

BEFORE THE ELECTRICITY OMBUDSMAN, JHARKHAND
4th floor, Bhagirathi Complex, Karamtoli Road, Ranchi – 834001

Case No. EOJ/08/2015

Jharkhand Urja Vikas Nigam Ltd., Engineering Bhawan, Dhurwa, Ranchi through its
Law Officer namely Arun Kumar Srivastava, son of late R.K.Lal, residence of –Gas
Godown Road, Namkom, P.O. & P.S.-Namkom & Ors. Appellant(s)

Versus

M/s Shree Ram Steels, having its place of working at Mohanpur, Mahtodih, P.O.
Udnabad, P.S. & Dist. Giridih, through its one of the partner, Dasrath Ram, Son of Late
Sahadev Ram, R/o Maheshtundi, P.O. Karharbari, P.S.Giridih (Muffasil), Dist.Giridih
(Jharkhand) Respondent(s)

Present:

Electricity Ombudsman	- Shri Ramesh Chandra Prasad
Counsel for the Appellant (s)	- Shri Rahul Kumar
	- Shri Prabhat Singh,
Advocate for the Respondent (s)	- Shri D.K.Pathak
	- Shri Navneet Prakash
	- Sri. Saket Upadhya

ORDER

(Passed on this 31st day of March,2016)

1. Brief of the case:

The appellant preferred writ petition W.P.(C) No. 7266 of 2011 before
the Hon'ble High Court against order dated 23/12/2010 of the learned

Vidyut Upbhokta Shikayat Niwaran Forum (VUSNF) in case No. 19 of 2008. The Hon'ble High Court vide order dated 03.09.2015 dismissed their writ application on the ground that the appellant herein has not availed the alternative remedy and has directly come to the Court. While dismissing the writ application the Hon'ble High Court gave liberty to the appellant vide order dated 03.09.2015 to file appeal before Electricity Ombudsman if they so desire. Hence, this appeal.

2. Submission of the appellant:

2.1 The learned Counsel submitted that pursuant to the order passed by the Hon'ble High Court, the appellant have preferred instant appeal. He further submitted that the respondent for the reasons best known to them are raising maintainability of the instant matter on the ground of limitation particularly in view of provisions made under Clause 14 of the Regulations, 2011. In fact from perusal of order passed by the Hon'ble Jharkhand High Court in W.P.(C) No.7266 of 2011, it is evident that the writ application filed by the appellant had not been entertained on the ground of alternative remedy. The said writ was dismissed on the ground of alternative remedy as provided under Section 42(6) of the Electricity Act, 2003 and, therefore, the appellant should be allowed to avail alternative remedy. If the appeal filed by the appellant is not heard on merits, it shall cause irreparable loss to the appellant.

2.2 The learned counsel submitted that the respondent in their reply have mistakenly stated that there is delay of five years in filing the present appeal. As a matter of fact Section 14 of the Limitation Act specifically states that the time spent in contesting a case before a

court having no jurisdiction shall be excluded in computing the period of limitation and since against the order passed by the learned VUSNF a writ was filed in year 2011 itself so, it cannot be said that the present appeal has been filed after a lapse of five years. Moreover, the Constitution of India under Article 226 & 227 have given inherent power to High Court including the power of superintendence over all the courts lying in territorial jurisdiction of the High Court. In the instant matter also the Hon'ble High Court has given liberty to the Appellant to file appeal and, so raising question on maintainability at this stage would not be proper in the eyes of law. Interestingly, the respondent have referred the provisions made under Regulation, 2011. In fact, the said regulation also provides for filing of an application for execution of order passed by the learned VUSNF. It is difficult to understand as to who had prevented the respondent to file an application for execution of order of the learned VUSNF. Therefore, if there are laches on part of the appellant then at the same time there are laches on the part of the respondent too.

2.3 The learned counsel specifically made reference of Sec. 14(3) of the Limitation Act, 1963 thereby put emphasis on the issue of exclusion of time of proceeding bona fide in court without jurisdiction. In view of the facts and circumstances as mentioned above the learned counsel submitted that the instant appeal should be heard on its own merit.

3. Submission of the Respondents:

3.1 The learned advocate submitted that the appellant deliberately did not choose to avail the statutory remedy of appeal. The appellant herein slept over the matter for a substantial period of time and much after the maximum period prescribed in Jharkhand State Electricity

Regulatory Commission (Guidelines For Establishment Of Forum For Redressal Of Grievances Of The Consumers And Electricity Ombudsman) Regulation, 2011 i.e. 60 days filed writ petition before the Hon'ble High Court, Jharkhand. The matter was taken up on 03.09.2015. The Hon'ble High Court has simply given liberty to the appellant to approach as per statutory remedy, if so desire. Hence, if the matter comes to the jurisdiction as per regulation then it has to be mandatorily entertained as per the Rules and Regulations framed by the JSERC. The Hon'ble High Court has not directed to entertain any application contravening the specific Rules and Regulations.

3.2 The learned advocate further put emphasis that the Hon'ble High Court has neither condoned the inordinate delay caused in filing the appeal nor even directed to condone the delay caused in filing the appeal and decide the matter on merit. In absence of any specific direction with respect to condonation of delay from the Hon'ble High Court, the specific provision of the Regulation, 2011 do not permit to condone even a single day delay after 60 days. Therefore, the appeal preferred by the appellant is hopelessly barred by law of limitation and, the same is not maintainable and fit to be rejected.

4. I have heard both Shri Rahul Kumar and Shri D.K.Pathak. I have also gone through the documents produced by the parties on record.
5. The Hon'ble High Court in it's order has given liberty to the petitioner to file appeal before Electricity Ombudsman, if petitioner so desire. The admitted fact is that in spite of having fleet of experts available to choose the correct legal recourse the appellant preferred writ before the Hon'ble High Court and, that too, after lapse of stipulated period of filing appeal as per the JSERC Regulation, 2011 for the reasons

best known to them. As per clause 20 of the Regulation, 2011 the Licensee or any consumer, who is aggrieved with the order passed by Forum on non implementation of the orders of the Forum, within one month the order of the Forum may himself or through his representative, make a representation, in writing, in Form-111 duly signed by the complainant or his authorized representative to the electricity Ombudsman. The representation is made within thirty days from the date of receipt of the order of the Forum or such extended period as may be permitted by the Ombudsman not exceeding further thirty days for reasons to be recorded in writing ,the Ombudsman; if satisfied that there exists sufficient cause for not filing it within that period. Though the respondents have vehemently opposed the move of the appellant at the same time are silent on the point of not taking the statutory recourse available as per Regulation for filing representation for non-implementation of the orders of the Forum. The Hon'ble High Court has simply given liberty to the Jharkhand State Electricity Board now known as JUVNL to approach as per statutory remedy, if so desire. The Hon'ble High Court has not directed to entertain any application contravening the specific Rules and Regulations. In fact, the rules and regulations does not prescribe limitation with the object of destroying the rights of the parties but to ensure that they do not resort to dilatory tactics and seek remedy without delay. The basic idea is that every legal remedy must be kept alive for a period statutorily fixed .The appellants have not offered any plausible explanation for the delay in filing of appeal after being aggrieved by the order of the learned VUSNF, Ranchi within the stipulated period.

6. Therefore, having regard to the facts and circumstances, without entering into controversy between the parties and without expressing any opinion on the rival contentions requiring consideration, it is felt that the Appeal is disposed by passing the following **order**:
The Appeal is dismissed with no order as to costs.

Sd/-
Electricity Ombudsman