

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

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**Present :      Shri S. P.Nanda, Chairperson  
                     Shri S. P. Swain, Member  
                     Shri A. K. Das, Member**

**Case No. 01/2015**

Shri Radhesyam Sahu	.....	Petitioner
Vrs.		
E.E (Elect.), BWED, WESCO Utility & Others	.....	Respondents

**In the matter of:**      **An application under Section. 142 of the Electricity Act, 2003 for non-compliance of Order dated 30.12.2008 passed in AFO Case No.01 of 2008 of the Deputy Electrical Inspector (T&D), Sambalpur and Order dated 03.03.2009 of the Hon'ble High Court of Orissa passed in W.P. ( C ) No.1957 of 2009.**

**For Petitioner:**      Shri A. K. Sahani, Authorized Representative

**For Respondent:**      Shri K. C. Nanda, DGM (Fin), WESCO Utility  
                                 Shri D. Parija, E.E (Elect.), BWED, WESCO Utility.

**ORDER**

**Date of Hearing: 22.05.2015**

**Date of Order:31.07.2015**

The fact of the case is that the Petitioner is a consumer of WESCO Utility under Bargarh West Electrical Division having a contract demand of 13 KW in LT supply. The authority of the Utility visited the premises of the Petitioner on 08.08.2006 and served a provisional assessment bill amounting to Rs.56070/- under Section 126 of the Act. Simultaneously the Licensee had also disconnected the power supply.

2. The Petitioner, against such provisional bill and for reconnection of power supply filed a complaint in C.D.Case No.31 of 2006 before the District Consumer Disputes Redressal Forum, Bargarh. The said DCDRF, Bargarh had passed an Order on 12.10.2006 with a direction to the respondent herein for reconnection of power supply to rice mill of the petitioner. Being aggrieved by the said order dated 12.10.2006 of the DCDRF, Bargarh the Respondent preferred an appeal in Misc. Case No.1453 of 2006 before the State Consumer Disputes Redressal Forum, Cuttack and the said learned Forum had disposed of the appeal on 19.12.2006 with a direction to the petitioner herein to deposit Rs.35,000/- within one week for reconnection of power supply to his rice mill. The power supply was also reconnected after such deposit on 26.12.2006.

3. Thereafter, the petitioner had filed an Appeal under S.127 of the Electricity Act,2003 against the above provisional assessment order of the Respondent bearing AFO Case No.1 of 2008 and the Appellate Authority-cum-DEI (T&D), Sambalpur after hearing the parties had disposed of the above appeal on 30.12.2008 with the following directions:-

*“The amount deposited by the Appellant against the penal electricity charges, i.e.Rs.35,000.00/- should adjusted by the Respondent No.2 in subsequent electricity bills on the basis of actual consumption of electricity. Executive Engineer (Electrical), BWED, WESCO , Bargarh is directed to refund the fee deposited by the Appellant with this Authority for an amount of Rs.417.00/- to the Appellant and the respondent No.2 is also liable to pay an amount of interest @ 16% per annum compounded every six months from the date of deposit of the same fee,i.e.December, 2007.”*

4. The petitioner has also submitted that during pendency of the appeal under S.127 of the Electricity Act, 2003 before the Appellate Authority-cum-DEI(T&D), Sambalpur, the Respondent had made another spot verification on 20.12.2008 with an intention to harass the petitioner and issued another show-cause notice with Provisional Assessment and disconnected the power supply to the rice mill of the petitioner. Being aggrieved by the illegal disconnection of power supply and the provisional bill amounting to Rs.1,12,140.00/- the petitioner had filed a writ petition before the Hon’ble High Court of Orissa in W.P.(C) No.1957 of 2009. The Hon’ble Court had disposed of the above W.P.(C) No.1957 of 2009 on 03.03.2009 with the following directions:-

*“ In the meanwhile if the petitioner deposits a sum of Rs.30,000.00/- (Rupees thirty thousand) along with the reconnection charges without prejudice, electricity supply to his premises shall be restored forthwith. Realization of the balance amount shall be subject to result of the decision to be taken by the competent authority in accordance with law.”*

5. As per the above direction of the Hon’ble High Court of Orissa, the petitioner had deposited Rs. 30,000.00/- along with reconnection charges fee of Rs.300/- on 21.04.2009 for reconnection of the power supply to his premises and the power supply was restored. No further action was taken by the Respondent on the directions given by the Hon’ble High Court and the Appellate Authority-cum-DEI (T&D), Sambalpur for implementation of the said order. As on date the Respondents have not adjusted/ refunded of the amount deposited by the petitioner with them but the power supply was disconnected without revising the electricity bills served on the petitioner. The Respondent has not served the final bill against the provisional assessment made on

16.02.2009 and no action on that score have been taken by the Respondents till today in contravention of the Order of the Hon'ble High Court of Orissa passed in W.P.(C) No.1957 of 2009. Even though the transformer was burnt, the petitioner has deposited Rs.2,320.00/- on 27.10.2014 without restoration of power supply to his rice mill.

6. Since, the above Order of the Appellate Authority-cum-DEI (T&D), Sambalpur has not been complied by the Respondents herein the petitioner has moved to this Commission under S.142 of the Electricity Act,2003 for implementation of the above order of Appellate Authority passed in AFO Case No.1 of 2008 along with implementation of the Order of the Hon'ble High Court of Orissa passed in W.P.(C) No.1957 of 2009 and seeking direction of the Commission to the Respondents to refund of Rs.30,000.00/- with interest which was paid as per the order of the Hon'ble High Court in W.P.(C) No.1957 of 2009 and also for restoration of power supply to his rice mill.
7. The representative of Respondent WESCO Utility has submitted that a provisional penal bill was served on the petitioner vide letter dated 08.08.2006 for Rs.56,078.00/- which was made final penal bill of Rs.41,620.00/- after consideration of the show cause reply of the petitioner and the said final penal bill was served on him vide letter dated 22.11.2006. The petitioner moved to the District Consumer Disputes Redressal Forum, Bargarh in C.D. Case No.31 of 2006 and obtained an interim order for reconnection of power supply to his rice mill by depositing Rs.35,000.00/-. The power supply was made effective on 26.12.2006 after payment of the amount as directed by the DCDRF, Bargarh. Thereafter, the petitioner filed an appeal bearing AFO Case No.01 of 2008 under S.127 of the Electricity Act,2003 before the Appellate Authority-cum-DEI (T&D), Sambalpur. The Appellate Authority only in consideration of some procedural lapses disposed of the above appeal vide their order 30.12.2008 holding that the penal bill served by the Respondent is improper and directed to refund of the deposited amount through adjustment in the future bill of the petitioner.
8. He further submitted that during pendency of the appeal under S.127 of the Electricity Act, 2003, further another spot verification was made by the Respondents on 20.12.2008 of the premises of the petitioner and it was found that there was unauthorized consumption of electricity for which another provisional penal bill amounting to Rs.1,12,140.00/- was served on 16.02.2009 and the power supply was disconnected. Against the second provisional penal bill, the petitioner had filed W.P.(C) No.1957 of 2009 before the Hon'ble High Court of Orissa and the Hon'ble Court vide their order dated 03.03.2009 by disposing the above writ petition directed to the petitioner to deposit Rs.30,000.00/- for restoration of power supply to his rice mill. According to the direction

of the Hon'ble Court, the petitioner had deposited Rs.30,000.00/- on 21.04.2009 with the Respondent and the power supply was restored on that day. As the petitioner has not filed his representation as per direction of the Hon'ble High Court before the concerned authority for consideration the Respondent had disconnected the power supply to the rice mill on Sept., 2010.

9. Respondent also further submitted that though the petitioner had obtained an order dated 30.12.2008 in AFO Case No.01 of 2008 for refund of deposited amount of Rs.35,000.00/- with interest @ 16% per annum but in view of the second penal bill of Rs.1,12,140.00/- out of which the petitioner had deposited Rs.30,000.00/- as per direction of the Hon'ble High Court kept the matter alive since 2009. Neither the petitioner nor the Respondent had proceeded further for amicable settlement of the matter in between the parties on both the penal bills. The petitioner in Sept,2014 has applied for fresh power supply to his said rice mill and the Respondent has given fresh supply to the above premises in consideration of as there was no arrear dues vide its letter No.EE/BWED/Tech./10-954 dated 27.02.2015. After availing the fresh power supply, now the petitioner has filed this petition for refund of the amount deposited as per the Order of the Appellate Authority passed in AFO Case No.01 of 2008 without complying the conditions of power supply permission order.
10. Heard parties at length and the documents submitted are taken on record.
11. We observe that in August, 2006, a provisional assessment order was issued on the petitioner under Section 126 of the Electricity Act, 2003 by the respondent and simultaneously the power supply was disconnected. The petitioner moved to DCDRF, Bargarh for reconnection of power supply to his Rice Mill. Aggrieved by order from the DCDRF, the respondent moved to the State Consumer Disputes Redressal Forum, who allowed reconnection to the petitioner on provisional payment of Rs.35,000.00. The power supply was restored on 26.12.2006 on payment of the ordered amount. The time period of disconnection on account of Provisional Assessment was nearly four months. The petitioner moved to Appellate Authority under Section 127 of the Electricity Act, 2003 and the same was disposed of by the Appellate Authority on 30.12.2008 relieving the petitioner of the assessed amount. Almost at the same time, another spot verification was made by the Licensee-respondent herein on 20.12.2008 presumably under Section 126 and a provisional bill of Rs.1,12,140.00 along with disconnection followed. Being aggrieved by the disconnection of power supply, the petitioner moved to the Hon'ble High Court of Orissa and the Hon'ble Court has allowed reconnection of power supply to the rice mill of the petitioner on deposit of a sum of Rs.30,000.00 and with the order that realisation of the balance amount shall be subject to result of decision of the competent authority in accordance with law. Thereafter,

power Supply was restored on 21.04.2009 on deposit of Rs.30,000.00 and no further action was taken by the respondent nor the final Assessment has been made till date . As per submission of the respondent, the final assessment amount in the first instant in 2006 was Rs.41,620.00 and served on the petitioner on 22.11.2006. They submitted that the Appellate Authority, only in consideration of some procedural lapse of the respondent disposed of the appeal and directed for refund of the amount with interest. The respondent have informed that another spot verification was made on 20.12.2008 of the premises of the petitioner and unauthorized consumption of electricity was noticed leading to provisional penal bill amounting to Rs.1,12,140.00. No final assessment order was issued to the petitioner in this regard inspite of request from the petitioner as claimed by the petitioner vide Annexures-XII & XIII attached to the petition and not contested by the respondent. Again, the respondent, allowed supply connection under fresh separate agreement to the petitioner as evident from letter No.2341 dt.24.11.2014 of S.E., Bargarh and Letter No.EE/BWED/Tech./10-954 dated 27.02.2015 of E.E., Bargarh, wherein there was no mention of any arrear amount in the said order.

12. It appears that the concerned officers of the licensee have failed to act professionally, transparently and legally with the consumer for which the petitioner has used the circumstances, to his advantage. A provisional bill is stated to be prepared on 08.08.2006 which was made final on 22.11.2006 after a lapse of period of about three months and fifteen days, even if the law speaks otherwise. Simultaneously disconnection of supply was made without issuing appropriate notice mandated by law is another deficiency on part of the respondent. Spot verification dated 20.12.2008 and disconnection thereof without notice time period is yet another lapse of the respondent. No document is placed before us stating that the provisional bill amount of Rs.1,12,140.00 has been heard by the Assessing Officer in spite of the claim by petitioner that reply to show cause has been filed by the petitioner and a final order has been prepared after giving due opportunity to the consumer/petitioner. That is precisely what has been mandated by law in the order of Hon'ble High Court. More culpable deficiency was that the power supply was disconnected without any disconnection notice allowing time and a fresh power supply agreement was made. Power supply was restored without seeking any amicable settlement on the outstanding amount and issues with the petitioner. All payments directed by the Hon'ble Courts except Appellate Authority were interim and was required to be adjusted against final claims. The plea of respondent that the Appellate Authority, in consideration of some procedural lapses, disposed of the above appeal in favour of the consumer does not hold ground at this stage since the officers of the licensee are required to act professionally and procedural lapses should not have taken place to place a consumer in difficulty. The benefit of doubt of such lapses might have

been held in favour of the consumer by the Appellate Authority. Nor, the respondent has sought any alternative remedy to the issue raised now, after the order of the Appellate Authority immediately. Such pleas at this stage by respondent is not acceptable.

13. Reverting to the original petition of the petitioner, we find that the order of the Appellate Authority does not call for any interference after a lapse of nearly six years as sought by the respondent. It should have been raised with Competent Authority long back, if there was any injustice. Therefore, this appears to be an afterthought by the respondent when the matter is debated before this Commission. Thus, the order has reached its finality. We also view that the subsequent order of assessment is yet to be finalized after following the procedure laid down under Section 126 of the Electricity Act, 2003.

The respondent has failed to furnish a satisfactory reply as to why, the order of the Appellate Authority has not been complied and order of the Hon'ble High Court of Orissa has not been implemented.

14. In our view, when non-compliance has been noticed, the consequential actions as per the Electricity Act, 2003 need to be followed.
15. Therefore, we direct that the respondent- Executive Engineer (Elect.), Bargarh Electrical Division, Baragarh, WESCO Utility shall implement the order of Appellate Authority within fifteen days from issue of this order, failing which, in accordance with the provisions of Section 142 of the Electricity Act, 2003, an amount of Rs.5, 000/- (Rupees five thousand) only shall be recovered from the respondent-Executive Engineer (Elect.), Bargarh by the competent authority of WESCO Utility. In case of further delay, an amount of Rs.1000/- (Rupees one thousand) only per day shall also be further recovered from the defaulting officer till the order remains non-complied.
16. Any pecuniary losses detected shall be to the defaulting officer's account. We also observe that the order of the Hon'ble Court shall also be complied along with the above and subject to similar consequences in case of default as mentioned above. No costs.
17. With the above directions the petition is disposed of.

Sd/-

**(A.K. Das)**  
**Member**

Sd/-

**(S.P. Swain)**  
**Member**

Sd/-

**(S.P. Nanda)**  
**Chairperson**