
(2010) 09 OHC CK 0003
In the Orissa High Court
Case No : Writ Petition (C) No. 6621 of 2010

Bidyadhar Khatua

APPELLANT

Vs

Executive Engineer (Elect.) and Another

RESPONDENT

Date of Decision : 23-09-2010

Acts Referred:

Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998 — Regulation 60

Citation : (2010) 2 ILR (Ori) 1141

Hon'ble Judges : Sanju Panda, J

Bench : Single Bench

Judgement

Sanju Panda, J.—In this writ petition, the Petitioner has challenged the order dated 20th November, 2009 passed by the Ombudsman-I in Consumer Representation Case No. OM (I) - 44 of 2009.

2. The factual backdrop of the case is as follows:

The Petitioner is a consumer under the opposite parties since 1976. Initially, the load of electricity supply to the premises of the Petitioner was 2 KW. Due to extension of the building, the Petitioner applied for enhancement of such supply of electricity from 2 KW to 6 KW stating therein that the electricity in respect of ground floor is for commercial purpose only. In the said application, he requested for preparation of bill for 2.5 KW under commercial tariff and 3.5 KW for domestic tariff. However, the authorities without following the procedure for enhancement of the load factor and change of tariff as provided under the Electricity Act and Rules prepared bill under commercial tariff on the basis of average load factor. Though the Petitioner requested several times for rectification of the same and the status of the metre was OK, opposite parties did not take any step to correct the same. The further case of the Petitioner is that, the building was damaged due to rioting on 9.12.1992 and there was no electric supply to the building from 9.2.1992 to 5.4.1994. Thereafter, fresh connection was given to the premises and bills were raised on an average basis.

Subsequently, on the request, a new meter was installed on 4.7.1998. However, bills were given on an average basis under commercial tariff for which the Petitioner filed WPC No. 2872 of 2004 which was disposed of on 12.2.2008 with an observation that the Petitioner may approach the authorities created under the Indian Electricity Act for determination of the dispute. Accordingly, the Petitioner approached the Grievance Redressal Forum, Cuttack (in short, "the GRF") by filing CC Case No. CDD-1/131 of 2008. In the said petition, the petitioner specifically prayed (a) to waive the bill for the period from 9.12.1992 to 5.2.1994 as the building was damaged due to riot; (b) revise load factor bill as per actual consumption on the basis of meter reading as the status of the meter is OK; and (c) revise the bill by changing the tariff from commercial to domestic purpose. The GRF, after hearing the Petitioner and the opposite parties and taking into consideration the records filed by the Petitioner, came to the finding that (i) the pleading of the Petitioner regarding non-supply of power to his premises from 9.12.1992 to 5.2.1994 was disbelieved as there was no record showing that the Petitioner deposited reconnection charges and accordingly, the prayer for reclassification of electricity bill during the said period had no merits; (ii) after enhancement of connected load from 2 KW to 6 KW there being no document showing that the Petitioner filed application for using of electricity load up to 3.5 KW for domestic purpose and 2.5 KW for commercial purpose in respect of ground floor only, it could be believed that the load was 6 KW and the use of commercial purpose being excess of 20% of the total load to 6 KW, opposite parties did not commit any wrong in raising the bill on the basis of commercial tariff; and (iii) so far as revision of load factor bill is concerned, as per Regulation 60(2) of the Orissa Electricity Regulatory Commission Distribution (Conditions of Supply) Code, 1998 (in short, "the Code"), the bills ought to be raised on load factor basis in case of defective or lost meters and Regulation 54 of the Code provides that the power supply shall not be effected without a correct meter. Opposite parties did not follow the said Regulations though it was within their knowledge that the meter was defective or lost and no attempt was made on behalf of them to replace or install a new one. Therefore, opposite parties should revise the load factor bills as per six months consumption pattern available after installation of new meter on 10.11.2004. Accordingly, on 17th December, 2008 the GRF directed the opposite parties to issue revised bill on load factor basis as per six months consumption pattern available after installation of new meter on 10.11.2004. Being aggrieved by the said order, Petitioner filed Consumer Representation Case No. OM(I) - 44 of 2009 before Ombudsman-I reiterating his plea and non-consideration of those facts by the GRF. The Ombudsman-I dismissed the said case on 20.11.2009 confirming the finding of the GRF and observed that it is open to the Petitioner to install a new meter for the purpose of domestic and commercial category in accordance with the statutory provisions. Hence this writ petition.

3. Learned Counsel for the Petitioner submitted that the Petitioner is not a consumer under "Kutir Jyoti Scheme" and Regulation 80 of the Code is not at all

applicable to the present case as the Petitioner is a consumer prior to 1998 when the Code came into force. As the Petitioner applied for load of 6 KW, his consumption is not excess from the said load and he is coming under the Orissa State Electricity Board (General Conditions of Supply) Regulations, 1981 (in short, "1981 Regulation"). According to the said provision, when the classification of consumer will change from domestic to commercial category, a notice is to be issued to the consumer directing to execute a fresh agreement. In the present case, while changing the consumer classification from domestic to commercial, a fresh agreement has not been executed. As per 1981 Regulation and 1995 Regulation, if it is found by the authorities that a consumer has been classified under a particular category erroneously, or has altered the purpose of the supply as mentioned in the agreement, the Board may alter the classification, call upon the consumer to execute a fresh agreement on the basis of the altered classification and may also revise the bills. If the consumer does not take steps within the time stipulated in the notice to execute the agreement, the Engineer may issue show- cause notice covering the period of clear seven days and after considering the explanation, if any, may disconnect the supply of power. However, on introduction of Orissa Electricity Regulatory Commission Regulation 02 of 1998, the "Classification of Consumer" is provided under Regulation 80 which reveals that a licensee may classify or reclassify the consumer into various categories from time to time as may be approved by the Commission and fix different tariffs and conditions of supply for different class of consumers. A domestic consumer also includes the occupants of flats in multi-storied buildings or residential colonies receiving power at single point for domestic purposes when connected load for nondomestic load exceeds 10% of the total connected load. In case the non domestic load exceeds 10% of the total connected load, they shall be treated as commercial or general purpose consumers as applicable. This shall not cover residential colonies attached to industrial establishment where power supply is drawn through the meter of the industrial establishment (Emphasis supplied). Learned Counsel for the Petitioner further submitted that the said provision was introduced in the year 1998 and since the present dispute is covering prior to that period, the said provision should not be applicable to the present case and the opposite parties should not have categorized the connection of the Petitioner as commercial one and both the forums below did not consider the said aspect at all. Therefore, the impugned order is liable to be interfered with.

4. Learned Counsel for the opposite parties while supporting the decision of the GRF as well as the Ombudsman-I submitted that both the forums considered the case of the Petitioner in proper perspective. The Petitioner did not disclose the reasons of seizure of the lodge by the local police till 5.2.1994 after riot and whether the building was vacated or not used during that period. The bill was issued on load factor for 6 KW and the Petitioner paid bills without any objection and he never lodged any complaint before the appropriate authorities as provided Under Regulation 110 of the Code. From the report of the SDO (Elect.),

Ranihat, it appears that the ground floor of the premises contained seven commercial shops and the balance portion as well as the entire first floor was used for lodging purpose. The averment made by the Petitioner in his earlier writ petition that the ground floor was used for lodging purpose and the first floor was used for residential purpose was not correct. The fact that he converted the ground floor into five shop-rooms and applied for five separate connections with five meters for connected load of 5.5 KW each under commercial category and further applied for 3.5 KW connected load in respect of first floor for the domestic purpose, did not reveal from any supporting material or document. Therefore, the GRF rightly approved the action of the Respondents. So far as the connected load of 6 KW under GPS category is concerned, since the Petitioner had declared that the connected load was 6 KW as on date of installation on 12.9.2006, there was no infirmity in issuing the bills by the opposite parties. Therefore, the order passed by the GRF as well as Ombudsman-I need not be interfered with.

5. This Court heard the rival submissions of the parties and went through the records. The admitted fact that the Petitioner applied for supply of electricity i.e., 2.5 KW for commercial purpose and 3.5 KW for domestic purpose and no agreement was executed by the consumer. There is no dispute that the supply of electricity to the premises of the Petitioner was disconnected at certain point of time and there was no reconnection of electric supply after alleged disconnection. The Petitioner did not pay any reconnection charges. Therefore, it can be presumed that there was no electric connection to the Petitioner's premises. Admittedly, Petitioner is a consumer under the opposite parties since 1976. The 1998 Code was modified on 7th September, 1998. Hence, the said provision is applicable from that date. Prior to that, the Petitioner is governed by 1981 and 1995 Regulations. Under both the Regulations, reclassification of the consumer can be made by the authorities after calling upon the consumer to execute a fresh agreement. There is no provision for enhancement of any power load.

6. For better appreciation, clause-38 of Regulation 1981 and clause-41 of Regulation 1995 are quoted below:

Regulation 38 of the Orissa State Electricity Board (General Conditions of Supply) Regulations, 1981.

38. Re-classification of consumer: If it is found that a consumer has been classified under particular category erroneously, or has altered the purpose of the supply as mentioned in the agreement, the Board may alter the classification, call upon the consumer to execute fresh agreement on the basis of the altered classification and may also revise the bills.

Regulation 41 of the Orissa State Electricity Board (General Conditions of Supply) Regulations, 1995

41. Re-classification of consumers- If it is found that a consumer has been classified in a particular category erroneously or has changed the purpose of the

supply as mentioned in the agreement or has enhanced the consumption of power so as to exceed the limit of that category or has obtained order of reduction or enhancement of contract demand, the Engineer may re-classify him under appropriate category and issue notice to him to execute a fresh agreement on the basis of altered classification and/or modified contract demand. If the consumer does not take steps within the time indicated in the notice to execute the fresh agreement, the Engineer may, after issuing the show cause notice covering the period of clear seven days and after considering his explanation, if any, may disconnect the supply of power.

7. From a conjoint reading of the above provisions, it appears that when a consumer is to be re-classified, the authority has to call upon the consumer to execute a fresh agreement on the basis of the altered classification and may also revise the bills. In the present case, neither the authorities issued show cause notice to the Petitioner nor did the Petitioner execute any fresh agreement. Therefore, while determining the revised bill, the opposite parties should have taken note of the same instead of categorizing the Petitioner as "commercial consumer" and by applying 1998 Regulation calculating the bill taking into consideration the 1980 Regulation and making enhancement of 10% of the power supply and submitting the bill. The disputed period is prior to September, 1998 and the same shall be governed under Regulation 1981 and Regulation 1995 and after 1998 the opposite parties may give revised bill as per the said Code.

8. With the above modification of the impugned order, the writ petition is disposed of.