
(2009) 10 KL CK 0089

In the High Court Of Kerala

Case No : Writ Petition (C) No's. 10122 and 10896 of 2009

Jose Francis and etc.

APPELLANT

Vs

Kerala State Electricity Board and Others

RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:

Electricity Act, 2003 — Section 126, 135, 136, 137, 138
Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 — Regulation 2, 2(1), 7

Citation : AIR 2010 Ker 39 : (2009) 4 ILR (Ker) 496 : (2009) 4 KLT 461

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : KKM Sherif, P.M. Kunjimoideenkutty, A.A. Ziyad Rahman, Sheena Samuel, J. Julian Xavier and Firoz K. Robin, for the Appellant; Sreedevi Kylasanath, SC, KSER Commn., Public Prosecutor Thajudeen, SC, C.K. Karunakaran, SC, for the Respondent

Judgement

S. Siri Jagan, J.—In W.P. (C) No. 10122/2009 the petitioner is aggrieved by re-classification of their electricity connection for the purpose of payment of electricity charges from LTIV to LT VIIA tariff. The petitioner in W.P. (C) No. 10896/2009 is aggrieved by similar re-classification from LT VIA to LT VIIA. According to the petitioners, under Regulation 7 of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005, a consumer has a right to approach the Consumer Grievance Redressal Forum against tariff classification. But they are prevented from approaching the Forum in view of Ext.P6 order (in W.P.(C) No. 10122/09 which is Ext. P9 in the other writ petition) of the Electricity Board, by which, the Electricity Board directed the Forum not to entertain any appeal regarding change of tariff and also to forward orders issued by the Forum to the office of the Chief Engineer (Commercial and Tariff) and to the Law Section of the Board Secretariat in order to have a close monitoring of the Forum. The petitioners are challenging that order of the Board along with challenge against

the re-classification itself. According to the petitioners, the Forum is expected to function as an independent statutory quasi-judicial body. Therefore, the Forum is not expected to function as per the instructions of the Board, but only as an independent adjudicatory body. Therefore, the Board is incompetent to issue the order impugned directing the Forum not to entertain any appeal regarding change of tariff.

2. The learned Standing Counsel for the Board would contend that u/s 42(6)(5) of the Electricity Act, 2003, it is for the Board to establish the Forum for redressal of the grievance of the consumers in accordance with the guidelines as may be specified by the State Commission and, therefore, the Board has powers to issue direction to the Forum in the nature of Ext.P6 in W.P.(C) No. 10122/09.

3. I have considered the rival contentions in detail.

4. I am of opinion that the argument of the Kerala Electricity Board is counter productive. The very object of establishing a Forum for redressal of the grievance of the consumers against the licensee is to hear complaints against the licensee. If the Board is permitted to issue directions to the Forum as to how the Forum should consider complaints filed before it, then it is better that there be no Forum at all, since the Forum would not be in a position to adjudicate the complaint filed by a consumer against the Board independently, if the Forum is bound by the directions of the Board in any manner, simply because the Board established the Forum that does not mean that the Forum is under their control regarding the statutory functions of the Forum. When the Forum is created as an independent arbitrator as between the consumer and the licensee, the Forum should be free from any kind of influence from anybody particularly the Board. If there is any such constraints on the Forum, it would not be an independent arbitrator at all. In fact the Courts in" Kerala are established by the Government of Kerala. That does not mean that the Government of Kerala has control over the judicial functions of the judicial officers of the State manning the Courts. Likewise, the Forum established by the Board is not under the control of the Board at all. That being so, the Board has absolutely no power whatsoever to issue an order in the nature of Ext.P6. In fact in the counter affidavit submitted by the Kerala State Electricity Regulatory Commission, they also rightly subscribe to the same view. In their counter affidavit the Kerala State Electricity Regulatory Commission has stated thus:

4. It is respectfully submitted that, complaints regarding change of tariff made by field officers of KSEB without considering the classification/categorisation declared by this respondent can be entertained by CGRF. Inclusion of particular types of consumers in particular categories are done by Regulatory Commission after hearing public responses in a transparent process. However, KSEB has no authority to issue such an order to the CGRF.

5. It is submitted that, Section 42(5) of the Electricity Act provides for establishment of a forum for redressal of grievances of the consumers in

accordance with the guidelines as specified by the State Commission. Section 42(6) any consumer aggrieved by the non-redressal of grievances under Sub-section (5) may approach the ombudsman. In exercise of power conferred u/s 181(1), 2(r), (S) & (zp) of Electricity Act, 2003, Kerala State Electricity Regulatory Commission framed "The Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005 taking into account the need for safeguarding the right and interest of consumers. Regulation 7 of it deals with the kinds of grievances that can be taken up by the Forum. The Forum shall take up and kind of grievances/complaints as defined in Regulation 2(1)(f), 2(1)(f)(III) empowers the CGRF to entertain complaint regarding charging of a price in excess of the price fixed by the Commission for supply of electricity and allied service. Regulation 2(f)(VII) empowers the CGRF to entertain any other grievance connected with the use of electricity by the licensee except relating to unauthorised use of electricity as provided u/s 126 of the Act, offences and penalties as provided under Sections 135 to 139 of the Act, and accident in the distribution, supply of use of electricity u/s 161 of the Act. Hence CGRF can entertain petitioner's grievances.

6. It is submitted that, CGRF being a statutory independent body established u/s 42(5) of the Electricity Act, all the individual grievances of consumers have to be raised before this Forum only. KSEB has no authority to issue orders directing CGRF not to entertain any consumers' grievances regarding change of tariff made by the field officers without considering the classification/categorisation declared by KSERC. The Hon'ble Supreme Court in Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. and Others, held "A complete machinery has been provided in Section 42(5) and 42(6) of the Electricity Act, 2003 for redressal of grievances of individual consumers, the consumers can only resort to these bodies for redressal of their grievances.

5. Under Regulation 7 of the Kerala State Electricity Regulatory Commission (Consumer Grievance Redressal Forum and Electricity Ombudsman) Regulations, 2005, the Forum shall take up any types of grievances/complaints as defined in Regulation 2(1)(f). Regulation 2(1)(f) reads thus:

2. Definitions.- (1) In these regulations, unless the context otherwise requires,:

xxx xxx xxx

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

(i) defect or deficiency in electricity 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 except those related to the following:

(1) unauthorised use of electricity as provided u/s 126 of the Act;

(2) offences and penalties as provided under Sections 135 to 139 of the Act; and

(3) accident in the distribution, supply or use of electricity u/s 161 of the Act.

As per Sub-clause (III) thereof, "charging of a price in excess of the price fixed by the Commission for supply of electricity and allied services" is a grievance which can be raised before the Forum. The Commission has fixed the price for supply of electricity as per the schedule of the tariff for retail supply. When the Board changes the tariff applicable to a consumer, it amounts to charging of a price in excess of the price fixed by the Commission for supply of electricity. Therefore, change of tariff is a grievance which can be raised by a consumer before the Forum. Therefore, on merits also, Ext. P9 is unsustainable.

6. In any event, if the Board has a contention that the complaint is not maintainable before the Forum, it is for the Board to urge that contention before the Forum and it is for the Forum to consider such contention in accordance with law and the Board cannot pass an order like Ext.P9 pre-empting the Forum from considering that issue. When a consumer approaches the Forum with a grievance, it is for the Forum to decide the question of jurisdiction also in the first instance, subject of course to scrutiny of the decision of the Forum by higher fora.

7. In the above circumstances, I do not have any doubt in my mind that Ext.P6 in W.P.(C) No. 10122/2009, which is Ext.P9 in the other writ petition, is without jurisdiction and liable to be quashed. Accordingly, the impugned orders are quashed. I further hold that the Kerala State Electricity Board is not entitled to issue any directions to the Forum in the matter exercise of their quasi-judicial functions. The Forum is statutorily bound to exercise their functions uninfluenced by any such directions and shall decide complaints before it independently like any other quasi-judicial body.

8. Now that Ext.P6 in W.P.(C) No. 10122/2006, which is Ext.P9 in the other writ petition, has been quashed, there is no impediment for the petitioners to approach the Forum. Accordingly, in both cases if the complaints filed by the petitioners have been either closed or refused to be accepted, the petitioners shall re-submit those complaints before the Forum within two weeks. The Forum shall accept the complaints as filed within time and dispose of the same in accordance with law. To enable the petitioners to approach the Forum and seek interim orders in the matter, I direct that the interim orders passed by this Court in these two writ petitions shall continue to be in force for a period of another one month.

The writ petitions are disposed of as above.