

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

Case No.89 of 2011

Shri Jaladhar Sahoo Petitioner

Vrs.

S.D.O.(Elct.), Dharmasala,Jajpur, NESCO Respondent

In the matter of: **An application under S.142 of the Electricity Act,2003 against the S.D.O.(Elect.), Electrical Sub-Division, Dharmasala, NESCO for illegal action under S.126 of Electricity Act, 2003.**

For the Petitioner: Shri A.K. Sahani & Shri. R.P.Mohapatra.

For the Respondent: Shri Suryakanta Behera, SDO (Elect.), Dharmasala.

ORDER

Hearing date: 23.12.2011

Order date: 28 .12.2011

1. The brief fact of the Case is that, the petitioner is a consumer of NESCO bearing Consumer No. DSL/KB 198 C with a Contract Demand of 2 KW. He had availed the power supply in the month of April, 2011. On 05.07.2011, as per the statement of the petitioner, during his absence, some staff of the respondent visited his premises, made inspection and finally disconnected the power supply on that day without giving any notice of disconnection as the petitioner has unauthorizedly used electricity by bypassing the meter . On 14.07.2011 he was served with a Provisional Assessment bill u/S. 126 of the Electricity Act. 2003 for an amount of Rs. 56,379.65 for the alleged unauthorized use of electricity. He has further contended that, against the Provisional Assessment, he made a representation before the respondent on 29.07.2011. In the said representation, he has challenged the Provisional Assessment bill on the following grounds:
 - a. When, the power supply was provided in the month of April, 2011, the provisional bill made for a period of 12 months preceding from the date of inspection is illegal and not sustainable by law.

- b. While serving the provisional bill, he has not been served with the copy of the verification report, on the basis of which the present alleged provisional assessment has been made.
- c. When there is no provision for disconnection of power supply u/S. 126 of the Electricity Act, 2003, the disconnection of power supply made by the respondent is violation of the provisions of the Electricity Act, rules and regulations made there under.
- d. The entire provisional bill being illegal is to be withdrawn and the power supply is to be restored.

2. It is further submitted that when the respondent did not reconnect the power supply and final assessment was not made by the respondent as per S. 126 (3) of the Electricity Act, 2003 within 30 days from the date of service of the provisional assessment order, the petitioner was legally debarred from approaching the "Appellate Authority" under S.127 of the said Act. This amounts to violation of the Electricity Act, 2003 by the respondent and therefore, the respondent is to be proceeded u/S. 142 of the Electricity Act, 2003 for such violation. He has further prayed the Commission for a direction to the respondent to withdraw the provisional assessment bill and to restore the power supply.

3. The SDO (Electrical), NESCO, Dharmasla during hearing on 23.12.2011 has filed its reply through affidavit, which is taken on record. The copy of the reply was served on the representative of the petitioner during the course of hearing. In its reply it has been stated that, the petitioner is a consumer since 28.04.2011, having a Contract Demand of 2 KW (Commercial) and he is using power for a small ice candy. On 05.07.2011, during inspection of the premises of the consumer, it was detected that, the outgoing phase and neutral are shorted with the corresponding incoming phase and neutral incoming terminal of meter. Accordingly, though there was meter, but, he had totally bypassed the energy meter. This unauthorized use of power being dangerous and unsafe, to the lives, health of the respondent, so on 05.07.2011 the power supply was disconnected under Regulation 46 of the OERC Distribution (Conditions of Supply) Code, 2004 read with S.135 of the Electricity Act, 2003.

4. It has been further contended in its reply that, for the unauthorized abstraction of energy, a provisional assessment was made to the tune of Rs 56, 380/-. After receipt of the reply to the show cause from the petitioner, and in consideration of the said reply, the final assessment order was made on 29.7.2011 as per S. 126 (3) of the Act and the Provisional Assessment amount of Rs 56,380/- was reduced to Rs 17, 426/-. The 'Final Assessment' order was issued to the petitioner on 29.7.2011 through the Junior Manager (Elect.) Kabatbandha Section, but the petitioner refused to receive the

same. Therefore there is no violation of Section 126 of the Act. Further, as the final assessment order has already been made, the petitioner can only approach before the appellate authority u/S. 127 of the Act. So the present case under section 142 of the Electricity Act, 2003 is not maintainable and liable to be rejected.

5. Mr. R P Mohapatra, the authorized representative appearing on behalf of the petitioner submitted that, if the final order of assessment would have been served upon the petitioner, he could have filed appeal before the Appellate Authority u/S. 127 of the Electricity Act, 2003 because the provision of Section 127 of the Act, can be invoked only after final assessment order is made by the assessing officer. He has submitted that, if the petitioner refused to accept the final assessment order, then alternatively, the respondent could have served the same by Regd. Post, so that the contention of the respondent made in the reply cannot be relied upon. He further submitted that, the respondent, at no point of time has communicated to the consumer about the disconnection of power supply under Regulation 46 of the Code and 135 of the Act. If at all the respondent has disconnected the power supply u/S 135 of the Act, then as per the second proviso to Section 135 (IA) of the Act, the respondent should have lodged complaint in the police station within 24 hours of such disconnection. In the present case, the same having not been done by the respondent, the disconnection of power supply u/S 135 of the Act, cannot be sustained.

6. Shri Behera, SDO Electrical, submitted that, nowhere it has been provided that, while disconnecting the power supply under Regulation 46, a notice is mandatory to be served on the consumer. He submitted that, conceding for a moment for sake of argument but not admitting, if the disconnection under section 135 of the Act would be faulted, but the disconnection under Regulation 46 of the Code can not be said to be illegal and unjustified. Power supply can only be restored only after making the supply system safe. He further submitted that, since the power supply has been disconnected u/S. 135 of the Act & if the petitioner wants restoration of power supply, he can apply for the same as per the 3rd proviso to Sec. 135 (IA) of Act, by making payment of the assessed amount and also after removal/rectification of the unsafe condition of the meter.

7. Heard the parties at length.

8. On perusal of the submission of the petitioner and reply submitted by the respondent, we prima facie find that procedure prescribed under Section 126 has been followed. The provisional assessment under Section 126 was made on 14.7.2011 which was served to the petitioner. The petitioner made a representation on 25.7.2011 in which he has admitted the bypassing of meter but taking a different plea as indicated below:-

“ମୁଁ ଶ୍ରୀ ଜଳଧର ସାହୁ ବୟସ(୨୮), ଗ୍ରାମ କଲାଣ୍ଡ, ପୋ – ଏଣ୍ଡଲ ଜି-ଯାଯପୁର, ଧର୍ମଶାଳା **Electrical subdivision** ଅନ୍ତର୍ଗତ କବାଟବନ୍ଧ **section** ଅଧିବସ୍ଥୁ ଜଣେ **commercial** ବିଦ୍ୟୁତ୍ ଉପଭୋକ୍ତା ଅଟେ । ଗ୍ରାମ ବିଦ୍ୟୁତ୍ ଉପଭୋକ୍ତା ମାନଙ୍କର ପ୍ରବଳ ବିରୋଧ ସତେ ଆପଣ ମୋତେ ତା ୨୯-୩-୨୦୧୧ ରୁ **single phase connection** ଦେଇଛନ୍ତି । ଯେଉଁଥିରେ ମୁଁ **3 HP motor** ବ୍ୟବହାର କରି ଏକ ଛୋଟ ଧରଣର **Ice-cream factory** ଚଳାଇ ଆସୁଅଛି । ମୁଁ ନିୟମ ଅନୁସାରେ **meter** ସ୍ଥାପନ କରି ନିୟମିତ **bill** ପୈଠ କରିଆସୁଅଛି । କିନ୍ତୁ ଦୁଃଖର ବିଷୟ ମୁଁ ଅନୁପସ୍ଥିତ ଥିବା ସମୟରେ କେହି ଶତ୍ରୁପକ୍ଷ ବ୍ୟକ୍ତି ମୋ ମିଟରଟି ବାହାରେ ବସିଥିବାରୁ **bypass** କରି ଉକ୍ତ କର୍ତ୍ତୃପକ୍ଷଙ୍କୁ ଦୃଷ୍ଟି ଗୋଲର କରାଇଛନ୍ତି । ଫଳରେ ଆପଣ ମୋତେ ଭୁଲ ବୁଝି ମୋ ଉପରେ କାର୍ଯ୍ୟାନୁଷ୍ଠାନ ଗ୍ରହଣ କରିବାକୁ ବିଚାର କରୁଛନ୍ତି । କିନ୍ତୁ ବାସ୍ତବିକ ମୁଁ ନିର୍ଦ୍ଦୋଷ । ମୋ ବିରୁଦ୍ଧରେ ଏହା ଏକ ଯୋଜନାବଦ୍ଧ ସତ୍ୟତା । ତଥାପି ଆପଣଙ୍କ ନିଷ୍ପତ୍ତିକୁ ମୁଁ ମାନିନେବାକୁ ରାଜି ।”

9. Subsequently, he made a representation on 29.7.2011 against the provisional assessment order and accordingly final assessment order was made on 29.7.2011 and the said order was forwarded vide letter No.585 dated 29.7.2011. The said final assessment order was sent through Digambar Nandi, Lineman, who reported that Moti Sahu, wife of the consumer refused to receive the said order. The Junior Manager (Elect.), Kantabandha in his letter No.181 dated 02.8.2011 addressed to SDO (Elect.) Dharmasala Electrical Division has informed as under:-

“I would like to intimate you that, the final assessment order of Sri Jaladhar Sahoo, Consumer No.DSL/KB1098C sent to him on 01.8.2011 through Sri Digambar Nanda, L/M-C. But Digambar Nandi L/M-C informed me that he refused to receive the final assessment order. After that I had contacted him regarding the matter over telephone and he asked me how much amount need to pay and I replied that it is Rs.17,426.51. But he refused to pay this amount and refused to receive the final assessment bill also. He replied that, he will pay this amount after reconnection of electricity to my house.”

10. The refusal of the petitioner to receive the final order is a clear evidence of taking a plea for not paying the penalty amount and in order to avoid the dues assessed under Section 126 of the Electricity Act, 2003. Now shelter has been taken under Section 142 of the Electricity Act, 2003. The plea advanced for invoking provision of Section 142 is that the procedure prescribed under Section 126 has not been followed; but from the evidence submitted before the Commission we find that these are not based on facts. Even assuming that the procedure prescribed under Section 126 has not been followed then it is the Appellate authority who will decide as to whether the assessment has been made correctly

and whether the prescribed procedure has been followed while assessing the penal amount. Commission has no jurisdiction under Section 126 of the Electricity Act, 2003 to sit in appeal against assessment made under Section 126 of the Electricity Act, 2003.

11. In view of the position indicated above, the Commission finds that this is not a fit case for admission under Section 142 of the Electricity Act, 2003 and therefore the petition is rejected. The Licensee is at liberty to take action as provided under the Electricity Act, 2003 and the Regulations framed there under for collection of the amount assessed. The petitioner is at liberty to approach the "Appellate Authority" u/s 127 of the Act and in that case the Appellate Authority may take a lenient view in condoning the delay in filing the appeal before him. As regards reconnection of the power supply, the "Appellate Authority" can decide the same and pass necessary orders in accordance with law.

12. With these observation and directions the case is disposed of accordingly.

Sd/-
(B.K.Misra)
Member

Sd/-
(K.C.Badu)
Member

Sd/-
(S.P.Nanda)
Chairperson