

**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. 87/2017

Shri Dillip Kumar Agarwal Petitioner

Vrs.

E.E (Elect.), SED, WESCO & Others Respondents

In the matter of: An application under Sections 142 of the Electricity Act, 2003 for non-implementation of order dated 31.01.2014 passed in C.R. Case No. Omb(II) W-25 of 2013.

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

For Respondents: Shri A. C. Bal, AGM (Legal), WESCO Utility.

ORDER

Date of hearing: 15.05.2018

Date of order: 13.06.2018

The petitioner Shri Dillip Kumar Agrawal, Managing Director, M/s. Balaji Food Products Pvt. Ltd. in the supply area of WESCO Utility has approached the Commission for the second time for non implementation of the order of the Ombudsman (II) dated 31.01.2014 passed in C.R. Case No. Omb(II) W-25 of 2013. In fact the petitioner had earlier approached the Commission for implementation of the aforesaid order of the Ombudsman and the matter was registered as Case No 34 of 2014 wherein the Commission had issued a show cause notice on 01.05.2014 to the respondents as to why a proceeding u/S. 142 of the Electricity Act, 2003 would not be initiated against them for non compliance of the order of the Ombudsman (II). In response to the said show cause notice of the Commission, the Executive Engineer (Electrical), Sambalpur Electrical Division, WESCO, Sambalpur filed compliance report on 27.05.2014 regarding implementation of the order dated 31.01.2014 of the Ombudsman-II at Bhubaneswar passed in C.R. Case No.Omb(II)W-25 of 2013 with due intimation of the same to the petitioner. Since there was no response from the petitioner, the Case was disposed on 12.06.2014 basing on the submissions of the respondent and proceeding u/S. 142 of the Electricity Act, 2003 was dropped.

2. After lapse of more than three and half years of time, again the petitioner has filed this present application before the Commission for non-implementation of the above order of the Ombudsman-II. The petitioner now submits that he has not received the copy of the order of the Commission dated 12.06.2014 since the unit of the Petitioner was closed and has rather objected to the correction of the bill by WESCO which is not in accordance to the direction of the Ombudsman-II.
3. In reply to the above case, the respondents have submitted that as per order of the Ombudsman-II they have revised the bills of the petitioner to the tune of Rs.88,119/- credited the same to the consumer's Account in the bill for the month of Feb, 2014 with intimation to the petitioner vide letter dated 17.05.2014 along with the bill to the tune of Rs.86,751.19/-. The petitioner vide his letter dated 11.06.2014 has disputed the said revised bill and has avoided to make payment of the above amount. The revision of bill has been made in accordance with the RST orders of the Commission for that period only. The Respondent stated that the order dated 12.06.2014 of the Commission passed in Case No. 34/2014 was served to the Petitioner on the address given in the petition. It is on the same address the Respondent sent letter dated 17.05.2014 intimating the Petitioner about compliance / implementation of order dated 31.01.2014 of Ld. Ombudsman-II which had been received by the Petitioner. At the outset, the instant petition is not maintainable in the eyes of law, as the Order of the Ombudsman has been duly implemented by the respondents.
4. The respondent further submitted that the present objection to said revision of bill is a fresh cause of action and the petitioner has liberty to take appropriate legal recourse of approaching GRF as provided under Section 42(5) & (6) of the Electricity Act, 2003. Further the petitioner has also raised certain additional issues regarding refund of meter rent which was not directed by the Ombudsman vide their order in Case No. 25 of 2013. Since the previous proceeding in Case No. 34 of 2014 is already closed, the petitioner is barred by the doctrine of estoppels to raise similar issue through subsequent proceeding under the same Section of the Act, 2003. Hence this case is not maintainable and liable to be dismissed.
5. Heard the parties. It is observed that though the Office of the Commission had served the Copy of the said Order dated 12.06.2014 vide letter No.863 dated 13.06. 2014, the same is said to not have been received by the petitioner. The petitioner now prays to rehear the matter since WESCO has not revised the bills as directed by the Ombudsman. Regarding raising of new issues we do agree with the contention of the respondent that it is a fresh cause of action.

6. In view of the above we direct that the Petitioner should raise the issue of non-compliance of order before Ombudsman-II and Ombudsman shall verify whether his order has been implemented fully or not. After that the Petitioner may approach the Commission under Section 142 if he desires so. Regarding new issues like meter rent etc. the matter should be raised before appropriate forum constituted for this purpose under Section 42 of the Act.
7. Accordingly, the case is disposed of.

Sd/-
(S.K.Parhi)
Member

Sd/-
(A. K. Das)
Member

Sd/-
(U. N. Behera)
Chairperson