

29th June,
2022
(AK)
07

W.P.A 10474 of 2022

CESC Limited
Vs.
State of West Bengal and others

Mr. Om Narayan Rai
Mr. Debanjan Mukherjee
...for the petitioner.

Mr. Samrat Sen
Ms. Manali Ali
...for the State.

Mr. Adnan Ahmed
Mr. Debesh Halder
Ms. Taniya Mondal
...for the respondents.

Affidavit-of-service filed in court today be kept on record.

Learned counsel for the petitioner contends that, in gross violation of the ratio laid down in *Uttar Pradesh Power Corporation Limited and others vs. Anis Ahmad* reported at (2013) 8 SCC 491 paragraph 60.2, the Consumer Forum has entertained a complaint of the private respondent in the teeth of pendency of a maintainability application filed by the petitioner/Distribution Licensee.

It is submitted that, by virtue of the impugned order bearing order no.3 dated May 31, 2022, the Consumer Forum has directed restoration of electricity connection of the petitioner, which was disconnected on the allegation

of theft, subject to payment of fifty per cent of the amount assessed as final assessment amount by the Distribution Licensee and thereafter payment of the rest by instalments by the private respondent.

Learned counsel places reliance on the judgment of *Anis Ahmad* (supra) for reiterating the proposition that such interference by the Consumer Forum, at the threshold, is without jurisdiction and ought to be set aside by this court under Article 226 of the Constitution of India.

That apart, although the private respondent/consumer offered to pay the entire dues, the dues were not deposited in reality.

Learned counsel also places reliance on the provisions of Sections 126, 127 and 135 of the Electricity Act 2003 in support of his propositions.

Learned counsel for the private respondent submits that the Supreme Court, in *Anis Ahmad* (supra) itself, clearly reiterated the last proviso to Section 135(1) of the 2003 Act which stipulates that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to the said clause, restore the supply line of electricity within 48 hours of such deposit or payment.

It is contended that since the consumer, in the present case, has unequivocally offered to deposit the dues, it was beyond the authority of the Distribution Licensee to disconnect the electricity supply.

Learned counsel further argues that the dispute raised by the petitioner before the Consumer Forum does not squarely fall within the domain of the appellate forum, since electricity is a 'service' within the definition of the term in the Consumer Protection Act, as repeatedly held by the Supreme Court and, as such, the impugned order ought not to be interfered with.

Learned counsel for the private respondent further argues that in view of availability of an equally efficacious alternative remedy in the form of a challenge as provided under the Consumer Protection Act, this court ought not to interfere in the matter under Article 226 of the Constitution of India.

Upon considering the submissions of learned counsel for the parties, a plain reading of the ratio laid down in *Anis Ahmad* (supra) reveals that the Supreme Court dealt with the provisions of Section 173 of the 2003 Act, which has also been relied on by learned counsel for the private respondent.

In paragraph no.60.1 of the judgment, the Supreme Court reiterated that in case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of the Consumer Protection Act will

prevail, but *ipso facto* it will not vest the Consumer Forum with the power to redress any dispute with regard to the matters which do not come within the meaning of “service” as defined under Section 2(1)(o) or “complaint” as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

However, even after noting the said provision, in paragraph no.60.2 of the judgment, the Supreme Court clearly laid down that a “complaint” against the assessment made by the Assessing Officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

Although the private respondent has sought to distinguish and segregate the challenge of the petitioner before the Consumer Forum with the challenge against the order of assessment by the CESC Limited, the two are, in fact, intertwined as per the contemplation of the 2003 Act.

Both Sections 126 and 135 provide that only in the event of deposit of the entire assessed amount, the restoration of electricity shall be given to a consumer in the case of an allegation of theft and a provisional/final order of assessment made by the authorities.

It has also been repeatedly held by the Supreme Court that Section 135 of the 2003 Act operates in a

somewhat different field than Section 126 of the 2003 Act.

Whereas the former requires *mens rea* or criminal intent to be proved for convicting a person, the latter is in the nature of a civil dispute.

Apart from the above reasoning, it is also well settled, as reiterated by the Supreme Court in *Anis Ahmad* (supra), that unless the “complaint” falls beyond the jurisdiction of the authorities stipulated under the 2003 Act, the Consumer Forum has no jurisdiction to interfere.

It is also surprising to note that, in the present case, although a specific maintainability application is pending at the behest of the CESC Limited, the same has been relegated for hearing to a later date on the one hand and, on the other, an interim order was granted by way of a direction to restore electricity upon payment of fifty per cent of the dues, thereby virtually granting the final relief sought in the complaint filed before the Consumer Forum.

Such exercise is patently *de hors* the jurisdiction of the consumer forum and falls within the domain of the appellate authority as stipulated in Section 127 of the 2003 Act. Moreover, the statute mandates prior deposit of the entire amount of assessed dues prior to a restoration of connection being given at an interim stage.

In the present case, contrary to the submissions made by learned counsel for the private respondent, a mere offer, which is nothing more than a lip-service, does not, by any stretch of imagination, tantamount to a “payment” or “deposit” as contemplated in Sections 126 and/or 135 of the 2003 Act.

Although the offer being made by the private respondent is disputed by learned counsel for the CESC Limited and counter-reiterated by learned counsel for the private respondent, this court does not intend to go into the factual context of the matter on such score.

However, since the consumer forum does not, *prima facie*, have jurisdiction to decide the challenge as framed by the petitioner, since restoration of electricity connection in the present case is directly dependent on deposit of the full assessed amount by the consumer, the consumer forum acted palpably without jurisdiction and *de hors* the law in passing the impugned order.

Accordingly, WPA 10474 of 2022 is allowed, thereby setting aside the impugned Order No.3 dated May 31, 2022.

However, in view of the plight being suffered by the private respondent, the Consumer Forum is requested to fix an early date and expedite the hearing of the maintainability petition filed by the CESC Limited in accordance with law prior to proceeding further with the rest of the dispute.

That apart, nothing in this order shall preclude the private respondent/consumer from depositing the entire amount of assessed dues within the contemplation of law, if permissible, for getting restoration of electricity connection to the petitioner's supply.

There will be no order as to costs.

Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)