

IN THE HIGH COURT OF BOMBAY AT GOA
CIVIL REVISION APPLICATION NO. 35 OF 2016.

THE CHIEF ELECTRICAL ENGINEER,
DEPT. OF ELECTRICITY, THR.
ASSISTANT ENGINEER
AND ANR.

.....Petitioners.

V/S

TRAVEL CORPORATION (INDIA) LTD.,
THR. ITS AUT. REP. SHRI PRASAD
HARMALKAR.

..... Respondent.

Mr. A. Taulikar, Adl. Govt. Advocate for the petitioners.
Mr. Sudesh Usgaonkar, with Ms. R. Pereira, Advocate for the
respondent.

CORAM: M. S. SONAK, J.
Date: 24th April, 2017.

ORAL ORDER:-

Heard Mr. A. Taulikar, learned Addl. Govt. Advocate for the petitioners and Mr. Sudesh Usgaonkar, learned Counsel for the respondent.

2. The petitioners challenge the impugned order dated 30.7.2015 made by the Addl. District Judge-I, Panaji, rejecting the petitioners' application under Order VII Rule 11 of CPC seeking rejection of the plaint instituted by the respondent on the ground that the Civil Court lacks jurisdiction to entertain suit of such nature.

3. Mr. Taulikar, learned Addl. Govt. Advocate for the

petitioners submits that the Electricity Act of 2003("the Act" for short hereinafter) is a complete code which not only spells out rights but also provides for remedy available to a consumer in the context of dispute with regard to supply of electricity or recovery of charges for supply of electricity. Mr. Talaulikar, submits that in this case the respondent/plaintiff has remedy under Section 42 of the said Act by way of raising grievance before ombudsman. Mr. Talaulikar, submits that the jurisdiction of the Civil Court therefore, stand excluded at least by implication. Mr. Talaulikar placed reliance upon the following decisions in support of his submissions:-

1. **Punjab State Electricity Board Patiala Vs. Ashwani Kumar, 1997 Law Suit(SC) 464;**
2. **H. D. Shourie Vs Municipal Corporation of Delhi, AIR, 1987 Delhi 219;**
3. **Sh. B. L. Kantroo Vs BSES Rajdhani Power Ltd, RFA(OS) 12/2008 decided on 25.9.2008.**

4. On the other hand Mr. Usgaonkar, learned Counsel for the respondent/plaintiff submits that plaint is almost entirely based upon the provisions contained in Section 56(2) of the said Act which provide that the petitioners are dis-entitled from recovering dues from any consumer or other sum which may be found to be due, after a period of two years from the date when such sum became first due. Mr.

Usgaonkar, submits that this is not a dispute which falls under Sections 126 or 127 of the said Act and therefore, there is no question of applicability of Section 145 of the said Act. He submits that even remedy under Section 42 of the said Act is doubtful. He however, submits that even it is assumed that some remedy is available by raising the grievance before the Ombudsman that by itself would not certainly bar the jurisdiction of the Civil Court, particularly, if cognizance is to be taken of the provision of Section 42(8) of the said Act. In this regard Mr. Usgaonkar has placed reliance upon the decision in **Uttar Haryana Bijli Vitran Nigam Vs. Sh. Harjit Singh, 2014) 173(1) ELR 184.**

5. In this case, the main dispute raised by the respondent in the plaint is with regard to entitlement of the petitioners to recover any sum of the money or any amount found due from the respondent beyond the period of two years from the date such amount became first due. Such a dispute, is not the one which is covered under Sections 126 or 127 of the said Act. Section 145 of the said Act provides that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing Officer referred to in Section 126 or an appellate authority referred to in Section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under

this Act.

6. Since, as noted earlier, dispute raised in the suit is not the one which stands covered under Sections 126 or 127 of the said Act, it cannot be said that provision of Section 145 of the said Act, which ousts the jurisdiction of the Civil Court is attracted.

7. Section 42 of the said Act reads thus:-

“Section 42. (Duties of distribution licensee and open access): ---

(1) *It shall be the duty of a distribution licensee to develop and maintain an efficient, co-ordinated and economical distribution system in his area of supply and to supply electricity in accordance with the provisions contained in this Act.*

(2) *The State Commission shall introduce open access in such phases and subject to such conditions, (including the cross subsidies, and other operational constraints) as may be specified within one year of the appointed date by it and in specifying the extent of open access in successive phases and in determining the charges for wheeling, it shall have due regard to all relevant factors including such cross subsidies, and other operational constraints:*

Provided that 1[such open access shall be allowed on payment of a surcharge] in addition to the charges for wheeling as may be determined by the State Commission:

Provided further that such surcharge shall be utilised to meet the requirements of current level of cross subsidy within the area of supply of the distribution licensee:

*Provided also that such surcharge and cross subsidies shall be progressively reduced 2[***] in the manner as may be specified by the State Commission:*

Provided also that such surcharge shall not be leviable in case open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use:

3[Provided also that the State Commission shall, not later than five years from the date of commencement of the Electricity (Amendment) Act, 2003, by regulations, provide such open access to all consumers who require a supply of electricity where the maximum power to be made available at any time exceeds one megawatt.]

(3) *Where any person, whose premises are situated*

within the area of supply of a distribution licensee, (not being a local authority engaged in the business of distribution of electricity before the appointed date) requires a supply of electricity from a generating company or any licensee other than such distribution licensee, such person may, by notice, require the distribution licensee for wheeling such electricity in accordance with regulations made by the State Commission and the duties of the distribution licensee with respect to such supply shall be of a common carrier providing non-discriminatory open access .

- (4) *Where the State Commission permits a consumer or class of consumers to receive supply of electricity from a person other than the distribution licensee of his area of supply, such consumer shall be liable to pay an additional surcharge on the charges of wheeling, as may be specified by the State Commission, to meet the fixed cost of such distribution licensee arising out of his obligation to supply.*
- (5) ***Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the***

consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5),(6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those sub-sections."

(Emphasis supplied).

8. In this case, it is possible to accept the submission of Mr. Talaulikar, that the respondent may have remedy to raise its grievance before the Ombudsman as contemplated by Section 42 of the said Act. However, this does not mean that jurisdiction of the Civil court stand ousted, to adjudicate upon a matter of this nature. Sub Section 8 of Section 42 of the said Act, in terms provides that the provision of Sub

Sections 5,6 and 7 shall be without prejudice to the right which the consumer may have, apart from the right conferred upon him by this sub section. This means that remedy of raising grievance before the Ombudsman is a remedy in addition to and not in derogation of normal remedy which the consumer has by way of institution of the proceedings before the Civil court. The decision in the case of **Uttar Haryana Bijli Vitran Nigam**(supra) supports this contention of the respondent.

9. The decision in the case of **Punjab State Electricity Board, Patiala** (supra) is not attracted to the facts and circumstances of the present case. In the first place, the Hon'ble Supreme Court, was considering the scope and import of the Electricity Act, 1910 whereas in the present case, we are concerned with Electricity Act 2003. In 1910 Act, it does not appear that there was any provision akin to the one contained in Section 56(2) of the said Act. Secondly, in the **Punjab State Electricity Board, Patiala** (supra), the issue was for recovery of amount in the context of tampering of installed meter. This means that issue was squarely as regards unauthorised use of electricity by tampering of electricity meter. Such an issue is not involved in the present case. No statutory circulars or office memorandum were pointed out in the present case to establish that the jurisdiction of the Civil Court is barred by necessary implication. Accordingly, decision in the case of **Punjab State Electricity Board, Patiala** (supra) is not of any assistance to the applicant in the present

case.

10. Mr. Talaulikar, submits that decision of the Hon'ble Supreme Court in the case of **Punjab State Electricity Board, Patiala** (supra) has been followed even in the year 2014. Though he was unable to substantiate this submission, there is no reason to doubt that the decision may have been followed in the year 2014, however as long as it is not established that the said decision was applied to the cases involving the same or at least similar facts to the present case, it is not possible to extend the principle in the said decision to the facts and circumstances of the present case.

11. In the case of **B. L. Kantroo** (supra), the dispute was squarely covered under Section 126 of the said Act and therefore, reliance was placed upon the provisions under Section 145 of the said Act to hold that Civil Court lacks jurisdiction in the matter. Again, it is not even the case of the applicant that the dispute raised by the respondent is covered under Section 126 or 127 of the said Act. Therefore, decision in the case of **B. L. Kantroo** (supra) is also not applicable to the facts of the present case.

12. In the case of **H. D. Shourie** (supra) again, the issue in fact concerned a dispute which was covered under Section 26(6) of the Electricity Act of 1910. It is in that context that certain observations

were made with regard to exclusion of the jurisdiction of the Civil Court by way of implication. Again, since, we are concerned with a entirely a different dispute, decision in the case of **H. D. Shourie** (supra) is not applicable. Mr. Usgaonkar, points out that in one of the cases the issue was of unauthorised user of electricity by taking a direct connection and bypassing the meter installed. Since the facts alleged in the present case are different, the aforesaid decisions offer no assistance to the petitioner.

13. For the aforesaid reasons, there is no case made out to interfere with the impugned order. Civil Revision Application is accordingly dismissed. There shall be no order as to costs.

14. It is however, clarified that observation in the impugned order or for that matter present order are only for the purpose of deciding whether the plaint was required to be rejected by resort to under Order 7 Rule 11 of CPC. Accordingly, none of such observations need be taken into consideration while disposing of the suit on its own merits in accordance with law.

M. S. SONAK , J.

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