

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 147 of 2014

Dated : 03rd March, 2015

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

In the Matter of:

Chhattisgarh State Power Distribution Co. Ltd.

Vidyut Seva Bhavan, Danganiya,

Raipur – 492 013,

Chhattisgarh

Through its Additional Chief Engineer (RAC) ... **Appellant(s)/Petitioner**

Versus

1. Chhattisgarh State Electricity Regulatory Commission

Irrigation Colony, Shanti Nagar

Raipur – 492 001

Chhattisgarh

Through its Secretary

2. Electricity Consumer Grievances Redressal

Forum, C-5, CSEB Campus Gudhiyari,

Raipur, Chhattisgarh – 492 013

Through its Chairperson

3. M/s Varun Steel Pvt. Ltd.

Plot No. 5, 6, 7 Bhanpuri Industrial Estate,

Raipur, Chhattisgarh – 492 001

Through its Managing Director

... Respondent(s)

Counsel for the Appellant(s) : Ms. Suparna Srivastava,
Ms. Nishtha Sikroria

Counsel for the Respondent(s) : Mr. C. K. Rai for Resp.No.1

Mr. Vikas Aggarwal, Mr. Karan
Arora, Mr. Ranjan Kumar Rai,
Mr. Karan Camba, Mr. Sunil Mittal,
for Resp.No.3

J U D G M E N T

PER HON'BLE JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER

This appeal under section 111 of the Electricity Act, 2003 has been filed by the appellant Chhattisgarh State Power Distribution Co. Ltd. (distribution licensee) against the order dated 07.04.2014 (hereinafter referred to as the impugned order) passed by the Chhattisgarh State Electricity Regulatory Commission (in short State Commission) in Petition No. 1 of 2014 (M), M/s Chhattisgarh State Power Distribution Co. Ltd. Vs. Electricity Consumer Grievance Redressal Forum, Raipur dismissing the Petition filed by the appellant petitioner under Section 142 of the Electricity Act, 2003 for violation of provision of Section 10.12 of the Chhattisgarh State Electricity Supply Code, 2011 and Section 25 of the CSERC (Redressal of Grievances of Consumers) Regulations 2011.

2. The appellant petitioner is a distribution licenses in the State of Chhattisgarh and a successor company of the erstwhile Chhattisgarh State Electricity Board (Electricity Board). The respondent No.1 is the State Regulatory Commission empowered to discharge functions under the Electricity Act, 2003. The respondent No.2 (ECGRF) is constituted under the provisions of 42 (5) of the Electricity Act, 2003 read with the provisions of Chapter 2 of CSERC (Redressal of Grievances of Consumers) Regulations

2011. The respondent No.3 M/s Varun Steel Pvt. Ltd. is a High Tension consumer of the appellant with a contract demand of 300 KVA at 33 KV voltage of supply since 17.05.2005

3. The relevant facts of the case are as under:

- i) that on 02.04.2005, the respondent No.3 (M/s Varun Steel Pvt. Ltd.) signed an agreement for high tension supply with the erstwhile Electricity Board and became HT consumer of the appellant with contract demand of 300 KVA at 33 KV of voltage supply.
- ii) that prior to the commencement of supply, the reading meter pertaining to consumption of electricity was installed in the factory premises of respondent No.3 (HT consumer). Due to bona fide and inadvertent mistake, the Potential Transformer Ratio (PTR) of energy meter was shown as 33 KV / 110 V instead of 11 KV / 110 V due to which the overall multiplying factor calculation came to 50 instead of 150. This led to under billing of energy consumption by the appellant on respondent No.3 (HT consumer). In other words, due to bona fide and inadvertent aforesaid mistake of the appellant, the overall multiplying factor calculation came to be 50 whereas it ought to have been 150.
- iii) that on 10.10.2008, during the inspection of installation of respondent No.3 by officers of the appellant / distribution

licensee it was noticed, that the multiplying factor for computation of actual consumption of power and energy was being incorrectly applied as 50 in place of 150 since the date of connection, which was leading to less billing of consumption. Further, a demand in the sum of Rs.69,09,657/- was raised by the appellant upon the respondent No.3 (HT consumer) for difference of actual consumption for the period from May 2005 to September, 2008 vide letter dated 23.10.2008 and added in the bill for November, 2008.

- iv) that the respondent No.3 (HT consumer) disputed the above demand raised upon it by the appellant and replied through letter dated 04.11.2008 stating that the meter reading at its premises was carried out every month by the staff of the appellant to record the actual consumption of energy and based on such meter reading reports, regular monthly bills were raised by the appellant on respondent No.3, which were duly discharged by the respondent No.3. The alleged mistake in applying wrong multiplying factor was unilateral mistake on the part of the appellant for which no claim in law could be lodged by way of restitution. Further the appellant was barred by the principle of promissory estoppels and change of position from demanding the additional amount after a lapse of over three years. Thus respondent No.3 requested the

appellant to withdraw its revised bill raised upon it by the appellant.

- v) that the respondent No.3 did not pay the above demand raised upon by it by the appellant and as such, in accordance with Section 56 of the Electricity Act 2003 read with Clause 26 of the HT agreement, the appellant was constrained to issue notice of disconnection dated 10.11.2008 to respondent No.3 stating if the said amount was not paid in full within 15 days, the supply of electricity to the premises of respondent No.3 would be discontinued. The respondent No.3, in reply dated 13.11.2008 to the disconnection notice informed the appellant that the notice of disconnection had been issued in excess of jurisdiction by creating false liability and as such it was null and void.
- vi) that being aggrieved by the above additional demand and subsequent disconnection notice, the respondent No.3 filed a Petition before the Hon'ble High Court of Chhattisgarh at Raipur (being Writ Petition (C) No. 6602 of 2008) seeking a direction to the appellant not to give any effect to the impugned memo dated 23.10.2008, the impugned revised bill dated Nil for the period from 16th May, 2005 to 30th September, 2008 and the impugned notice of disconnection dated 10th November, 2008 and / or to forbid the appellant from disconnecting the supply of electricity to respondent No.3 (Varun Steel)

vii) that the Hon'ble High Court after hearing the parties dismissed the Writ Petition (C) No. 6602 of 2008 titled as Varun Steel & Anr. Vs. The Chhattisgarh State Power Distribution Co. Ltd. & Anr. by the Hon'ble single Judge vide order dated 05th November, 2012, the relevant part of which is reproduced as under :

“16. In the case on hand, the petitioners seek quashing of the impugned memo dated 23.10.2008 (Annexure P/1), the revised bills (Annexure P/2) and the notice of disconnection dated 10.11.2008 (Annexure P/3), on the ground that on account of change of position, this writ petition is maintainable. This is also the contention of the petitioners that principles of estoppel would be applicable as once the bill has been raised and it was paid by the petitioners, the subsequent revised bills with enhanced amount cannot be raised. The petitioners have further not produced any material in support of its contention that the issue of promissory estoppel would be applicable as the same cannot be applied, contrary to the statutory provisions of law. To establish promissory estoppel, the petitioners have to establish cogent and sound foundation which has not been done in the instant case, by producing substantive materials. The petitioners were consuming the electricity, as submitted by learned counsel for the respondents, for which proper bills could not be raised earlier.”

17. As a sequel, the writ petition is dismissed as not maintainable, reserving liberty to the petitioners to approach the appropriate statutory forum, as the petition involves disputed question of facts and the same can be settled by the forum, created under the Regulations, as aforesaid.

18. There shall be no order as to costs.”

- viii) That on 22.11.2012, the appellant informed the respondent No.3 that as per Clause 10.12 of the Chhattisgarh State Electricity Supply Code, 201, surcharge @ 1.5% per month for current amount and 1.5% for the balance amount was accruing monthly. Thus respondent No.3, M/s Varun Steel Pvt. Ltd. was conveyed vide letter dated 22.11.2012 by the appellant that the outstanding amount of the supplementary bill had been grossed up by surcharge as per Supply Code and became Rs.1,48,33,048/- and requested for payment of the same. The amount of Rs.11,51,610/- was deposited by M/s Varun Steel Pvt. Ltd. on 17.12.2012 as first instalment according to the order of the Hon'ble High Court dated 23.11.2012, out of which Rs.86,370/- were adjusted against the surcharge.
- ix) That the appellant feeling aggrieved by the foresaid disconnection notice of electricity, filed Write Appeal No. 1148 of 2012 titled as Varun Steel & Anr. Vs. Chhattisgarh State

Power Distribution Co. Ltd. & Anr., challenging the order dated 05th November, 2012 of the learned single Judge of the Hon'ble High Court which was heard by a Division Bench of the Hon'ble High Court and the said Writ Appeal was decided by the Division Bench of the Hon'ble High Court vide judgment dated 23rd November, 2012, the relevant part of which is reproduced as under :

“5. The writ petition was dismissed on 05.11.2012 on the ground that the Petitioner can raise its grievance before the Redressal forum of consumers’ grievances constituted under the Chhattisgarh State Electricity Regulatory Commission (redressal of Grievances of Consumers) Regulations, 2007 (the Regulations). Hence, the present writ appeal.

6. We have heard counsel for the parties.

7. There is no dispute that after dismissal of the writ petition the electricity connection of the Appellant has been disconnected. Before this Court, the parties agreed that:

- The Appellant will deposit the entire disputed amount in six monthly instalments;*
- The electric connection of the Appellant will be connected after payment of the first instalment. The first instalment is to be paid by 31st December, 2012 and subsequent*

monthly instalments are to be paid on the interval of one month;

- *This deposit of amount will be subject to the decision taken by the Forum. It will also be open to the parties to raise such grievance as permissible under the law.*

8. *Apart from above, the Appellant will also pay the regular bills with the multiplying factor of 150. We make it clear in case of default it will be open to the contesting respondent to take proceeding for disconnection.*

9. *With aforesaid observations, the writ appeal is disposed of.”*

- x) that according to the liberty given by Hon’ble High Court in the aforesaid order dated 23.11.2012, the respondent No.3 (Varun Steel) filed an application before the respondent No.2 ECGRF (Forum) on 29.12.2012 seeking a fresh adjudication of dispute for determination of actual amount payable as per applicable laws, the application was registered as Case No. 101/Raipur/2012, in which the respondent No.3 also filed an application for restraining the appellant from recovery of the surcharge.
- xi) that the respondent No.2 Forum, vide interim order dated 18.02.2013, held that, in the opinion of the Forum, as the

respondent No.3 has been making the payment of instalments of disputed amount in compliance of the order dated 23.11.2012 of the Hon'ble High Court and further in the present circumstances, the surcharge is not payable. If the respondent No.3 does not pay the amount of instalments regularly and within the time period, then the appellant is entitled for taking surcharge on the instalment of amount for the month of November 2012 from the respondent No.3. The Forum further observed that as the payment of amount of instalment of previous month, December, 2012 of the disputed amount has been made in time, as per the order of the Hon'ble High Court, the surcharge is not payable on it and thus the surcharge taken on the instalment of the month of December 2012 be adjusted in the bill of next month.

- xii) that the respondent No.2, ECGRF (Forum) vide a very long, a very detailed and well discussed order dated 24th June, 2013 disposed of the complaint / application of respondent No.3 made under Regulation 4(1)(e) (VIII) and Regulation 4 (1)(e)(ix) read with Regulation 16 of the CSERC (Redressal of Grievances of Consumers) Regulation 2011 in Case No. 101/Raipur/2012 made the following observations:

“8. *Opinion of the Forum:*

- (i) *That due to finding error in meter detail in its first testing report by the non-applicants, difference in meter multiplier*

has come, due to this erroneous multiplier, the electricity bill issued earlier to the applicant firm has also been issued erroneously. On coming to notice during the meter checking / testing on 18.10.2008 by the non-applicants, as per correct multiplier 150, the electricity bills issued to the applicant earlier from May 2005 to September 2008 have been corrected and issued additional bill of the amount of difference on 23.10.2008.

- (ii) That the applicant has made mention of Section 56(2) of the Electricity Act, 2010, according to which, the non-applicant cannot recovery any amount after the period of 2 years, unless such an amount has not been shown regularly as arrears of charges.*
- (iii) That in this regard the judgment of High Court of Delhi in Case No. WP (C) no. 8647 of 2007 passed on 19.04.2011, in which the amount of revised bill issued after wrong multiplier, appeal had been filed for setting side under Section 56(2) of the Electricity Act, 2003, regarding which order has been passed that “it was held that the revised bill amount would become due when the revised bill is raised and Section 56(2) of the Act would not come in way of recovery of the amount under the revised bill.*

According to the above said order, after the erroneous multiplier, issued correct multiplier, the amount of bill

issued cannot be accepted under Section 56(2) of the Electricity Act, 2003, therefore by mentioned section 56(2) of Electricity Act, 2003 by the applicant, the payment of amount cannot be stayed.

As the applicant has consumed excess electricity from may 2005 to September 2008, has paid less amount. Therefore the amount of difference be paid by the applicant.

9 *Order passed*

10 *Case Decided*

11 *If the applicant/ Consumer is not satisfied with his order, then can file appeal before the Electricity Lokpal within 45 days,”*

xiii) that after final order dated 24th June, 2013 the respondent No.2 Forum the appellant petitioner filed Petition No. 1 of 2014 under section 142 of the Electricity Act 2003 for violation of provisions under Section 10.12 of the Chhattisgarh State Electricity Supply Code 2011 and Section 25 of CSERC (Redressal of Grievances of Consumers) Regulations 2011 stating that the interim order dated 18.02.2013 and final order dated 24th June, 2013 passed by respondent No.2, ECGRF, the respondent No.2 has deliberately violated the said

provisions of the Chhattisgarh State Electricity Supply Code 2011 and Section 25 of the CERC (Redressal of Grievances of Consumers) Regulation 2011 by deciding that the appellant petitioner namely CSPDCL cannot recover the amount of surcharge payable as per rates approved by the State Commission in its relevant tariff orders and further the respondent No.2 ECGRF is liable for punishment under Section 142 of the Electricity Act, 2003. In the instant petition, being No. 1 of 2014, the appellant / petitioner has prayed the State Commission to consider as under :

‘Award the punishment to the ECGRF, Raipur as much as possible under section 142 of the Act and pass such other orders as it may deem fit to meet the ends of justice.’

- xiv) that the grievance of the appellant petitioner in the instant appeal is since the respondent No.2 ECGRF (Forum) has deliberately violated the said provisions of State Electricity Supply Code 2011 and also the provisions of Section 25 of the CERC (Redressal of Grievances of Consumers) Regulations 2011 holding that the appellant / petitioner cannot recover the amount of surcharge payable as per the rates approved by the State Commission in its relevant tariff orders, the said Forum should be awarded punishment under Section 142 of the Electricity Act, 2003.

4. Thus we confine only to consider whether the respondent No.2 ECGRF while passing the interim order dated 18.02.2013 and final order dated 24th June, 2013 has deliberately violated the said provisions in holding that the appellant / petitioner cannot recover the amount of surcharge.
5. This aforesaid petition, being No.1 of 2014, has been dismissed by the learned State Commission by the impugned order dated 07.04.2014 as stated above.
6. Before we come to our conclusion we require to test the findings recorded by the learned State Commission in the impugned order dated 07.04.2014. We quote the relevant part of the impugned order as under:

“18. According to the Hon’ble High Court’s order, the dispute, regarding the supplementary bill, had to be decided by the ECGRF and the parties had given liberty to raise their grievances, as permissible under law, before the ECGRF. The direction given by the Hon’ble High Court, to deposit the disputed amount seems to be given for the amount, which was shown in the writ petition, as disputed amount.

19. As per High Court’s directions, M/s Varun Steel had deposited the entire amount in dispute, in instalments and challenged the supplementary bill before the ECGRF and after hearing M/s Varun Steel and the CSPDCL, i.e. the

petitioner in this petition, the ECGRF had passed final order, on 24.06.2013 and thus the supplementary bill raised by the petitioner had got finality on 24.06.2013, implied meaning.

- 20. If we go through the provisions from 9.26 of the State Supply Code, 2011, which are related to supplementary bill, we can observe implied meaning of the provision is that every consumer has right to impugn the supplementary bill before the appropriate authorities, who are under obligation to decide it in a reasonable way. After getting finality, the amount of supplementary bill can be added in subsequent regular bills and thereafter, in case of non-payment, the surcharge can be imposed.*
- 21. In this case, the supplementary bill became final, after the order dated 24.06.2013 of the ECGRF.*
- 22. The argument of the petitioner, that, the ECGRF has not only ignored to address the issue of surcharge payable according to the provisions of section 10.12 of the Supply Code, 2011, but also violated the directions under section 25 of the CSERC (Redressal of grievances of consumers) Regulations 2011, is not sustainable. In our view, the respondent ECGRF has made no mistake in deciding the matter vide order dated 24.06.2013.*

23. *Hence, we found no ground to take action under section 142 of the Electricity Act, 2003 against the respondent ECGRF. Further according to the provisions of section 168 of the Electricity Act, 2003, no action can be taken under section 142 of the Electricity Act, 2003, against the ECGRF, for anything done or in good faith purporting to be done, under the Electricity Act or Rules or Regulations made thereunder.*
24. *Accordingly, we dismiss the petition, filed by the petitioner, against the respondent, at the stage of admission only, since, there is no merit in the petition.”*
7. We have heard Ms. Suparna Srivastava learned counsel for the appellant and Mr. C. K. Rai and Mr. Vikas Aggarwal learned counsel for the respondents, gone through the written submissions submitted by both the parties and the material available on record.
- 8. The only issue arising for our consideration in this appeal is whether the respondent No.2 ECGRF (Forum) has deliberately violated the provisions of Section 10.12 of the Chhattisgarh State Electricity Supply Code 2011 and Section 25 of the CSERC (Redressal of Grievances of Consumers) Regulations 2011 and is liable for punishment for non-compliance thereon as provided under section 142 of the Electricity Act 2003?**

9. On this issue, the following submissions have been made on behalf of the appellant:
- 9.1 that the findings, recorded in the impugned order by the State Commission, are contrary to the settled law regarding interest as a just compensation for deprivation of use of money and the appellant's right of recovery of additional demand raised on respondent No.3, vide the supplementary bill.
- 9.2 that prior to commencement of supply under the said agreement for high tension supply of electricity, the reading meter pertaining to consumption of electricity was installed in the premises of respondent No.3. Due to bona fide and inadvertent mistake of the appellant, right from commencement of supply from 17th May, 2005, there was under billing on respondent No.3 for the power availed by it from appellant. Due to the bona fide mistake of the appellant, Potential Transformer Ratio (PTR) of the energy meter was shown as 33 KV/110 V instead of 11 KV/110 V due to which overall multiplying factor came to 50 in place of 150. Applying incorrect multiplying factor the energy consumption computation showed less consumption than the actual.
- 9.3 that the above error in billing was detected during an inspection of the installation of respondent No.3 by officers of appellant on 10.10.2008. Since the energy consumed by respondent No.3 had

been more than the energy billed by the appellant, the actual energy consumption computation was carried out for the entire period, since the date of connection, by applying the correct multiplying factor of 150. For the difference of actual consumption for the said period i.e. from May 2005 to September 2008, a supplementary bill was raised on respondent No.3 under the cover letter dated 23.10.2008.

- 9.4 that it emerged from the order dated 23.11.2012 of the Division Bench of the Hon'ble High Court that respondent No.3 accepted before the Hon'ble Court that the correct multiplying factor for arriving at correct electricity consumption was 150, meaning thereby that the respondent No.3 had knowledge that there, in fact, had been an under billing on respondent No.3 for the electricity supplied to it under the HT agreement.
- 9.5 that the issue of payment of surcharge on the unpaid amount under the supplementary bill was not an issue before the Hon'ble High Court, the controversy was non-payment of demand raised under the supplementary bill and the consequent disconnection of supply to the premises of respondent No.3.
- 9.6 that the Hon'ble High Court did not adjudicate on the merits of the demand raised under the supplementary bill and relegated the issue to be decided by respondent No.2 / Forum where parties were given liberty to raise grievances as permissible under law.

- 9.7 that in the Petition filed by respondent No.3 before the respondent No.2, Forum, the main prayer was for quashing of the demand raised under the supplementary bill, meaning thereby that the respondent No.3 itself admitted that Hon'ble High Court had not adjudicated upon the legality of demand raised under supplementary bill.
- 9.8 that in the said circumstance it could not be construed that by virtue of order dated 23.11.2012 of the Division Bench of Hon'ble High Court, the appellant's claim against respondent No.3 became restricted to the principal amount raised under the supplementary bill and the appellant could not claim interest / surcharge on delayed payment of the said principal amount. The Forum's finding on this aspect was not in consonance with Hon'ble High Court's order dated 23.11.2012.
- 9.9 that the appellant had already lost its claim for payment of surcharge on delayed payment of the amount demanded under the supplementary bill dated 23.10.2008 when it had served disconnection notice on respondent No.3 on 10.11.2008. Thus, the claim for surcharge had been raised on respondent No.3 in November, 2008 itself.
- 9.10 that under Clause 10.2 of Supply Code, the mechanism of payment of bills, temporary and permanent connection of supply has been

laid down. Clause 10.12 provides that all consumers who default in payment of bill amount are liable to pay delayed payment surcharge on the amount outstanding at rates as approved by Commission from time to time in tariff order. Thus the payment of surcharge on delayed payment of demand raised under a supplementary bill is mandatory in law as provided in the said Supply Code.

9.11 that respondent No.3 proceeded to file an application, being Case No. 101/Raipur/2012 before the respondent No.2 Forum on 29.12.2012 seeking afresh adjudication of dispute for determination of actual amount payable as per applicable law. The respondent No.3, in pursuance to the order dated 23.11.2012 of the Hon'ble High Court, deposited the first instalment of the principal amount in the sum of Rs.11,51,610/- with the appellant on 17.12.2012. Thus electricity supply to the premises of respondent No.3 was accordingly resumed. Thereafter, applying the provisions of Supply Code, a sum of Rs.86,370/- was adjusted against the surcharge and reflected as such at the time of payment of second instalment. Respondent No.1 then felt aggrieved by the said recovery of surcharge and filed an objection application before respondent No.2, Forum for restraining the appellant from recovery of surcharge.

9.12 that respondent No.2, Forum vide interim order dated 18.02.2013 had illegally not only stayed recovery of surcharge over outstanding amount but also directed the appellant to refund the surcharge

already recovered in December 2012 by way of adjustment in next instalment of outstanding payments. This interim order of the Forum was not only illegal but was also based on complete misinterpretation of the order dated 23.11.2012 of the Division Bench of Hon'ble High Court.

9.13 that the Forum was required to examine the issue in the light of applicable laws and determine the actual payment amount by respondent No.3. However, the Forum did not follow applicable law for recovery of surcharge as prescribed under Clause 10.12 of Supply Code and wrongly directed the appellant to refund the surcharge already recovered in December, 2012.

9.14 that the impugned order of the State Commission denying the appellant the delayed payment surcharge on the amount remaining unpaid under the supplementary bill is contrary to settled principles of law of restitution. In doing so, the State Commission has acted in violation of its own Regulations namely Clause 10.12 of Supply Code, that consumers who default in payment of bill amount are mandatorily liable to pay delayed surcharge on the amount outstanding at the rates approved by State Commission from time to time in tariff orders.

9.15 that as per settled law, interest or surcharge is a just compensation for deprivation of use of money. Thus the respondent No.3 was bound to compensate the appellant by paying surcharge / interest

over the unpaid amount of the revised bill, as held by Hon'ble Supreme Court in *Central Bank of India Vs. Ravindra & Ors. (2002) (1) SCC 367* which defines interest as the compensation fixed by law or allowed by law for the use of detention of money or for loss of money by one who is entitled to its use.

10. Per contra, the following submissions have been made on behalf of the respondents:

10.1 that on 24.06.2013, the respondent No.2, Forum passed the final order wherein the Forum held that since the consumer had consumed excess electricity from May, 2005 to September 2008 and paid less amount, therefore, the respondent No.3 is liable to pay differential amount to the appellant.

10.2 that the appellant, in the impugned petition filed before the State Commission on 17.01.2014 had sought relief of awarding punishment to ECGRF, Raipur (Forum) as much as possible under Section 142 of the Electricity Act 2003 as the said Forum had deliberately violated the provisions of Section 10.12 of the State Supply Code 2011 and Regulation 25 of the CSERC (Redressal of Grievance of Consumers) Regulations 2011.

10.3 that the learned State Commission, vide impugned order, dated 07.04.2014 has dismissed the impugned petition, being No.1 of 2014, at the admission stage itself observing that the provisions of

Section 9.26 of the State Supply Code 2011 relating to supplementary bill provide that every consumer has right to impugn the supplementary bill before the appropriate authorities namely the ECGRF which is the Forum prescribed under section 42(5) of the Electricity Act, 2003 for adjudicating upon the consumers bill. After getting finality, the amount of supplementary bill can be added in subsequent regular bills and only thereafter in case of non payment, the surcharge can be imposed. In this case the supplementary bill raised by the appellant upon respondent No.3 became final after the final order dated 24th June, 2013 of the Forum, hence no surcharge is payable in the facts of the instant case.

10.4 that the contention of the appellant, that the Forum had not only ignored to address the issue of the surcharge amount payable, according to the provisions of Section 10.12 of the Supply Code 2011 but also violated the provisions provided under section 25 of the CSERC (Redressal of Grievance of Consumers) Regulation 2011, is not sustainable.

10.5 that the learned State Commission has correctly observed in the impugned order that the respondent No.2 Forum had made no mistake in deciding the said matter and has rightly held that there is no ground to take any action under section 142 of the Electricity Act 2003 against the respondent Forum and further since according to the provisions of Section 168 of the Electricity Act 2003 no action

can be taken against the respondent Forum under section 142 of the Electricity Act 2003 for anything done or in good faith purporting to be done under the Electricity Act or Rules or Regulations.

10.6 that the State Commission has, in the impugned order, given detailed reasoning and correctly and legally relied upon the order dated 23.11.2012 passed by the Division Bench of the Hon'ble Chhattisgarh High Court and the applicable Regulations and provisions of Electricity Act 2003.

10.7 that the combined reading of Supply Code Regulations 2011 makes it clear that in case of supplementary bill, the consumer has a right to challenge the bill to the authorities and it is only after deciding the consumers objections by the said authorities, the supplementary bill can be added in the bill of next month.

10.8 that the respondent No.3 had deposited the disputed amount in instalments as per the directions of the order dated 23.11.2012 passed by the Division Bench of Hon'ble High Court and challenged the supplementary bill before the respondent No.2, Forum who thereafter disposed of the matter vide order dated 24.06.2013 and it is only on 24th June, 2013 that a supplementary bill raised by the appellant has attained finality and it is only after getting finality, the amount of supplementary bill can be added in subsequent

regular bills and it is then in case of non-payment of the amount of supplementary bill, the surcharge can be imposed.

11 As per respondents, the present appeal is not maintainable for the following reasons:

a) that if the present appeal is against the impugned order dated 07.04.14, this Appellate Tribunal cannot legally be requested by the appellant petitioner to see and decide the correctness of the interim order dated 18.02.2013 and final order dated 24.06.2013 passed by the respondent No.2/Forum. Even otherwise the impugned order was passed on 07.04.2014 and this appeal has been filed on 26.05.2014 with a delay of four days without filing any application for condonation of delay.

b) If the present appeal is against order dated 18.02.2013 and 24.06.2013 passed by respondent No.2/Forum, then the present appeal should have been filed within 45 days of the date of the order as per Section 111(2) of the Electricity Act, 2003. The present appeal is then much beyond the period of 45 days and in that case, there is a delay of 336 days without there being any application for condonation of delay.

12. According to the learned counsel for the respondents this appeal is without merits due to the following reasons:

a) that the appellant itself admitted that the bill raised upon respondent No.3 from 2005-2008 on multiplying factor of 50,

instead of 150, was purely due to the mistake of appellant itself.

- b) the demand through supplementary bill dated 23.10.2008 was raised after a period of three years.
- c) that the Hon'ble Division Bench of the Hon'ble High Court in its order dated 23.11.2012 recorded the settlement/agreement between the appellant and respondent No.3 and disposed of the said writ appeal with the given directions. In compliance of order dated 23.11.2012 of the Hon'ble Division Bench of the High Court, the respondent No.3 deposited the amount due and payable within time granted by the Hon'ble High Court and in that order the respondent No.3 was given liberty to deposit the amount in six monthly instalments and at present there are no outstanding dues against respondent No.3.
- d) that the appellant during hearing in this Tribunal has admitted that the demand of surcharge vide letter dated 22.11.2012 issued by the appellant upon respondent No.3 was neither served upon respondent No.3 nor was filed or shown before the Hon'ble Division Bench, when the appellant was specifically questioned by this Tribunal as to the letter dated 22.11.2012 was produced before the Hon'ble Division Bench when the settlement dated 23.11.2012 between the appellant and the respondent No.3 was recorded by the Hon'ble Division

Bench in its order dated 23.11.2012. Since the said surcharge demand notice dated 22.11.2012 was not placed or shown before the Hon'ble Division Bench when the Hon'ble Division Bench was considering recording the settlement and passed the order dated 23.11.2012 according to the agreement / settlement between the appellant and respondent No.3. This letter of the previous date was concealed and not disclosed to the appellant and produced before the Hon'ble Division Bench the very next day, on 23.11.2012 when the Hon'ble Division Bench passed the order recording the settlement / agreement between the appellant and respondent No.3.

- e) that as per law the surcharge demand was neither due nor payable by respondent No.3, since there was no demand by the appellant as there were no outstanding dues till 23.11.2012. The respondent No.3 as per the order dated 23.11.2012 passed by Hon'ble Division Bench on recording the said agreement has made the payment in six instalments without any fault and therefore there remains no cause of action to the appellant to raise any grievance against the interim order dated 18.02.2013 and final order dated 24.06.2014 passed by respondent No.2/Forum.
- f) that as per the admission of the appellant the surcharge demand letter was issued on 22.11.2012 for the Electricity dues. As per the demand letter dated 22.11.2012 and clause /

section 10.12 of Chhattisgarh State Electricity Supply Code, 2011 (CSESC) there was no outstanding due or pending any surcharge between 23.10.2008 and 22.11.2012. Hence the surcharge demand, raised vide demand letter 22.11.2012 is not maintainable and the provisions of CSESC, 2011 have no applicability in the facts and circumstances of the present case.

13. **Our Conclusion:**

13.1 After hearing and going through the rival contentions made by the contesting parties and testing the impugned order as per the provisions of Section 142 and 168 of Electricity Act 2003, we do not find any force in the contentions of the appellant. Section 142 of the Electricity Act 2003 provides as under:

“142. Punishment for non-compliance of directions by Appropriate Commission.- *In case any complaint is filed before the Appropriate Commission by any person or if that Commission is satisfied that any person has contravened any of the provisions of this Act or the rules or regulations made thereunder, or any direction issued by the Commission, the Appropriate Commission may after giving such person an opportunity of being heard in the matter, by order in writing, direct that, without prejudice to any other penalty to which he may be liable under this Act, such person shall pay, by way of penalty, which shall not exceed one lakh rupees for each*

contravention and in case of a continuing failure with an additional penalty which may extend to six thousand rupees for every day during which the failure continues after contravention of the first such direction.”

13.2 Section 168 of the Electricity Act 2003 lays down as under:

“168. Protection of action taken in good faith.- *No suit, prosecution or other proceeding shall lie against the Appropriate Government or Appellate Tribunal or the Appropriate Commission or any officer of Appropriate Government, or any Member, Officer or other employee of the Appellate Tribunal or any Members, officer or other employees of the Appropriate Commission or the assessing officer or any public servant for anything done or in good faith purporting to be done under this Act or the rules or regulations made thereunder.”*

13.3 We have gone through the State Supply Code 2011 and also the provisions of CSERC (Redressal of Grievance of Consumer) Regulation 2011, we do not find any illegality or perversity in any of the findings recorded by the State Commission in the impugned order dated 07.04.2014.

13.4 By way of filing the impugned petition, being No. 1 of 2014 before the State Commission, the appellant petitioner sought the relief of

awarding punishment to ECGRF (respondent No.2 herein) under Section 142 of the Act for alleged violation of the provisions of Section 10.12 of Chhattisgarh State Electricity Supply Code 2011 and Section 25 of CSERC (Redressal of Grievances of Consumers) Regulation 2011. Thus the learned State Commission was only to decide the factum of any kind of violation of the aforesaid provisions of the said Regulation and Supply Code in deciding the said petition by the learned ECGRF, the respondent No.2 herein.

13.5 The learned counsel for the appellant has tried to assail indirectly the interim order as well as the final order passed by the Forum and has tried to justify the said imposition of surcharge on the so called delayed outstanding payment under the revised supplementary bill raised by the appellant petitioner upon respondent No.3. The State Commission in the impugned petition was not obliged and could not be legally obliged to go into the legality or correctness of the interim order as well as final order passed by respondent No.2 Forum just in the name of surcharge or interest over the alleged non-payment of outstanding amount raised through supplementary bill by the appellant petitioner upon respondent No.3. The whole exercise has been done before this Tribunal also to justify the imposition of said surcharge over the disputed amount raised through supplementary bill which is not permissible in law. The same thing was tried to be done on behalf of the appellant petitioner before the State Commission saying that the interim order as well as final order passed by respondent No.2

Forum were illegal and against the provisions of the relevant regulation and also the provisions of the Electricity Act 2003 which the Commission has rightly rejected by the impugned order.

13.6 Section 42 of the Electricity Act 2003 provides as under:

“42. Duties of distribution licensees and open access. – (1)..

(2) ...

(3) ...

(4) ...

(5) *Every distribution licensee shall, within six months from the appointed date or date of grant of license, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.*

(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 provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections.”

14. We observe that the Hon'ble Division Bench in its order dated 23.11.2012 recorded settlement / agreement between the appellant and respondent No.3 and passed an order on 23.11.2012 giving certain directions and in compliance of the said directions of the Hon'ble Division Bench, the respondent No.3 has deposited the entire disputed amount within six instalments and after the payment of first instalment, the electricity connection of respondent No.3 was connected by the appellant. The appellant has, for the best reasons known to it, deliberately and knowingly concealed and not placed the surcharge demand notice dated 22.11.2012 before the Hon'ble Division Bench of the High Court during hearing when the Hon'ble Division Bench passed the aforesaid order on the very next day particularly on 23.11.2012. If such a surcharge demand letter dated 22.11.2012 was in existence and was issued to the respondent No.3 by the appellant, the said demand letter was neither served upon respondent No.3 during hearing of the Hon'ble Division Bench and nor was placed before the Hon'ble Division Bench on 23.11.2012 when the Hon'ble Division Bench recorded the settlement / agreement between the appellant and respondent No.3 and decided the writ appeal vide order dated 23.11.2012 giving the aforesaid directions. Even

during the hearing by us, the learned counsel for the appellant could not satisfy us about its failure to draw the attention of the Hon'ble Division Bench to the said surcharge demand notice dated 22.11.2012.

15. After going through the material on record carefully and cautiously, we further note that the said surcharge demand was neither due nor payable by respondent No.3 since there was no demand by the appellant regarding surcharge till 23.11.2012. Further, since respondent No.3 as per the agreement recorded, vide order dated 23.11.2012 of the Hon'ble Division Bench, has already made the total payment in six instalments without any default, there remained no cause of action to the appellant to raise any grievances against interim order dated 18.02.2013 and final order dated 24.06.2013 passed by the respondent No.2/Forum, which was an authority authorised under law to adjudicate the said issue. Since under section 10.12 of the Chhattisgarh State Electricity Supply Code, 2011 there were no outstanding dues of any surcharge between 23.10.2008 and 22.11.2012. The surcharge demand notice dated 22.11.2012 for the said electricity dues cannot be said to be a just and legal one. The said surcharge demand vide demand letter dated 22.11.2012 is not legal and justified and the said provisions of Chhattisgarh State Electricity Supply Code 2011 have not applicability in the present case.

16. Though we were not needed to decide the legality of the interim order and final order passed by respondent No.2/Forum, since a lot of arguments were made on behalf of appellant on the said points, we have decided this lis. We may further note that the dispute between the distribution company and individual consumer could only go to the Electricity Consumer Grievance Redressal Forum (ECGRF) as provided under section 42(5) of the Electricity Act 2003. The Hon'ble Division Bench directed the same and the respondent No.2 / Forum had passed the legal, proper and just interim order as well as the final order at the instance of the respondent No.3 / consumer. The appellant petitioner, for the purpose of assailing or finding fault with the interim order as well as final order of the Forum, filed the instant petition being Petition No. 1 of 2014 before the State Commission seeking punishment of the respondent No.2 / Forum under section 142 of the Electricity Act 2003 for violation of provisions of Section 10.12 of the Chhattisgarh State Electricity Supply Code, 2011 and section 25 of CSERC (Redressal of Grievances of Consumers) Regulations 2011. Thus the appellant petitioner, a distribution licensee itself who had established a Forum for Redressal of Consumers Grievances under section 42(5) of the Electricity Act, 2003 had sought the punishment of the Forum itself under section 142 of the Electricity Act 2003 for the violation of the said provisions. The learned State Commission in its impugned order has not found any violation of said provisions and we also do not find any such violation of any provisions as contended by the appellant.

17. We may further add that as per section 42(6) of the Electricity Act 2003, any consumer, who is aggrieved by non redressal of his grievances under sub-section 5 of the section 42 of the Electricity Act, 2003, may make a representation for the redressal of his grievances to an authority known as Ombudsman appointed or designated by the State Commission. The Ombudsman, as per sub-section 7 of Section 42 of the said Act is required to settle grievances of consumers within such time and in such manner as specified by the State Commission.

18. We may further note that the learned respondent No.2 / Forum in its final order dated 24.06.2013, in the end of the order, clearly mentioned that if a consumer is not satisfied with the said order then the consumer can appeal before the electricity Lokpal / Ombudsman within 45 days. Thus the right to appeal has been granted by Section 42(6) of the Electricity Act 2003 to the consumer if the consumer is not satisfied with the order of the Forum and the said appeal would lie before the Ombudsman. Since the appellant petitioner, a distribution licensee, could not legally challenge the interim order as well as the final order of respondent No.2 / Forum, the appellant preferred to file the aforesaid petition being No.1 of 2014 seeking punishment for the Forum under section 142 of the Electricity Act 2003 for violation of the aforesaid provisions of State Supply Code 2011 and Section 25 of the CERC (Redressal of Grievances of Consumers) Regulations 2011.

19. In view of the above discussion, we do not find any illegality or perversity in the impugned order dated 07.04.2014 passed by the learned State Commission and agreeing to the findings recorded in the impugned order, we approve the said findings. This issue is decided against the appellant. The instant appeal has no merits and is liable to be dismissed.

20. **Summary of findings:**

The respondent No. 2, namely, Electricity Consumer Grievances Redressal Forum, set up under the provisions of section 42(5) of the Electricity Act 2003 has not committed any contravention or violation of any provisions of the Electricity Act 2003, the Rules or Regulations. The Forum cannot be punished under section 142 of the Electricity Act 2003 for any alleged non-compliance. An attempt has been made by the appellant petitioner, a distribution licensee itself to seek prosecution of the authority which had been set up by the appellant petitioner itself as required under section 42(5) of the Electricity Act 2003. According to the provisions of Section 168 of the Electricity Act 2003 no suit, prosecution or other proceedings shall lie against the appropriate Government or Appellate Tribunal or appropriate Commission or any officer of appropriate Government or any Member or officer or employee of the Appellate Tribunal or of the appropriate Commission or assessing officer or any public servant for anything done in good

faith or purporting to be done under the Electricity Act 2003 or Rules or Regulations made in thereunder.

21. Consequently this appeal, being Appeal No. 147 of 2014, fails and we hereby dismiss the appeal as the same is without merits. No costs. We hereby affirm the impugned order dated 07.04.2014 passed by the learned State Commission.

Pronounced in the open court on this **03rd day of March, 2015.**

**(T. Munikrishnaiah)
Technical Member**

**(Justice Surendra Kumar)
Judicial Member**



REPORTABLE / ~~NON-REPORTABLE~~