

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

W.P.A. No. 14266 of 2022

**CESC Limited and another
Vs.
State of West Bengal and others**

For the CESC Limited : Mr. Om Narayan Rai,
Mr. Debanjan Mukherji

For the State : Mr. Mukti Chandra Ghosh,
Ms. Adreeka Pandey

For the respondent nos.3 & 4 : Mr. Soumyajit Bhatta,
Mr. Jayanta Dey

Hearing concluded on : 05.08.2022

Judgment on : 11.08.2022

Sabyasachi Bhattacharyya, J:-

1. The CESC Limited has preferred the instant writ petition challenging an *ex parte* Order No.2 dated June 22, 2022 whereby the District Consumer Disputes Redressal Commission, North 24 Parganas, entertained a petition under Section 38(8) of the Consumer Protection Act and, *inter alia*, directed the CESC Limited to restore at least one electricity connection of the two in the name of the complainants (present respondent nos.3 and 4) immediately after receiving the order till further order and fixed the date of hearing in the matter on August 30, 2022.

2. Learned counsel for the CESC Limited contends that in the said complaint before the District Forum, the private respondents admitted that the CESC personnel had disconnected the two electricity connection, respectively in the name of the two private respondents, who are spouses of each other.
3. It is submitted that a First Information Report was registered on the complaint of the CESC Limited with the Inspector-in-Charge, Khardah Police Station, in respect of theft of electricity committed by the private respondents. Steps were taken by the CESC Limited under Sections 135 and 138 of the Electricity Act, 2003 (for short, “the 2003 Act”) against the private respondents.
4. A provisional assessment was also made under Section 126 of the 2003 Act. It is submitted that the provisional order of assessment has to be disputed by the consumer by appearing before the authorities prior to final assessment being made.
5. Against a final order of assessment, it is pointed out, an appeal is provided in Section 127 of the 2003 Act.
6. Learned counsel for the CESC Limited places reliance on the order of provisional assessment (Annexure P-2 at page 34 of the writ petition), where a specific allegation was made in respect of meter no.2559423, standing in the name of respondent no.4 Putul Giri, on the allegation of tampering of meter.
7. In the complaint on the basis of which the FIR was registered, it has specifically been alleged that both Sujit Kumer Giri and Putul Giri, the respondent nos.3 and 4, were guilty of such act of theft.
8. It is submitted that since specific provision has been provided in Sections 126 and 135 to challenge the provisional order of assessment and dispute the

allegation of theft in the criminal court, no application lay before the consumer forum.

9. Hence, the impugned order was passed patently without jurisdiction.
10. It is further submitted that the present dispute does not relate to any service provided by the CESC Limited. The electricity service was disconnected specifically under the provisions of sections 135 and 138 of the 2003 Act and provisional assessment was raised under Section 126 of the same. As such, there did not arise any occasion of deficiency of service, in the present case, which would have attracted the jurisdiction of the consumer forum.
11. Learned counsel places reliance on *Uttar Pradesh Power Corporation Limited and others Vs. Anis Ahmed*, reported at (2013) 8 SCC 491, for the proposition 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.
12. Next citing *T. Arivandandam Vs. T.V. Satyapal and another*, reported at (1977) 4 SCC 467, it is argued that a vexatious and meritless claim ought to be nipped in the bud.
13. Learned counsel for the CESC Limited also places reliance on an unreported judgment of this Court dated June 29, 2022 passed in WPA 10474 of 2022, relying, inter alia, upon *Uttar Pradesh Power Corporation (supra)* wherein it was held that such exercise by the consumer forum is patently *de hors* the jurisdiction of the forum.
14. Lastly, learned counsel for the petitioner places reliance on *Universal Consortium of Engineers (P) Ltd. and another Vs. State of West Bengal and others*, reported at (2019) 2 CHN 143, wherein a Division Bench of this Court

held, *inter alia*, that a challenge against an order of the National Commission under Article 226 of the Constitution of India need not necessarily be dismissed, notwithstanding the availability of an appellate remedy before the Supreme Court. Such remedy would be illusory for many and if such a reason were assigned to dismiss a writ petition, it was held, it is justice that could be the casualty.

15. While controverting such submissions, learned counsel appearing for the respondent nos.3 and 4 argues that an application under Article 226 of the Constitution is not maintainable in view of the Consumer Protection Act providing specifically for an appeal against an order of the District Forum.
16. By placing reliance on a co-ordinate bench judgment of this Court reported at *CALLJ 1998 (1) 500 [Sri Gouri Sankar Chatterjee and another Vs. Howrah Municipal Corporation and another]*, learned counsel submits that, against an order passed under the Consumer Protection Act, an application under Article 227 of the Constitution was held to be maintainable in the said case. However, no such application has been preferred but the CESC Limited has chosen to take out the present application under Article 226 of the Constitution of India, which ought not to be entertained.
17. Learned counsel further submits that it was held by a Division Bench of this court in *FMAT No.52 of 1994 (Saswati Meherotra Vs. State of West Bengal)* that the High Court should not interfere with the proceedings of the Tribunal except for compelling reasons. It was further held that the writ court may have giant's power but should not use it as a giant.
18. It was further held by the Division Bench in the said judgment that the burden of deciding the question of jurisdiction of the Commission should not be taken

upon itself by the High Court unless there was a compelling necessity. As the remedy on the question of jurisdiction is readily, adequately and also effectively available before the State Commission, it was held, this Court should ordinarily refuse to entertain such a question bypassing the Commission.

19. In fact, learned counsel for the respondent nos.3 and 4 places reliance on annotations from text books and does not cite any copy of the said judgment at the time of hearing.
20. It is contended by learned counsel appearing for the State that the jurisdiction of the Consumer Forum, vis-à-vis specific remedies under other Acts, is in addition to and not in derogation of the provisions of other statutes.
21. Learned counsel places reliance on *Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha (dead) through LRS. and others*, reported at (2004) 1 SCC 305, for the above proposition. Section 3 of the Consumer Protection Act, it is submitted, provides the same.
22. Learned counsel further contends that the Consumer Protection Act is a special Act inasmuch as the consumer disputes are concerned, and not the Electricity Act, 2003.
23. By relying on *Bar Council of India Vs. Union of India*, reported at AIR 2012 SC 3246, learned counsel contends that the Supreme Court held therein that the Parliament can definitely set up effective alternative institutional mechanisms or make arrangements which may be more efficacious than the ordinary mechanisms of adjudication of disputes through the judicial courts. Such institutional mechanisms or arrangements, by no stretch of imagination, can be said to be contrary to the Constitutional scheme or against the rule of law, it was observed.

- 24.** Learned counsel for the State further submits that electricity is a ‘service’ as contemplated in Section 2(42) of the Consumer Protection Act and, as such, the complaint before the Consumer Forum is maintainable.
- 25.** It is further submitted, by referring to Section 37 of the Consumer Protection Act, that mediation ought to have been explored as an alternative remedy prior to preferring the instant writ petition.
- 26.** Upon considering the submissions of parties and going through the materials-on-record, it transpires that the CESC disconnected the electricity meters of both the respondent no.3 (Sujit Kumar Giri) and respondent no.4 (Smt. Putul Giri), bearing meter nos. 4785905 and 2559423 respectively, on the allegation of theft of electricity.
- 27.** In the complaint giving rise to the FIR under Section 135 of the 2003 Act, it was specifically alleged by the CESC Limited that meter no. 2559423 was found tampered so as to gain unauthorized access into the internal mechanisms of the meter to manipulate meter registration and derive unlawful financial gain. During the course of inspection, the CESC further found that Sujit Kumer Giri and Putul Giri are the main culprits and beneficiaries of the said theft of electricity to run electrical appliances at their residence through the tampered meter.
- 28.** A basis of assessment was also disclosed in the said complaint. Again, the order of provisional assessment dated June 10, 2022, also annexed to the writ petition, reiterates that meter no. 2559423, particularly the seal on the meter-body, was found tampered with.
- 29.** A provisional assessment was made to the tune of Rs.1,97,955/- inclusive of electricity duty, as applicable, payable to the State Government as indicated in

the calculation sheet annexed thereto. Both the calculation sheet and the provisional assessment order have been annexed to the present writ petition.

- 30.** It is submitted that due proceedings were initiated under Sections 126 and 135 as well as 138 of the 2003 Act by the CESC Limited.
- 31.** Section 135(1), Clause (e) provides that whoever dishonestly uses electricity for purpose other than the usage of electricity which was authorised is guilty of theft. Clause (d) of the same sub-section implicates persons who similarly use electricity through a tampered meter. Clause (c) covers damages and destruction of an electric meter, apparatus, equipment, etc., or causing or allowing such damage or destruction as to interfere with the proper or accurate metering of electricity. Section 135(1), in all its Clauses, specifically defines 'theft of electricity'. The allegations made against both the respondents are within the periphery of the said sub-section.
- 32.** Sub-section (1-A) of Section 135 stipulates that, upon detection of theft of electricity, the licensee may immediately disconnect the supply of electricity. A complaint is also required to be lodged with the concerned Police Station having jurisdiction within 24 hours from such disconnection. Such formalities have been complied with by the CESC Limited in the present case.
- 33.** The third proviso to sub-section (1-A) further provides that the licensee, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of the 2003 Act, shall, without prejudice to the obligation to lodge the complaint, restore the supply line of electricity within 48 hours of such deposit or payment.

- 34.** On the other hand, Section 126 provides for assessment if on an inspection of a place or premises, it is found that a person is indulging in unauthorised use of electricity (which also includes theft).
- 35.** Sub-section (4) of Section 126 stipulates that a person served with the order of provisional assessment may accept such assessment and deposit the assessed amount with the licensee within seven days of the service of the provisional assessment order upon him.
- 36.** It is nobody's case that the deposit, as contemplated in Section 126(4) or Section 135(1-A) of the 2003 Act, has been has been made or admitted to be made by the private respondents in the present case.
- 37.** Thus, the right of the respondent nos. 3 and 4, upon their electricity supplies having been disconnected, to get restoration of electricity connection is not unfettered but circumscribed by Sections 126(4) and 135(1-A) of the 2003 Act.
- 38.** Section 127 of the 2003 Act provides an appeal, upon deposit of 50 per cent of the assessed amount, against a final order of assessment, if made under Section 126 of the said Act.
- 39.** In the present case, the disconnection was effected by the CESC Limited on the specific allegation of theft, which is a species of unauthorised use of electricity, by the private respondents. Unless the private respondents accept such assessment and deposit the amount or challenge the same before any appropriate forum, the private respondents do not have an automatic right to get reconnection of electricity, since such right is subject to the above discussed provisions.
- 40.** The right to get electricity, conferred under Section 43 of the 2003 Act, is not unbridled but circumscribed by Sections 126 and 135 of the Act.

- 41.** Hence, it cannot be said that the disconnection was a deficiency in service of the CESC Limited in supply of electricity to the private respondents.
- 42.** Hence, the District Consumer Forum patently lacks jurisdiction to entertain such a dispute.
- 43.** Inasmuch as the Consumer Protection Act being applicable parallel with other statutes, Section 174 of the 2003 Act specifically stipulates that the 2003 Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than the said Act. Section 175 of the 2003 Act provides that provisions of the Act are in addition to and not in derogation of any other law for the time being in force. A similar parallel provision is also found in the Consumer Protection Act. Read together, Sections 174 and 175 of the 2003 Act clearly indicate that if a specific procedure or mechanism is provided in the 2003 Act, the same overrides the provisions of any other Act, including the Consumer Protection Act, despite the functioning and operation of the two statutes being parallel.
- 44.** The respondent nos. 3 and 4, in the present case, have resorted to gross suppression of the allegation of theft and provisional assessment against them by the CESC Limited, both of which are essentially germane for the Consumer Forum to decide whether it would entertain the dispute at all or not.
- 45.** Disconnection for theft under Section 135 is visited with penal consequences under the 2003 Act and reconnection thereafter is not a deficiency of service as envisaged in the Consumer Protection Act.

46. Specific forums have been provided under Sections 126 and 135 of the 2003 Act, which ought not to be permitted to be usurped by the Consumer Forums, although the two Acts may act in conjunction with each other.
47. Both the respondent nos. 3 and 4 have been charged with theft of electricity. Unless both their meters, which were involved in the act of theft, were disconnected, the act of theft would have continued. The CESC Limited has provided sufficient *prima facie* material including the complaint, inspection report, provisional order of assessment and photographs to establish beyond doubt that proceedings under the Electricity Act, 2003 have been taken out against the private respondents. Thus, the Consumer Forum could not usurp the jurisdiction of the competent forums under the 2003 Act by entertaining the dispute under the Consumer Protection Act, thereby nullifying the provisions of the 2003 Act.
48. In any event, the unconditional direction by the Consumer Forum in the impugned order to reconnect at least one of the electricity meters of the respondent nos. 3 and 4 was patently *de hors* the provisions of the 2003 Act and passed without jurisdiction.
49. Inasmuch as the Co-ordinate Bench judgment cited by the respondent nos. 3 and 4 is concerned, *Shri Gouri Sankar Chatterjee* (supra) is an authority on the proposition that Article 227 of the Constitution can be resorted to for interference in spite of an alternative remedy being available in the statute book. The said proposition does not, *ipso facto*, curtail the jurisdiction of the High Court under Article 226 of the Constitution of India in any manner.
50. The Division Bench judgment in *Saswati Meherotra* (supra), sought to be relied on by the private respondents, is not a precedent for the proposition that the

High Court cannot, in any circumstances, interfere with an order passed by a Consumer Forum under Article 226 of the Constitution of India. In the present case, a patent jurisdictional error was committed by the Consumer Forum in entertaining the 'dispute' by assuming jurisdiction which it did not have. Hence, there is no reason why a judicial review under Article 226 of the Constitution ought not to be allowed.

51. Inasmuch as the judgments cited by the State is concerned, although the mechanism of the Legal Services Authorities Act was held not to be contrary to the Constitutional scheme and certain observations were arrived at by the Supreme Court, the same are in the context of establishment of Lok Adalat and do not anywhere support the proposition that the Consumer Forum can usurp the jurisdiction conferred on specific forums by the 2003 Act. The proposition laid down in *Uttar Pradesh Power Corporation Limited* (supra), in particular paragraph no.60.2 thereof, that a complaint against the assessment made by the Assessing Officer under Section 126 or against offences committed under Sections 135 to 140 of the 2003 Act, is not maintainable before a Consumer Forum, has not been upset by the Supreme Court in any subsequent judgment and, as such, such proposition still holds the field.
52. Insofar as *T. Arivandandam* (supra) is concerned, the petitioner is justified in arguing that vexatious claims ought to be nipped in the bud. There cannot be any conceivable reason to compel the CESC Limited to continue litigating against the private respondents in a frivolous litigation, where the Consumer Forum does not have jurisdiction to entertain the matter at all.
53. The direction for reconnection in respect of one meter, issued by the forum, was also palpably *de hors* the Electricity Act, 2003.

- 54.** The proposition laid down by the Division Bench of this Court in *Universal Consortium of Engineers* (supra) also applies to the present case inasmuch as there is no complete bar to a petition under Article 226 of the Constitution of India even if an appeal is maintainable against an order of the Consumer Forum.
- 55.** For the reasons discussed above, the impugned order of the District Consumer Forum was palpably without jurisdiction and *ex facie de hors* the law. Hence, the same deserves to be set aside under Article 226 of the Constitution of India.
- 56.** Accordingly, WPA No.14266 of 2022 is allowed on contest, thereby setting aside Order No.2 dated June 22, 2022 passed by the District Consumer Disputes Redressal Commission, N-24 Parganas at Barasat in CC No.205 of 2022.
- 57.** However, nothing in this order shall preclude the respondents 3 and 4 from resorting to the mechanism available in the Electricity Act, 2003 in order to redress their grievance against the distribution licensee, if any. If such an approach is made by the private respondents, the appropriate authority shall not be swayed in any manner by the present order while deciding such challenge on merits.
- 58.** There will be no order as to costs.
- 59.** Urgent certified copies, if applied for, be issued by the department on compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)