
Case No. 55/2024

notice with abnormal assessment alleging unauthorised use and subsequently issuing notices for disconnection.

4. At Para-14 of the Petition, the Petitioner has submitted its averments in the following words:

“Last year TPCODL had also made a futile attempt to bring prawn farming in commercial category attempting to redefine the category despite provided in Regulations but stopped due to shrimp farmers’ protest. This year again they have started their actions against Seafood Export Units. If they follow their draconian policies, the industry shall be closed down following industrial unrest throughout the State.”

5. The Petitioner has requested the Commission to issue following directives to the Licensee-TPCODL:

- 1) To stop unilateral reclassifications to already settled issues of classification allotted to fish processing units and cold storages
- 2) To withdraw all such notices of penalties and unilateral classifications made
- 3) To present their case before OERC or take concurrence of OERC before initiating any action for inspection with regard to machinery to be included or excluded for cold storage functions.

6. The Petitioner has further prayed as under:

“For the interest of justice and equity, the Hon’ble Commission may graciously be pleased to admit this Petition and direct the Respondent to honor the Rules and Regulations in force, as regards verifications are concerned under the Section 126 of the Electricity Act, 2003.

And

The Hon’ble Commission may take action against the Respondent as contemplated under Section 142 of the Electricity Act, 2003.

And

Any other relief/s may please be extended to the Petitioner as deemed fit by the Hon’ble Commission and for which act of kindness the Petitioner as in duty bound shall ever pray”

7. We have heard the Petitioner on the point of admission through hybrid mode.
8. The question arises in the light of the facts of this case, “whether the Consumer-Complainant Association can approach the State Commission under Section 142 of the Electricity Act, 2003 to get its grievances redressed when there is specific remedy available to the Consumers to get its grievances redressed through Grievance Redressal Forum and Ombudsman under Section 42 (5) and Section 42 (6) of the Electricity Act, 2003?”
9. It may be noted that this point has already been decided by the Hon’ble Appellate Tribunal of Electricity as well as the Hon’ble Supreme Court in the following decisions:

- i. 2007 Aptel 356

- ii. 2007 Aptel 764
- iii. AIR 2008 SC 1042

10. The relevant observations in these decisions are as follows:

- a) 2007 Aptel 356, Dakshin Haryana Bijli Vitaran Nigam Limited Vrs. DLF Services Ltd.; wherein the relevant observations made by the Hon'ble Tribunal are as follows:

"The State Commission in law cannot usurp either the jurisdiction of the Grievance Redressal Forum or the Ombudsman. In respect of the grievance of the consumers, the specific forum of redressal and representation to a higher authority are provided and the regulatory commission has no jurisdiction apart from the fact that it is either the appointing authority or the authority conferred with the powers to frame Regulations, and not even an Appeal power has been conferred on the State Commission with respect to consumer grievance."

- b) In 2007 Aptel 764, Dakshin Haryana Bijli Vitaran Nigam Ltd. Vrs. Princeton Park Condominium, the Hon'ble Tribunal has made the following observations:

"The regulatory commission could exercise jurisdiction only when the subject matter of adjudication falls within its competence and the order that may be passed is within its authority and not otherwise on facts and in the law. All these statutory provisions conferring jurisdiction on the redressal forum, thereafter to approach the Ombudsman, it follows that the State Commission has no jurisdiction to decide the dispute raised by the consumers."

- c) In AIR 2008 SC 1042, MSEDCL Vrs. Llyod Steel Industries Ltd., the Hon'ble Supreme Court has made following observations:

"The basic question is whether the individual consumer can approach the State Commission under the Act or not. By virtue of Section 42 (5), all the individual grievances of the Redressal Forum and the Ombudsman only. The Commission cannot decide about the disputes between the licensee and the consumers."

11. These observations made by the Hon'ble Tribunal as well as the Hon'ble Supreme Court would vindicate the following dictums:

"a. With regard to the resolution of the disputes over the consumer grievances between the licensee and the consumer, the Grievance Redressal Forums or the Ombudsman alone is a competent authority to deal with the grievances of the consumers and get their grievances redressed. The State Commission cannot usurp either the jurisdiction of the Grievance Redressal Forum or the Ombudsman in respect of those grievances of the consumers."

b. The individual consumer can approach only the Grievance Cell to place his grievances under Section 42 (5) of the Act and thereafter the Ombudsman under Section 42 (6) of the Act. The individual consumer cannot approach the State Commission to decide about the disputes between the licensee and the consumer. Even when there is no appeal is provided as against the above order passed by the Ombudsman, the State Commission cannot usurp

the jurisdiction of the Grievance Redressal Forum or the Ombudsman by going through the validity of the order passed by the Ombudsman.

c. The State Commission could exercise jurisdiction only when the subject matter of adjudication falls within its competence and the order that may be passed shall be within its authority and not otherwise on facts and on law. The Commission cannot decide on the basis of the complaint given by the consumer about the dispute between the consumer and the licensee.”

12. The above dictums would reveal that the Consumer cannot approach the State Commission to get its grievances redressed as against the Distribution Licensee especially when such a remedy is available to the Consumers by virtue of Section 42 (5) and Section 42 (6) of the Act to approach the Grievance Redressal Forum and the Ombudsman for getting their grievances redressed.
13. It is submitted by the Learned Counsel appearing on behalf of the Petitioner that the State Commission has got independent powers to punish the licensees in the matter of breach of regulation, regardless of the remedy available for the Consumer through Grievance Redressal mechanism constituted under Sections 42 (5) and Section 42 (6) of the Act and therefore, the consumer can approach the State Commission to seek their remedy. The contention cannot be countenanced in view of the decision taken by the Hon'ble Tribunal as well as the Hon'ble Supreme Court wherein it has specifically been held that the Consumer cannot approach the Commission for Redressal of his grievances as there is specific remedy available for the Consumer to approach the concerned Authorities like Grievance Redressal Forum and Ombudsman whose award is final and against which no appeal will lie with the Commission.
14. In the Odisha Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 2019, there are specific provisions like Regulations 140 and 159 etc. for dealing with reclassification and unauthorised use of electricity. Since there are specific regulatory provisions in the OERC Distribution (Conditions of Supply) Code, 2019 governing the field for dealing in unauthorised use of electricity by the Consumers and also regulating actions of the Licensee-DISCOMs, there is hardly any scope left with the Commission for admitting the present petition filed under Section 142 of the Electricity Act, 2003. The present petition is nothing but grievance by a group of Consumers against the Licensee-DISCOM. The Regulations 2 (c) (iii) & (iv) of OERC (GRF & Ombudsman) Regulations, 2004 spell out that any Complainant who is a Registered Consumer Society or any unregistered Association of Consumers, where the Consumers have similar interest may approach GRF and Ombudsman, if they have any grievance. Similarly, Regulation 4 of the said Regulation provides that a Complainant aggrieved by any action or lack of action by

the Engineer under the OERC Distribution (Conditions of Supply) Code, 2019 may file Representation before the Grievance Redressal Forum. Therefore, specific remedies are available under the Regulations to address the grievances of the Consumers.

15. Further, as per Section 42 (5) and Section 42 (6) of the Electricity Act, 2003, the power to resolve the disputes between the licensee and consumers has been vested only with the Grievance Redressal Forum and the Ombudsman and not with any other Authority. Moreover, under Section 86 of the Electricity Act, 2003, the State Commission can resolve the disputes only between the Licensees and Generating Companies and not the disputes between the Licensees and the Consumers.
16. Though the Petitioner is reckoned as an association of certain consumers, it has not come to the Commission with specific instances of violation of the Supply Code, 2019 or Order of the Commission. On going through the whole averments in the petition, it is observed that omnibus abstract allegations have been made against the licensee with allegations of arbitrary misuse of power of wrongful assessment of un-authorised use of power under Section 126 of the Electricity Act, 2003. Such wrongful act of misuse of power of wrong assessment can be addressed under Section 127 of the Electricity Act, 2003. Non-classification of the consumers can be remedied by filing proper application before the appropriate forum. This apart, neither the Act nor the Code provides any scope to the consumer to approach the Commission directly for redressal of his grievances. Such grievances can be raised before the appropriate forum under the Act.
17. In view of the above, the Petition at hand stands rejected as such at the time of admission with liberty to the individual aggrieved consumers to raise their grievances in accordance with law.

Sd/-
(S.K. Ray Mohapatra)
Member

Sd/-
(G. Mohapatra)
Officiating Chairperson