(2025) 07 KL CK 1232

In the High Court Of Kerala

Case No : Writ Petition (C).No.25898 Of 2015

Assistant Engineer, Electrical Section, K.S.E.B. — APPELLANT

Vs

M/S.Pooja Milk Food Private Ltd — RESPONDENT

Date of Decision : 31-07-2025

Acts Referred:
Constitution of India, 1950 — Article 12
Electricity Act, 2003 — Section 42, 42(5), 42(6), 103

Citation : (2025) 07 KL CK 1232

Hon'ble Judges : S.Manu, J

Bench : Single Bench

Advocate : P.Santhalingam, S.Sharan, P.A.Ahamed, G.Keerthivas, Riji Rajendran, C.K.Karunakaran, K.V.Krishnakumar, Lekshmi P. Nair, Shifna Muhammed Shukkur, Krishna Suresh, Mekha Manoj

Final Decision : Dismissed

Judgement

S.Manu, J

1. Assistant Engineer of Kerala State Electricity Board (KSEB) has filed this writ petition challenging an order passed in favour of the respondent by the Consumer Grievance Redressal Forum of the Board.

2. The respondent is a LT consumer bearing consumer No.14360 under Electrical Section, Palarivattom. Anti-Power Theft Squad (APTS) conducted an inspection in the premises of the respondent on 25.9.2008. It was detected that the industrial unit was using more than 20% of the total connected load. A short assessment bill for Rs.10,09,331/- was served on the respondent on 27.9.2008. Tariff was changed to LT-VIIA and fixed charges and consumption charges from 1.12.2007 was also included. The respondent company approached this Court in W.P.(C)No.29352/2008 aggrieved by the short assessment. This Court disposed of the writ petition on 7.10.2008 directing the respondent to approach the Consumer Grievance Redressal Forum (CGRF). Respondent was directed to pay a sum of Rs.2,00,000/- and impugned bill was directed to be kept in abeyance till

the CGRF took a decision. Respondent complied with the direction to pay the amount. CGRF by order dated 6.1.2009 upheld the assessment made by the Board. The respondent filed appeal before the State Electricity Ombudsman. While the appeal was pending respondent informed that connected load was reduced. The Ombudsman disposed of the appeal by changing the Tariff from LT-VIIA to LT-IV. Respondent approached this Court again, aggrieved by the order of the Ombudsman. This Court by judgment dated 2.2.2015 in W.P.(C)No.27130/2009 directed the CGRF to reconsider the complaint of the respondent in the light of the judgment in Kerala State Electricity Board and Others v. M/s.KSE Limited, Dairy Division and another [2012 (1) KLJ 584:2012 SCC OnLine Ker 31551].

3. CGRF thereafter passed its order on 12.05.2015. The Forum cancelled the short assessment bill dated 27.9.2008. The Board was directed to re-assess the subsequent bills in commercial tariff in LT-IV. Excess amounts collected and the additional amounts remitted by the respondent including Rs.2,00,000/- paid as directed by this Court were directed to be refunded with interest at bank rate. The said order is under challenge in the instant writ petition.

4. Contentions of the petitioner are as follows:-

The power to decide tariff is vested in the State Regulatory Commission under the Electricity Act, 2003. At the time of the inspection in the premises of the respondent, the tariff order applicable then provided that if more than 20% of the load was used for chilling operation, tariff required reclassification as commercial from industrial. In the case of the respondent 43.35kW out of 118.87kW was used for chilling operation. Therefore, the re-classification and short assessment was perfectly correct. The petitioner's unit was not a production industry. The 2007 Schedule of Tariff and Terms and Conditions for Retail Supply by KSEB provided in Clause (e) under LT-IV tariff that dairy farms and milk chilling plants, with or without chilling/freezing/cold storage activity, shall be charged under the industrial category, provided the chilling/freezing/cold storage load is limited to 20% of the total connected load. If the said limit was exceeded, LT-VII(A) tariff would be applicable. Clause (e) remained applicable till it was deleted in 2010. The deletion was made effective prospectively from 21.6.2010 and it has no retrospective effect. This Court remitted the matter for reconsideration by the CGRF in W.P.(C)No.27130/2019, in the light of the judgment in Kerala State Electricity Board and Others v. M/s.KSE Limited, Dairy Division and another. However, according to the petitioner, the judgment established that the Regulatory Commission is the competent authority to fix the tariff which the Board complies with. Therefore, the conclusions of the CGRF in Ext.P5 order was incorrect and the CGRF ought to have upheld the short assessment bill.

5. Respondent in its counter affidavit contended as follows:-

The writ petition is not maintainable as the CGRF is a body having majority of the members who are serving officers of the Board. It is a first level domestic grievance redressal mechanism not performing any public duty. Therefore, the Board cannot maintain a writ petition challenging the order of the CGRF. Contention of the Board that note '(e)' appended to LT-IV in the notification dated 26.11.2007 was applicable to the respondent is incorrect. It was applicable only in the case of dairy farms or chilling plants. The respondent company is not a dairy farm nor a chilling plant. Its activity is of receiving raw chilled milk, pasteurizing/processing, packing, storing and distribution of milk and milk products. Its activity is completely different from that of dairy farms and milk chilling plants. Deletion of clause (e) appended with LT-IV and the changes made effective from 21.6.2010, as clarified by circular issued is to be noted. However the respondent does not come under the categories of dairy farms and chilling plants and even the unamended provision had no application in its case. In M/s.Pooja Milk Foods Pvt. Ltd. v. State of Kerala [2003 KHC 1237:2003 SCC OnLine Ker 247] this Court had explained that pasteurization only preserves milk and does not amount to manufacturing activity. Process undertaken by the respondent was explained in the said judgment. Though cooling of milk is an integral activity of pasteurization process, the cooling facility of the respondent cannot be compared with a chilling plant. The CGRF arrived at the conclusions on the basis of judgment of this Court binding on the petitioner. There is proper consideration of the matter by the CGRF and hence no reasons are available for the interference by this Court.

6. The Board filed reply affidavit. It denied the contentions of the respondent and reiterated the contentions in the writ petition. Heard Sri.Riji Rajendran, the learned Standing Counsel for the KSEB and Sri.C.K.Karunakaran, learned counsel appearing for the respondent.

7. The learned Standing Counsel contended that the short assessment made by the Board was proper and correct. It was argued that the CGRF erred in setting aside the short assessment bill and in directing a refund to the respondent. Although the CGRF is a quasi-judicial body, its findings are subject to judicial review. There is no bar on the distribution licensees challenging the orders of the CGRF. The learned counsel relied on the judgment of the Gujarat High Court in Executive Engineer(O and M) v. ShantiKrupa Estate Pvt. Ltd. [2015 SCC OnLine Gujarat 275] in support of his contention that the licensee is entitled to maintain the writ petition. The CGRF applied the 2010 Tariff Amendment retrospectively to set aside the valid assessment under the 2007 tariff order. The tariff applicable at the time of the inspection required re-classification as commercial if more than 20% of the load was used for chilling. As the respondent was using more than 20% of the load for chilling, the classification under LT-VIIA and short assessment was perfectly in tune with the tariff in vogue at the time of inspection. Respondent's claim that they performed only pasteurization is incorrect and chilling units were also there at the time of inspection. Hence, the order passed by the CGRF is illegal and perverse. Approach of the Forum was patently erroneous. He denied all contentions of the respondent and submitted

that the order of the CGRF, against which no other remedy was available to the petitioner Board, has been rightly challenged by approaching this Court invoking the writ jurisdiction. The impugned order being perverse and illegal, is liable to be set aside by this Court.

8. Sri.C.K.Karunakaran, the learned counsel appearing for the respondent submitted that the petitioner Board is not entitled to maintain a writ petition against an order passed by the CGRF. The Forum is an internal grievance redressal mechanism. Its members are serving officials of the KSEB. No appeal is provided under the Regulations enabling the licensee to challenge the orders passed by the CGRF, for the reason that the Forum is an internal mechanism maintained by the licensee to deal with the grievances of the consumers. He relied on judgment of the Orissa High Court in Executive Engineer, Electrical (TPNODL), Balasore Electrical Division-II v. Raj Complex [2023 SCC OnLine Ori 2312] in support of the contention that the practice of licensees challenging the orders of CGRF and Ombudsman is improper and writ petitions at the instance of the licensees are not maintainable. The learned counsel made reference to the report of the Standing Committee to which Electricity Bill, 2001 was referred to. The Committee recommended that there was a need to formulate some kind of Ombudsman Scheme to safe-guard the interest of the consumers. The learned counsel also submitted that concerns of the Committee was recognized when the Bill was presented in Lok Sabha during 2003 as discernible from the speech of the Hon'ble Minister. The learned counsel submitted that the CGRF manned by the employees of the licensee, funded by the licensee and controlled by the licensee has no independent existence. The learned counsel also pointed out that other than the State Electricity Board there are several other licensees also who do not satisfy the criteria for being treated as state under Article 12. Such licensees also maintain CGRF. If the petitioner Board is permitted to challenge the decisions of CGRF, other licensees who do not satisfy the test of being a state may also resort to writ jurisdiction to challenge the decisions of CGRFs maintained by them and the same will be an absurd situation. He therefore submitted that the writ petition is liable to be rejected as not maintainable without entering into merits. The learned counsel, apart from challenging the maintainability for the above said reasons, further contended that the principles of constructive res judicata would apply in the instant case as the issue raised was actually concluded with the judgment of this Court in W.P.(C)No.27130/2009 wherein the Standing Counsel for the Board conceded that the issue was covered by the judgment in Kerala State Electricity Board and Others v. M/s.KSE Limited, Dairy Division and another [2012 (1) KLJ 584:2012 SCC OnLine Ker 31551]. This Court therefore directed the CGRF to decide the complaint of the respondent in the light of the principle laid down in the said judgment. He hence contended that it is not open to the licensee to make an attempt to wriggle out by contending in the instant writ petition that the judgment of the Division Bench in Kerala State Electricity Board and Others v. M/s.KSE Limited, Dairy Division and another was not helpful to the respondent. He relied on the judgments of the

Hon'ble Supreme Court in Hope Plantations Ltd. v. Taluk Land Board, Peermade and others [(1999) 5 SCC 590] and Securities and Exchange Board of India v. Ram Kishori Gupta and others [2025 SCC OnLine SC 748]. He hence submitted that the writ petition is misconceived.

9. Apart from fervidly arguing for rejecting the writ petition as not maintainable learned counsel Sri.C.K.Karunakaran further contended that the Board issued the short assessment bill on the basis of note (e) appended to LT-IV (industrial) in the notification issued in 2007. The learned counsel contended that the said note was applicable only in the case of dairy farms and milk chilling plants. A dairy farm is engaged in the rearing of cattle, whereas a milk chilling plant is a facility where the collected milk is chilled and stored. The note was applicable only in the case of those activities. Respondent is engaged in processing of milk. It cannot be therefore considered as falling under note (e). The learned counsel submitted that by its decision on 21.6.2010 in the matter of tariff applicable to milk processing unit, the Electricity Regulatory Commission analysed the activity of chilling plants and processing units. The Commission found that once it is established that a unit is undertaking a manufacturing process and is assigned with industrial tariff, it is illogical to assign it commercial tariff if chilling/freezing/cold storage load exceeds 20% of the total connected load as there is no change in the process involved even if the load is changed. The Commission therefore directed to delete note (e) to LT-IV (industrial) tariff. He hence submitted that the contention of the Board lacks logic. The learned counsel made reference to judgment of a Division Bench in M/s.Pooja Milk Foods Pvt. Ltd. v. State of Kerala [2003 KHC 1237:2003 SCC OnLine Ker 247] in which this Court explained that pasteurization only preserves milk and does not amount to manufacturing activity so as to convert it into a commodity commercially different from fresh milk. Though the said case was decided in the context of levy of sales tax on pasteurized milk, the process undertaken by the respondent is explained in the judgment. Cooling of milk carried out by the respondent is an activity integral to pasteurization process and that by itself will not make the unit a chilling plant. Sri.C.K.Karunakaran further contended on the basis of a decision dated 1.9.2008 of the Kerala State Electricity Regulatory Commission that the Commission had clarified that the limit of 20% of freezing load is applicable only to dairy farms and milk chilling units and need not be made applicable universally to consumers other than milk chilling plants and dairy farms. He, with reference to the judgment in KSE Ltd.'s case (supra) pointed out that this Court categorically held in the said judgment with respect to a similar industry that production and stocking of milk, ice-cream and other products will squarely fall under industrial tariff and only sales outlet will go under commercial tariff. The Court was considering the case of another similar industrial unit engaged in pasteurization of the fresh milk, packing and storing of the same for distribution which was having a separate ice-cream manufacturing unit also. He pointed out that the Board in the previous litigation conceded that the said judgment would apply to the case of the respondent too. The CGRF followed the said judgment in

the impugned order and hence the CGRF cannot be held to have committed any error.

10. Since the learned counsel for the respondent vehemently contended that the writ petition is not maintainable, it is essential to decide the said issue first. Section 42(5) and 42(6) of the Electricity Act reads as under:-

"42. Duties of distribution licensee and open access: ....

(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission."

Therefore, it is the statutory obligation of every licensee to establish a forum for redressal of grievances of consumers. It is the responsibility of the State Commission to specify the guidelines in this regard. Any consumer aggrieved by the non-redressal of of his grievances by the Forum may make a representation to the Ombudsman to be appointed or designated by the State Regulatory Commission. The Kerala State Electricity Regulatory Commission framed 'The Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005', (hereafter mentioned as the Regulations for brevity). Composition of the CGRF is provided under Regulation 3. The Forum shall consist of 3 members including the Chairperson. The Chairperson and one member are to be appointed by the licensee from among its employees. The remaining member shall be nominated by the Commission. Jurisdiction of the Forum is provided under Regulation 6. It shall have jurisdiction to entertain the complaints within the area of the distribution licensee. Regulation 8 speaks about the obligations of the licensees. It shows that maintaining the Forum, meeting its expenses and ensuring effective functioning is the sole responsibility of the licensee. Complaint is defined under Regulation 2(f). It means any grievance made by a complainant in writing with respect to matters specified thereunder. 'Complainant' is defined under Regulation 2(e). The said provision reads as under:-

"(e) 'Complainant' means-

(i) any consumer of electricity supplied by the licensee including applicants for new connections;

(ii) a voluntary electricity consumer association/forum or other body corporate or group of electricity consumers;

(iii) the Central Government or State Government - who or which makes the complaint;

(iv) in case of death of a consumer, his legal heirs or representatives."

11. Hence, the CGRF is contemplated as a Forum for addressing the grievances of the ‘complainants’ as defined under Regulation 2(e). Regulation 11 deals with proceedings of the Forum and 12 deals with findings of the Forum. Regulation 12 reads as under:-

"12. Findings of the Forum.-(1) On completion of the proceedings, if the Forum is satisfied that any of the allegations contained in the complaint is true, it shall issue an order to the licensee directing it:

(a) to redress the grievance of the complainant; and

(b) to pay such amount as may be awarded as costs to the consumer.

(2) A certified copy of every order rendered by the Forum shall be delivered to the parties.

(3) Any Complainant aggrieved by the order made by the Forum may make a representation against such order to the 'Ombudsman', within a period of thirty days from the date of receipt of the order."

12. Regulation 12(3), in tune with S.42(6) of the Electricity Act provides a further remedy of making a representation against the order of the Forum to the Ombudsman within a period of 30 days from the date of receipt of the order. The said remedy is available only to 'any complainant'. Hence, the remedy of approaching the Ombudsman is not available to the distribution licensee. Regulation 12A was inserted by the Fifth Amendment Regulations, 2011. The said provision reads as under:-

“12A. Review :- (1) The Forum may, either on its own motion or an application of any person aggrieved by an order, review its order on the following grounds, namely:-

(i) on the Discovery of a new and important matter of evidence which, after the exercise of due diligence, was not with his knowledge or could not be produced by him.

(ii) mistake or error apparent on the face of the record.

(2) An application under clause (1) shall be filed within a period of fifteen days from the date of receipt of the order:

Provided that the Forum may entertain an application after the expiry of the said period of fifteen days, if it is satisfied that the applicant had sufficient cause for not preferring the review within such period.

(3) If on a preliminary examination of the application, if the Forum found that there is no sufficient ground for review, it shall reject the application after

affording an opportunity of being heard to the applicant.

(4) In cases where the review petition is admitted, the Forum shall dispose of it within a period of 30 days from the date of admission after affording sufficient opportunity to the parties to the application.”

13. It is to be noted that the Forum has been vested with jurisdiction to review its orders either on its own motion or an application of any person aggrieved by an order. Hence, the review is manifestly contemplated as a remedy available to any person aggrieved which may include the distribution licensee also. However, the scope of review is limited as it can be only on the grounds mentioned under Regulation 12A(1)(i).

14. Regulation 27(5) reads as under:-

"27. Award :-........

(5) The distribution licensee or concerned official named in the representation of the complainant/award of the Ombudsman shall submit a report on compliance of the order award to the Ombudsman within three months or within the time specified in the order/award whichever is earlier.

Provided that the Ombudsman shall have the power to extend the period of 3 months or the time specified as above on being satisfied that such extension of time is reasonable and in the interest of justice.

Non-compliance of awards/orders/directions of the Consumer Grievance Redressal Forum and Ombudsman by Distribution Licensee shall be considered as non-compliance of the provisions of Electricity Act, 2003 and the regulations made there under and Kerala State Electricity Regulatory Commission shall proceed accordingly.”

Hence, non-compliance of awards/orders/directions of CGRF and Ombudsman by the licensee shall be considered as non-compliance of the provisions of the Electricity Act and the Regulations made thereunder. Thus, the decisions of the CGRF and Ombudsman are made binding on the distribution licensee.

15. The petitioner Board contended that the CGRF is a quasi-judicial body and its decisions can be subjected to judicial review. The Board is a corporate entity and hence if it is aggrieved by a decision of the CGRF for which no remedy is provided under the Regulation, it cannot be precluded from invoking the writ remedy. As evident from the analysis of the provisions of the Regulations remedy of approaching the Ombudsman against a decision taken by the CGRF is available only to a ‘complainant’ as defined under the Regulations. S.42(6) of the Electricity Act provides the remedy of approaching the Ombudsman to ‘any consumer’. The said remedy is not available to the licensee. Though the licensee also can seek review under Regulation 12A, scope of review is too narrow. Hence, the contention of the Board may prima facie appear to be correct.

16. Provisions of Chapter II of the Regulations deals with CGRF and those of

Chapter III deals with Ombudsman. Comparative reading of the provisions of these chapters brings to light sharp contrasts in the nature of these two grievance redressal mechanisms and strengthens the opinion indicated above regarding the nature of the CGRF. Regulation 3 in Chapter II deals with establishment and composition of the CGRF. Regulation 3(3)(a) lays down broad criteria for appointing the Chairperson and one member from among the employees of the licensee. No specific technical qualifications are prescribed. No basic educational qualification is also prescribed. Regulation 3(3)(b) provides that the member nominated by the Commission shall be from among persons having a degree in any discipline with proven ability, integrity, standing and familiarity with consumer affairs. The said person shall not be an employee or former employee of any licensee. Regulation 5 provides that all costs and expenses of the Forum including remuneration and fees to the members, salaries and allowances of members of the staff, establishment charges and office expenses shall be borne by the licensee. Further obligations of the licensee regarding maintaining the Forum are provided under Regulation 8. Regulation 13 deals with monitoring by the Forum. Under Regulation 13(2) the Forum shall furnish a quarterly report on the number of complaints received, redressed and pending to the licensee within one month at the end of the quarter. It is pertinent to note that specific qualifications are not prescribed for choosing the Chairman and one member and therefore wide discretion is available to the licensee to nominate them from among its employees. Those nominated are already on the payrolls of the licensee. Most relevant aspect to note is that the Forum, under Regulation 13(2) is bound to furnish quarterly report to the licensee regarding its functioning. Hence, under the scheme of the Regulations, the CGRF is a forum integrated with the licensee. The responsibility of maintaining the Forum, including meeting all expenses, is wholly of the licensee.

17. Among the grievance redressal mechanisms under the Act and relevant Regulation, CGRF is the primary forum and constituting and maintaining the Forum is the obligation of the licensee. The only external interference is nomination of one of the members by the Regulatory Commission. Nomination of a member by the Commission is obviously to ensure fairness to some extent, as the other two members, including the Chairman are employees of the licensee. Thus viewed, the CGRF is virtually an internal mechanism of the licensee to address the complaints at the primary level. If the intention while framing the Regulation and establishing the CGRF and Ombudsman was to maintain CGRF also as an independent adjudicatory forum, the licensee would not have been empowered to nominate the Chairman and a member.

18. Regulation 14 in Chapter III deals with establishment of the office of Ombudsman. Appointing authority of the Electricity Ombudsman is the Electricity Regulatory Commission. The licensees have no role in the appointment. Qualification of the Ombudsman is provided under Regulation 15(1). The Ombudsman shall be an Electrical Engineer. The person appointed as Electricity Ombudsman shall not hold any other office during the tenure of his appointment.

A detailed selection process is provided under Regulation 15A for selection of the Ombudsman. Regulation 17(4) provides that the pay and allowances of the Ombudsman shall be met from the Kerala State Electricity Regulation Fund constituted under Section 103 of the Electricity Act. Regulation 20 deals with removal of Ombudsman on account of conditions mentioned thereunder. Procedure for functioning of the Ombudsman is delineated under Regulations 21 to 27. Thus the Ombudsman has been evidently envisaged as a truly independent adjudicatory mechanism.

19. The above analysis shows the substantial difference between the CGRF and the Ombudsman. Establishment of the Forum, appointment of majority of the members including the Chairman and maintenance of the Forum is the sole responsibility of the licensee under S. 42(5) of the Electricity Act read with the provisions of the Regulations. Selection of the Chairman and a member is left to the choice of the licensee and no procedure for selection and definite qualifications for the Chairman and members are prescribed under the Regulations. Forum is bound to submit periodical reports to the licensee. Undoubtedly, with its composition and nature, the CGRF cannot be considered as an independent adjudicatory forum like the Electricity Ombudsman. It is not a distinct and autonomous grievance redressal mechanism. Merely for the reason that it has also been established as mandated under S.42 of the Electricity Act and broad guidelines in the form of Regulations to ensure its proper functioning have been framed by the Commission, it cannot be compared with the Ombudsman. The latter has all trappings of an independent adjudicatory forum and it stands on a higher pedestal. To the contrary, CGRF is only a mechanism maintained by the licensee. As per Regulation 27(5), orders of the CGRF are binding on the licensee like orders of the Ombudsman. But that is not a reason to infer that both are placed on the same pedestal. Obvious objective is to ensure that the grievance resolution by the CGRF shall also be efficacious and meaningful as far as the consumers are concerned. Hence it can be concluded that under the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, the CGRF has been envisioned as an institutional grievance redressal mechanism maintained by the licensee. Mandate of S.42(5) of the Electricity Act also appears to be the same.

20. Under S.42(6) of the Act, right to approach the Ombudsman, if not satisfied with the decision of CGRF, is provided to consumers. The Regulatory Commission, while framing the Regulation, provided the remedy of approaching the Ombudsman only to the 'complainants' as defined under the Regulations. The said opportunity was not made available to the licensee. Therefore, under the Act and the Regulations, no provision is incorporated to enable the licensee to challenge the decisions of the CGRF. It cannot be considered as a mere omission. The said feature of the Act and Regulations shows that the true intention and purpose for providing the grievance redressal mechanism of CGRF and Ombudsman is for the purpose of addressing the grievances of the complainants

against the licensee.

21. As noticed above, provisions of the Act and Regulation do not contemplate any challenge by the licensee against a decision or order of the CGRF. The Rule making authority however laid down that the orders and decisions of the CGRF shall be binding on the licensee, as evident from Regulation 27(5). It is true that when statutory remedies are not available writ petitions can be entertained. However, the said general proposition cannot have any application in a case like this wherein the licensee attempts to challenge an order of an institutional grievance redressal forum maintained by it. The rule making authority did not extend the remedy of approaching the Ombudsman to the licensee manifestly for the reason that under the scheme of the Regulations the CGRF is an institutional mechanism maintained by the licensee. Therefore filing of writ petitions by the licensee and its officers against the decisions of the CGRF will be in violation of the object and scheme of the Regulations. It will be irrational to permit the licensee to invoke writ jurisdiction and challenge decisions of its own institutional forum. Moreover, permitting such litigation will be against the very objective of providing grievance redressal mechanisms under the Act, as the purpose is to ensure speedy redressal of grievances of consumers and to avoid unnecessary litigation.

22. The learned Standing Counsel had placed heavy reliance on a judgment of the Gujarat High Court in Shantikrupa Estate's case (supra). A learned Single Judge of the Gujarat High Court held that the CGRF is a statutory forum and when its decisions have legal and financial implications, the licensee cannot be rendered remediless. A similar contention regarding maintainability was rejected by the Gujarat High Court. However, no detailed analysis of the scheme of the relevant Regulation was undertaken by the Gujarat High Court in the said judgment. It is also not discernible as to whether the regulatory regime involved in the said case is comparable to that under the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005. I therefore respectfully refuse to follow the conclusion of the Gujarat High Court in the above judgment regarding maintainability of writ petition filed by licensee against the decision of the CGRF. The learned counsel also placed reliance on the judgment in Village Panchayat, Calangute v. Additional Director of Panchayat II [2012 (7) SCC 550]. However, the said judgment cannot be of any help to the petitioner. In the said judgment the Hon'ble Supreme Court held that a Village Panchayat had locus to file a writ petition for setting aside an order passed by the designated officer exercising the power of an appellate authority qua the action/decision/resolution of Village Panchayat. In the case at hand, the petitioner licensee is however challenging a decision of the CGRF which is an institutional grievance redressal forum maintained by the licensee. Position in the case at hand is therefore altogether different. CGRF is not an appellate authority, but an appendage of the licensee entrusted with the task of addressing grievances of the complainants as defined under the Regulations.

23. In Kisan Cold Storage and Ice Factory v. Paschimanchal Vidyut Vitran Nigam Limited [2019 SCC On Line All 1810] a Full Bench of the Allahabad High Court declared a provision of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007 which provided remedy of approaching Electricity Ombudsman against the decision of the CGRF to the distribution licensee also. The Court held that the same was in conflict with the provisions of Section 42 of the Electricity Act which provides remedies of approaching the CGRF and the Ombudsman only to the consumer. In the said case a contention was raised that the CGRF under Section 42(5) was an independent Forum. The said contention was disapproved by the Allahabad High Court after referring to various provisions of the Uttar Pradesh Electricity Regulatory Commission (Consumer Grievance Redressal Forum & Electricity Ombudsman) Regulations, 2007 though no finding was given. Paragraph 53 of the judgment of the Allahabad High Court reads as under:-

“53. The argument of Sri.Mathur that the State Commission has created an independent Forum under Section 42(5) of the Act, 2003, which is neither an extension of the Distribution Licensee nor under its control and it being an independent Forum, the Distribution Licensee must be given an opportunity to approach the Electricity Ombudsman is also patently misconceived inasmuch as, as already discussed above, the Act 2003 only gives a remedy to a consumer to approach the Electricity Ombudsman. The said remedy provided to the Consumer being a creation of statute, as such, the Distribution Licensee cannot be expected to have a remedy in this regard of approaching the Electricity Ombudsman. So far as the independence of the Forum is concerned, though Regulation 3.5 of the Regulations, 2007 indicates that the Forum shall function independent of the Licensee yet Regulation 3.3 of the Regulations, 2007 itself provides that the Distribution Licensee shall invite applications for appointment on the post of a Technical Member of the Forum. The Officer of the Licensee is also to be a Member of the Forum in terms of Regulation 3.2 of the Regulations, 2007. As such, once the power of selection and appointment is given to the Distribution Licensee, the funds and expenditure are also in the hands of the Distribution Licensee and the power of removal of members of the Forum in practice is also with the Distribution Licensee. Consequently, the kind of independence expected from such Forum cannot be said to be complete independence of the Forum. This would also be apparent from perusal of Regulation 3.12 of the Regulations, 2007, which categorically provides that the salary, allowances, secretarial support, office accommodation and infrastructure facilities for establishing the office and other facilities required for efficient functioning of the Forum shall be provided by the concerned Distribution Licensee. The power of removal of any Member has also been given to the Distribution Licensee which, suffice to state, makes it apparent that the independence of the Forum is illusory. However, as we have not been called upon to give any finding regarding independence of the Forum, we refrain from doing so.”

24. In the judgment in Executive Engineer, Electrical (TPNODL), Balasore

Electrical Division-II v. Raj Complex and others [2023 SCC On Line Ori 2312], the Orissa High Court came down heavily on the distribution licensee for challenging decisions of Grievance Redressal Forum and Ombudsman.

25. It is reiterated that under the scheme of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005, the CGRF is an institutional grievance redressal forum maintained by the licensee, but not having independent existence like the Ombudsman. The licensee, as provided under Regulation 27(5) shall be bound by the awards/orders/directions of the CGRF. It is not open to the licensee to challenge the awards/orders/directions of the CGRF by invoking writ remedies.

In view of the foregoing discussion, the inevitable conclusion is that the writ petition is not maintainable. It is accordingly dismissed. All other contentions are kept open.