
(2008) 03 KL CK 0058

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30419 of 2007

Eminent Sea Foods (P) Limited

APPELLANT

Vs

K.S.E.B. and Others

RESPONDENT

Date of Decision : 13-03-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Electricity Act, 2003 — Section 42(5), 42(6), 42(7), 43(5), 43(6)

Citation : (2008) 03 KL CK 0058

Hon'ble Judges : Thottathil B. Radhakrishnan, J

Bench : Single Bench

Advocate : M.N. Mathew, for the Appellant; P.P. Thajudeen, S.C., K.S.E.B., for the Respondent

Judgement

Thottathil B. Radhakrishnan, J.—Petitioner, a consumer of electrical energy, challenges certain demands made by the Kerala State Electricity Board, the licensee. As noticed even in the interim order dated 13-12-2007, there is glaring disparity between the calculations made by the Petitioner and the Board, which appears to claim an amount of Rs. 25 lakhs, while the Petitioner demands refund of around Rs. 37 lakhs. By that interim order, this Court had called upon the Chief Engineer (Distribution) to look into the calculation statement of the Petitioner and file an affidavit. The Chief Engineer (Distribution, Central) accordingly filed an affidavit and also a calculation statement.

2. Learned Counsel for the Petitioner submits that a comparison of the different documents would show that the pleadings made by the Board are illusory and the affidavit filed by the Chief Engineer does not stand.

3. The matter essentially calls for adjudication on the calculation statement regarding energy charges and other incidentals demanded by the Board vis-a-vis, the claim of the Petitioner that the demand by the Board is unsustainable and still further, that going by his calculation, he is entitled to refund. This issue is essentially a dispute between a consumer and the licensee and it can be easily

resolved if the records are taken to the concerned Consumer Grievances Redressal Forum, hereinafter, the "CGRF", constituted u/s 42(5) of the Electricity Act, 2003, which obliges every distribution licensee to establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission. If the grievance of a consumer who has taken recourse to Section 42(5) is not redressed, he is entitled to approach the Ombudsman, so appointed or designated by the State Commission. Sub-clause (7) of Section 42 of the Act enjoins that the Ombudsman shall settle the grievances of the consumer within such time and in such manner as may be specified by the State Commission. The provisions of Sub-sections (5), (6) and (7) of Section 42, which confers such mechanism, in no way take away any of the rights of a consumer, which are otherwise available to him. This is explicit from Clause (8) of Section 43.

4. Having regard to the fact that technical issues and accounting constitute the fundamental dispute between the parties, it is abundantly appropriate that the matter gains attention of the CGRF since technical personnel are involved in that Commission, as is apparent from the Board order dated 25-2-2006, by which, the CGRF was constituted under authority u/s 42(5) of the Act. The mere fact that the CGRF is chaired by an officer in the rank of a Deputy Chief Engineer makes no difference because CGRF is a statutory authority and any decision or view of any officer superior in rank in the service of the Board will and should have no impact whatsoever on the powers and rights of the CGRF while it enters the process of resolution of disputes in exercise of authority u/s 43(5) and (6) of the Act. When such statutory remedies of efficacious nature are available, the visitatorial jurisdiction of this Court under Article 226 of the Constitution of India need not be extended.

For the foregoing reasons, this writ petition is disposed of relegating the Petitioner to move the CGRF in terms of what is stated above and if the Petitioner makes an application before the CGRF within a period of two weeks from now, the CGRF will bestow immediate attention to the application, since, according to the Petitioner, he is suffering very huge loss as the establishment is closed down. The CGRF will be at liberty to issue such interlocutory orders which may govern the parties, if final decision in the issue would be delayed beyond three months. The CGRF will finalise the issue within four months of the receipt of the application of the Petitioner or a copy of this judgment, whichever is later.