

**Before the  
Bihar Electricity Regulatory Commission  
Patna**

**Dated the 21<sup>st</sup> September, 2006**

**General Case No. 1/2006**

**Present :**

- |    |                             |                 |
|----|-----------------------------|-----------------|
| 1. | <b>Justice B.N.P. Singh</b> | <b>Chairman</b> |
| 2. | <b>B.K. Halder</b>          | <b>Member</b>   |
| 3. | <b>S.K. Jayaswal</b>        | <b>Member</b>   |

**Between**

**Smt. Anustha Devi..... Petitioner**

**Versus**

- 1. Bihar State Electricity Board, Patna  
(Through its Chairman)**
- 2. Assistant Electrical Engineer  
Tilkamanjhi Electric Supply Division  
Bhagalpur..... Respondent**

**ORDER**

The apathy of the Licensee to kindle light in the hamlet of the petitioner led the petitioner to knock the door of the Commission taking recourse to provisions of Section 129 of the Electricity Act, 2003 seeking following reliefs :-

- 1) For issuance of an order of load sanction, requisition of service line cost and security deposit within one week and giving electric supply connection to the petitioner within one week of payment.
- 2) Payment of penalty @ Rs. 1,000/- per day for each day of default from 30<sup>th</sup> July 2005 till the day of giving electric service connection by the Respondent No. 2

Factual matrix –

The Petitioner is a prospective consumer and the Respondent No. 1 is the Licensee for distribution of electricity in the State of Bihar. Respondent No. 2 is a functionary of Respondent No. 1 inter-alia responsible for giving electric service connection to applicant in the Tilkamanjhi Electric Supply Sub Division Area where Petitioner's house is located. The Petitioner, the erstwhile prospective consumer purchased a piece of land within Bhagalpur Municipal Corporation from Smt. Urmila Chowdhary through registered sale deed executed in her favour on 28<sup>th</sup> August 2002 and it is stated in the petition that said Smt.Urmila Chowdhary, the vendor of the Petitioner had purchased the said piece of land from one Sri Preeti Ghosh on 31<sup>st</sup> March 1987. There was an old depleted room on the land purchased by the Petitioner which had no electricity from any source whatsoever and was uninhabitable. The Petitioner demolished this room and constructed a new house on the land purchased by her, pursuant to which she approached Respondent No. 2 on deposit of requisite fee on 30<sup>th</sup> June 2005 seeking provision of electric service connection to her house. It is stated in the petition that the distributing mains have been laid down by the Board in the same street and supply of electricity has commenced several years ago. However, the Respondent No. 2 mailed a letter to the Petitioner on 18<sup>th</sup> October 2005 stating therein that there was outstanding dues of Rs. 2,42,940.71 in the name of Sri Preeti Ghosh in the neighbouring premises and hence the Petitioner was required to make available Respondent No. 2 the purchase deed of Smt. Urmila Devi executed by said Sri Preeti Ghosh. Since the Petitioner did not have the purchase deed of her vendor, she drew attention of the Respondent No. 2 to the recitals made in the deed executed in her favour which explicitly stipulates that she had purchased the property from Sri

Preeti Ghosh on 31<sup>st</sup> March 1987. Be that as it may, electric service connection was not provided to the Petitioner's house on one pretext or other, it is alleged.

When the Petitioner approached this Commission, notices were issued to the Respondent No. 1 and 2 to submit rejoinder to the assertions made by the Petitioner in the plaint as to why the reliefs sought by the Petitioner be not redressed. Subsequent events are rather more interesting. In the counter affidavit filed on behalf of the Respondent No. 1 on 02.08.06, it is stated that that new electric connection in the name of Petitioner have been provided to her premises on 18<sup>th</sup> July 2006 by Respondent No. 2. Since authority for redressal of first part of relief claimed by the Petitioner is traceable to the provisions of Sub-Section 5 of the Section 42 of the Electricity Act, 2003 which mandates every Distribution Licensee to establish a Forum for Redressal of Grievance of the Consumers in accordance with the guidelines as may be specified by the State Commission, we wanted to know from the learned counsel for the Respondents as to whether Consumer Grievance Redressal Forum as mandated by Section 42 (5) of the Electricity Act has been constituted by the Licensee in terms of the Regulations on the issue, framed by the Commission. Learned counsel sought adjournment to apprise the Commission about constitution of the Forum and on the next day of hearing we were rather shocked and surprised to notice averments made in supplementary affidavit filed on behalf of Respondent No. 1 which stipulates that the Licensee had established a Public Grievance Cell in the Board for redressal of grievance related to with regard to providing connections, billing, difficulty in disposing the bills, delay in replacement of faulty transformer, non-uniformity load-shedding and other grievances related to electricity. Needless to say that though the Commission had sought information from the Licensee about constitution of Consumer Grievance Redressal Forum, the materials placed before the Commission were quite otherwise as the Cell constituted by the Licensee could not be a substitute for the Forum. The

learned counsel yet sought further adjournment to apprise the Commission about constitution of the Forum and in the Order dt. 22<sup>nd</sup> August 2006 we also directed that the copy of the Order be made available to the learned counsel of the Board and copy be also sent to the Chairman of the Bihar State Electricity Board for observance of directives issued by the Commission about necessity for constituting the Forum in terms of Regulations framed by this body. The Respondent No. 1 in its letter dt. 31<sup>st</sup> August 2006 however apprised the Commission about constitution of Consumer Grievance Redressal Forum as required by Clause 3(1) of the Chapter – II of the Gazette Notification. The Matter could have ended there after provision of electric service connection to the Petitioner and also constitution of Consumer Grievance Redressal Forum by the Licensee for redressal of various grievances that may arise with a consumer, but the learned counsel for the Petitioner would yet argue about second part of relief sought by him which would not fall within domain of the Consumer Grievance Redressal Forum. A lot of arguments were addressed from both sides.

The learned counsel for the Petitioner would urge that as enjoined in Section 43 of the Electricity Act the Licensee was statutorily obliged to provide electric service connection on payment of requisite cost and the exercise was to be completed by the Licensee within one month from the date of filing the petition, failure of which would render the Licensee liable to a penalty which may extent to Rs. 1000/- for each day of default. The provisions of Section 43 of the Electricity Act 2003 can be extracted below :-

1) Every Distribution Licensee shall on an application by the owner or occupier of any premises, give supply of electricity to such premises within one month after receipt of the application requiring such supply .....

3) If a Distribution Licensee fails to supply the electricity within a period specified in Sub Section (1), he shall be liable to a penalty which may extend to Rs. 1000/- for each day of default.

The exceptions from duty to supply electricity is however enjoined in Section 44 of the Electricity Act which is not the case of the Licensee.

Investigation in the matter of failure on part of the Licensee to comply with statutory provisions of the Act are traceable to provisions of Section 128 and 129 of the Electricity Act and the relevant provisions of Section 128 can be extracted :-

"(1) The Appropriate Commission may, on being satisfied that a Licensee has failed to comply with any of the conditions of License or a Generating Company or a Licensee has failed to comply with any provisions of this Act or the Rules or Regulations made therein, at any time, by order in writing, direct any person (hereafter in this section referred to as Investigating Authority) specified in the order to investigate the affairs of any generating company or Licensee and to report to that Commission on any investigation made by such Investigating Authority". Obviously the case before us is not that of violation of conditions of License but in case there have been violation of any of the provisions of this Act by the Licensee, the Appropriate Commission by order direct any person to investigate the affairs of the generating company or Licensee and to report to that Commission on such matters. In such matters, further course of action shall be determined by the Commission only on report of the Investigating Authority and that too only after giving an opportunity to the Licensee to make representation with Commission on the report.

Yet we may notice the provisions of Section 129 of the Electricity Act 2003 :

"(1) Where the Appropriate Commission on the basis of materials in its possession is satisfied that a Licensee is contravening or is likely to contravene any of the conditions mentioned in his license or conditions for grant of exemption or the

Licensee or the Generating Company has contravened or is likely to contravene any of the provisions of this Act, it shall by an order give such directions as may be necessary for the purpose of securing compliance with that conditions or provision.

(2) While giving direction under Sub Section (1), the Appropriate Commission shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention.

In context of this provision also no case can be made out by the petitioner for contravention of any of the conditions mentioned in license or conditions for grant of exemption. However in case where the Generating Company or the Licensee has contravened or is likely to contravene any of the provisions of this Act, though directions may be issued by the Commission for purpose of securing compliance with such provision, exercise of such powers by the Commission here too is constrained by provisions of Sub Clause –2 of Section 129, as while giving directions under Sub Section (1) , the Appropriate Commission shall have due regard to the extent to which any person is likely to sustain loss or damage due to such contravention. Though the Petitioner has sought to invoke jurisdiction of the Commission taking recourse to provisions of Section 129 of the Electricity Act 2003, there is neither mechanism to assess the loss or damage to the Petitioner by alleged violation of provisions of the Act nor the petitioner has placed material before the Commission to lead to conclusion about loss or damage sustained by the Petitioner if there by violation of this provision of the Act.

Since provisions enjoined under Section 42 (5) of the Electricity Act, 2003 mandates every Distribution Licensee to establish a Forum for redressal of grievance of the consumers in accordance with the guidelines as may be specified by the State Commission, it follows that the State Commission is authority to frame guidelines and

it cannot constitute itself to be the Forum for redressal of consumer grievance. In terms of Sub Section (5) and (7), the State Commission's role is to frame guidelines or manner or settlement of grievance and it is delegated rule making authority according to said provisions. The Commission as such in law cannot usurp the jurisdiction of the consumer grievance redressal forum. Once an authority has been delegated and authorized by the Commission for redressal of grievance of the consumers in exercise of statutory provisions of the Act, the Commission is not expected to assume jurisdiction in such matters even when the authority delegated with power has not been functional. Not even power of hearing of appeal arising from decision of Forum/Ombudsman has been conferred on the State Commission with respect to consumer grievance. Rightly it is brought to our notice that Section 86(a) to (k) defines the functions of the State Commission and the redressal of grievance or complaint do not fall under anyone of the functions defined by the Section 82. No other provision in the Act confers such power or authority or jurisdiction on the Commission not even by implication.

Since a lot of arguments were addressed by learned counsels for both the parties we would like to address them since Consumer Grievance Redressal Forum had been constituted by the Licensee for redressal of grievances of the consumers or for settlement of disputes arising out of electricity matters, learned counsel appearing for the petitioner has endeavoured to impress us, placing reliance on decision of the Hon'ble Supreme Court reported in AIR 1961 Supreme Court 617, State of Kerala & Others, Appellant V C.M. Francis Co. & Others, Respondent, and would argue that even where two remedies were open, both can be resorted to at the option of the authority. Placing reliance on the decision of the Hon'ble Supreme Court reported in AIR 1985 Supreme Court 1147, Ram and Shyam Company, Appellant V State of Haryana & Others, Respondent, the learned counsel would urge that the rule which

requires exhaustion of alternative remedies is a rule of convenience and discretion rather than a rule of law. Here too the reliance placed by the learned counsel was misconceived as case of the person aggrieved was turned down by the High Court on premises that other remedy available before aggrieved person was not availed by him before going to the Court. However it was noticed by the Hon'ble Apex Court that since case of the aggrieved person had already been rejected by the Chief Minister of the State, to whom can there be appeal in a state administration against the decision of the Chief Minister? We may usefully quote observations of the Apex Court " The cliché of appeal from Caesar to Caesarwife can only be bettered by appeal from once own order to oneself." Here is a different case before us, as no alternative remedies are available to the prospective consumer for redressal of his grievance. This Commission was not a Forum for redressal of grievance suffered by the petitioner. Refuting the contentions raised on behalf of the Petitioner, the learned counsel for the Respondents would urge that if a Court or an Authority has no jurisdiction in law to entertain a dispute and erroneously proceeds to determine the rights of the parties, no amount of consent or acquiescence of the parties themselves will create the jurisdiction in the said Court or Authority and the inherent lack of jurisdiction in the said authority will not in any way be cured or supplied on account of the Act of the parties themselves, and reliance on this score was placed of a decision of the Hon'ble Patna High Court reported in 1974 , PLJR 273, Mohan Lal and Another, Petitioner V the Charge Officer, Purnea & Others, Respondents.

However the decision cited at bar would not come for rescue of the petitioner as in such matters which are under consideration only the consumer grievance redressal forum can exercise jurisdiction. It is not a case where both the consumer grievance redressal forum and State Commission would have concurrent jurisdiction.

Yet placing reliance on a decision of Hon'ble Supreme Court reported in AIR 1960 Supreme Court 12, the Central Bank of India & Others V Their Workmen etc. and AIR 1957 SC 532 Newspapers Ltd., Appellant V State Industrial Tribunal UP & Others, Respondent, the learned counsel for the Petitioner urged that since provisions of Section 43, 128 and 129 would confer exclusive jurisdiction on the Electricity Regulatory Commission for redressal of grievance of the electricity consumers where there has been any violation of the provisions of this Act, the Commission was not expected to frame Regulations conferring exclusive jurisdiction on the Consumer Grievance Redressal Forum as rules or regulations framed by an authority are not expected to be inconsistent with the Act and hence rule must yield to statute. The observations made by the Hon'ble Apex Court in the case cited at bar are that "We do not say that the statutory rule can enlarge the meaning of Section 10, if a rule goes beyond what the Section contemplates, the rule must yield to the statute." If observations made by us in the preceding paragraphs can be noticed, no such fallacy would probably arise as the Regulations framed by the Commission in no case can be said to be inconsistent with any provisions of the Act and they are rather in conformity with the powers delegated to the Commission for constitution of such Forum for redressal of grievance of the Consumers.

Here we may usefully refer to the definition of complaint as enjoined in sub Clause (F) of Clause 2 of the Consumer Grievance Redressal Forum and Electricity Ombudsman Regulations.

(f) 'Complaint' means any grievance made by a complainant in writing on: -

- (i) defect or deficiency in electricity supply or service provided by the licensee;
- (ii) unfair or restrictive trade practices of licensee in providing electricity

services;

(iii) charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services;

(iv) errors in billing;

(v) erroneous disconnection of supply;

(vi) electricity services which are unsafe or hazardous to public life in contravention of the provisions of any law or rule in force; or

**(vii) any other grievance connected with the supply of electricity by the licensee to the consumers except grievances arising under Sections 126, 135 to 139, 143, 152 and 161 of the Act. :**

We would lay emphasis on (vii) of F which provides a platform to the electricity consumers for redressal of their grievance connected with supply of electricity by the Licensee. The case of the Petitioner in our considered view would fall within this provision as Petitioner's case is connected with supply of electricity by the Licensee to the Consumer.

If various provisions of the Electricity Act 2003 quoted in the preceding paragraph are noticed, the irresistible conclusion that would follow is that no express authority has been conferred on the Commission for redressal of the grievance of the kind with which the Petitioner had approached this Forum. Since provision of electric service connection, which constitutes Part –I of the relief claimed by the Petitioner has been redressed by the Licensee, there would not have been need to dwell upon other aspect of the case. However in view of grievance of the Petitioner for apathy of the Licensee in not providing electric service connection, we would make certain observations. Admitted facts are that electric service connection had not been

provided to the premises of the Petitioner till he approached the consumer, there being outstanding dues of Rs. 2,42,940.71 in the neighbouring house of the Petitioner which was in the name of Sri Preeti Ghose. Our attention was drawn by the learned counsel of the Petitioner towards a circular issued by the Licensee which bears Memo No. 3622 dt. 14.10.1966 wherein a positive direction has been given to all concerned that the electric supply of consumers is to be disconnected within three months of default and in no case it should be allowed to exceed the amount of security deposit. Reliance was placed also on two decisions of Patna High Court reported in 1999 (3) PLJR 223, Smt. Rekha Gupta, Petitioner, V Bihar State Electricity Board, Patna and others, Respondent and a decision reported in 2005 (1) PLJR 439, Sunil Kumar Sharma V Bihar State Electricity Board and Others. Reliance can also be placed on the decision of the Hon'ble Patna High Court rendered in CWJC No. 5358 of 1992 in which observations were made by the Hon'ble Court that right of the Petitioner for electricity service connection cannot be defeated on the ground that electricity dues were pending against erstwhile house owner. When the Electricity Board approached the Hon'ble Supreme Court of India in Civil Appeal No. 1422 of 1995, the Hon'ble Apex Court in Batch Cases made observations that the Board was under statutory obligation to supply electrical energy to any person whenever a requisition is made subject to the fulfilment on conditions and a purchaser was not expected to make an enquiry from the Board so as to know whether any dues were outstanding to the Board from the previous consumer nor it is possible for the auction purchaser to find out the personal liability of the debtor. The Petitioner had not consumed electricity and it was merely seeking supply of energy and there being no dues towards consumption charges, the Board could not have insisted upon him to pay the arrear owned by the erstwhile consumer. The liability to pay electricity dues is obviously fastened only to the consumer and the contractual liability between the erstwhile consumer and the

Board cannot be enforced against third party, there being no concept of the premises of the consumer being liable for electricity dues dehors the consumers, whose premises it is. That apart, the claim of the Petitioner seeking electricity service connection could not have been defeated by the Licensee, also on the premises that even in the letter mailed to the petitioner by Respondent No. 2 it has not been expressly stated that the dues were outstanding against the electricity connection provided in the premises which the Petitioner had purchased from Smt. Urmila Chowdhary. From the communication made to the Petitioner by Respondent No. 2 it is explicitly clear that the dues were outstanding against the premises which was adjacent to the house purchased by the Petitioner. True it is that to avoid payment of dues the erstwhile defaulter may make transfer of the property in question who too has some sort of interest with him. The previous consumer true it is who may avoid payment of the arrears by transferring the unit in favour of third party and hence the proper test as was held by the Hon'ble Supreme Court in Isha Marble case was that as to whether the arrears were due in relation to the premises to which electricity was supplied. The liability for payment of arrears hence can be fastened when the transferee was the legal representative of the defaulter. There is no provision either in the Act or the circulars issued by the Licensee that the transferee shall not only have assets but also the liability of the Electricity Board. The claim of the Petitioner could not have been delayed in making provision of electricity supply on untenable grounds which were also unethical particularly when affidavit was shown by the Petitioner that in no way the vender was related to him or she had any trade transaction with him. In Isha Marbles case, the claim of Wax Pol Industries and Another was rejected by the Hon'ble Supreme Court as in fact ownership of the firm was transferred to no other entity and the directors of the Company were more or less the same persons. Since there was no new entity, transferee was made liable to pay past arrears of the Board.

The Petitioner, it appears, was a bonafide purchaser from Smt. Urmila Devi and hence liability of a neighbour to pay past arrears of the Board could not have been fastened to him.

Though it is brought to our notice that the electric service connection has already been provided to the Petitioner's premises, it is not a charity nor philanthropic act of the Licensee as it is obliged under statute to provide electricity connection to the person who approaches it with bonafide claim, yet we appreciate the good gesture of the learned counsel at whose instance before the rejoinder was filed before the Commission, the Licensee provided electric service connection to the Petitioner. Though observations made by us may not be of much relevance in the backdrop of the facts of the case particularly when first part of relief sought by the Petitioner has been redressed by the Licensee, yet it has been made in the interest of the consumer and also the Licensee who approaches the Commission for such relief sought by them. Even at the cost of the repetition we wish to say that for redressal of grievance of the kind with which the Petitioner has approached the Commission, the proper remedy lies elsewhere once Consumer Grievance Redressal Forum has been constituted by the Licensee. Time and again the Board itself has issued instructions to its field officer through various circulars including circular No. Revenue/C2/COLP/2689/99-2124 dt. 15.07.02 in which there is clear stipulation that new connection cannot be legally refused to the new applicant or else the electrical authority concerned will have to bear the brunt of the Court's wrath. It is a wake up call to which the Licensee must respond to.

So far other part of relief claimed by the Petitioner was concerned, obviously power to impose penalty in case of failure of the Licensee to supply with provisions of the Section 43 of the Electricity Act 2003, that power was vested in the Adjudicating officer and not the Commission. The learned counsel for the Petitioner

however having noticed redressal of first part of his claim, would not pursue the remedy available under Section 43(3) of the electricity Act 2003. He would however urge that Petitioner had to incur handsome amount over the litigation. In the peculiar facts and circumstances of the case and having considered submission of the learned counsel for the Petitioner we dispose of this matter. But in view of harassment meted out to the petitioner, we shall award cost payable to the Petitioner by the Licensee which we quantify to Rs. 5,000/-.

Sd/-

**(S.K. Jayaswal)**  
Member

Sd/-

**(B.K. Halder)**  
Member

Sd/-

**(Justice B.N.P. Singh)**  
Chairman