

HIGH COURT OF CHHATTISGARH, BILASPUR
WPC No. 2294 of 2020

- Chhattisgarh Ferro Alloys Producer Association

(A Registered Society Under The Societies Act), Having Its Office
At Urla Industrial Complex, Urla, Raipur, Chhattisgarh, Through Its
Authorized Representative Shri Manoj Kumar Agrawal, District :
Raipur, Chhattisgarh

----- Petitioner

Versus

- Chhattisgarh State Electricity Regulatory Commission Having Its
Office At Irrigation Colony, Shanti Nagar, Raipur - 492001,
Chhattisgarh, Through Its Secretary, District : Raipur, Chhattisgarh
- Chhattisgarh State Power Distribution Company, Having Its Office At
Dagania Raipur (Chhattisgarh), Through Its Managing Director,
District : Raipur, Chhattisgarh
- State Of Chhattisgarh Through Its Secretary, department Of Industries
Udyog Bhawan, Ring Road No. 1, Telibandha- Raipur (Chhattisgarh),
District : Raipur, Chhattisgarh

-----Respondents

For Petitioner	: Shri Ankit Singhal, Advocate.
For Respondent No.1	: Shri Animesh Tiwari, Advocate.
For Respondent No.2	: Shri Ayush Singh Solanki, Advocate on behalf of Shri Abhinav Kardekar, Advocate.
For Respondent No.3/State	: Shri Dilman Rati Minj, G.A.

Hon'ble Shri Justice Rakesh Mohan Pandey
Order on Board

31.01.2024

- 1) The petitioner has filed the instant petition seeking the following
relief(s):-

"10.1. Be pleased to issue a writ of mandamus or any
other appropriate writ holding and/ or declaring that the
orders dated 2.5.2020 and 15.5.2020 passed in Petition
No. 43 of 2020 (M) (Annexure P-1 Colly) issued by the
respondent No.1 are issued in breach of natural justice
and rule of law as the due process has not been followed
and are also illegal, arbitrary and violative of the
petitioners rights and consequentially quash the
impugned order dated 2.5.2020 and 15.5.2020 passed in
Petition No. 43 of 2020(M) (Annexure P-1 Colly); and

10.2. Be pleased to issue a writ of mandamus or any other appropriate writ directing the Respondent No.2 to revise its bill giving relief of force majeure to the Petitioners members; and

10.3. Any other relief which this Hon'ble Court may deem fit in the facts and circumstances of the case along with cost of the petition."

- 2) Learned counsel for the petitioner would submit that the dispute raised by the petitioner ought to have been considered and decided by the Commission, but the Commission refused to entertain such petition and dismissed the same directing the petitioner to approach the Grievance Redressal Forum. He would further submit that earlier, on 30.04.2020 an interim order was passed in favour of the petitioner but later on, the same also was recalled by the Commission on 02.05.2020. He would also submit that the Commission passed the final order on 15.05.2020 and both the orders dated i.e. 30.04.2020 and 02.05.2020 have been challenged in this petition. He would further argue that the petitioner is an association of Power Generating Companies and a consumer of the Chhattisgarh State Power Distribution Company Limited (CSPDCL). On account of the COVID-19 pandemic, the Companies remained shut and thereafter, a request was made to the CSPDCL to raise bills on a pro-rata basis according to clause 13 of the Chhattisgarh State Electricity Supply Code-2011. He would also argue that the request made by the petitioner was turned down by the authorities and as there was no decision, the petition bearing No. 43 of 2020 was filed before the Chhattisgarh State Electricity Regulatory Commission. He would further contend that the commission vide order dated 15.05.2020 dismissed the petition of the petitioner and directed it to raise its grievances before the Grievance Redressal Forum. It is also contended that according to clause 4(1) (e), grievance or complaint relating to damage to consumer's equipment/network/premises; requests for reduction/enhancement in

load/demand; non-payment of interest on the security deposit or recovery of excessive charges for any services, etc. would be considered by the Grievance Redressal Forum. It is next argued that as per clause 21 of the Chhattisgarh State Electricity Regulatory Commission (Redressal of Grievances of Consumers) Regulations, 2011 (for short 'the Act, 2011'), the Grievance Redressal Forum cannot adjudicate the disputes between the licensees and generating companies. He would submit that the petitioner is a power-generating company therefore the Grievance Redressal Forum has no authority to decide the dispute.

- 3) On the other hand, learned counsel for respondent No.1 would submit that if the petitioner is aggrieved by the order passed by the Commission, the appropriate remedy would be to prefer an appeal according to provisions of Section 111 of the Electricity Act, 2003 before the Appellate Tribunal and the present petition is not maintainable. He would further submit that the objections have been filed in this regard at the first instance. He would also submit that the grounds which have been raised by the petitioner in the present petition may be raised before the Appellate Tribunal and the issue of jurisdiction or any other issue may be decided by the Appellate Tribunal.
- 4) Learned State counsel and counsel appearing for respondent No. 2 would support the submissions made by counsel for respondent No.1.
- 5) I have heard learned counsel for the parties and perused the documents present on record.
- 6) From a perusal of the documents and pleadings made in the petition, it is apparent that the petitioner has shown itself as a power-generating company and even in the petition filed before the Commission; the petitioner has shown its identity as the power-generating company. The petitioner approached the Commission challenging therein the

electricity bill dated 01.04.2020. In order to extend the benefit to the petitioner of force majeure arising out of the COVID-19 pandemic according to provisions of clause 13 of the Act, 2011, the distribution company may be restrained from demanding charges for that period and other reliefs. Initially, an interim order was passed by the Commission in favour of the petitioner, later on, that order was recalled on 02.05.2020. The final order was passed on 15.05.2020 whereby the claim of the petitioner was dismissed and the petitioner was permitted to raise its grievances before the Grievance Redressal Forum.

7) Section 111 of the Electricity Act, 2003 provides as under:-

"111. Appeal to Appellate Tribunal.—(1) Any person aggrieved by an order made by an adjudicating officer under this Act (except under section 127) or an order made by the Appropriate Commission under this Act may prefer an appeal to the Appellate Tribunal for Electricity:

Provided that any person appealing against the order of the adjudicating officer levying any penalty shall, while filing the appeal, deposit the amount of such penalty:

Provided further that wherein any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, it may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the adjudicating officer or the Appropriate Commission is received by the aggrieved person and it shall be in such form, verified in such manner and be accompanied by such fee as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(4) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer or the Appropriate Commission, as the case may be.

(5) The appeal filed before the Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as

possible and endeavour shall be made by it to dispose of the appeal finally within one hundred and eighty days from the date of receipt of the appeal:

Provided that where any appeal could not be disposed of within the said period of one hundred and eighty days, the Appellate Tribunal shall record its reasons in writing for not disposing of the appeal within the said period.

(6) The Appellate Tribunal may, for the purpose of examining the legality, propriety or correctness of any order made by the adjudicating officer or the Appropriate Commission under this Act, as the case may be, in relation to any proceeding, on its own motion or otherwise, call for the records of such proceedings and make such order in the case as it thinks fit."

- 8) The Commission vide order dated 15.05.2020 granted liberty in favour of the petitioner to approach the Grievance Redressal Forum. If the petitioner is aggrieved with the findings recorded by the Commission, it should have approached the Appellate Tribunal according to the provisions of Section 111 of the Electricity Act raising all grounds which have been raised in the present petition. Therefore, in the considered opinion of this Court, the present petition is not maintainable on account of the availability of the alternative remedy.
- 9) Accordingly, the petition is **dismissed**; however, the petitioner would be at liberty to prefer an appeal according to provisions of Section 111 of the Electricity Act, if so advised.

Sd/-

(Rakesh Mohan Pandey)
Judge

Nimmi