

**IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
AT NEW DELHI
(APPELLATE JURISDICTION)**

**APPEAL NO.103 OF 2015 &
I.A. No. 156 OF 2015**

Dated : 19th July, 2016

**Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member**

In the matter of:-

**P.R. Singh, Executive Engineer,)
Electricity Distribution Division,)
Kasganj - 207401) ... **Appellant****

AND

1. **M/s. Greenland Fruit and)
Vegetables Pvt. Limited)
Mohanpura, Kasganj,)
District Kashiramnagar through)
its Managing Director – 207401.)**
2. **U.P. Electricity Regulatory)
Commission)
Kisan Mandi Bhawan, Gomti)
Nagar, Lucknow -226010) ... **Respondents****

Counsel for the Appellant(s) : Mr. Pradeep Misra
Mr. Manoj Kr. Sharma
Mr. Shashank Pandit

Counsel for the Respondent(s) : Ms. Shashi Lata Chauhan (Rep.)
for **R.1**
Mr. C.K. Rai
Mr. Paramhans for **R.2**

JUDGMENT

PER HON'BLE (SMT.) JUSTICE RANJANA P. DESAI – CHAIRPERSON:

1. The Appellant is the Executive Engineer of the Dakshinanchal Vidyut Vitran Nigam Limited, Electricity Distribution Division, Kasganj, Uttar Pradesh. Respondent No.1 is a company registered under the Companies Act. According to Respondent No.1 it was doing the business of processing fruits and vegetables till its closure and was the consumer of electricity of Dakshinanchal Vidyut Vitran Nigam Limited within the jurisdiction of the division of the Appellant. Respondent No.2 is the Uttar Pradesh Electricity Regulatory Commission (**“the State Commission”**). In this appeal the Appellant has challenged the judgment and order dated 08/01/2015 passed by the State Commission. To understand the controversy involved in this appeal it is necessary to give gist of the facts.

2. On 18/04/2013 Respondent No.1 approached the Consumer Grievance Redressal Forum (“**CGRF**”) by filing Complaint No. 372/2013/Kasg claiming *inter alia* that Electricity Distribution Division Kasganj has raised inflated bills. Respondent No.1 wanted the said bills to be set aside and the bills to be revised after adjusting the amount deposited by it. On 28/09/2013 the CGRF allowed the said complaint. The CGRF set aside the provisional revenue assessment made by the Appellant and the Appellant was directed to make available the revised bills on the basis of meter reading recorded in the meter of Respondent No.1 on 31.07.2011/26.08.2011 after adjusting the amount deposited by Respondent No.1 for payment within 15 days. The operative portion of the order of the CGRF reads as under:

“2. The Provisional Revenue assessment sent by Respondent is set aside and Respondent is directed to make available the revised bill on the basis of meter reading recorded in the meter of consumer on 31.07.2011/26.08.2011 after adjusting the amount deposited by complainant for payment within 15 days.”

3. It is pointed out to us that the Appellant has filed Writ Petition No.61372 of 2013 before the Allahabad High Court challenging the CRGF's order dated 28/09/2013. The Allahabad High Court has on 28/04/2014 passed following order on the said writ petition.

“Issue Notice to Respondent NO.1 returnable within next six weeks. List thereafter along with record of Civil Misc Writ Petition Nos. 61254, 61317 of 2013, 61368 of 2013 and 61257 of 2013.”

Respondent No.1 is Respondent No.2 therein. The said writ petition is still pending adjudication. No other interim order is passed thereon till date.

4. The Appellant did not comply with the order dated 28/09/2013 of the CGRF. Respondent No.1 therefore filed an application under Section 142 of the Electricity Act, 2003 (**“the said Act”**) before the State Commission *inter alia* on the ground that Appellant has not taken any action for implementing the relief granted to Respondent No.1 by CGRF vide its order dated 28/09/2013.

5. Vide its order dated 20/02/2014 the State Commission directed the Appellant to appear before it on the next date of hearing which was scheduled on 29/05/2014. The relevant portion of the said order reads as under:

“....In exercise of powers accorded under section 94(1) of the Electricity Act, 2003 the Commission issued notice dated 23/1/2014 to the respondent to appear before it on 4/2/2014 and substantiate why penal provisions be not enforce against him for non compliance of above Electricity Ombudsman’s order.”

The Respondent was represented by Shri A.S. Rakhra, Advocate.

The Respondent submitted that the writ petition is pending before the Hon’ble High Court. The petitioner submitted that the order has not been complied with for the last six months and no stay order has been granted by the Hon’ble Court.

The Commission directed the Executive Engineer to appear before it along with the stay order of the Hon’ble High Court, if any and apprise the Commission of the latest position of the Court Case.

The next date of the hearing shall be intimated separately.”

Since till date no stay order has been passed by the Allahabad High Court on the Appellant’s writ petition, the Appellant

could not have produced any such order before the State Commission.

6. Admittedly Respondent No.1 had filed Writ C No.23032 of 2014 in the Allahabad High Court challenging the demand notices dated 19/02/2014, 28/02/2014 and 11/03/2014 wherein the Dakshinanchal Vidyut Vitran Nigam had raised a demand of Rs.17,64,887/. The Appellant was Respondent No.2 therein. The said petition was disposed by the Allahabad High Court on 28/04/2014. The relevant observations of the Allahabad High Court are as under:

“We find from the aforesaid circumstances that when the Commission is already seized the complaint petition which is in relation to the order of the Forum and on the other hand the respondent are questioning very jurisdiction of the Forum to pass the order which is under challenge by them in the writ petition, it would be appropriate that the Commission before whom the matter is pending, should consider the dispute raised by the petitioner before it including the issue of the impugned demand notices to the petitioner since it can record its findings on these highly disputed facts between the parties on the basis of record and evidence available before it. For the purpose of grievance of the petitioner with respect to the impugned demand notices, the Commission may consider the eminent danger to which the petitioner is faced of lodging an F.I.R. against him

under the impugned demand notices. In case the petitioner files certified copy of this order before the Commission within a period of one week from today, along with suitable application and raises his grievance against the impugned demand notices, the Commission may pass order in accordance with law keeping in mind the eminent threat of lodging an F.I.R. against the petitioner against the impugned demand notices....”

7. It is clear from the above order of the Allahabad High Court that the Allahabad High Court has noted that the State Commission was seized of the complaint filed by Respondent No.1 about non compliance of the CGRF's order by the Appellant. The Allahabad High Court has further noted that the Appellant was challenging the jurisdiction of the CGRF to pass the order under challenge in the writ petition. The Allahabad High Court has observed that since the State Commission was seized of the complaint it would be appropriate that the State Commission considers the disputes raised by Respondent No.1 before it including the issue of the impugned demand notices issued to Respondent No.1. The Allahabad High Court has further observed that it is the State Commission which can record its findings on the highly

disputed facts between the parties on the basis of the record and evidence available before it. The Allahabad High Court has directed that in case Respondent No.1 files certified copy of its order before the State Commission along with suitable application and raises its grievance against the impugned demand notices the State Commission may pass order in accordance with law.

8. Pursuant to the said order on 03/05/2015 Respondent No.1 filed an application before the State Commission.

Following prayers were made in the application:

“i) Examine the entire record available with the respondent and pass appropriate order including interim protection against the threatened action u/s 138(b) of the Electricity Act,2003.

ii) Impugned demand notices be stayed and respondent be directed to refrain from any coercive method against the petitioner till the matter is decided and grievances of the petitioner is redressed by the Hon’ble Commission.

iii) Consider the grievances presented by the petitioner through this petition on the basis of record and evidence made available before it.”

9. It appears that 29/05/2014 was the date fixed by the State Commission. However, the Appellant did not appear before the State Commission. The Appellant did not comply with the order of the CGRF. The State Commission therefore expressed its displeasure and directed the Appellant to appear before it on 04/06/2014 at 12.00 hrs along with compliance report.

10. On 04/06/2014 the State Commission enquired with the Appellant as to why he was not present during the hearing on 29/05/2014. He replied that he had received the information regarding the hearing only on 28/05/2014 and therefore he was unable to attend the hearing. He submitted his unconditional apology for his behaviour. The State Commission then enquired with the Appellant as to whether he had brought the compliance report and the bill revised as per the direction of the CGRF order dated 28/09/2014. The Appellant replied in the affirmative. The State Commission therefore directed the Appellant to hand over the revised bill to

Respondent No.1. On receiving the revised bill Respondent No.1 requested for two weeks time to file the counter if any. The State Commission granted two weeks time to Respondent No.1 to file the counter.

11. Vide order dated 10/09/2014 the State Commission directed the Appellant to restore the connection within 5 days of deposit of 50% of the bill amount as per the amended bill handed over to Respondent No.1 during the last hearing. The matter was remanded to CGRF with a direction to decide it within 10 days. A further direction was passed that the Appellant should reconnect the supply within next 24 hours thereafter. The State Commission in the said order clarified that it had accepted the unconditional apology of the Appellant, however, the Appellant's conduct shall be looked into by the CGRF. The State Commission observed that if there is deliberate effort to harass Respondent No.1 the CGRF will take punitive action. Operative portion of the said order reads as under:

“.....During the hearing the petitioner submitted that no notice for extension of load has been received by her and all the notices produced by the respondent are fake. The Petitioner further requested to direct the respondent to restore the electricity connection. The respondent opposed it, saying electricity connection should be restored only after the payment of the dues.

The Commission directed the respondents to restore the connection within 5 days of the deposit of 50% of the bill amount as per the amended bill handed over to the petitioner during the last hearing.

The case is remanded back to CGRF, Aligarh and the petitioner may approach CGRF, Aligarh regarding the bill amount. The Pleadings may be made afresh regarding the bill. The CGRF, Aligarh shall decide the case within ten days and the petitioner will deposit the amended bill amount in next five days and in this case, the respondent shall reconnect the supply within next twenty four hours thereafter. Although the Commission has accepted the unconditional apology of the Executive Engineer however his conduct shall be looked into by CGRF while examining the bills submitted by him and if there has been a deliberate effort to harass the petitioner, the CGRF may taken punitive action....”

12. On 24/09/2014 Respondent No.1 deposited 50% amount i.e. Rs.3,54,000/- of the impugned bill and approached the Appellant for connection of supply as per the orders of the State Commission. However, vide its letter dated 27/09/2014

the Appellant instead of restoring the connection advised Respondent No.1 to approach the CGRF. On 03/11/2014 the CGRF pursuant to the remand order passed by the State Commission dealt with the matter and concluded *inter alia* that the Appellant has in violation of the order of the State Commission dated 10/09/2014 refused to restore the electricity connection to Respondent No.1. For reconnection the Appellant has imposed a new condition to deposit the total amount of Rs.21,89,344/-. The CGRF observed that the Appellant had committed contempt of the State Commission's order dated 10/09/2014 and has caused harassment to Respondent No.1. The CGRF recommended to the State Commission that action under Section 142 of the said Act be taken against the Appellant and Chief Engineer(Distribution) of Aligarh Division, Aligarh be directed to issue necessary administrative proceedings against all the officers/employees who are responsible for smooth electricity supply to the premises of Respondent No.1. We may quote relevant portion of the said order:

“ (D) Analysis

On the bill of account submitted before the Hon’ble Commission on 4/6/2014, the Hon’ble Commission has passed the following order:-

The Commission directed the respondents to restore the connection within five days of deposit of 50% of the bill amount as per the amended bill handed over to the petitioner during the last hearing.

In compliance of the aforesaid order dated 10/9/2014 of the Hon’ble Commission, the Complainant has deposited 50% of the bill amount of Rs.7,08,144/- on 24/9/14 in the Respondent’s office, but the Respondent is violation of the said order of the Hon’ble Commission has not restored the connection till the hearing before the Forum on 20/10/2014 for which the complainant has submitted its representation (Document No.23 to 25) before the Hon’ble Commission.

Respondent for reconnection of Complainant’s connection has imposed a new condition to deposit the total amount of Rs.21,89,344/- including the amount of Rs.7,08,144/-(amended amount Rs.6,37,895/-) in the bill of account handed over to the complainant on 4/6/2014 before the Commission.

The action of the respondent in one hand is contempt of the order of Hon’ble Commission dated 10/9/14 and on the other hand is an example of harassment proceedings of the Complainant.

The contempt of the orders of the Hon’ble Commission is not in the jurisdiction of the Forum and in this regard the Complainant has submitted

representation before the Hon'ble Commission on which the Hon'ble Commission is competent to take action at its level.

(B) Conclusion/Recommendations

In the light of aforesaid issues, it is clear that Respondent intentionally did harassment in respect of bills sent to Complainant for different period.

Forum is not competent for any action against Respondent under Section 142 of the Electricity Act, 2003 therefore Forum recommends to Hon'ble Commission that action under Section 142 be taken against the Respondent and Chief Engineer(Distribution) Aligarh Division, Aligarh be directed to issue necessary administrative proceedings against all officers/employees who remained responsible for smooth electric supply in the Complainant's premises, installation of meter and its maintenance, meter reading, issuance of bill and revenue recovery from the date of issuance of the connection to Complainant(8/2008) till the registration of complaint before the Forum i.e. 9/10/14 so that there will not be any harassment of all other consumers (including Complainant) in Electricity Distribution Division, Kasganj because Respondent has filed a case before the Hon'ble High Court against the Complainant and also against the orders passed in Complaint Nos. 384/2013/Kasg, 385/2013/Kasg, 357/2013/Kasg, and 377/2013/Kasg before Hon'ble High Court of Allahabad being Writ Petition No.61368,61257,61317 and 61254 of 2013 meaning thereby that instead of resolving the problem of consumers, Respondent is indulging them in legal proceedings and mental harassment."

13. After going through the order of the CGRF dated 03/11/2014, the State Commission has in the impugned order concluded that the Appellant is in the habit of disobeying the orders of superior authorities. The State Commission has observed therein that it had directed the Appellant on 10/09/2014 to restore the electric connection of Respondent No.1 within five days of deposit of 50% of the bill amount as per the amended bill handed over to Respondent No.1. This order was not complied with. The State Commission has further observed that the Appellant had tendered apology to save himself and after tendering apology the Appellant again resorted to causing harassment to the consumer. In view of this the State Commission imposed penalty of Rs.50,000/- on the Appellant for not complying with its order dated 10/09/2014 and directed that this penalty shall be deducted from his salary and entry shall be made in his personal records. The amount of penalty was directed to be deposited with the State Commission. The Appellant has assailed these directions.

14. We have heard Mr. Misra, learned counsel for the Appellant. We have carefully perused the written submissions filed by Mr. Misra. Mr. Misra contended that on 10/09/2014 the State Commission directed the Appellant to restore the connection within five days of deposit of 50% of the bill amount. By the same order the State Commission remanded the matter to the CGRF and directed it to decide it within 10 days. The State Commission further directed Respondent No.1 to deposit the amount in next five days and the Appellant was directed to reconnect supply within next 24 hours thereafter. Mr.Misra submitted that in view this inconsistent timeline there is utter confusion in the order as regards the direction to restore the connection. In the written submissions it is submitted that there were two directions regarding restoration of electricity in the same order. The Appellant understood the order to mean that after decision of the Forum, revised bill has to be issued and on depositing the same the electricity has to be restored.

15. Undoubtedly the State Commission has not worded the direction to restore the connection accurately. The State Commission directed that the restoration be done within five days of deposit of 50% of the bill amount. By the same order the State Commission while remanding the matter to the CGRF directed Respondent No.1 to approach the CGRF. The CGRF was directed to decide the case within ten days. Respondent No.1 was directed to deposit the amended bill amount in the next five days and the Appellant was directed to reconnect the supply within next twenty four hours thereafter. It appears that the second direction issued by the State Commission was intended to emphasise the urgency and to conclude the entire exercise in a short span of time. The State Commission wanted the connection to be restored at the earliest. But in that effort some ambiguity crept in the order. The State Commission should have been more careful in drafting the order. But the Appellant cannot take advantage of the ambiguity. The Appellant is not a layman. He clearly knew that he was expected to restore the electricity. But he took advantage of the unhappily worded order of the State

Commission. Though Respondent No.1 deposited 50% of the bill amount on 24/09/2014 the Appellant did not restore the connection. Drawing support from the second direction the Appellant by his letter dated 27/09/2014 directed Respondent No.1 to approach the CGRF and indicated that the CGRF will take decision on Respondent No.1's representation within ten days and then Respondent No.1 will have to deposit the complete electricity dues within next five days and thereafter the Electricity Department is expected to restore electricity connection.

16. In our opinion the Appellant's conduct lacks bonafides. If he had any doubt as to when he was required to restore the connection he should have sought clarification from the State Commission. He did not do so. While we do feel that the State Commission's order ought to have been more accurate and precise we are also not happy with the Appellant's conduct. Moreover the Appellant did not remain present before the CGRF and the State Commission on the appointed dates. This conduct shows that he has scant regard for authorities. He

showed disrespect to the CGRF and the State Commission. Obedience and respect to the orders of the authorities was expected from a senior officer like the Appellant. After Respondent No.1 deposited 50% of the bill amount instead of restoring the connection the Appellant imposed a new condition on Respondent No.1 to deposit the total amount of Rs.21,89,344/- including the amount of Rs.7,08,144/- (50% of the bill amount deposited by Respondent No.1). Even assuming that the Appellant has a good case on merits that does not permit him to remain absent during proceedings and show disrespect to the orders of the authorities. The Appellant should have first restored the connection and then argued his case. It bears repetition to state that if the Appellant had any doubt about the State Commission's direction he should have sought clarification from it. Instead of that he behaved in a manner unbecoming of a senior officer.

17. Mr. Misra further contended that Respondent No.1 has used electricity after temporary disconnection. A chart purportedly substantiating this contention is incorporated in

the written submissions of the Appellant. Mr. Misra submitted that the Appellant has filed writ petition in the Allahabad High Court challenging CGRF's order dated 28/09/2013 quashing the assessment bill as well as notice under Section 5 of the UP Government Electrical Undertakings (Recovery of Dues) Act, 1958. Mr. Misra submitted that all actions were taken by the Appellant to protect the interest of the licensee. The Appellant has no personal grouse against Respondent No.1. Therefore the observation of the State Commission that the writ petitions were filed by the Appellant to harass the consumers is wrong. Mr. Misra also contended that the State Commission has no jurisdiction to direct entry to be made in the Annual Confidential Report of the Appellant. Mr. Misra also pointed out that Respondent No.1 is not using electricity inspite of reconnection.

18. At the outset it must be made clear that we are dealing here with the conduct of the Appellant and the propriety of passing such stringent order against the Appellant for his conduct by the State Commission. We are not considering the

merits of either the Appellant's case or Respondent No.1's case. It will be open for both of them to agitate their respective cases on merits in the pending proceedings. We therefore do not want to express any opinion on Respondent No.1's case *inter alia* of inflated bills and the chart produced by the Appellant to show that Respondent No.1 used electricity after temporary disconnection and his case *inter alia* that the bills are not inflated. It is for the State Commission to look into this aspect. As earlier noted by us even the Allahabad High Court has in its order dated 28/04/2014 directed the State Commission to record its findings on the highly disputed facts between the parties on the basis of record and evidence available before it.

19. By order dated 02/03/2016 we had directed the State Commission to submit a report as to whether Respondent No.1's food processing unit at Mohanpur, Kasganj, U.P. is in operation. The State Commission has submitted its report dated 15/03/2016. It states that the said unit is not in

operation. Whereas it is the case of Respondent No.1 that the said unit had to be closed because of the Appellant's conduct of not restoring the connection, the Appellant's case is that Respondent No.1 is not using electricity inspite of restoration of connection. We do not want to go into this disputed aspect. The State Commission may deal with this issue if it is raised before it by the parties in the pending proceedings.

20. So far as the writ petition filed by the Appellant is concerned we have noted that the Allahabad High Court has merely issued a notice thereon as far back as on 18/11/2013. No interim order is passed in favour of the Appellant. On the writ petition filed by Respondent No.1 however the Allahabad High Court has passed a detailed order on 28/04/2014 directing the State Commission to deal with all the issues raised by the parties. Therefore mere pendency of a writ petition filed by the Appellant does not help him.

21. Now the question is whether the operative part of the impugned order deserves to be maintained as it is or should

be modified. Having considered the entire matter in its proper perspective we are of the opinion that the order directing that penalty of Rs.50,000/- be imposed on the Appellant and that amount should be deducted from his salary should be maintained. However, in the peculiar facts of this case we are not inclined to maintain the order directing that an entry be made in this regard in the personal record of the Appellant. We set aside that direction.

22. In the view that we have taken we dismiss the appeal. Considering the nature of the dispute and the fact that the matter is hanging fire for a long time we direct the State Commission to dispose of the pending complaint within four months from the date of receipt of this judgment by it. We however make it clear that we have not expressed any opinion on the merits of the case of the Appellant and Respondent No.1 as regards the alleged inflated bills and related issues. If such issues are raised they shall be dealt with by the State Commission independently and in accordance with law.

23. Pronounced in the Open Court on this **19th day of July,**
2016.

(I.J. Kapoor)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

✓ **REPORTABLE / ~~NON-REPORTABLE~~**