

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 7th August, 2012

+ **LPA No.559/2012**

% **INDIAN HYDRAULIC INDUSTRIES (P) LTD. Appellant**

Through: Mr. N.S. Dalal with Mr. Deviesh
Pratap Singh & Mr. H.L. Verma,
Advs.

Versus

NORTH DELHI POWER LIMITED & ANR. Respondents

Through: Mr. K. Datta & Mr. Manish
Srivastava, Advs.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This Intra-Court appeal impugns the judgment dated 26th March, 2012 of the learned Single Judge allowing W.P.(C) No.12201/2009 preferred by the respondent no.1 North Delhi Power Ltd. (NDPL) and setting aside the order dated 31st August, 2009 of the Consumer Grievance Redressal Forum (CGRF) holding the complaint preferred by the appellant to CGRF to be not barred by limitation.

2. The appellant had approached the CGRF in the year 2009 with the complaint that the appellant had on 27th July, 1992 approached the then Delhi Electricity Supply Undertaking (DESU), being the predecessor of the respondent NDPL for reduction of load; that DESU had however delayed such reduction and gave effect thereto only in the year 1999 and owing whereto the appellant was forced to continue paying excess charges for

higher load from the year 1992 to 1999 and claiming refund thereof along with interest.

3. The respondent NDPL in opposition to the aforesaid complaint *inter alia* took a preliminary objection of the same being barred by limitation. CGRF however vide its order dated 31st August, 2009 dismissed the said preliminary objection by holding that the appellant had continuously been taking up the matter, earlier with the predecessor of the respondent NDPL and thereafter with the respondent NDPL and had in the year 2008 first approached the Monopolies and Restrictive Trade Practices (MRTP) Commission and thereafter in the year 2009, the CGRF. The complaint was thus posted for further consideration.

4. Aggrieved therefrom the respondent NDPL preferred the writ petition aforesaid, which has been allowed by the learned Single Judge. It is held that CGRF has not given any reason for rejecting the plea of the complaint being barred by limitation and that the mere factum of the respondent NDPL having entertained the representations and correspondence of the appellant would not give rise to a fresh cause of action. It was further held that even if the period of three years for claiming refund for the excess charges paid from 1992 to 1999 is reckoned from the year 1999, when the load was ultimately reduced, the limitation of three years expired in the year 2002; the appellant had however approached the MRTP Commission after six years in the year 2008 and the CGRF in the year 2009. It was further observed that even after the MRTP Commission had rejected the complaint granting liberty to the appellant to approach the appropriate forum under the

Electricity Act, 2003, the appellant approached the CGRF after waiting for six month. It was thus held that the complaint was barred by limitation.

5. The counsel for the appellant has at the outset contended that foras such as CGRF are intended to entertain the grievances of the customers and are not to make any adjudication and are not bound by the provisions of the Limitation Act, 1963. It is next contended that the learned Single Judge erred in entertaining the writ petition when the complaint was still pending with the CGRF and when the CGRF had given only a *prima facie* opinion. It is argued that the question of limitation would have been finally decided after detailed consideration of the complaint.

6. We are unable to agree. The grievances, which the CGRF under Section 42(5) of the Electricity Act, 2003 has been constituted to address, have to be grievances in law i.e. grievance which are alive and which have not became stale and which are capable of redressal. Section 42 (8) provides that the right of a consumer of electricity, of redressal of his grievance before the CGRF constituted under Section 42(5), is without prejudice to the other rights of the consumer. Thus, the appellant could have filed a suit in a civil court for recovery of the amount claimed by him to be due and which suit would have been barred by time, if had been filed at the time when the complaint was filed. That being the position, the complaint will certainly qualify to be labeled as 'Stale'. The counsel for the appellant has been unable to demonstrate that CGRF was intended by the legislature to be free of such fetters.

7. Rather, what we find is that Clauses 5&6 of The Delhi Electricity Regulatory Commission (Guidelines for Establishment of Forum for

Redressal of Grievances of the Consumers) Guidelines, 2003 prescribe a period of six months from the date when the “cause of action first arose”, for filing the complaint. Similarly, the DERC (Guidelines for Establishment of Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2003, vide proviso to Regulation 7(2) prohibit the complaints from being entertained unless filed within three months of the date the consumer exhausted the remedy under the complaint handling procedure or when no action is taken by the authority prescribed in such procedure within the period prescribed therein, within three months of the expiry of such period. Thus, the limitation for filing complaints before the CGRF is much shorter than of three years on anvil whereof the learned Single Judge has decided.

8. As far as the argument, of the order dated 31st August, 2009 of the CGRF being not a final order on the aspect of limitation is concerned, though CGRF has used the words ‘*prima facie*’ but has in the operative part of the order overruled the preliminary objection raised by the respondent NDPL with regard to limitation. In view of the language used, it cannot be said that the order dated 31st August, 2009 of the CGRF was not intended to be final in so far as the objection of the respondent NDPL of the complaint being barred by limitation was concerned.

9. We have even otherwise considered the matter. Even if the contention of the appellant that the plea of limitation be kept open for decision by CGRF finally, were to be recorded, the present is a case where we are of the opinion that no disputed facts qua plea of limitation need to be adjudicated or considered. As aforesaid, the claim of the appellant pertains to the period

from 1992 to 1999. There is no acknowledgment of liability. All that the counsel for the appellant has been able to urge is that the appellant was continuously representing to the predecessor of the respondent NDPL and thereafter to the respondent NDPL. However it is the settled position that repeated notices/reminders do not extend the period of limitation.

10. The counsel for the appellant has also argued that the grievance of the appellant is also for refund of security and for which the period of limitation does not apply. We are unable to agree. Article 22 of Schedule-I of the Limitation Act, 1963 provides limitation of a period of three years from the date when the money is demanded. According to the appellant, the appellant has been demanding the amount continuously since the year 1999 and thus it cannot be said that the claim for refund of security in the year 2009 or for that matter in the year 2008 was within time. Else, the limitation for filing complaint remains the same as discussed above.

11. The counsel for the appellant has argued that the appellant did not file the complaint earlier owing to the ambiguity as to which entity was successor of the erstwhile DESU and liable for the claims of the appellant.

12. The said plea also cannot extend the period of limitation. It was for the appellant to, upon not meeting with any success to his representation, institute recovery proceedings within limitation. Cases are not unknown where the claimants have filed claims against all the successor of DESU. On the contrary the appellant herein preferred to sit quite and cannot be allowed to revive a dead claim when there is no possibility of the same being within the prescribed period of limitation.

13. The appeal is therefore without any merits and is dismissed. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

AUGUST 7, 2012

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