directed to implement the order of the GRF within 7 days. The petitioner is also directed to co-operate the licensee for installation of new meter in his premises. After installation of new meter the previous bill will be revised taking 3 months consecutive average meter readings. The licensee is further directed to depute its concerned officer to be present during hearing before the Commission and also submit the compliance report to the Commission on or before 30.06.2010. If the petitioner does not co-operate the licensee for installation of the meter in his premises, the licensee is at liberty to disconnect the power supply to the said premises of

the petitioner. Power supply can also be disconnected if the current bills are not paid in time as per Regulation 100 of the OERC (Conditions of Supply) Code, 2004”.

He also stated that without implementing the order of the GRF the respondent raise the same allegations here as raised before the GRF. The Commission is not the proper Forum as per law to adjudicate the grievances of the respondent. If the respondent has any difference or disputes regarding the order of the GRF, then they could file an appeal before the proper court. He also stated that implementation of Regulation 97 of OERC Distribution (Conditions of Supply) Code, 2004 by the respondent is not applicable to this case, as the existing meter is in serviceable condition.

2. Further, he has submitted that OERC has no jurisdiction to entertain the grievances of the respondent so far as law is concern. The Statute did not provide the execution power to the GRF. The Commission have only limited power u/S.142 of the Electricity Act, 2003 only to give direction to the licensee to implement the order of the forums and for their negligence compensate the consumer by imposing penalty upon the licensee. The Order dated 21.6.2010 passed by the OERC reflected that it was passed without applying judicious mind and beyond its power vested by Statute. It is not the proper Forum to adjudicate the grievances of the respondent.
3. Shri Kuntia, Advocate on behalf of CESU stated that the consumer has not extended any co-operation during fixation of meter in her premises. As per earlier direction of the Commission vide Order dated 21.6.2010. CESU has revised the bill of the consumer after taking the meter reading for 3 months average consumption in accordance with the regulation but the consumer has not yet paid the revised amount in full.
4. We have heard both the parties at length. From the facts submitted and the written submissions given by the petitioner and the respondent, the question for consideration is whether *prima facie* a case has been made out u/S 142 of the Electricity Act, 2003. Before we proceed further in the matter, has the Licensee CESU contravened any of the provisions of the Act or the rules or regulations made there under or any directions made there under? In order to understand and

to determine whether any of the ingredients of Sec. 142 is satisfied, one must necessarily have to go into the facts of the case and analyse them for a clear appreciation of both the facts and the law. The complaint under Section 142 of the Act has been made by one Rasananda Sahoo who is the husband of the consumer Smt. Sanjulata Sahoo, under Choudwar Electrical Sub-division, bearing Consumer Number DSG2382. The complaint in brief is that the Licensee CESU has not obeyed the order of the GRF in order No.CED/02/10 and, therefore, must be punished u/s 142 of the Act. The complainants prayer is :-

“6. Since it is proved beyond doubt that the Opp. Party has willfully disobeyed the above orders & defied it deliberately by misinterpreting the orders with a malafied intention of harassing the consumer, the Opp. Party :

- (a) Should be reprimanded to refrain from taking any further such vindictive actions against the consumer Smt. Sanjukta Sahoo.*
- (b) Should be punished as per Sec. 142 of Elect. Act.*
- (c) Should be directed to regularize & raise the electricity bills of Sanjukta Sahoo basing of main meter & adjust 50% deposit amount paid against FAO.*
- (d) Should remove the check meter fitted on pole since 15.01.09 for more than 16 months in violation of conditions of supply code which has tarnished my image in the locality.*
- (e) Should be directed to pay Rs.25,000/- for the mental harassment that I have faced since last almost 2 years & the financial loss I have suffered in fighting the case against the Opp. Party.”*

5. Why exactly did the complainant approach the GRF? On a routine check by the MRT team on 13.8.08, a Check Meter was fitted on the pole in series, on 15.01.2009. Thereafter, an assessment order (Final Assessment Order) was issued by the competent authority u/S 126 of the Act. The consumer appealed against the order to the Appellate Authority, who is the Electrical Inspector (T&D), Angul. It would not be necessary to go into the details and facts of this case, which was appealed against by the complainant before the Electrical Inspector (T&D) Angul,

who set aside the final Assessment Order made u/S 126 of the Act on the grounds that *“The reading of the old meter and check meter for quite a long period of 7 months & the average consumption during this period being on a higher side does not indicate any interference ...”* Thus, the entire proceedings of the Assessing Officer u/S 126 covering inspection of premises, equipments, devices, etc. leading to a provisional assessment order, followed by filing of objections and a reasonable opportunity of hearing against the provisional assessment, ending with a final assessment order was disposed of by a short and bald statement that *“the average consumption during this period being on a higher side does not indicate any kind of interference”*. Nothing was stated about the readings of the check meter and the readings of the main meter and how the average consumption was higher on the main meter. Nothing else was stated regarding the accuracy of the main meter, except that the respondent cannot allege interference with the main meter, since they had not provided a tamper proof box. It would not be necessary to enter into the validity of these findings. It would be pertinent however to state that this pronouncement, that the meter had not been tampered with, subsequently became the very foundation of the GRFs final conclusion.

6. After this pronouncement, the Appellate Authority set aside the final Assessment Order and directed adjustment of the amounts paid by the assessee, Smt. Sahoo, in the subsequent monthly bills against her. When the licensee presented the next monthly bill with the requisite adjustments, etc., the consumer and her authorized representative, i.e. her husband approached the GRF, with the plea that the bill presented is based on the readings of the check meter which is not legal and, therefore, void. The bill can only be raised, based on the original main meter, as it was not interfered with as concluded by the Appellate Authority u/S 127 of the Act. The GRF agreed with this contention and further laid down the definitive interpretation of the regulations governing the Conditions of Supply. It was held *“... Regulation 2(f)(1) of the Supply Code as amended by Notification dtd.22.6.07 defines “Check Meter” and as per said definition a check meter can be used for accounting and billing of electricity in case of failure of main meter. As such the bills raised by the OP on the basis of the Check Meter reading are illegal and*

liable to set aside. Hence it is ...” It was ordered, therefore, “the OP shall install the existing meter in the consumer’s premises in a sealed TP Box within 15 days of the receipt of this order and a fresh bill be served to the complainant as per the meter readings recorded by the said meter.”

7. While the Commission would not like to go into the interpretations and meanings ascribed by the GRF to the provisions of the “Supply Code”, nevertheless, it has become imperative to dispel the notion that the use of a check meter by the supply engineer of the licensee is illegal and that such a meter can be used, only on failure of the main meter. Such a conclusion cannot readily be supported and certainly the use of a check meter cannot be termed as illegal under the terms of the definition of a “Check Meter” as provided in Section 2(f)(1). The term “Failure” used in this context is not the dictionary meaning of total break down or complete stoppage or completely non-functional. It refers only to poor accuracy or not running properly. That precisely is the reason as to why the Proviso to Regulation 57 of the Conditions of Supply Code empowers the Supply Engineer to use a check meter, if he suspects the accuracy of the meter. The proviso states as follows :

“Provided that even if the meter is supplied either by licensee or by consumer, if the Engineer suspects about the accuracy of the meter, the Engineer may by giving 24 hour notice to the consumer install a check meter either by side of the original meter within the premises of the consumer or at such other places as may be decided by the Engineer to test the accuracy of the meter and in that case the reading records in the check meter can be treated as of the original meter for the purpose of ascertaining the consumption made by the consumer, which is conclusive.”

8. It is necessary, therefore, to read the definition of the check meter in a harmonious fashion with Regulation 57 which in plain and simple language states clearly, when and how the check meter can be installed and what reliance can be placed on the readings of the check meter. In fact, it states clearly that the reading records of the check meter can be treated as the original meter for the purpose of ascertaining the consumption made by the consumer which is conclusive. The regulations, therefore, do not prohibit the use of a check meter or restrict its use in

any manner. It only says that the supply engineer should have a reasonable apprehension or suspicion about the accuracy of the installed meter. In the instant case a check meter was installed only after a routine inspection by the MRT team. It cannot be said, in the circumstances that the installation of the said check meter is illegal or that its readings are illegal and that only the readings of the main meter are legal. It must be recalled that the only finding of the Appellate Authority u/S 127 is that the Licensee having not supplied the main meter in a Tamper Proof Box cannot allege interference and tampering and that since the average consumption during the period was higher, the main meter is accurate. Nothing was brought about or shown to support this conclusion. No readings were cited or bills referred to. Merely because a meter has not been interfered with or tampered with, cannot be the basis to automatically arrive at the inference that the meter is accurate. A check meter can still be installed if there is suspicion about the accuracy of the meter. The readings from such a meter can certainly be used to measure consumption and raise energy bills. It cannot be termed as an illegal act. Whether in the instant case and in the circumstances, it would have been prudent to have had the main meter tested for its accuracy is a separate issue. The fact however remains that a verification by the MRT squad led to a check meter being installed which certainly is within the lawful limits of the licensee. The GRF ought to have taken this into account and if the main meter required to be tested, such a test should have been conducted and thereafter come to a conclusion as to whether the main meter could be relied upon. In the circumstances, when the licensee has done what the law empowers him to do so, cannot be the basis of action u/S 142 of the Act. These are our observations. We do not wish to state that these are our orders. It would be sufficient to state that we do not find any grounds to proceed further in the matter and accordingly any further proceedings are not called for.

9. The GRFs are the fora for redressal of grievances. They are not courts of law to sit in judgement over contesting parties on adversarial issues and pronounce learned orders in tune with the prevailing and governing law. While the legal backing to their resolutions or decisions must be kept in mind, in essence the

grievance of the consumer must be redressed. In doing so they can certainly review and revisit their earlier decision to set right and redress a grievance. Parties in this case are, therefore, free to approach the GRF to resolve the matter afresh by going into all the facts and circumstances for a fair and just resolution. The GRF may also consider all the material, facts and circumstances without being influenced by their earlier decision in any manner.

10. We further hereby clarify and reiterate our earlier order dated 21.6.2010 that the licensee is at liberty to disconnect power supply if the current bills are not paid in time as per Reg. 100 of the OERC (Conditions of Supply) Code, 2004.
11. Accordingly, the complaint petition is disposed of.

Sd/-
(B.K. Misra)
Member

Sd/-
(K.C. Badu)
Member

Sd/-
(B.K. Das)
Chairperson