

IN THE HIGH COURT AT CALCUTTA
(CIVIL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CO 1950 of 2014
Station Manager Nandakumar Grp.Elect.Supply WBSEDCL
VS.
Namita Das

For the Petitioner	: Mr. Srijan Nayak, Adv. Ms. Rituparna Maitra, Adv.
For the Opposite parties	: Mr. Jayanta Kumar Mandal, Adv.
Hearing concluded on	: 21 st August, 2023
Judgement on	: 25 th August, 2023

Siddhartha Roy Chowdhury, J.:

1. This petition under Article 227 of the Constitution of India challenges the order dated 19th of February, 2014 passed by the learned State Consumer Disputes Redressal Commission, West Bengal in SC Case No. F.A. 843 of 2013 arising out of order dated 28th May, 2013 passed by the learned District Consumer Disputes Redressal Forum, Purba Medinipur in C.C. No. 12 of 2013.
2. Briefly stated on 3rd August, 2012, the husband of Smt. Namita Das since deceased got electrocuted while he came in contact with the electric wire hanging from the post. The WBSEDCL was not informed about such incident till a letter was received by the company issued by an advocate on behalf of Smt. Namita Das, wife of the victim.
3. It is stated that in the village on behalf of the villagers enjoying electricity, Panchayat used to pay the electric bill. Husband of the opposite party used to earn of Rs. 20,000/- per month. Learned Consumer Forum presumed that the monthly income of the husband in absence of any documentary proof was Rs.

3,000/- and awarded a sum of Rs. 3,84,000/- towards compensation. Against the said order WBSEDCL preferred an appeal under the statute before the State Commissioner, but the appeal was not accepted. Hence, this petition under consideration.

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 of 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 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, Namita Das, 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, Namita Das.
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.)