AIR 2014 Ori 174 : (2014) 118 CLT 928 : (2014) 2 ILR 981 : (2014) 2 OLR 1108 Suppl. : (2014) 2 OLR 1108

Orissa High Court

Case No: W.P.(C) No. 15866 of 2007

Executive Engineer,Electrical,Khurda Electrical Division		APPELLANT
	Vs	
Ombudsman,Central Zone		RESPONDENT

Date of Decision: Aug. 19, 2014

Acts Referred:
Constitution of India, 1950 â€" Article 12, 300A#Electricity Act, 2003 â€" Section 177(2)(c), 55, 55(1), 73, 73(e)

Citation: AIR 2014 Ori 174 : (2014) 118 CLT 928 : (2014) 2 ILR 981 : (2014) 2 OLR 1108 Suppl. : (2014) 2 OLR 1108

Hon'ble Judges: B.K. Patel, J

Bench: Single Bench

Final Decision: Allowed

Judgement

B.K. Patel, J.
In this writ application petitioner, representing CESU, has made prayer to quash the award dated 5.11.2007 passed by the

opposite party no. 1-Ombudsman, Central Zone in Consumer Representation Case No. OM(CZ)-60 of 2007 at Annexure-12 by which order

dated 22.8.2007 passed by the Grievance Redressal Forum(GRF), CESU, Khurda in Complaint Case No. 31 of 2007(KED) at Annexure-8 was

set aside and it was directed, inter alia, that energy bills of the opposite party no. 2 for the period of seven months from November, 2005 to Mays, 2006 as well as for the period of four months from March, 2007 to June, 2007 raised on the basis of check meter readings while the main meter was in working order be revised and recast on the basis of consumption recorded in the main meter during that period; that bills if prepared during any other period on the basis of check meter readings while the main meter was in working order be revised in the same manner that excess payment made by the opposite party no. 2 for the periods stated above be adjusted in the future energy bills; and that all future energy bills be raised on the basis of readings recorded in the main meter while the same is in working order.

2. Opposite party no. 2 is a large scale industry which was provided with power supply initially for a contract demand of 2500 KVA and subsequently contract demand was enhanced to 4500 KVA. For the purpose of billing main meter was installed within the factory premises at the time of initial power supply and billing continued on the basis of consumption recorded in the main meter. Subsequently, a check meter was installed by the petitioner at the sub-station end of the power supply. On 14.2.2005 the main meter was found defective for which energy bills were raised from the month of March, 2005 onwards on the basis of check meter readings for 15 months till May, 2006 although the defective main meter was replaced on 24.10.2005 by another meter with Multiplying Factor (MF) of 1000. Since check meter was found defective on 19.6.2006 energy bills from the month of June, 2006 was raised on the basis of average consumption and from the month of July, 2006 to the month of February, 2007 bills were raised on the basis of consumption recorded in the main meter. Defective check meter was replaced on 28.2.2007 with a new meter of MF 12000 and energy bills for the period from the month of March, 2007 to the month of July, 2007 were raised on the basis of consumption recorded in the check meter.

3. Opposite party no. 2 filed Complaint Case No. 31 of 2007(KED) before the GRF contending that opposite party no. 2 paid charges as per

energy bills raised on the basis of check meter readings when the main meter was in working order on protest and requested the petitioner to

rectify/revise the energy bills on the basis of main meter readings. But no action was taken by the petitioner to rectify/revise the energy bills. It

appears that during the pendency of the complaint before the GRF, petitioner revised the energy bills for the months of March, 2007 and April,

2007 earlier prepared on the basis of main meter readings and recast on the basis of consumption in the check meter readings. It also appears that

main meter became defective on 7.7.2007 and the same was replaced on 22.10.2007.

4. Petitioner filed objection against the complaint contending mainly that as the check meter was of MF 12000 whereas main meter was of MF

1000 and there was wide variation in consumption figures between the main meter and the check meter, the petitioner has committed no illegality in

raising the energy bills on the basis of readings in the check meter which had a higher MF ensuring more accuracy.

5. The GRF accepted petitioner''s contentions and upheld the energy bills raised on the basis of check meter readings mainly in view of its finding

that there was wide variations in electricity consumption recorded in the main meter and the check meter, and that the check meter having higher

MF of 12000 measured consumption more accurately than the main meter having MF of 1000.

6. Assailing the order passed by the GRF, opposite party no. 2 filed Consumer Representation Case No. OM(CZ)-60 of 2007. Considering rival

submissions the Ombudsman observed that the only issue which needs to be examined and decided is whether the licensee was entitled to raise

energy bills based on consumptions recorded in the check meter while the main meter was functioning properly and answered the question in the

negative upon reference to provisions under Regulation 57 of 2004 Code as well as provisions under Regulations 2(1)(i) and 3(2) of the Central

Electricity (Installation and Operation of meters) Regulation 2006 (for short, the CEA Regulations). Accordingly, the impugned award containing directions as referred to above was passed.

7. Shri B.K. Nayak, learned counsel for the petitioner raised two contentions in course of his argument to assail the impugned award. Firstly, it

was contended that the Ombudsman illegally issued direction for revision/recasting of energy bills for the entire periods when the same was

prepared on the basis of check meter readings when the main meter was working in order in view of limited prayer made by the petitioner in his

complaint before the GRF for revision/recasting of energy bills for the months of May and June, 2007 only. Second contention raised on behalf of

the petitioner was that there was no illegality on the part of the licensee to raise bills on the basis of check meter readings as there was wide

variation of 5,00,000 units in a month between the main meter reading and the check meter reading. It was argued that such wide variation

indicated that the main meter with MF of 1000 was defective and the check meter having MF of 12000 measured the consumptions more

accurately.

8. In reply, Shri B. Jena, learned counsel appearing for opposite party no. 2 supported the impugned award. It was argued that no notice was ever

served on the consumer as required under Regulation 57 of 2004 Code for installation of check meter. It is not disputed that the Meter Relay

Testing (MRT) squad frequently inspected the main meter and found the same to be O.K. No doubt from time to time main meter as well as check

meter were damaged and replaced. Even during pendency of complaint before the GRF energy bill were revised and raised on the basis of check

meter readings while the main meter was functioning. Not only in the complaint petition the opposite party no. 2 made prayer no. (ii) to pass order

directing the licensee to raise electricity bills as per readings of the main meter installed within the premises of the complainant as long as the said

meter is found O.K. but also in the rejoinder affidavit before the GRF at paragraphs 4 and 5 specific prayer was made to direct the licensee to raise energy bills for the period from March, 2007 to June, 2007 as per readings recorded in the main meter. Placing reliance on the decision of

this Court in Ajay Kumar Agrawal -vs- OSFC & Ors: AIR 2007 Orissa 37 it was argued that licensee having been entrusted with the task of

discharging preeminently governmental function of supply of power cannot act at its caprice, whims or fancy nor can it, taking advantage of its

monopoly status, exact an amount which it cannot do under any provision of law in violation of Article 12 of the Constitution. That would amount

to undue enrichment by exacting sum from a consumer who is under no legal obligation to pay the same. Such action would be in violation also of

mandate under Article 300A of the Constitution of India by depriving a person''s property without authority of law. It was further argued that the

CEA Regulations have been framed in exercise of powers conferred under the Electricity Act, 2003 (for short ''the Act''), a Central Act. The CEA

Regulations lay down specific provisions for installation and use of meters. Under the said Regulations main meter is to be primarily used for

accounting and billing of electricity. Regulation 2(1)(i) specifically provides that check meter can be used for accounting and billing of electricity in

case of failure of main meter. The 2004 Code does not lay down elaborate provisions for installation or use of meters. On the other hand,

Regulation 115 of the 2004 Code specifically provides that provisions of the CEA Regulations shall be applicable with regard to installation and

operation of meters and in case of any inconsistency between the CEA Regulations and the 2004 Code, the CEA Regulations will prevail.

Regulation 57 of the 2004 Code mandates 24 hours notice to the consumer for installation of check meter in case there is suspicion of the

accuracy of the main meter. In the present case, there being no dispute that the energy bills have been prepared on the basis of check meter

readings when the main meter was neither suspected nor found to be defective, without any notice of installation of check meter to the consumer,

there is no infirmity in the impugned award directing revision/recasting of the energy bills.

9. From the rival averments and submissions, it is apparent that the substantial issue which arises for determination in this writ petition is as to

whether the petitioner distribution licensee-CESU is entitled to raise energy bills based on consumptions recorded in the check meter while the

main meter was functioning properly. In other words, the question is as to whether the petitioner can ignore the main meter readings as long as

performance of the main meter is found satisfactory/OK. It is not disputed that in course of periodical checkings done by MRT squad, status and

performance of the main meter was found OK/satisfactory. However, a check meter was installed by the licensee at the substation end of the

power supply.

10. Regulation 57 of the 2004 Code provides for manner and modality and circumstances under which a check meter can be installed. Said

Regulation reads as follows:

The consumer may, after giving notice to the engineer, get a check meter installed at his own expense in his incoming line by the side of the

licensee''s meter. In case of difference in readings between the licensee''s meter and consumer''s check meter, the readings of the licensee''s meter

shall be taken to be conclusive. The consumer may demand the licensee''s meter to be tested by the Electrical Inspector whose decision shall be

final and binding on the consumer and the licensee. The consumer shall be required to pay a fee for such testing. If the meter is found incorrect after

testing, the fee paid by the consumer shall be refunded by the licensee by way of adjustment in the next bill. If the meter is found correct after

testing, the fee paid by the consumer shall be forfeited by the licensee.

Provided that even if the meter is supplied either by licensee or by consumer, if the Engineer suspects about the accuracy of the meter, the Engineer

may by giving 24 hour notice to the consumer install a check meter tested and duly sealed in Government laboratory either by side of the original

meter within the premises of the consumer or at such other places as may be decided by the Engineer to test the accuracy of the meter and in that case the reading records in the check meter can be treated as of the original meter for the purpose of ascertaining the consumption made by the

consumer, which is conclusive.

The above provision lays down the circumstances under which licensee can install a check meter to test the accuracy of the main meter supplied

either by the licensee or by the consumer in case the accuracy of the main meter is suspected. The concerned engineer is required to give 24 hours

notice to the consumer. There being no such notice to the consumer in the present case, petitioner-licensee cannot avail the benefit of the provision

for ascertaining the consumptions made by the consumer on the basis of the check meter in view of want of notice as mandate under proviso to

Regulation 57.

11. Moreover, Regulation 115 of the 2004 Code provides that the CEA Regulations with regard to installation and operation of meters shall have

overriding effect over the 2004 Code. Regulation 115 of the 2004 Code reads as follows:

Application of CEA Regulations-

The provisions of the Regulations framed by Central Electricity Authority (CEA) u/s 55(1), 73(e) and 177(2)(c) of the Electricity Act, 2003 as

amended from time to time, shall be applicable with regard to installation and operation of meters. In case there is any inconsistency between CEA

Regulations and this Code, the former shall prevail.

12. The CEA Regulations have been framed by the Central Electricity Authority in exercise of powers conferred under the Electricity Act 2003.

The Act lays down specific provisions for installation and use of meters by generation, transmission and distribution companies. Section 55 of the

Act reads as follows:

Use, etc., of meters.- (1) No licensee shall supply electricity, after the expiry of two years from the appointed date, except through installation of a

correct meter in accordance with the regulations to be made in this behalf by the Authority:

Provided that the licensee may require the consumer to give him security for the price of a meter and enter into an agreement for the hire thereof,

unless the consumer elects to purchase a meter:

Provided further that the State Commission may, by notification, extend the said period of two years for a class or classes of persons or for such

area as may be specified in that notification.

(2) For proper accounting and audit in the generation, transmission and distribution or trading of electricity, the Authority may direct the installation

of meters by a generating company or licensee at such stages of generation, transmission or distribution or trading of electricity and at such

locations or generation, transmission or distribution or trading, as it may deem necessary.

(3) If a person makes default in complying with the provisions contained in this section or the regulations made under sub-section (1), the

Appropriate Commission may make such order as it thinks fir for requiring the default to be made good by the generating company or licensee or

by any officers of a company or other association or any other person who is responsible for its default.

Thus, Sub-section (1) of Section 55 of the Act postulates framing of regulations with regard to use, etc. of meters by the Central Electricity

Authority.

13. As per Clause (e) of Section 73 of the Act, functions and duties of the Central Electricity Authority include specification of conditions for

installation of meters for transmission and supply of electricity. Section 177(2)(c) of the Act confers powers on the Central Electricity Authority to

make regulations in the matters of the installation and operation of meters u/s 55 of the Act.

14. The CEA Regulations framed in accordance with above referred provisions provide for the meanings of check meter and main meter. As per

Regulation 2(1)(i) "Check Meter" means a meter which shall be connected to the same core of the Current Transformer (CT) and Voltage

Transformer (VT) to which main meter is connected and shall be used for accounting and billing of electricity in case of failure of main meter and

according to Regulation 2(1)(o) ''Main Meter'' means a meter which would primarily be used for accounting and billing of electricity.

15. In view of the above provisions, there is no scope for using a check meter for accounting and billing of electricity unless there is failure of main

meter, or so long as main meter is functioning properly. Main meter has to be used for accounting and billing of electricity.

16. In the present case, check meter was installed even though the main meter was found satisfactory/OK by the officers of the licensee. The

opposite party no. 2 was not given notice as required under Regulation 57 of the 2004 Code for installation of said check meter. It is also on

record that main meter as well as check meter were replaced from time to time when defects were detected. In such circumstances, there is no

scope to sustain the plea of the petitioner that the licensee was entitled to use the check meter for raising energy bills simply on the ground that

check meter having higher MF of 12000 ensured more accuracy in reading the consumption. Petitioner was not justified in raising energy bills on

the basis of check meter readings in violation of the above referred provisions of the CEA Regulations and the 2004 Code when the main meter

was neither suspected nor found to be defected.

17. As regards the second contention relating to grant of wider reliefs by the Ombudsman than the reliefs for which opposite party no. 2

specifically approached the GRF, the contention is neither factually sustainable nor legally tenable. Admittedly, even after filing of the complaint by

the opposite party no. 2, energy bills earlier raised on the basis of main meter readings were revised and recast on the basis of check meter

readings. In the original complaint, opposite party no. 2 not only made prayer for revising the electricity bills for the months of May and June 2007

but also made prayer to direct the licensee to raise electricity bills as per the main meter readings as long as the main meter is found OK. In the rejoinder before the GRF, opposite party no. 2 specifically pleaded that after filing of the complaint the licensee claimed additional charges towards

differential units as per the check meter readings for the months of March and April, 2007 and made prayer to raise energy bills for the said

periods also on the basis of main meter readings. Be that as it may, it has to be borne in mind that petitioner, being a licensee for distribution of

electricity which is a public property, is regulated by statutory provisions. Distribution licensee, as such, is clothed with the status of the State under

Article 12 of the Constitution of India. It has to perform duties in accordance with the statutory provisions and the licensee cannot claim any

amount in order to enrich itself unduly by exaction from a consumer who is under no legal obligation to pay the same. Learned counsel for opposite

party no. 2 has rightly placed reliance on the decision of Ajay Kumar Agrawal vs. OSFC & Ors (supra) wherein it has been held:-

xxxx electricity, being a public property, its supply is controlled by the statute. Therefore, elements of public law govern the situation at the stage

of supply. Under such circumstances, WESCO as a distribution licensee is clothed with the status of a State under Art. 12 of the Constitution of

India since it is to discharge preeminently governmental function, namely, supply of power to industries. In such a situation, the WESCO cannot act

like a ""public giver"". It cannot act its caprice, whims or fancy nor can it, taking advantage of its monopoly status, exact an amount which it cannot

do under the provision of law. If the Court, ignoring the provision of the said Act, permits WESCO to realise the amount which is contemplated

under Clause 9 of its purported agreement dated 28.11.2001 then the Court would be permitting WESCO, a State under Art. 12 to flout the

provisions of the said Act and to enrich itself by virtue of its superior bargaining position through a method, not contemplated under law and

therefore prohibited by law. Here, the silence of the statute would amount to a prohibition, otherwise it amounts to an exaction of a sum from a consumer who is under no legal obligation to pay the same. That would amount to deprivation of one''s property without authority of law. Thus the

Constitution''s mandate under Art. 300A would be breached. Article 300A runs as follows:

300A. Persons not to be deprived of property save by authority of law.- No person shall be deprived of his property save by authority of law.

18. Thus, no illegality has been committed by the Ombudsman in directing the petitioner to revise energy bills for any period prepared on the basis

of check meter readings when the main meter was in working order.

19. In view of the above, there is no merit in any of the contentions raised on behalf of the petitioner. The writ petition is without merit.

Accordingly, the writ petition is dismissed.