

Before the

Bihar Electricity Regulatory Commission
Ground Floor, Vidyut Bhawan-II, Bailey Road, Patna-21

Misc. Case No.1/08

In the matter of

M/s Saraogi Paper Mills (P) Ltd. Petitioner

Vrs.

1. Chairman, Consumer Grievance Redressal Forum, Patna Opp.party

2. The Bihar State Electricity Board, Vidyut Bhawan, Patna
through the Chairman and others. Opp.party

Present:

- | | | |
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| 1. | B.K.Halder | Chairman |
| 2. | S.K.Jayaswal | Member |

Dated: 09th September, 2008

ORDER

The petitioner has sought to invoke jurisdiction of this Commission to ensure compliance of an interim order dt. 15th July 2008 passed by Consumer Grievance Redressal Forum, Patna. The learned counsels for the parties were heard. The brief resume of the facts which persuaded the petitioner to approach this Commission can be recapitulated with brevity.

It is stated that the installed meter in the premises of M/s Saraogi Paper Mills (P) Ltd. Kishanganj, a consumer of Bihar State Electricity Board, was replaced by a defect free electronic meter on 31.01.08 in presence of authorities of the Board but this installed meter too stopped displaying the desired parameters. Pursuant to this a new electronic meter was installed in the premises on 9th May, 2008 and on 30.05.08 monthly meter reading as usual was taken by the opposite party, the functionary of the Board, and then

no anomaly was found. Subsequent to it an inspection was carried out in the premises of M/s Saroigi Paper Mills, Kishanganj on 12th June, 2008 by officers of the Board with representative of M/s Secure Meter Ltd. and as per inspection report, the consumer was found to have indulged in theft of energy on massive scale by tampering of the meter. An F.I.R. came to be lodged in terms of provisions of Section 135 of the Electricity Act, 2003 on 13.06.08 in the local police station by the concerned Assistant Electrical Engineer of the Board. The electric line of the premises of the petitioner was accordingly disconnected and a penal bill of Rs. 1,30,00,000/- was served on the consumer for payment.

Aggrieved with the action of the licensee M/s Saroigi Paper Mills approached the Consumer Grievance Redressal Forum seeking following reliefs :

- (A) Setting aside the penal bill dt. 14.06.2008 by which the penalty has been imposed contrary to provisions of the Bihar Electricity Supply Code, 2007.
- (B) To accept the voluntary disclosure of the petitioner which was served to the Chief Engineer (Commercial), BSEB, Patna under clause 11.4 of the Code as licensee was informed prior to the inspection made.
- (C) To rectify the bill and issue revised bill in terms of clause 11.4 of the code in view of the fact that petitioner had made an intimation to the licensee vide letter dt. 10.06.08 before the inspection and hence the levy of penal bill was invalid.

The petitioner also moved the Forum that pending disposal of its petition the opposite parties be restrained from taking any coercive measures against petitioner and also sought restoration of the electric line.

It seems that the Consumer Fora on being moved gave audience to the parties and by an interim order dt. 15.7.2008 directed the petitioner to deposit compensation bill of Rs. 5,88,030.00 with the functionary of the licensee along with cost of installed meter in the shape of cash/bank draft within seven days of its decision and pursuant to deposit of

the compensation bill the electric line be restored in the premises of the petitioner by installing a correct tested meter of appropriate capacity within seven days. The grievance of the petitioner had been that all efforts made by it for deposit of the compensation bill of Rs. 5,88,030.00 in terms of directive of the Consumer Fora yielded no good result and consequently there has been no restoration of the electric line in the commercial premises of the petitioner. It is how that the petitioner approached this Commission under the provisions of Section 129, 142 and 146 of the Electricity Act, 2003.

Notices were served on the licensee and its functionary. The Consumer Fora was also informed to participate in the proceeding for appreciation of the issues involved in this proceeding. Though written statements were filed by Consumer Fora also along with other respondents but, no one appeared at the time of hearing for admission, under mistaken presumption that Consumer Grievance Redressal Forum and Electricity Ombudsman Regulation does not make any provision about the Chairperson of the Consumer Grievance Redressal Forum to appear before the Commission in person or through advocate on the date and time fixed for hearing of the cases when the matter was about non-implementation of the decision of the Forum.

Reiterating the contentions raised in the petition it is urged on behalf of the petitioner that since petitioner had made a voluntary declaration of the installed meter as tampered, prior to inspection, the assessment bill on normal tariff should be served in terms of clause 11.4 of the Bihar Electricity Supply Code 2007 or the formula laid in Annexure-7, for assessment under section 126 of the Electricity Act, 2003. Our attention has also been drawn to provisions of clause 8(10) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations which require licensee to implement the decision of the Forum within the time frame specified in the order, and report compliance to the Forum within five days of the implementation of the order. The contentions are raised that licensee, in utter disregard of the direction of the Consumer Fora has not yet

implemented its interim order and the Commission as such in exercise of its jurisdiction vested in it by virtue of Section 129, 142 and 146 of the Act by issuing proper direction to the licensee should ensure compliance of the order passed by the Consumer Fora.

Refuting the assertions made on behalf of the petitioner contentions are raised on behalf of the licensee respondents that even if it is assumed this to be a case of clause 11.4 of the Bihar Electricity Supply Code 2007, then also the complaint before the Forum was not maintainable in terms of clause 2(1)(f)(vii) of the Regulation, and that apart this was a case of theft and tampering under section 135 of the Electricity Act, 2003. The contentions are raised that inspection was carried out in premises of M/s Sarogi Paper Mills, Kishanganj on 12.06.08 by the officers of the Board in presence of the consumer who too put his signature on the inspection report accepting the entire inspection exercise without making neither any comment on the issue nor raising the issue of voluntary disclosure purported to have been made by the licensee on the date of inspection. The learned counsel for licensee would urge that the alleged voluntary disclosure made through the letter on 12.06.08 was itself a doubtful case as entry of the letter in the Board's register has been made on 17.06.08 and for which, suspecting a foul play, the staff concerned has been put under suspension.

In the written statement it is sought to be urged on behalf of the Consumer Fora that it has acted in exercise of jurisdiction vested in it and its jurisdiction cannot be questioned as all. Individual consumer grievances can be handled only by this Forum alone under the provisions of the Electricity Act, 2003.

Having heard the counsels for the parties we have given our thoughtful consideration to the contentions raised before us and we feel uncomfortable when we dwell upon these issues. Though jurisdiction of the Commission has been sought to be invoked under provisions of such as 129, 142 and 146 of the Electricity Act, 2003, admittedly in a matter like the present one, the Commission will not assume jurisdiction

under provisions of Section 129 of the Electricity Act, 2003. Likewise in our view the Commission would not like to pull up the licensee in purported exercise of jurisdiction vested under provisions of Section 146 of the Electricity Act, 2003, as both the provisions of the Act do not expressly confer jurisdiction over the Regulatory Commission to take recourse to punitive action to secure compliance of provisions of the Act, order or direction of the Commission contained in its Regulations. We endorse contention raised on behalf of the petitioner that the Commission in exercise of its jurisdiction vested U/S 142 of the Act can take recourse to punitive action to ensure compliance when breach of provision of the Act or violation of direction or order has been brought to its notice and we may profitably reproduce the provision of Section 142 of the Electricity Act, 2003.

“In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

The provisions of clause 8(10) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations expressly require the licensee to implement the decision of the Forum within the time frame specified in the order and report compliance to the Forum within five days of the implementation of the order. It is not in dispute that the order of the Consumer Forum was required to be implemented and compliance thereof

had to be reported to the Forum within five days of the implementation of the order. There is no evidence on the record that the licensee ever responded to the order of the Consumer Forum. Had there been any difficulty in implementing the decision, the matter ought to have been brought in the notice of the authority concerned, but that too was not done. We should not be understood when we say that the order passed by the Consumer Fora is required to be implemented by the licensee, as question of jurisdiction and also maintainability of the issue has to be taken into consideration. We would have made the licensee answerable for violating the provision of the Regulation quoted above, yet we feel uncomfortable at this juncture if we give thoughtful consideration to the contention raised on behalf of the licensee that assuming this to be a case of clause 11.4 of Bihar Electricity Supply Code, 2007, the complaint before the Forum was not maintainable in term of Clause-2(1)(f)(vii) of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulation. That apart this was a case of theft and tampering U/S 135 of the Act.

The jurisdiction of the Consumer Fora has been well defined under clause 2(1)(f)(vii) of the Bihar Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations 2006 which expressly forbids jurisdiction of Consumer Fora in matters which come under Section 126, 135, 139, 143, 152 and 161 of the Act. One may appreciate that commercial premises of the petitioner was inspected by the team of the licensee and provisional assessment was made calling upon the petitioner to pay the penal bill as assessed by the team. Admittedly it was not a case of arrears in billing nor it can be said to be erroneous disconnection of supply of energy to confer jurisdiction on the Consumer Fora to decide the issue. However, it seems that the Consumer Fora assumed jurisdiction in a matter which was forbidden area and issued interim orders. We do not appreciate failure of the Consumer Fora to appear before the Commission in the judicial proceeding presumably under mistaken notion that no such

provision has been made in the Regulation. We would say that least said is better, as matters of proceeding are not expected to be incorporated in that Regulation. There is no gainsaying the fact that after Commission considering it appropriate to issue notices to the parties or affected persons to have audience for appreciation of the issues coming before it, the parties may either appear in person or through authorised person. The matter can be judged from other angle also since punitive action was taken against the petitioner by the functionary of the licensee following an inspection made in its commercial premises and a provisional assessment was made under Section 126 of the Electricity Act, 2003, the petitioner was entitled to file petition if any against the provisional assessment before the assessing officer who after affording a reasonable opportunity of hearing shall pass a final order of assessment within 30 days from the date of service of such order of provisional assessment of the Electricity charges payable by such person. The petitioner, it seems, without raising objection before the assessing officer and awaiting final order to be passed in the matter approached the Consumer Fora seeking certain relief. In that view of the matter without making any comment on the merit of the issue involved, we dispose of this matter at the admission stage itself giving opportunity to the petitioner to agitate the issue before the proper forum and seek remedy authorised under the statute.

Though it is brought to our notice that directives issued by the Commission in Suo-Motu proceeding 1/2008 and Complaint Case No. 1/2008 too has not yet been implemented by the licensee and in view of violation of its order the Commission should pull up the licensee respondent with punitive action, that matter need not be stretched in this proceeding.

There would be no order as to cost.

Sd/-
(S.K.Jayaswal)
Member

Sd/-
(B.K.Halder)
Chairman