

19.08.2024
Sl. No.18(DL)
srm

W.P.A. No. 19587 of 2024

C.E.S.C. Limited

Versus

Sri Suvendu Seal & Ors.

Mr. Debanjan Mukherjee

...for the Petitioner.

Mr. A Chakraborty,
Mr. Gourab Mukhopadhyay

...for the Respondent No.1.

Affidavit-of-service is taken on record.

Service upon the respondent Nos.2 and 3 is dispensed with as they are all officials of the CESC Ltd. and CESC Limited itself is the petitioner in this matter.

The petitioner alleges that the District Consumer Redressal Commission, Kolkata Unit-II (Central) had wrongly dismissed the application challenging the maintainability of Complaint Case No.CC/68/2023 dated January 3, 2024. The application challenging the maintainability was registered as MA-349/2023.

The District Commission was of the view that the Commission had ample jurisdiction to try the complaint case in view of the decision of the Hon'ble Apex Court in Emaar MGF Ltd. vs. Aftab Singh in Civil Appeal No.923/2017, wherein it was

held that an arbitration agreement would not oust the jurisdiction of the consumer forum.

The learned Advocate appearing for the CESC Ltd. submits that the complainant had raised a billing dispute before the District Commission. The dispute was with regard to the bill for the month of December, 2022 for an amount of Rs.5,960/-. The bill appeared to be high and inconsistent with the consumption pattern of the earlier months. Though the unit consumption recorded in the said bill was 101 units, but the bill was raised for a sum of Rs.5,960/- by adding some unrealised outstanding dues.

Paragraphs 4 to 8 of the complaint have been placed in great detail to substantiate that the entire contention of the complainant was with regard to the disproportionate bill and the adjustments claimed. The prayers have also been relied upon. The consumer prayed before the District Commission for setting aside the disputed bill and for sending the meter to an independent authority for testing.

Learned Advocate for the complainant submits that the definition of the 'service' read with the definition of 'unfair trade practice' would indicate the jurisdiction of the Commission. The exorbitant bill which was raised and which was sought to be adjusted, amounted to unfair trade practice, as defined in the Consumer Protection Act, 2019.

The maintainability of the writ petition is also under challenge.

The law is well settled that judicial review of an order of a tribunal either under Article 226 or 227 of the Constitution of India is permissible. Reference is made to the decision of L. Chandrakumar vs. Union of India reported in AIR 1997 SC 1225.

Clause 3.5 of Regulation No.55 talks about the payment of disputed bills and the procedure to be adopted for raising a billing dispute and determination thereof. It appears to this Court that the District Commission did not take into consideration the said provisions and proceeded on the basis of the decision of the Hon'ble Apex Court which was passed in case of an arbitration agreement.

Thus, the contentions of both the parties should be decided afresh and the order impugned is accordingly set aside.

The issue of jurisdiction of the Commission to decide a billing dispute must be decided with reference to the two laws which are operating in the field namely, Consumer Protection Act, 2019 and the Electricity Act, 2003 read with clause 3.5 of Regulation 55.

This Court also takes note of a decision of the District Consumer Redressal Commission, Kolkata Unit-II (Central) passed in Complaint Case No.CC/355/2020 where the

Commission was of the view that an allegation against the service provider on the ground of charging of price in excess of the price fixed by or under law, was essentially a billing dispute and the complaint was accordingly dismissed by referring to the decision of the Hon'ble Apex Court in UP Power Corporation Ltd. & Ors. vs. Anis Ahmed reported in (2013) 8 SCC 491. Thus, such aspect shall also be looked into by the District Commission while disposing of MA-349/2023.

The writ petition is, thus, disposed of.

There shall be no order as to costs.

Parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)