
(2019) 11 UK CK 0078
In the Uttarakhand High Court
Case No : Special Appeal No. 799 Of 2019

M/s Shri Bankey Bihari

APPELLANT

Vs

M/s BTC Industries Pvt. Ltd. Kishanpur, Kiccha, District
Udham Singh Nagar And Others

RESPONDENT

Date of Decision : 13-11-2019

Acts Referred:

Electricity Act, 2003 — Section 42(5), 42(6)
Code Of Civil Procedure, 1908 — Section 151
Constitution Of India, 1950 — Article 226
Uttarakhand Electricity Regulatory Commission (Appointment & Functioning Of
Ombudsman) Regulations, 2004 — Regulation 4(1)(a), 5

Citation : (2019) 11 UK CK 0078

Hon'ble Judges : Ramesh Ranganathan, CJ;Alok Kumar Verma, J

Bench : Division Bench

Advocate : P.K. Chauhan, Shobhit Saharia, Akhshay Latwal, N.S. Pundir

Final Decision : Dismissed

Judgement

Ramesh Ranganathan, CJ

1. Heard Sri Pradeep Kumar Chauhan, learned counsel for the appellant, Sri Shobhit Saharia, learned counsel for the first respondent, and Sri Akshay Latwal, learned counsel holding brief of Sri N.S. Pundir, learned counsel for respondents 2 and 3.

2. This Special Appeal is preferred against the order passed by the learned Single Judge in MCC No. 627 of 2019 in Writ Petition (M/S) No. 124 of 2010 dated 08.07.2019. The appellant herein is the applicant in MCC No.627 of 2019, and the first respondent in Writ Petition (M/S) No. 124 of 2010. The first respondent in this Special Appeal filed Writ Petition (M/S) No. 124 of 2010 seeking a writ of certiorari to quash the orders passed by the Ombudsman (Electricity), Dehradun dated 16.09.2009 and 21.01.2010; and a writ of certiorari to quash Regulation 4(1)(a) of the UERC (Appointment & Functioning of Ombudsman) Regulations,

2004, to the extent it vested in the Ombudsman the power to receive representations against any order of the Forum, and Regulation 5 of the said Regulations as being ultra vires and inconsistent with the provisions of the Electricity Act, 2003.

3. Facts, to the limited extent necessary, are that the Executive Engineer, Electricity Distribution Division, Rudrapur passed an order on 18.08.2006 directing recovery of Rs. 31,15,388, from the respondent-writ petitioner, as cost sharing of a pre-existing different independent feeder installed for the appellant herein by the Uttarakhand Power Corporation. The respondent-writ petitioner filed a representation before the Consumer Grievance Redressal Forum Kumaun at Haldwani constituted under Section 42 (5) of the Electricity Act, 2003. The Consumer Forum, by its order dated 04.04.2009, cancelled the demand raised by the Executive Engineer, in his order dated 18.08.2006 for Rs. 31,15,388/-, holding that the Office Memorandum dated 29.01.2006 was not applicable. The Forum further directed that Rs. 13,69,835/- due to the respondent-writ petitioner be adjusted in the next three electricity bills. The appellants herein submitted a representation to the Ombudsman (Electricity) under Section 42(6) of the Electricity Act, 2003; and the Ombudsman, by his order dated 16.09.2009, set aside the order passed by the Forum and, in effect, restored the order passed by the Executive Engineer.

4. Aggrieved thereby, the first respondent in this Special Appeal filed Writ Petition (M/S) No. 124 of 2010 and the learned Single Judge, in his order in Writ Petition (M/S) No. 124 of 2010 dated 11.12.2017, followed the order passed in Writ Petition (M/S) No. 1859 of 2007 dated 29.08.2008, and held that the Office Memorandum dated 29.01.2006 would be applicable. The learned Single Judge further held that the Ombudsman had also relied on O.M. dated 29.01.2006 while passing the impugned order; there was no merit in the writ petition; and the same was liable to be dismissed. The learned Single Judge also directed that the amount, lying deposited in the Registry of the Court, be released in favour of the second respondent i.e. the Power Corporation which, in turn, should pay the same to the appellant herein. The first respondent-writ petitioner was directed to deposit the outstanding amount before the second respondent within eight weeks; and the second respondent (Uttarakhand Power Corporation) was directed to transmit the same to the first respondent immediately after its receipt.

5. Curiously it is the appellant (first respondent in Writ Petition (M/S) No. 124 of 2010), and not the petitioner therein, who filed MCC No. 627 of 2019 seeking a direction to the respondent-writ petitioner to deposit the outstanding dues accruing till date of Rs. 1,76,04,295/- to the second respondent (Uttarakhand Power Corporation Limited) to enable the Uttarakhand Power Corporation Limited to remit the same to the appellant-applicant in compliance with the order passed in Writ Petition (M/S) No. 124 of 2010; and for a direction to the High Court Registry to release Rs. 7 lacs to the account of the second respondent i.e. Uttarakhand Power Corporation Limited in compliance with the order in Writ

Petition (M/S) No. 124 of 2010 dated 11.12.2017.

6. In the order under appeal, (i.e. the order in MCC No. 627 of 2019 in Writ Petition (M/S) No. 124 of 2010 dated 08.07.2019), the learned Single Judge observed that the issue raised in the writ petition was whether the cost of the independent feeder, which was erected primarily on the cost paid by the first respondent (the appellant herein), should be mandatorily shared by the other consumers who were also getting electricity through this feeder; the respondent-writ petitioner, who was one of the beneficiaries of the independent feeder, had challenged the demand of the Uttarakhand Power Corporation Limited in the writ petition; the writ petition was dismissed by order dated 11.12.2017, and they were directed to pay the cost to the Uttarakhand Power Corporation Limited, which would be refunded to the appellant herein; when the order dated 11.12.2017 was passed, both the appellant and the Uttarakhand Power Corporation Limited were represented by their counsel; in case the order had not been complied, and there was a deliberate and willful disobedience of the Court's order dated 11.12.2017 at the hands of the petitioner, the appellant's remedy was to file a contempt petition within the period of limitation; without filing a contempt petition, they had filed an application under Section 151 CPC for redressal of their grievance; and the prayer sought by the appellant-applicant could not be granted.

7. What the appellant-applicant has sought, in MCC No. 627 of 2019, is to direct the respondent -writ petitioner to deposit the amount, not only as directed by the learned Single Judge in his order dated 11.12.2017, but even for the period thereafter i.e. till 15.08.2018.

8. As noted hereinabove, the jurisdiction of this Court, under Article 226 of the Constitution of India, was invoked not by the appellant but by the respondent-writ petitioner; and the said writ petition was dismissed by order dated 11.12.2017. In a writ petition filed not by them, but by the respondent-writ petitioner, the appellant herein has, by way of an Application under Section 151 CPC, sought a direction against the respondent-writ petitioner. Such an application is wholly misconceived. Any grievance which the appellant-applicant may have, regarding the failure of the respondent-writ petitioner to deposit the amount in terms of the order passed by the Executive Engineer, as affirmed by the Ombudsman, can only be agitated in independent legal proceeding instituted by them, and not in a writ petition filed by the respondent-writ petitioner.

9. Since the application as filed is itself not maintainable, the learned Single Judge was justified in dismissing the said application albeit on another ground.

10. Suffice it, while refusing to entertain the appeal preferred against such an order, to make it clear that neither the order passed by the learned Single Judge, nor the order now passed by us, shall disable the appellant-applicant from availing such other legal remedies as are available to them in law, and by initiating independent legal proceedings seeking appropriate directions as has

been sought in the application filed before the learned Single Judge.

11. Subject to the aforesaid observations, the Special Appeal fails and is, accordingly, dismissed. No costs.

12. Since we are dismissing the Special Appeal itself, we see no reason to defer hearing of this Special Appeal to enable the appellant to rectify the deficiencies pointed out by the Registry.