

CASE NO.:
Appeal (civil) 2325 of 2006

PETITIONER:
Haryana State Electricity Board

RESPONDENT:
Mam Chand

DATE OF JUDGMENT: 28/04/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T
[Arising out of SLP (C) No.18892 OF 2005]

KAPADIA, J.

Leave granted.

Is the consumer beneficial jurisdiction extendable to assessment and quantification of duty (including penalty) under the Electricity Act, 2003, is the question which arose before the State Commission under the Consumer Protection Act, 1986.

With the industrial revolution and development in the international trade and commerce, there has been a substantial increase of business and trade, which resulted in a variety of consumer goods appearing in the market to cater to the needs of the consumers. With globalization and with free market economy the possibility of deficiency in the services rendered warranted enactment of the Consumer Protection Act, 1986, as amended from time to time. This law has been enacted for the welfare of consumers and to protect them from their exploitation for which the said 1986 Act has made provisions for the establishment of Commissions for settlement of consumer disputes and matters connected therewith. In the case of Skypak Couriers Ltd. etc. v. Tata Chemicals Ltd. etc., (2000) 5 SCC 294 this court has held that "the Commissions, under the Act, are quasi-judicial bodies to provide speedy and simple redressal to consumer disputes and for that purpose, they have been empowered to give relief of a specified nature and in an appropriate way, to award compensation." (emphasis supplied by us)

The key question which arises for determination in this civil appeal is : whether disputed and complicated questions of fact and law arising under the provisions of the Electricity Act, 2003 concerning assessment of unauthorized use of electricity, tampering of meters, interfering with calibration or metering of electric current resulting in theft of electricity under section 126 and section 135 of the Electricity Act, 2003 could be decided in a summarily manner by the Consumer Forum or whether in such cases the complainant should be directed to approach the competent authorities under the said Electricity Act, 2003.

Respondent herein was having small power electric connection. That connection was checked by the junior engineer on 24.11.94. On checking, the junior engineer found the seals of the meter to be broken.

On 25.11.94 notice was issued to the respondent calling upon him to deposit Rs.10,150/- as per the rules of the Nigam. The respondent did not raise any dispute whatsoever with the Nigam. In fact, he submitted an application to deposit the said amount in two instalments. He was allowed to deposit the said amount in instalments.

In 1995, however, the respondent filed Complaint Case No.42/95 before the District Consumer Disputes Redressal Forum, Ambala against the Nigam alleging that his electric supply was illegally disconnected without showing any cause for disconnection. This complaint was filed under section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as, 'the said 1986 Act'). In the complaint it was alleged that the concerned meter was not checked by the Nigam and, therefore, the respondent was not liable to pay the demanded penalty as claimed by the Nigam. The respondent herein denied tampering of the meter as alleged by the Nigam. According to the respondent, as a consumer he had suffered financial loss of Rs.50,000/- on account of the Nigam making a false allegation of theft against him.

By written statement filed on behalf of the Nigam, the allegations made by the respondent herein as a complainant came to be denied. According to the written statement, notice was given to the respondent herein as per the rules of the Nigam and the respondent was called upon to pay Rs.10,150/- as the connected load was of 10 B.H.P. According to the written statement the respondent herein never complained against the demand. He did not make any application making grievance against the Nigam. On the contrary, he had requested the Nigam to allow him to deposit the said amount in two instalments. According to the Nigam, the demand was raised on account of breaking of seals. In the written statement it was submitted by the Nigam that breaking seals of the meter amounted to theft on account of which the Nigam had suffered losses.

By judgment and order dated 7.7.1997 the said District Forum allowed the complaint and directed the Nigam to refund the aforesaid amount of Rs.10,150/- with interest at 18% per annum from the date of deposit till payment. However, the Nigam was ordered to pay Rs.500/- by way of costs.

Aggrieved by the said judgment and order passed by the said District Forum, the Nigam preferred First Appeal No.411 of 1997 before the State Consumer Disputes Redressal Commission, Haryana, Chandigarh under section 15 of the said 1986 Act. By a non-speaking order and without discussing the merits of the case the said State Commission dismissed the First Appeal preferred by the Nigam.

Aggrieved by the decision given by the said State Commission, the Nigam preferred Revision Petition No.2154 of 1999 before the National Consumer Disputes Redressal Commission, New Delhi. The revision was dismissed by National Commission without reasons. Hence, the Nigam has come to this court by way of special leave petition.

The basic contention advanced on behalf of the Nigam before us was that the State Commission has been constituted under Section 15 of the said 1986 Act as the first statutory appellate authority and consequently the State Commission had erred in dismissing the said appeal by a non-speaking order. Before us, it is further urged that in this case the check report duly signed by the respondent in Hindi indicated that the seals on the meter had been tampered for which the respondent was ready to pay the penalty as indicated by the above facts. This aspect is important because all the three courts below

proceeded on the basis that mere breaking of the seals on the meter is not a conclusive proof of theft of electric energy. This aspect has not been appreciated by the State Commission as well as by the National Commission. This circumstance coupled with the fact that the respondent had asked for time to deposit in instalments also showed that the respondent had notice of the demand raised by the Nigam.

On behalf of the respondent reliance is placed on the judgment of the Consumer Forum and particularly on paragraphs 10, 11 and 12. It is urged on behalf of the respondent that mere breaking of the seals on the meter did not constitute a conclusive proof of theft of electric energy. It is urged that the State Commission as well as the National Commission have indicated in their impugned orders that they were in agreement with paragraphs 10, 11 and 12 of the decision of the Consumer Forum and therefore no interference was called for by this Court under Article 136 of the Constitution.

In this case we are concerned with the scope and extent of the beneficial consumer jurisdiction, particularly with regard to technical subjects falling under provisions such as the Electricity Act, 2003. Under Section 2(c) of the 1986 Act "complaint" is defined to mean allegation in writing made by a complainant that the service provider has charged for the services, a price in excess of the price fixed under the law for the time being in force [See: Section 2(c)(iv)]. Under section 2(d) "consumer" is defined to mean any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised. Under section 2(g) of the said 1986, Act the word "deficiency" is defined to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or under a contract or otherwise in relation to any service. The word "goods" is defined under section 2(i) to mean goods as defined in the Sale of Goods Act, 1930. "Service" also defined under section 2(o) of the said 1986 Act to mean service of any description which is made available to users in connection with banking, financing, insurance, transport, processing, supply of electrical energy, entertainment etc. Therefore, supply of electric energy by the Nigam falls under section 2(o) of the said 1986 Act. However, the question which arises for determination and which has not been decided is : whether the beneficial consumer jurisdiction extends to determination of tortious acts and liability arising therefrom by the Consumer Forum. In this connection, it is urged on behalf of the Nigam that assessment of the duty for unauthorized use of electricity, tampering of meters, distribution of meters and calibration of electric current are matters of technical nature which cannot be decided by the Consumer Forum. It is urged that under the Electricity Act, 2003 the jurisdiction of the civil court is excluded. In this connection reliance was placed on section 145 of the said 2003 Act under which the jurisdiction of the civil court to entertain suits in respect of matters falling under Section 126 is expressly barred. These are matters of assessment. According to the Nigam, the said 2003 Act is a complete code by itself and therefore in matters of assessment of electricity bills the Consumer Forum should have directed the respondent to move before the competent authority under the Electricity Act, 2003 read with rules framed thereunder either expressly or by incorporation.

In our view, the contentions advanced on behalf of the Nigam require deeper consideration by the State Commission. None of the above points have been discussed by the State Commission in this case. Disputes of this nature are repeatedly arising before this court. At this stage, we do not wish to express any opinion. In our opinion, for the foregoing reasons the civil appeal filed by the Nigam deserves to be allowed and is hereby allowed.

We accordingly direct the State Commission to decide the matter on facts of this case in the light of the provisions of the Electricity Act, 2003 read with the rules framed thereunder.

The impugned orders passed by the State Commission and National Commission are hereby set aside and the matter is remitted to the State Commission for fresh disposal of the complaint in accordance with law and on the points formulated hereinabove.

The appeal stands disposed of accordingly with no order as to costs.

JUDIS