

**ODISHA ELECTRICITY REGULATORY COMMISSION
BIDYUT NIYAMAK BHAWAN
PLOT NO.-4, CHUNAKOLI, SHAILASHREE VIHAR
BHUBANESWAR - 751 021**

**Present: Shri U. N. Behera, Chairperson
 Shri A. K. Das, Member
 Shri S. K. Parhi, Member**

Case No. 43/2016

M/s. Juga Jyoti Ice Factory Petitioner
Vrs.	
E.E (Elect.), BED, CESU & Another Respondents

In the matter of: An application under S.142 of the Electricity Act, 2003 for non-implementation of order dated 10.05.2016 of the Ombudsman-I passed in C.R Case No. Omb(I)-03/2016.

For Petitioner : Shri A. K. Sahani, authorized representative.

For Respondent : Shri S. K. Harichandan, AGM (Law), CESU, Shri J. K. Patra, E.E., BED, Balugaon, CESU, Shri B. Das, Advocate and Shri S. Ray, Advocate both are on behalf of M/s. FEDCO, the Franchise agreement holder.

ORDER

Date of hearing: 25.04.2017

Date of order:04.01.2019

M/s. Juga Jyoti Ice Factory, Balugaon is a MI consumer under BED, Balugaon, CESU having contract demand of 48 KW. The supply was given from the LT network through an AB cable. It appears after verification by the MRT team of CESU that the Y phase supply to the meter was not properly injected since 23.05.2013 and R-phase from 03.07.2013 for which the meter was recording less consumption due to carbonization at cable joints. M/s. FEDCO, the Franchise Holder of CESU operating in that area also found that the petitioner was unauthorisedly overdrawing power beyond its contract demand. Therefore, a provisional assessment under Section 126 of the Electricity Act, 2003 was made for unauthorized use of power. However, the final assessment order which was received by the petitioner on 10.07.2015 for the period from 07.03.2013 to 21.11.2014 without giving him any opportunity for filing of reply to the provisional assessment order as per the provisions of the Act. This was challenged by the petitioner before the GRF, Khurda in C. C. Case No. 304 of 2015. The said forum rejected the petition on question of admission stating therein that efficacious alternative remedy is available under Section 127 of the Act. The said order of the GRF, Khurda was challenged by the petitioner in C.R. Case No. 03 of

2016 before the Ombudsman-I. The Ombudsman-I while setting aside the order of the GRF, Khurda passed in C.C. Case No. 304 of 2015 has directed as follows:-

“Hence the Respondent is directed to recast the bill from July, 2013 to 21.11.2014 on the average consumption of meter reading of December, 2014, January, 2015 and February, 2015 and to provide the bill revision details to the petitioner within 15 days from issue of the order. The petitioner is to clear the billing amount within 15 days from presentation of the bill.”

As the above order of the Ombudsman-I was not implemented by the respondent, the petitioner has filed the present case before the Commission for implementation u/S. 142 of the Electricity Act, 2003.

2. The case was taken up on 25.04.2017 for hearing on question of admission as well as on merit.
3. Heard the parties at length. During hearing the representative of CESU submitted that since the matter relates to unauthorized use of electricity u/S. 126 of the Electricity Act, 2003, the order/award passed by the Ombudsman-I in C.R. Case No. 03 of 2016 is a nullity since the jurisdiction of the Ombudsman-I is ousted in the present case. The efficacious remedy under Section 127 of the Act is available to the Petitioner, however, he has approached the Ombudsman which has no jurisdiction in this matter. In support of his submissions he has cited the Clause 6 of the OERC (Grievance Redressal Forum and Ombudsman) Regulation, 2004 which deals with the functions of the Ombudsman reads as follows:

“6(1) (a): xxxxxxxxxxxxxxxx. Notwithstanding the above, the Ombudsman shall not entertain any representation in regard to matters which are subject matter of existing or proposed proceedings before the Commission or before any other authority including under Part X, XI, XII, XIV & XV of the Act.”

He also brought to our notice an order of Hon’ble Bombay High Court dated 31.10.1996 between K. S. Jhunjhunwala & another Vrs. Tayebhai Mohammedbhai wherein the Hon’ble Court observed at Para 26 as follows.

“If the order passed is without jurisdiction or void ab initio, it is not binding on the parties for committing breach thereof, there can be no punishment for contempt.

4. On the same breath the representative of CESU has also submitted that against the said order of the Ombudsman-I passed in C.R Case No. 03 of 2016 the Franchise M/s.

FEDCO has gone on appeal before the Hon'ble High Court of Orissa in W.P.(C). No. 14743 of 2016 which is pending before said Hon'ble Court for disposal. The outcome of the above writ petition will be applicable to the parties herein. Therefore, the present case may not be admitted by this Commission.

5. After going through the case records and submissions made by the parties during hearing, the Commission opine that it is not the proper Forum to examine the validity of the order/award passed by the Forums constituted u/S. 42 (5) & (6) of the Electricity Act, 2003. The Commission is only empowered by the said Act to adjudicate the application filed u/S. 142 of the said Act as to whether the Orders of the forum passed have been complied or not by the licensee. As the said order/award of the Ombudsman-I has been challenged by the franchisee M/s. FEDCO before the Hon'ble High Court in W.P.(C) No. 14743 of 2016 and the Hon'ble Court has not granted any stay of operation on the said order of the Ombudsman-I till today there is no bar on the part of the respondent to implement the same.
6. Respondent is directed to implement the order of the Ombudsman-I in above case i.e CR Case No. 03/2016 within a period of one month of this order unless a stay of operation is granted by Hon'ble High Court in WP(C) No. 14743 of 2016 failing which penal action shall be taken against respondent as per law. The Commission is to be apprised of the development by the respondent.
7. With the above observation, the case is disposed of.

Sd/-
(S. K. Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U.N.Behera)
Chairperson