

I.A. No. 98/2013

(Arising out of C.S. No. 146/2013)

1. The Khurda Zilla Milita Kriyanusthan Committee, Khordha represented through its president, Sri Nrusinghanath Mishjra, Advocate, Khordha and its Secretary Sri Jayanta Roy, at/P.O./P.S./Dist- Khordha.
2. The Khordha Dist. Bar Association, Khurda a registered society under the provisions of societies Regiustration Act, 1860, bearing registratioin No. 33-33/1982-893. having its registered office at Khordha Dist. Bar Association. Khordha town, P.O./P.S./Dist- Khordha, represented through its president and Secretary of the above address namely Nrusinghanath Mishra and Sri Manmath Kumar Mishra respectively.
3. Budhadeb Mohapatra, aged about 69 yrs, S/o- Late Basudev Mohapatra of Forest Colony area, Main road Khordha, P.O./P.S./Dist- Khordha.
4. Debendra Kumar Kar, aged about 71 yrs, S/o- Late Nilambar Kar, At- Near Telephone Bhawan, Khordha, P.O./P.S./Dist- Khordha.
5. Sisir Kumar Parida, aged about 47 yrs, S/o- Late Jatadhari Parida, of Samantarapur, Khordha town, P.O./P.S./Dist- Khordha.
6. Prafulla Kumar Mishra, aged about 62 yrs, S/o- Late Chintamani Mishra of Vill.- Gurujanga, P.O./P.S./Dist- Khordha.
7. Ajit Kumar Pattanaik, aged about 47 yrs, S/o- Late Nandakishore Pattanaik, of Vill.- Deulatangi, P.O.- Kuradhamalla, P.S.- Khordha Sadar, Dist- Khordha.
8. Bijay Chandra Mohanty, aged about 53 yrs, S/o- Late Damodar Mohanty, at – Temple lane, Lokeswarpur, P.O.- Pallahat, P.S./Dist- Khordha.
9. Bichitra Kumar Badajena, aged about 64 yrs, S/o- late Purna Chandra Badajena of near wireless station Khordha town, P.O./P.S./Dist- Khordha.

10. Sabitri Mishra, aged about 57 yrs, W/o- Sudhakar Mishra, at Fish market, Khordha town, P.S./Dist- Khordha.

..... **Petitioners**

Verses

1. Feedback energy Distribution Company Pvt. Ltd. "FEDCO". A wholly owned subsidiary of feedback Infrastructure services Pvt. Ltd. A company registered under the companies Act, 1956. Having its registered office at 311. 3rd. Floor Vardhaman Plaza, pocket.7, plot No. 6, Sec. 12, Dwaraka, New Delhi, 110075. the distribution Franchisee, having its Local head office at. A.1, 4th. Floor, fortune towers, Bhubaneswar, 751023, Odisha, represented through its Managing Director/ Authorized officer of the above address of the company.
2. Central Electricity Supply Utility of Odisha, (hereinafter referred to as "CESU") created under operation and Management Scheme, 2006, framed by "OERC" (Orissa Electricity Regulatory Commission) under Sec. 22 of the Electricity Act, 2003, having its principal office at 2nd floor, IDCO towers, Janapath Bhubaneswar, 751022. represented through its Managing Director or Authorised officer of the above address of "CESU".
3. The Chief Commercial Officer, "CESU". Bhubaneswar, 751022, Dist- Khordha.
4. The Central Electricity Supply Utility of Odisha, Khordha Electrical Division, At/P.O./P.S./Dist- Khordha, represented through its Executive Engineer, Khordha.

.... **Opposite Parties.**

Counsel for the petitioner Sri B.C. Mohanty, Advocate and Associates, Khordha.

Counsel for the Opp.parties.... Sri K. N. Roy, Advocate and Associates, Khordha

Date of argument - 31.07.2014
Date of order - 12.08.2014

PETITION U/O39 R1&2,CPC.

13.08.2014

The petitioners have preferred the present interim application U/o- 39 R- 1 & 2 CPC with a prayer to restrain the Opp. Party Nos. 1 from acting or operating as a distribution franchise for distributing, from acting or operating as a distribution franchisee for distributing and supplying electricity to the consumers and submitting bills and from collecting Electricity dues and from doing other necessary ancillary and incidental work as a distribution franchise as well as restraining the Opp. Party from giving effect to the alleged agreement dt. 05.01.2013 between Opp. Party Nos. 1 & 2 till disposal of the suit

The Opp. Party No. 1 has filed his show cause/ rejoinder, whereas Opp. Party Nos. 2 to 4, who have already filed the written statement have made a prayer that their written statement may be treated to be rejoinder to the above interim application of the petitioners.

The background of the present application is that on 06.08.2013 the original suit was filed by the *Khordha Jilla Milita Kriyanusthana Committee, Khordha* District Bar Association and others including the Advocates of this Bar for a declaration and permanent injunction against the Opp. Parties. In the said suit as well as in the interim application the petitioners have to say that the act of the Opp. Parties being illegal and against the public policy, they being representatives of the general public of Khordha town filed

the suit to restrain the Opp. Parties for doing such illegal act. This being the background, the petitioners case as it reveals from their records and statement that Opp. Party No. 2 is a registered society known as 'CESU' authorized by the State to distribute Electricity and to collect the rent from the consumers with other ancillary activities. The act of Opp. Party No. 2 is guided by the rules and regulations of the State as well as the Government of India. Initially the Orissa State Electric Board or functioning for supply of electricity and to collect rent, but subsequently as per the policy of the State and Central Government, the Electric supply was handed over to the private organizations and accordingly law has been changed in the country and Orissa Electricity reforms Act 1995 came into force and initially it was handed over to the GREEDCO for the above purpose. Rather CESU became the distribution licensee for central zone, which includes Puri, Khordha and Cuttack to supply Electricity and to collect the dues. The meter was accordingly installed to read the consumption electricity and to collect rent accordingly. Recently the Opp. Party No. 2 through Opp. Party No. 3 has entered into an agreement with Opp. Party No. 1, which is a private limited company, authorizing Opp. Party No. 1 to distribute electricity on its behalf for Khordha Electrical division including khordha town or within the urban limitation of khordha town. The petitioners have to say that neither the Opp. Party No. 2 the licensee nor Opp. Party No. 3 can entered into any agreement to assign his license of transfer utility or any part thereof or any sale, lease, exchange other wise without the prior approval of the Orissa Electricity Regulatory Commission (in short OERC) and if the agreement is

made without prior permission of the appropriate authority/ commissioner, such agreement is void. Therefore the agreement whatever executed between Opp. Party Nos. 1 & 2 is void. The Opp. Party No. 2 has not obtained any prior permission from the OERC. Therefore, the Opp. Party No. 1 cannot be authorized by Opp. Party No. 2 for distribution and collection of dues of electricity from the central region or khordha town. The alleged agreement was executed on 05.01.2013 illegally violating the provision of law. But, in spite of such agreement not a single bill is submitted by Opp. Party No. 1 to the consumer demanding the electricity due on its behalf till date. Rather the bills to which the dues are being collected are submitted by Opp. Party No. 2. It is further contended that no public advertisement nor any notice has been issued prior to transfer of the authority to supply of electricity to a distribution franchisee. Therefore, the act of Opp. Party No. 2 is illegal, without jurisdiction and arbitrary. There is absolutely no public purpose involving in such action of Opp. Party No. 2, but only to create mischief such an agreement has been executed. It is again contended by the petitioners that the electricity became the necessity for the citizen surviving in a developing country and taking advantage of the same the Opp. Party Nos. 2 & 1 have entered into an agreement with a malafied intention. As per such agreement the Op. Party No. 1 has to made provisions for installation of small meter phase wise for all consumers by replacing the old meters which is contrary to the provision of Sec. 56 of the New act as prior notice is desirable for installation of a new mater/ smart meter. In order to demand more charge the meters are purported

to be installed. The petitioners has further to say that the Opp. Party No. 1 being a private limited company and its registration office is beyond the reach of the state there is neither any scope nor any opportunity to the plaintiffs or the general public to investigate into the act of the Opp. Party No. 1 and to submit their complaint with immediate effect. The petitioners have again averred that in the recent past, after execution of the alleged agreement the Opp. Party No. 1 has engaged groups of criminals and ante-socials for installation of small or pre-paid meter and collecting of dues of the bills which is highly illegal and contrary to the public policy. Therefore, the Opp. Parties are to be restrained from exercising their act as per the illegal and void agreement and in the present application the Opp. Party has sought for the relief of temporary injunction to restrain the Opp. Parties from exercising their illegal act till the matter is decided in the original suit.

The Opp. Party No. 1 in his show cause has raised that the petition as filed by the petitioners is not maintainable, which is nothing but a sheer abuse of judicial process. The specific case of the Opp. Party No. 1 is that the matter in dispute is purely and highly a technical issue and this court has no jurisdiction to consider the matter like this. It is the sole prerogative of OERC and the appellate tribunal to consider and decide the dispute. The OERC during the tariff hearing and after considering all the written objections pleaded to pass an order on 23.03.2013 in case No. 93 & 94 of 2011 directing the distribution companies to involve franchise operators on revenue sharing basis. Which has been reflected in the agreement executed between Opp. Party Nos.

1 & 2. No illegality has been committed by Opp. Party Nos. 1 & 2 while entering into an agreement and as such the claim of the petitioners being highly baseless and false liable to be rejected. The Op. Party Nos. 2 to 4 have filed their written statement which is also taken up by this court as their objection. The relevant portion which relates to the factual aspect of this case is that, the agreement executed between Opp. Party No. 3 with Opp. Party No. 1 in consultation with Opp. Party No. 2 is legally executed as per the statutory provision of law and regulation as well as the order order passed for the year 2012-13 by OERC for the benefit of the society and for the development of infrastructure and economic development as well as for the supply of quality energy to the consumers. Appointment of franchise has been directed by the OERC during the tariff hearing as mentioned by the Op. Party No. 1. Therefore, the petitioners case regarding commission of illegality by executing the agreement is not acceptable at all as the same plea is raised on misconceived and illogical assertions. The provision under Sec. 2 (27) and Sec. 40 of the Indian Electricity Act. 2003 defines the word “franchise” and the provision of law of Indian Electricity Act, 2003 give ample power to the electricity supply agencies to appoint franchise for the purpose of distributing and collecting rent. The purpose of such agreement is to reduce the theft of energy distribution and to check the commercial loss of energy. It is again contended by the above Opp. Parties that the franchise agreement with “feedback energy distribution company private limited” has been executed on 05.01.2013 and made enforceable on 01.02.2013 in a legal and transparent

manner. The present CESU is suffering from T & D and AT and C losses. Its poor billing and collection efficiency has badly affected the revenue sustainability and quality of supply of electricity energy to the consumers at large and in order to make its quality efficient and to make necessary developments in its functioning as well as to make necessary developments in its functioning, CESU has entered into the agreement keeping in mind the legal provisions of law and his obligation to the general public at large and even with the approval and sanction of the concerned authorities. It is specifically contended by the above Opp. Parties that it is wrong to say that by virtue of such agreement the Opp. Party No. 2 has transferred the utility to the Op. Party No. 1, rather the Opp. Party No. 2, who is a licensee to distribute electricity under 7th proviso to Sec. 14 of Electricity Act 2003 is entitled to appoint another person for the purpose of distribution of electricity on its behalf and such person shall not be required to obtain any license from the said commission for distribution of electricity on behalf of the licensee. The agreement was executed as per the approval of the appropriate commission and as such the whole claim of the petitioners is completely baseless and false. The energy bills are being prepared by the Op. Party No. 1 and also being served by the franchise in the logo of CESU and the money receipts have also been issued by the franchise in the logo of CESU. The Opp. Party No. 1 on the strength of the agreement is now issuing the bills and also collecting bills in the logo of CESU. No illegality has been committed with appointing the Opp. Party No. 1 for the said purpose with conformity to the Sec. 56 of new electricity act. The

Opp. Party Nos. 2 to 4 have finally contended that the present interim application as well as the suit is not maintainable as the same has been presented in a representative capacity without following the provision U/o- 1 R- 8 of CPC. The Chief Executive Officer, CESU is a public Officer and in the suit he has been made as a party by the plaintiff without adopting the necessary recourse of law as envisaged in the provision U/s- 80 of CPC. Therefore, neither the suit nor the present application is not maintainable at all.

Before entering into the basic ingredients which is likely to be established by the petitioners it is obligatory on the part of the court to mention that Opp. Party No. 1 & 2 are the independent bodies, but their act and omission are certainly guided by the statutory provision of law, rules made by the state and the law of the land. They are accountable to the State for their obligation to the general public. In case of any violation of any rule and regulation they are also equally accounted for the general public as a whole. The Opp. Parties are involving with the cause of public utility service. Basing on such facts, two major points have been raised in the present interim application by the petitioners. Firstly, the petitioners have to say that the agreement executed between the Opp. Party Nos. 1 & 2 dt. 05.01.2013 is illegal void and against the public interest. Secondly the petitioners have contended that in case the agreement will be effected, the Opp. Party No. 1 will be permitted with free hands to play with the fate of the consumers. The Opp. Party No. 1 cannot distribute the electricity energy, installation of smart meters and to collect rent, which is by nature is illegal and prohibited by the law. On

the other hand the Opp. Parties have to say that the agreement is neither illegal nor it is against the public policy. Coming to the subject of *prima-facie* case, the petitioner has to prove that 'there is serious question to be tried in the suit and that on the facts before the court there is probability of his being entitled to the relief asked by the petitioners'. In the present case while two basic facts have been raised by the petitioners it is their legal obligation to establish both the facts. Now coming to the agreement between Opp. Party Nos. 1 & 2 dt. 05.01.2013, the said agreement has not been placed before the court. Unless and until the said agreement is brought to the court it is not possible for the court to see as to which clause of the agreement is against the public policy or against the statutory provisions of law. Neither the agreement nor the certified copy of the agreement nor the exact contents of such agreement has been perused before the court to have a look regarding its implication, object and scope. On the other hand the Op. Party has rightly mentioned that the agreement whatever is executed between Opp. Party Nos. 1 & 2 are not against the public policy and more over he has specifically mentioned that the Orissa Electricity reform Act. 1995 brings reforms to electricity laws in the State. Like wise the electricity bill 2001 was placed before the parliament and finalized and ultimately the electricity act 2003 came into force in form of 'Indian Electricity Act, 1910' empowering distribution of electricity to a specific area supplying therefore, another person referred to as franchise, like that a present Opp. Party No. 1. It has been further specifically contended by the Op. Parties that after execution of the agreement the same was sent to the

OERC, who has accordingly prove the same and as such the Opp. Party No. 1 was duly authorized to do the purpose as per the agreement between the Opp. Party Nos. 1 & 2. Therefore, saying that the agreement is illegal and void in nature as well as against the public policy seems to be not basing of any facts. There is no replay from the petitioners with regards to the said forceful contention of the opp-party. Coming to the second, pertaining to the distribution of electricity and collection of rent, the petitioners in their plaint in para – 7 has clearly averred that even though the agreement has been executed between Opp. Party Nos. 1 & 2, strangely enough not a single bill has been submitted by the Opp. Party No. 1 to the consumers demanding the electricity dues on its behalf or in its name till date. Therefore, the petitioners have admitted that the agreement has not yet been acted upon as the Opp. Party No. 1. The Opp. Parties in counter have specifically stated that the Opp. Party No. 1 has already acted upon as per the terms and conditions of the agreement, but whatever service the Opp. Party No. 1 is obligating, the same shall be provided to the individual consumers with all the receipts and documents with the logo of Opp. Party No. 2. Which held that Opp. Party No. 2, who has initially disturbing the duty of supply electricity, installation of meter and collecting electricity dues to the consumers has been assigned to the Opp. Party No. 1, but the Opp. Party No. 2 is still responsible for any act or omission of the Opp. Party No. 1, if any. But, since the agreement is not made available to the court it is not at all possible to take a judicial notice to the assignments of Opp. Party No. 1 as per the said agreement. But as a whole, the contention of the

petitioners have not been duly or rightly substantiated by the documents. Rather the whole case of the petitioners appears to be based on the blank statements and not a single document has been supplied to the court to have a judicial notice to the fact that the duty whatsoever assigned to the Opp. Party No. 1 is against the public policy. Coming to the subsequent question regarding the interest of general public, this court has not filed a scarp of paper regarding any complain against the Opp. Party No. 1 or any illegality committed by it against the general public or any one of them. Therefore the baled statement of the petitioners is completely premature one having no substances. Two major facts as raised by the petitioners find no support from any corner. No endeavor has been made by the petitioners to establish theirs own case. They have also failed to substantiate that the agreement between the Opp. Party Nos. 1 & 2 is contrary to the law or against the public policy. It is doubtful if the petitioners have ever gone through such agreement or not? Similarly, elaborate and exhaustive statements have been provided to the court by the Opp. Parties with regards to the whole fact and circumstances of the agreement as well as the approval of the appropriate authority with regards to the assignment of the work to Opp. Party No. 1 by the Opp. Party No. 2 and as such he is not answerable to the present petitioners. Now it is clear that the petitioners have not came to the court with a bonafied dispute and as such the prima-facie case does not tilt in favour of the petitioners.

Likewise, coming to the question of irreparable loss, it should be remembered that it is not a matter relating to installation of a new meter or

collection of bill in high charge. The CESU (Opp. Party No. 2) is empowered to distribute electricity and to collect electricity dues and other ancillary duties for three districts like Khordha, Cuttack and Puri. Its act is not out of the scrutiny of the state functionaries. Whatever steps has been taken by the Opp. Party No. 1 by virtue of agreement being approved by the OERC, it is answerable to the state and any illegal act is liable to be punished and every individual owes right to sue for damage against the illegal act of any of the Opp. Party. But, a section of the society while coming to the court with a claim that they are representing the whole society, they are required to substantiate that the loss, which is likely to be sustained by the general public will not be compensated in future. Even if the case of the petitioners to that is accepted, the loss whatsoever, if any, is likely to be sustained by individual must be a material loss and the same can be compensated. Apart from that the petitioners have not come with any specific fact or circumstances to show that the act of the Opp. Party No. 1 is purported to cause loss to the general public as well as the reason and basis of such apprehension. Therefore, the case of the petitioners without any basis is not acceptable.

Lets came to the question of balance of inconvenience. In continuation to the above facts and findings it is further obligatory on the part of the court to clarify that the act of the Opp. Party Nos. 1 or 2 or both as well as the other Opp. Parties is within the public domain. If the agreement is against the public policy, it is the state who have to answer the same to the general public in a democratic country like ours. No stone will remain unturned

if a violation or omission is caused by any responsible institution and going against the interest of general public at large. Therefore, the petitioners cannot say that comparative mischief or inconvenience which is likely to cause from withholding the injunction will be greater than that is likely to arise from granting it.

Electricity is the lifeline of the modern society. We all know about the value of electricity energy to our civilization. It is also within our knowledge that electricity companies are running in loss and as such we are suffering from power cuts and low voltage. All the recent amendments and laws have been brought into force with a purpose of giving ample scope to the energy creating and distributing organizations to act professionally for the interest of the society and to minimize the inconvenience caused by the public as well as the industrial sectors which are providing bread and butter to a major section of the society. In case franchises are empowered to collect dues and to install meters that will be beneficial to the general public at large as because theft of electric energy has already become a serious threat and impediment to the electricity distribution system. The purposes of making the electricity distribution system professional and to check the theft of energy and to collect the actual dues from the consumers, statutory provisions have been enacted by giving sufficient scope to the consumers to approach the authority or court of law against any illegal action of the electricity distribution companies. After taking account of the whole facts and circumstances of the case, it is the opinion of this court that the petitioners have miserably failed to substantiate

the basic ingredients to get relief as per the provision U/o- 39 R- 1 & 2 CPC and as such they are not entitled for the relief as sought for. Hence it is order.

ORDER

The Interim application of the petitioners under order 39 rule 1 & 2 CPC is hereby dismissed on contest against the opp-parties, but in the circumstances without any cost.

Senior Civil Judge, Khordha.

Transcribed to my dictation, corrected and signed by me, and pronounced in the open court on this the 12th day of August, 2014.

Senior Civil Judge, Khordha.

List of Witnesses examined on behalf of the petitioner:-

None

List of Witnesses examined of behalf of the OP.

None

List of documents proved by the petitioner:-

Nil

List of document proved by the OP:-

Nil

Senior Civil Judge, Khordha.

