

(2007) 08 MAD CK 0221

In the Madras High Court

Case No : Writ Petition No. 6199 of 2007 and MP. No's. 1 and 2 of 2007

The Superintending Engineer

APPELLANT

Vs

Meenakshmi Udyog India (P) Ltd. and Tamilnadu Electricity

RESPONDENT

Date of Decision : 14-08-2007

Acts Referred:

Consumer Grievance Redressal Forum and Electricity Ombudsman Regulation, 2004 —
Regulation 16, 17, 18, 19, 2
Electricity Act, 2003 — Section 111, 42, 42(5), 42(6), 42(7)

Citation : (2007) 08 MAD CK 0221

Hon'ble Judges : Chitra Venkataraman, J

Bench : Single Bench

Advocate : P.S. Raman, A.A.G, for the Appellant; Muthukumaraswamy for K. Seshadri, for the Respondent

Final Decision : Dismissed

Judgement

Chitra Venkataraman, J.—This writ petition is filed by the Superintending Engineer, Dharmapuri Electricity Distribution Circle, Dharmapuri challenging the order passed by the second respondent viz., Tamilnadu Electricity Ombudsman, Chennai dated 7.11.2006 in O.P. No. 13 of 2006, quash the same and direct the first respondent to levy consumption charges under Tariff III from the date of service connection till the date of first meter reading.

2. The first respondent herein is having a mini-steel plant having two electric induction furnaces involved in the manufacture of steel ingots and applied for a service connection. The service connection with a sanctioned load of 5500 KVA at 33 KV was established and the supply was availed on 10.6.2006 for industrial purpose. It is stated by the first respondent herein that it is a high tension consumption service connection under the petitioner. The first respondent started the industrial activity by using electric furnace for the production of steel ingots on the same day. On 28.6.2005 the petitioner issued bill for consumption of electricity charges for the month of June 2005 under HT Tariff-III cover instead of

HT Tariff-I. The first respondent represented to the petitioner to charge them under HT tariff-I as specified under tariff order dated 15.3.2003 by the Tamil Nadu Electricity Regulatory Commission constituted u/s 82 of the Electricity Act 2003. After considering the request, the petitioner revised the first bill for the month of June 2005 to HT tariff I and adjusted the excess amount collected in July 2005 consumption bill. However, the Superintending Engineer reversed his decision by letter dated 5.12.2005 demanding the first respondent to pay June 2005 consumption charges being first bill under HT tariff III, that the initial bill has to be billed only under tariff III, even though the industrial activities started well before the first reading was recorded. The first respondent appealed to the Superintending Engineer on 13.12.2005, he being the Chairman of the Consumer Grievance Redressal Forum constituted u/s 42(5) of the Electricity Act, 2003. The first respondent contended that the revision of the bill from HT tariff I to HT tariff III was against tariff notification issued by the Regulatory Commission. Further the demand made after a lapse of six months was in violation of principle of natural justice. The first respondent alleged that it was not given an opportunity to lodge their objections. Considering the fact that no relief was granted, on 14.6.2006, the first respondent was directed to pay the amount refunded on the ground that the first respondent did not attend the enquiry on 14.6.2006, but the notice of which according to the respondent was received only on 16.6.2006.

3. Aggrieved by the orders of the petitioner herein, the first respondent filed an appeal before the second respondent Ombudsman created u/s 42(6) of the Electricity Act 2003. The petitioner also filed its written statement stating that HT tariff I is applicable only from the date of first meter reading after commencement of the industrial activities and not from the date of service connection. The petitioner also submitted that the first respondent was charged under HT tariff III from the date of service connection and change of tariff from HT III to I was done only from the date of first meter reading since commencement of the industrial activity could be verified physically only by the Field Officers. It was also stated that in the tariff order of TNERC/Supply Code and tariff G.Os. issued by the Government of Tamil Nadu there was no specific direction with regard to the date from which corresponding HT-I tariff is to be adopted for HT service connections. Defending the action to charge HT tariff-III, the petitioner prayed for rejection of the complaint.

4. By order dated 7.11.2006, the Ombudsman constituted under the Act passed orders restoring the earlier decision dated 13.7.2005 wherein the first respondent's request was revised for the month of June 2005 from HT tariff-I as against the original demand under HT tariff-III. The second respondent directed the implementation of the order within a period of 30 days.

5. Aggrieved by this order, the Superintending Engineer Dharmapuri has preferred this writ petition challenging the same on the ground that the order passed is contrary to the provisions of the Act. The petitioner also alleged that the Ombudsman exceeded the powers vested in him considering the fact that the

subject matter of controversy is not one falling within the purview of his jurisdiction and that Ombudsman does not have a statutory authority to issue a direction to the Tamilnadu Electricity Board as an adjudicatory body. Placing reliance on Sub-section (7) and (8) of Section 42 of the Act, the petitioner contended that Ombudsman is not empowered to give any specific direction. The petitioner also raised a contention that Ombudsman could not be considered as an Adjudicating Officer for the purpose of Section 111 of the Electricity Act, 2003.

6. Learned Additional Advocate General appearing for the petitioner referring to the role of Ombudsman, invited my attention to the constitution of Ombudsman u/s 42(6) and (7) of the Act. He submitted that the role of Ombudsman at best could be viewed only as a conciliatory board to settle the grievance of the consumer and wherever reconciliation is not possible, the Ombudsman should relegate the parties to take recourse to the adjudicatory mechanism. He also referred to Rule 18 of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004 as well as Rule 20 and submitted that where the complaint is not settled by an agreement under Clause 20, Ombudsman has to send a report to the Commission, beyond that, there is no question of passing an award under Rule 22(3). He further submitted that there are no provisions to challenge the order of the Ombudsman exceeding its jurisdiction and hence, the present writ petition.

7. The learned senior Counsel Mr. Muthukumaraswamy, appearing for the first respondent took me through Section 42(5), (6) and (7) of the Electricity Act, 2003 and emphasised the role of the Ombudsman, "to settle the grievance as may be specified by the State Commission". Considering the scope on the above said provisions read with Regulations 16, the adjudicatory role of Ombudsman to pass an award cannot be negated. He also pointed out that the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004 passed under notification No. TNERC/CGR & EO/6/1 dated 8th January 2004 has not been questioned by the petitioner herein to challenge the award passed by the Ombudsman. He emphasised the fact that considering the scope of Rules 19, 20 and 22 of the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004, the adjudicatory role of the Ombudsman necessarily involves passing an order on merits would bind the petitioner herein. For a proper analysis of the contentions taken in this matter we need to advert our attention to the provisions relating to the constitution of the Ombudsman under the Act and the authority and the jurisdiction of the Electricity Ombudsman given under the Regulation. Section 42(6) and (7) of the Electricity Act, 2003 reads as follows:

(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.

(7) The Ombudsman shall settle the grievance of the consumer within such time

and in such manner as may be specified by the State Commission.

8. The above sections shows that a consumer aggrieved of the non redressal of the grievance before the forum constituted under Sub-section (5) of Section 42, may make representation to the Ombudsman designated by the State Commission. In pursuance of the power thus reserved, the Tamil Nadu Electricity Regulatory Commission framed the Regulations for Consumer Grievance Redressal Forum and Electricity Ombudsman, 2004 by its notification No. TNERC/ CGR & EO/6/1 dated 8th January 2004. Part I of the Regulations contained definitions, Part II deals with the constitution of the Forum for Redressal of consumer grievance. A person, having a grievance of the nature as defined in Clause 2(f) of the Regulations, can petition the Forum for the Redressal of consumer grievance. Under Sub-regulation 10 of Regulation 7, the decision of the forum have to be implemented by the licensee within the time frame specified in the order and report compliance to the Forum within 5 days of implementation of the order. Where there is non implementation, the Forum has an authority to hold that the consumer is entitled to the compensation and shall state that the consumer if aggrieved, can accept the compensation as prescribed by the Commission in the relevant Regulations. Any person aggrieved by the order of Forum may prefer an appeal to the Electricity Ombudsman within a period of 30 days from the date of the order. Regulation 8 dealing with appeal provisions, prescribes the power of the Electricity Ombudsman to entertain the appeal beyond 30 days on sufficient cause shown in not filing the same within a period. It also prescribes the appellant to deposit 25% of the amount as ordered by the forum as a condition for entertaining the appeal.

9. Part III of the Regulations deals with the appointment, tenure, powers and jurisdiction of the Ombudsman. Regulation 16 deals with powers and duties of the Electricity Ombudsman. Regulation 17 deals with procedure for filing a complaint. Regulation 18 deals with rejection of the complaint and Regulation 20 deals with the settlement of complaint by agreement. Regulation 21 provides for proceeding with the matter on the basis of the pleadings of the parties. Thereupon, the Ombudsman passes an award as per Regulation 22.

10. A reading of Regulation 16 shows that the Electricity Ombudsman has the jurisdiction to receive the appeal petitions against the order of the Consumer Grievance Redressal Forum and consider such complaints and facilitate their satisfaction or settlement by agreement, through conciliation and mediation between a licensee and the aggrieved party or by passing an award in accordance with the Act and Rules or Regulations made thereunder.

11. A reading of Regulation 18 shows that where a complaint is received, the Electricity Ombudsman may reject the same if its frivolous, vexatious and mala fide or where it is not pursued by the complainant with reasonable diligence, or prima facie, there is no loss or damage or inconvenience caused to the complainant.

12. Regulation 19 shows that the Ombudsman has an authority to require the licensee to furnish certified copies of any document relating to the subject matter of the complaint and where the licensee fails, without any sufficient cause, the Ombudsman may draw adverse inference. Under Sub-clause (2) of Regulation 19, the Ombudsman shall maintain confidentiality of the document and shall not disclose any information therein except with the consent of the person furnishing such information. The Regulation also recognises the authority of the Ombudsman to disclose the information to the extent considered by him to be reasonably required to comply with the principles of natural justice and fair play. Primary endeavor of the Ombudsman is to bring about the settlement of the complaint by agreement between the parties. The Ombudsman is entitled to have his own procedure for the purpose of facilitating the settlement of the complaint, where the efforts end in a successful settlement of the grievance by mutual agreement, the same is recorded and signed by parties. Where the settlement effort fails, then the Electricity Ombudsman proceeds to decide the matter on the basis of the pleadings of both the parties and hear them in person or through their representative of their choice. After hearing the parties, the Ombudsman passes an award within a period of three months from the date of receipt of the complaint. The award stipulates the period within which the licensee has to comply and intimate the same to the Electricity Ombudsman. A reading of this provisions in Regulations 21 and 22 shows that the authority exercised by the Ombudsman is more in the nature of an appellate authority deciding on the grievance projected against the order of Consumer Grievance Redressal Forum. It may be seen that under the regulations as framed u/s 42 of the Electricity Act 2003, the first effort is for resolution of the grievance created Consumer Grievance Redressal Forum by way of complaint. The definition of the "complaint" as given in 2(f) of the Regulation also includes a case of charging of a price in excess of the price fixed by the Commission for consumption of electricity and allied services. For all practical purposes it is an appeal to the resolution of a dispute. The further proceedings before the Ombudsman is by way of adjudication of disputes raised over the orders passed by the redressal forum. While recognising the need for resolution through settlement by recourse to conciliation, the Regulation also reserved the power in the Ombudsman to pass an award on the merits of the claim. Regulation 8 is specific enough to prescribe the appeal provisions to go before the Electricity Ombudsman questioning the order passed by the forum. The subject matter of dispute thus specified before the Ombudsman. Regulation 20 and 21 operate on different fields one by way of settlement through agreement on conciliation and the other by adjudicating on the claims.

13. Going by the plain words used in the Regulations, it is difficult to accept the plea of the petitioner herein that the award passed under Regulation 22(3) cannot be in the nature of adjudication of rival claims. Learned Additional Advocate General submitted that even as per the constitution of the ombudsman, his authority is to resolve the dispute and not to adjudicate upon

the dispute. Hence, where the parties did not agree for a settlement, necessarily the parties must be directed to have their grievance settled before the adjudicatory mechanism. He submitted that the proper course for the first respondent would be to prefer an appeal before the Appellate Tribunal u/s 111 of the Electricity Act, 2003. Consequently, any order passed by the Ombudsman acting like an authority under adversarial system of resolution of disputes is totally without jurisdiction.

14. I do not find any justification to accept the plea of the petitioner herein. A reading of the Regulations does not give room for any such understanding that the Ombudsman functions only as mediating personality as an alternative system for resolution of disputes. Although by very nature, normally the Ombudsman acts more as an administrative authority to settle the grievances in any set up of an institution, to understand the role of the Electricity Ombudsman, one has to look at the scheme of Regulations given under the notification dated 8.1.2004. Regulation 2(k) defines the Electricity Ombudsman as an authority to be appointed and designated by the Commission under Sub-section (6) of Section 42 of the Act, with whom a representation may be made in accordance with Sub-clause 17(1) of these Regulations. When the extent of power and jurisdiction is guided by these Regulations, it is not possible to accept the submission of the petitioner herein, that he merely attempts on a settlement between the parties through conciliation failing which the ombudsman loses his authority to proceed further in this matter. A reading of Regulation 21 shows that the provisions contemplate the hearing of the parties as in an arbitration proceedings, and to pass an award, ultimately on the merits of the claims. The Ombudsman is a statutory arbitrator in the matter of adjudicating on the rival claims, where settlement through conciliation fails. Whatever might have been the position of Ombudsman under any other provisions of other enactments, in terms of Regulation 20, it is not possible to view that a complaint goes out of the purview of the Ombudsman when once the conciliation fails. Given the scope of Regulations 20 and 21, the jurisdiction under Regulation 21 springs into action when proceedings under Regulation 20 fails unless the parties themselves choose to come out of the jurisdiction either on account of their inaction, failure to comply with the prescriptions in the Regulation 8 or consciously take a decision to work out the remedies otherwise. In the background of the provisions thus available, I do not find any ground to accept the plea of the petitioner as to the scope of the authority of the Ombudsman.

15. Learned Additional Advocate General submitted that all that is contemplated u/s 42(7) is only to settle the grievance and not to adjudicate on the differences. He further submitted that the provisions of Sub-sections (5), (6) and (7) are without prejudice to the right which the consumer may have, apart from the rights conferred upon him by those Regulations. Hence, he submitted that going by what is contemplated in the above provisions, where there is no reconciliation of the differences, it is not open to the Ombudsman to pass an award as though it is an adjudicatory authority.

16. As already noted, given the scope of jurisdiction under Regulation 20 to adjudicate and to pass an award under Regulation 21, the Electricity Ombudsman is entrusted with an authority to pass a speaking order with a detailed reasoning on a fair consideration of the facts and circumstances of the claim. Regulation 22(1) reads as follows:

Where the complaint is not settled by agreement under Clause 20, the Electricity Ombudsman shall pass a speaking order with detailed reasoning that he thinks fair in the facts and circumstances of a claim.

17. In the background of the said provisions, it is not possible to accept the contention that the Electricity Ombudsman loses his authority once efforts failed under Regulation 20. Consequently, I uphold the jurisdiction of the Ombudsman under Regulation 21 to pass an award as an Arbitrator would do under normal circumstance. Since no arguments were advanced on the merits of the award passed, I confirm the order impugned in the proceedings. Consequently, the writ petition fails and the same is dismissed. No costs. Consequently, connected MP are closed.