

AD-32
Ct No.09
08.05.2023
TN

WPA No. 7165 of 2008

West Bengal State Electricity Distribution
Company Limited
Vs.
Union of India and others

Mr. Srijan Nayak,
Mr. Sujit Sankar Koley
.... for the petitioner/WBSEDCL

When the matter is called on for hearing, none appears for the respondents.

Learned counsel for the petitioner places reliance on two judgments to submit that the revisional forum below acted without jurisdiction in affirming the order of the first consumer forum to relegate the issue of maintainability of the complaint against the petitioner/licensee to the hearing of the dispute raised by the private respondent before the consumer forum.

The first judgment relied on is that of *U.P. Power Corporation Ltd. & Ors. vs. Anis Ahmad (Civil Appeal No. 5466 of 2012)* and the second is a judgment of the Maharashtra State Consumer Disputes Redressal Commission, Mumbai reported at II (2022) CPJ 120 (Maha.) in the case of *Farm Machinery and Equipment vs. Maharashtra State Electricity Distribution Company*

Ltd. for the proposition that cases of theft under the Electricity Act, 2003 cannot be decided by the consumer forum but has to be decided by the appropriate forum provided under the 2003 Act.

A perusal of the orders of both the fora below shows clearly that the said fora shirked their responsibility of deciding the question of maintainability, which is a preliminary issue palpable from the face of the complaint itself.

Hence, the petitioner's counsel is justified in arguing that instead of relegating the matter again to the forum, the issue of maintainability may be decided by this court.

The judgment of the Supreme Court in *U.P. Power Corporation Ltd.* (supra) clearly distinguishes between the Electricity Act, 2003 and the Consumer Protection Act, 1986 and it has been held that in the case of inconsistency between the two, the provisions of the 1986 Act would 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 1986 Act. The Supreme Court further held 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.

The Maharashtra Forum also held in the cited judgment that though the complainant was contending that it was not a theft case and he was unnecessarily dragged into the case of theft, in view of *prima facie* case of theft of electricity or tampering with the meter being evident, the Commission held that it was not empowered to decide the cases where there are charges of theft under Section 135 of the 2003 Act.

In the present case, a mere perusal of the complaint indicates that the petitioner raised several issues but ultimately prayed for restoration of his electricity supply to the premises with regard to a particular consumer number.

It has been admitted in the said complaint itself that a quantum of sum was demanded by the WBSEDCL upon disconnection of the electricity supply on the allegation of theft.

Lodging of an FIR in that regard has also been admitted in the complaint itself.

In relief (b) of the complaint, a direction was sought upon the opposite parties therein (the present

petitioner) to rectify the amount of Rs.14,70,375/- demanded in the bill dated September 09, 2006.

As ancillary relief, the complainant/private respondent had also asked for compensation for alleged mental pain, sufferings and harassment caused to the complainant by the WBSEDCL.

By looking into the tenor of the allegations made in the complaint itself, it is *ex facie* clear that the nature of the dispute, although couched in the garb of restoration of electricity, pertained to the allegation of theft and consequential disconnection by the WBSEDCL, which was sought to be set at naught by the petitioner by way of lodging of the complaint. As per Section 135 of the Electricity Act, 2003, it is the exclusive domain of the Special Court formed under the 2003 Act to decide the question of theft and ascertain civil liability as well as criminal liability in that regard.

Insofar as the provision of Section 126 of the 2003 Act is concerned, it is the sole prerogative of the Assessing Officer of the licensee to assess the amounts due for alleged unauthorized use of electricity. Section 127 provides for an appeal against such an order passed by the Assessing Officer at its final stage.

As regards defective meters, the said dispute is also to be decided by the appropriate authority as designated under the 2003 Act and the Regulations framed thereunder. Thus, there is no scope for the consumer forum to either entertain or decide the issue raised by way of a complaint.

Hence, the fora below palpably refused to exercise jurisdiction vested in them by law in not dismissing the complaint lodged by the private respondent at the outset on the ground of the same being not maintainable before the consumer forum.

Hence, WPA No. 7165 of 2008 is allowed, thereby setting aside the impugned order dated January 03, 2008 passed by the State Commission, whereby the State Commission had affirmed the order passed by the District Commission. It is hereby held that the Consumer Forum does not have the jurisdiction to redress grievances coming within the purview of Sections 126, 127 and 135 of the Electricity Act, 2003.

In the event the private respondent is entitled to any other relief under the Electricity Act, 2003, however, subject to the question of limitation, the private respondent shall be at liberty to approach the appropriate forum in that regard. If such dispute is otherwise maintainable on facts, such forum shall

take a lenient view in the line of Section 14 of the Limitation Act due to the pendency of the present writ petition.

However, the above rider shall not entitle the petitioner to claim a relief which is palpably time-barred even after deduction of the period of pendency of the present writ petition.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)