

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.233 OF 2015

The Maharashtra Electricity
Distribution Company Limited,
Through : Its Executive Engineer,
Urban Sub Division No.1,
Weekly Market,
Near Matan Market, Jalgaon,
Tq. and District Jalgaon

..PETITIONER

VERSUS

1. The State of Maharashtra
Through : Principal Secretary,
Consumer Affairs Department,
Mantralaya, Mumbai – 32
2. The Union of India,
Through the Secretary,
Department of Consumer Affairs,
Delhi
3. Vijay Dairy,
Through : Its Proprietor
Vijay s/o Dashrath Wani,
Age : 50 years, Occ. Business,
R/o Visanji Nagar, Jalgaon,
Tq. & District Jalgaon

..RESPONDENTS

Mr S.M. Godsay, Advocate for petitioner;
Mr S.K. Tambe, A.G.P. for respondent no.1;
Mr S.B. Deshpande, Asstt. Solicitor General of India for respondent no.2;
Mrs Rashmi S. Kulkarni, Advocate for respondent no.3

**CORAM : R.M. BORDE AND
N.W. SAMBRE, JJ.**

**(Date of reserving the
order : 20th February, 2015**

**Date of pronouncing the
order : 2nd March, 2015)**

ORDER (PER N.W. SAMBRE, J.):

This petition is by the Maharashtra Electricity Distribution Company which holds licence under the Electricity Act, 2003, for distribution of electrical energy in the State of Maharashtra. In the petition, the petitioner has come out with the following prayers :-

“(A) Rule may kindly be issued.

(B) By issue of writ of mandamus, order or direction, in the nature of writ of mandamus, the order dated 30.04.2009 in Complaint No.114/2008 passed by District Consumer Grievance Redressal Forum, Jalgaon be declared as without jurisdiction, null and void and non-est for want of jurisdiction.

(C) By issue of an appropriate writ, order or direction, in the nature of writ, the State Government and Central Government may be directed to issue suitable directions to the District Forums in the State or in the Union Territory of India, as the case may be, not to entertain the complaints under the Electricity Act, 2003, in view of the provisions made under the Electricity Act, 2003 for redressal of the grievance of the consumers.”

2. The facts, in brief, as are necessary for consideration of the issue involved in the present petition, are as under :-

3. Respondent no.3 is registered as a small scale industry and was receiving electric supply from the petitioner company and the same was disconnected for want of payment of electricity charges.

4. A dispute had cropped-up between the petitioner and respondent no.3 and hence, respondent no.3 preferred Complaint No.114 of 2008 before the District Consumer Disputes Redressal Forum, Jalgaon (hereinafter referred to as "District Forum", for the sake of brevity), alleging therein deficiency in service on the part of the petitioner herein and seeking refund of amount of Rs.82,837/- recovered by the petitioner towards the electricity charges.

5. The aforesaid complaint was contested by the petitioner herein. The complaint came to be decided on 30th April, 2009, whereby the District Forum ordered present petitioner to refund amount of Rs.82,837/- to respondent no.3 herein, or adjust the same in the next energy bills.

6. Feeling aggrieved by the order dated 30th April, 2009, passed by the District Forum, the petitioner herein preferred Appeal No.229 of 2009 before the State Consumer Dispute Redressal Commission, Mumbai,

Circuit Bench at Aurangabad (hereinafter referred to as "State Commission", for the sake of brevity), which also came to be dismissed by an order dated 25th July, 2011, for want of prosecution.

7. Revision Petition No.3202 of 2012, preferred by the present petitioner also suffered the same fate by order dated 10th July, 2014, for inordinate unexplained delay of 416 days although office had calculated the same to be 169 days, as observed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as "National Commission", for the sake of brevity).

8. The National Commission, while dealing with the revision of the petitioner, has refused to condone the delay and saddled costs on the petitioner to be recovered from the salary of the concerned officers of the petitioner.

9. Feeling aggrieved by the order dated 10th July, 2014, passed by the National Commission, the petitioner preferred Petition for Special Leave to Appeal (Civil) No.21962 of 2014 but the same came to be dismissed by the Apex Court by an order dated 20th August, 2014, after considering the contentions of the petitioner, on merits. However, the Apex Court has interfered in the matter by setting aside the order of the National Commission to the extent of imposition of costs, observing that the

petitioner was *bona fide* pursuing the revision being the remedy provided under the statute.

10. Now, by way of the present petition, the petitioner has posed a challenge to the legality and validity of the order dated 30th April, 2009, passed by the District Forum, in Complaint No.114 of 2008, which, as stated earlier, has already been upheld by the Apex Court. One more relief claimed by the petitioner in the present petition is for issuance of blanket directions by the State Government and the Central Government, to the District Forums in the State or in the Union territory, as the case may be, not to entertain the complaints under the Electricity Act, 2003.

11. While canvassing the contentions before this Court, Mr Godsay, learned Counsel for the petitioner would urge that since the proceedings before the Apex Court are dismissed in *limine*, principle of *res judicata* would not be attracted in the present case and as such, according to him, this Court can look into the merits of the matter, particularly with regard to the powers exercised by the District Forum while passing the order dated 30th April, 2009 which he claims to be adverse to the interest of the petitioner. According to him, the said order being without jurisdiction is nullity and as such, is void. In view thereof, according to Mr Godsay, it is open for the petitioner to challenge the same at any stage of the proceedings.

12. In support of his contentions, Mr Godsay has placed reliance on the judgment of the Apex Court in the matter of **Union of India vs. Sube Ram & ors.**, reported in **(1997) 9 SCC 69**; **Amrit Bhikaji Kale & ors. vs. Kashinath Janardhan Trade & anr.**, reported in **(1983) 3 SCC 437**; **Balvant N. Viswamitra & ors. vs. Yadav Sadashiv Mule (dead) through L.Rs. & ors.**, reported in **(2004) 8 SCC 706** and **Chiranjilal Shrilal Goenka (deceased) through L.Rs. vs. Jasjit Singh & ors.**, reported in **(1993) 2 SCC 507**.

13. According to the learned Counsel for the petitioner, having regard to the scheme under the Electricity Act, 2003, Consumer Forums are not armed with the powers or jurisdiction to deal with the matters falling under or arising out of the said Act as is wrongly done in the present case and as such, the order dated 30th April, 2009, passed in Complaint No.114 of 2008, is not sustainable for want of jurisdiction.

14. While countering the above referred submissions, Mrs Rashmi Kulkarni, learned Counsel for respondent no.3 has taken us through the observations made by the District Forum in its order dated 30th April, 2009 and submitted that the said decision has been rendered on merit and has been upheld up to the Apex Court. She, as such, would submit that the present petition is nothing but misuse of the jurisdiction. She further

urged that though the District Forum has passed order on 30th April, 2009 and the same has been confirmed up to Apex Court, the petitioner company has not complied with the said order despite period of six years has elapsed since then. She, therefore, submits that the writ petition is not maintainable and deserves to be dismissed with exemplary costs.

15. Having considered rival contentions of the parties, it is noticed that the order dated 30th April, 2009, passed by the District Forum, which is the subject-matter of the present petition was, in fact, challenged before the State Commission in First Appeal No.229 of 2011, thereafter in Revision Petition No.3202 of 2013 before the National Commission and lastly before the Apex Court in Petition for Special Leave to Appeal (Civil) No.212962 of 2014. While dismissing the Petition for Special Leave to Appeal, the Apex Court was alive of submission of the present petitioner, of District Forum passing the said order without jurisdiction. The said contention was duly recorded by the Honourable Apex Court in its order. The Apex Court, while dealing with the contentions of the petitioner, has observed that no reasons could be found for interfering with the orders impugned in the Special Leave Petition and as such, dismissed the Special Leave Petition as a consequence of which, the order dated 30th April, 2009, passed by the District Forum in Complaint No.114 of 2008, came to be confirmed.

16. It is also required to be noted that the contentions raised by the petitioner while assailing the order on merit are very much reflected in the order dated 20th August, 2014 passed by the Honourable Apex Court and it, therefore, cannot be said that the Apex Court has dismissed the Petition for Special Leave to Appeal, preferred by the petitioner, in *limine* as sought to be contended by the petitioner. As such, in our opinion, it is not open for the petitioner to reopen and question the said order dated 30th April, 2009 of the District Forum before this Court in the present writ petition. *Prima facie*, this Court is of the view that the conduct of the petitioner in questioning the said order is nothing but the abuse of process of law.

17. There is yet another facet to the present proceedings, which this Court has taken note of and i.e. the Maharashtra Electricity Distribution Company has preferred present petition questioning the order passed under the provisions of the Consumer Protection Act, 1986. The Apex Court, in the matter of **Cicily Kallarackal vs. Vehicle Factory**, reported in **2012 (7) Scale 328**, has observed in paragraph no.7 thus :-

“7. While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27 A(1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it

will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission.”

18. In the light of the above referred observations of the Apex Court, it is required to be noted that the petitioner, having already exercised right of appeal, it is not open for it to come out with a prayer to this court for invoking extraordinary jurisdiction conferred under Article 226 of the Constitution of India, for the purpose of setting aside an order which has already attained finality since the same has been upheld in the Special Leave Petition.

17. In that view of the matter, no case for interference is made out. In the result, the writ petition stands dismissed with no order as to costs.

(N.W. SAMBRE, J.)

(R.M. BORDE, J.)

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