

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 428 of 2014

THE ASSISTANT ENGINEER
JOYNAGAR GROUP ELECTRIC SUPPLY
VS.
PRABHAT KUMAR PAUL & ORS.

For the Petitioner	: Mr. Srijan Nayak, Adv. Ms. Rituparna Maitra, Adv.
For the Opposite parties	: Mr. Sounak Bhattacharya, Adv. Mr. Chandraday Sarkar, Adv. Mr. Sounak Mandal, Adv.
Hearing concluded on	: 8 th August, 2023
Judgement on	: 8 th August, 2023

Siddhartha Roy Chowdhury, J.:

1. This revisional application impeaches the order dated 4th November, 2013 in S. C. Case No. FA/461/2012 passed by the learned State Consumer Disputes Redressal Forum, West Bengal affirming thereby the order passed by the learned District Consumer Disputes Redressal Forum, South 24-Parganas on 29th May, 2012 in C.C. Case No. 2/2010.
2. For the sake of convenience the parties will be referred to as they were arrayed before the learned Trial Court.
3. Briefly stated, the opposite party approached the petitioner, WBSEDCL for electricity connection to his premises No. IIIX, Gopika Mohan Bhattacharjee Sarani, Ward No. 11 under Joynagar, District-South 24-Parganas and for that purpose he discharged for obligation by

depositing necessary fees and by complying with other formalities but the service provider WBSEDCL did not provide him with the electricity connection. The opposite party herein Mr. Prabhat Kumar Paul thereafter approached the learned State Consumer Disputes Redressal Forum and the learned District Consumer Disputes Redressal Forum was pleased to allow the prayer of the petitioner and direct the service provider to give electric connection within 15 days from the date of order and cost of Rs. 2,000/- compensation to the tune of Rs. 10,000/- was awarded in favour of the petitioner along with interest at the rate of 9% per annum from the date of default till realization. The Assistant Engineer, Joynagar Group Electric Supply, WBSEDCL made an unsuccessful attempt by preferring the appeal before the State Consumer Disputes Redressal Forum. Hence this application is under Article 227 of the Constitution of India.

4. Mr. Srijan Nayak, learned counsel for the petitioner submits that both the learned District Consumer Disputes Redressal Forum and the learned Appellate Authority passed the judgment without taking into consideration the fact that the petitioner since was not a consumer per se, he had no locus standi to seek relief as consumer.
5. Mr. Nayak makes me go through the definition consumer as laid down under Section 2(15) of the Electricity Act, 2003 which says:-

“Consumer” means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of

a licensee, this Government or such other person, as the case may be”.

6. My attention is further drawn to the provision of Section 2(d) as laid down under the Consumer Protection Act, 1986 where the consumer has been defined:-

“Section 2(d) : “Consumer” means any person who,-

- (i) Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or*
- (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person [but does not include] a person who avails of such services for any commercial purpose”.*

7. According to Mr. Nayak, the learned State Consumer Disputes Redressal Forum and the learned District Consumer Disputes Redressal Forum committed jurisdictional error by entertaining the application.

8. Refuting such contention, Mr. Bhattacharya, learned counsel for the opposite party submits that pursuant to the direction given by the Consumer Forum Authority, WBSEDCL has provided electric connection.
9. Having preferred the appeal before the State Consumer Disputes Redressal Forum challenging the order of the District Consumer Disputes Redressal Forum, WBSEDCL has surrendered to the jurisdiction of State Consumer Disputes Redressal Forum. Therefore, having complied with the direction of the State Consumer Disputes Redressal Forum, WBSEDCL is estopped from challenging the jurisdiction.
10. Mr. Bhattacharya makes me go through the submission made by the learned counsel for the WBSEDCL before the learned Appellate Forum and submits that this point of jurisdiction was never canvassed before the authority. The petitioner, WBSEDCL cannot be allowed to approbate and reprobate.
11. Upon plain reading of the definition “Consumer” under Section 2(15) of the Electricity Act, 2003, it appears that consumer is a person who is supplied with the electricity for his own use by a licensee or by any other person engaged in the business to supply electricity to public under the Act and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of licensee.
12. From the attending facts of the case, it is admitted that the opposite party herein approached the District Consumer Disputes Redressal Forum with the allegation that WBSEDCL did not supply with electricity

for his use though he has discharged his obligation by making necessary payment. Therefore, at that point of time, when the opposite party approached the Consumer forum he was not a consumer per se. Section 2(d) of the Consumer Protection Act, 1986 as well. The opposite party cannot be said to be a consumer.

13. It goes without saying that there cannot be any estoppel against law which is why I refused to imbibe myself with the submission made by Mr. Bhattacharya that having preferred appeal against the order of the District Consumer Disputes Redressal Forum before the State Consumer Disputes Redressal Forum, WBSEDCL is estopped from challenging the order impugned under Article 227 of the Constitution of India.
14. As at the point of initiation of the proceeding, Pravat Kr. Paul, the opposite party herein was not a consumer as defined under the Electricity Act, 2003 or under the Consumer Protection Act, 1986 both the District Consumer Disputes Redressal Forum and the State Consumer Disputes Redressal Forum, WBSEDCL committed jurisdictional error by passing the order impugned and the same should not be allowed to remain in force and should be set aside which I accordingly do. But this order shall not by any means inspire the WBSEDCL to interfere with the connection already given to the opposite party, Pravat Kr. Paul.
15. The revisional application is thus disposed of, however without costs.
16. Let a copy of this judgement along with lower Court record be sent down to the learned Trial Court immediately.

17. Urgent photostat certified copy of this judgement if applied for, should be made available to the parties upon compliance of requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)