

ACCOUNTS OFFICER, JHARKHAND STATE ELECTRICITY
BOARD AND ANR.

v.
ANWAR ALI

OCTOBER 9, 2007

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Consumer Protection Act, 1986; Section 2(o):

Beneficial Consumer Jurisdiction—Electricity supply of respondent discontinued by appellant-Board allegedly without serving Notice—Complaint to District Consumer Forum—Forum awarding a sum of Rs. 50,000/—as compensation to respondent—Upheld by State Commission—Affirmed by National Commission—On appeal, Held: National Commission did not consider the question as to whether consumer of electricity is a consumer in terms of Section 2(o) of the 1986 Act—Hence, matter remitted to National Commission to record a positive finding on the subject and also to consider the dispute regarding alleged service of Notices—Electricity Act, 2003.

Respondent-consumer filed a complaint before the District Consumer Forum that the electricity supply was discontinued by the appellant-Board without notice. The District Forum awarded compensation of Rs. 50,000/- along with 12% interest per annum. The order was upheld by the State Consumer Commission and, on appeal, the National Commission affirmed the same. Hence the present appeal.

Appellant contended that the District Forum, the State Commission and the National Commission failed to appreciate that the notice of disconnection was given on 20.12.1999 and the disconnection was made on 29.1.2000; and that the definition of 'Consumer' as defined in Section 2(o) of the Act does not cover a consumer of electricity.

A Respondent-consumer submitted that the District Forum, the State Commission and the National Commission have categorically found that no notice was given prior to disconnection and he has taken a categorical stand that the notice dated 20.12.1999 has not been served on him.

B Partly allowing the appeal, the Court

C HELD: 1.1. "Service" as defined under Section 2(o) of the Consumer Protection Act the mean service of any description which is made available to users in connection with banking, financing, insurance, transport, processing, supply of electrical energy, enterinment etc. Therefore, supply of electric energy by the Nigam falls under Section 2(o) of the Act. [Para 8] [908-C-D]

D 1.2. In view of the fact that the National Commission has not addressed the question as to whether consumer of electricity is covered by the definition of 'Consumer' as defined in Section 2(o) of the Act, the matter is remitted to the National Commission to record a positive finding on the aspect. It shall also take into consideration the dispute raised regarding the alleged service of notice dated 20.12.1999. [Para 10] [908-H; 909-A]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4734 of 2007.

F From the Judgment and final Order dated 19.2.2004 of the National Consumers Disputes Redressal Commission, New Delhi in R.P. No. 355 of 2004.

Nagendra Rai, and T. Mahipal for the Appellants.

G Mansoor Ali, Payal Mahajan and Ashok K. Mahajan for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

H 2. Challenge in this appeal is to the order passed by the National

Consumer Disputes Redressal Commission, New Delhi (in short 'the National Commission'). A

3. The appellants had questioned correctness of the findings recorded by the District Consumer Forum, Ranchi (in short 'District Forum') and the State Consumer Disputes Redressal Commission, Jharkhand, Ranchi (in short 'the State Commission') before the National Commission. B

4. The basic grievance of the respondent was that the electricity supply was discontinued without notice. Compensation of Rs.50,000/- was awarded along with 12% interest per annum by the District Forum and upheld by the State Commission. The National Commission took the view that since notice was given after disconnection, the action was clearly unsustainable. C

5. In support of the appeal, learned counsel for the appellant submitted that the District Forum, the State Commission and the National Commission failed to appreciate that the notice of disconnection was given on 20.12.1999 and the disconnection was made on 29.1.2000. Additionally, it was submitted that whether the consumer of electricity can be covered under the provisions of the Consumers Protection Act, 1986 (in short the 'Act') has not been considered by the National Commission. D E

6. Stand of the appellants is that the definition of 'Consumer' as defined in Section 2(o) of the Act does not cover a consumer of electricity.

7. Learned counsel for the respondent, on the other hand, submitted that the District Forum, the State Commission and the National Commission have categorically found that no notice was given prior to disconnection and the respondent has taken a categorical stand that the notice dated 20.12.1999 has not been served on him. F

8. In this case we are concerned with the scope and extent of the beneficial consumer jurisdiction, particularly with regard to technical subjects falling under provisions such as the Electricity Act, 2003. Under Section 2(c) of the Act "complaint" is defined to mean allegation in writing made by a complainant that the service provider has charged for the G H

A services, a price in excess of the price fixed under the law for the time being in force [See: Section 2(c) (iv)]. Under Section 2(d) “consumer” is defined to mean any person who hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised. Under Section 2(g) of the Act the word “deficiency” is defined

B to mean any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or under a contract or otherwise in relation to any service. The word “goods” is defined under

C Section 2(i) to mean goods as defined in the Sale of Goods Act, 1930. “Service” also defined under Section 2(o) of the Act to mean service of any description which is made available to users in connection with banking, financing, insurance, transport, processing, supply of electrical energy, entertainment etc. Therefore, supply of electric energy by the

D Nigam falls under Section 2(o) of the Act. However, the question which arises for determination and which has not been decided is : whether the beneficial consumer jurisdiction extends to determination of tortuous acts and liability arising therefrom by the Consumer Forum. In this connection, it is urged on behalf of the Nigam that assessment of the duty for

E unauthorized use of electricity, tampering of meters, distribution of meters and calibration of electric current are matters of technical nature which cannot be decided by the Consumer Forum. It is urged that under the Electricity Act, 2003 the jurisdiction of the civil court is excluded. In this connection reliance was placed on Section 145 of the said 2003 Act

F under which the jurisdiction of the civil court to entertain suits in respect of matters falling under Section 126 is expressly barred. These are matters of assessment. It is stated that the 2003 Act is a complete Code by itself and, therefore, in matters of assessment of electricity bills the Consumer Forum should have directed the respondent to move before the competent

G authority under the Electricity Act, 2003 read with rules framed thereunder either expressly or by incorporation.

9. The above position was noted in *Haryana State Electricity Board v. Mam Chand* [2006] 4 SCC 649.

H 10. In view of the fact that the National Commission has not

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addressed the question as to whether consumer of electricity is covered A
by the definition of 'Consumer' as defined in Section 2(o) of the Act, we
set aside the impugned order and remit the matter to the National
Commission to record a positive finding on the aspect. It shall also take
into consideration the dispute raised regarding the alleged service of notice
dated 20.12.1999. B

11. The appeal is allowed to the aforesaid extent with no order as
to costs.

S.K.S.

Appeal partly allowed.