

M/s Bengal Iron Trading Co. and Another Vs Appellate Authority and Others

Court: Calcutta High Court

Date of Decision: March 6, 1995

Acts Referred: Electricity Act, 1910 " Section 36(1), 36(2)

Hon'ble Judges: Samaresh Banerjea, J

Bench: Single Bench

Advocate: S.N. Mukherjee, Mr. P.K. Samanata and Mr. J. Bhattacharyya, for the Appellant; Arijit Choudhury and Mr. R. Dev, for the Respondent

Final Decision: Allowed

Judgement

S. Banerjea, J.

In the instant writ petition the writ petitioners have challenged the legality and validity of the impugned order dated 25th of

April, 1995 passed by the Appellate Authority u/s 36(2) of the Indian Electricity Act, 1910, rejecting the appeal of the petitioner against the order

dated 23 rd February, 1995 passed by the Electrical Inspector Government of West Bengal, inter alia, on the ground that such appeal is not

maintainable.

2. The petitioners who are consumers of high voltage of electricity and paid electricity bills raised by the respondent No.3 till February, 1994,

raised in the basis of consumption recorded in the meter in question disputed bill raised by CESC for the month of March, 1994 by which CESC

levied charges for additional 1.10,130 units in addition to 34.200 units as recorded in the meter during the billing period of March, 1994 on the

ground of alleged under recording in the meter.

3. Challenging the aforesaid bill the petitioners moved the District Forum for direction upon the CESC Limited not to raise any electrical bill by

adding average consumption unit and to rectify the aforesaid disputed bill as per Indian Electricity Act, 1910-

4. The Consumer District Forum by an order dated 19th April, 1994 disposed of the aforesaid complaint by directing, inter alia So ordered that

the impugned bill for March, 1995 be referred to CEI WB for adjudication within two months and his report shall be final and binding upon the

parties." The petitioner thereafter filed an application before the Chief Electrical Officer, West Bengal, praying for correct assessment and decision

in respect of the alleged under recording in the meter in question in accordance with law. The matter thereafter was assigned by the Chief Electrical

Inspector to the concerned Electrical Inspector having territorial jurisdiction as per the relevant notification, issued u/s 36(1) of the Indian Electricity

Act, 1910 and the said concerned Electrical Inspector after contested hearing disposed of the matter by an order dated 23rd February, 1995

directing, inter alia, that CESC Ltd. shall revise the March, 1994 bill by taking into consideration of 86.466 units as the average KWH per month

for the months of January, February and March, 1994 and 462.5 KWH as average maximum demand per month for months of January, February

and March, 1994 respectively and power factor of 01.4%. 94% and 90% for the months of January, February and March, 1994 respectively.

Against the aforesaid order the petitioner preferred an appeal before Appellate Authority u/s 36(2) of said Electricity Act. The CESC before the

said Appellate Authority raised objection as to the maintainability of the same, inter alia, on the ground that the Electrical Inspector passed an order

appealed against on a reference made by the District Forum and therefore there cannot be any appeal against the same u/s 36(2) of the Act, it was

further contended by the respondents CESC before the said Appellate Authority that the District Forum had indicated that the findings of the Chief

Electrical Inspector will be final and binding between the two parties and therefore no appeal will lie.

5. The Appellate Authority by the impugned order has rejected the appeal of the petitioner after accepting the submission of CESC that the order

appealed against not arising out of a dispute raised by the petitioner before Electrical Inspector but under the reference of the District Forum and

District Forum having hold that the order of Electrical Inspector will be final and binding between the parties, the Appellate Authority is not

competent to proceed further in the matter.

6. Since the question which has come up for determination before this Court in this case is purely a question of law of both parties, agreed that the

matter can be disposed of finally without any affidavit and accordingly both parties addressed the Court in full on the aforesaid question of law.

7. Sum and substance of the submission made on behalf of the petitioner is that impugned order of Electrical Inspector is certainly appealable

under the relevant provisions of Act as adjudication was made by the Electrical Inspector in terms of Section 26(6) of the said Act. such

determination of dispute being exclusively within his jurisdiction under said Section 26(6) of the Act. The District Forum did not really refer the

disputed bill to the Chief Electrical Inspector for adjudication, but the forum directed that the said bill ""be referred"" to the Chief Electrical Inspector

for adjudication and since the Chief Electrical Inspector is not empowered u/s 26(6) of the Act to decide disputes being the administrative head,

the matter was referred to an Electrical Inspector who decided the matter u/s 26(6) of the Act and therefore such order is certainly appealable.

The District Forum has extremely limited jurisdiction and could not have overridden the provision of the Electricity Act and when the same directed

that the matter be referred to the Chief Electrical Inspector for adjudication, obviously it was implied that the same would be adjudicated under the

provision of Electricity Act. By the said order the District Forum did not create a new jurisdiction, but was merely referring the matter to the pre-

existing statutory jurisdiction under the Electricity Act, It has been further submitted on behalf of the petitioner relying on the decision of the

Supreme Court in AIR 1994 Supreme Court page 2544, that there cannot be an arbitration to adjudicate a. dispute under the Electricity Act when

there is no provisions K""I arbitration in respect of the matter in dispute under the Electricity Act itself and consequently such order of the District

Forum was not at all a reference to a Chief Electrical Inspector as an arbitrator but a reference to the appropriate Authority under the Electricity

Act for adjudication of the dispute under the provision of the said Act.

8. It has been contended on behalf of the CESC on the other hand that the provisions of Section 26(6) of the Electricity Act will be applicable only

on the making of an application by either party by giving not less than seven days notice of such application to the other party, neither of which

requirements has been fulfilled in this case. The relevant records will indicate that it was a reference made by the District Consumer Forum to the

Chief Electrical Inspector on the basis of which the adjudication was made and not made under the provisions of Section 26(6) of the-Electricity

Act.

9. It has been further sought to be contended that such reference to the Chief Electrical Inspector is similar to the reference by Court to a referee

under the provisions of Original Side Rules of this Hon""ble Court and Chapter XXVII, in respect thereof and u/s 75 and Order XXVI. Rule 10

and 10-A of the Court of Civil Procedure.

10. Having heard the learned Advocate of both the parties and considering the material on the record I am of the view, that the Appellate

Authority has erred in holding that appeal preferred by the petitioner before him against the order passed by the Electrical Inspector cannot be

maintained

11. The fact that the adjudication of a dispute as to the correctness of the meter is within the exclusive jurisdiction of the Electrical Inspector is

absolutely clear from Section 26(6) as also other provisions of the Electricity Act, 1910.

12. As held by the Supreme Court in the case of Punjab State Electricity Board Vs. Bassi Cold Storage, Khara and another, . Electricity Act

having specifically mentioned that the difference and the dispute relating to the meters enumerated in the relevant section which are required to be

determined by arbitration, only these matters enumerated in the relevant section in the Electricity Act alone can be referred to arbitration and no

other matter.

13. Admittedly matters relating to which the Electricity Act has provided that the same would be determined by arbitration are the matters

contained in Section 13(2), Section 16(3), Section 19 (2), Section 21(4) and Section 22 (A)(2) of the Electricity Act. Section 26(2) of the Indian

Electricity Act, under which an adjudication is to be made by a Electrical Inspector as to the differences and disputes between the two parties as to

the correctness of the meters, does not contain any provisions for referring such disputes to arbitration.

14. Under such circumstances when the District Forum directed that the matter be referred to the Chief Electrical Inspector for adjudication, the

only logical and legal interpretation of such order would be that the District Forum directed adjudication of the disputes under the provisions of

26(6) of the said Act.

15. I accept the submission of Mr. Sakli Nath Mukherjee the learned Advocate appearing for the writ petitioner that by the impugned order the

District Forum itself having a very limited jurisdiction under the Consumer Protection Act could not have created a jurisdiction for the Chief

Electrical Inspector to adjudicate the matter beyond the scope of the provisions of the Electricity Act and the Rules made thereunder.

16. The submission of the learned counsel appearing for the CESC that there can be a third mode of adjudication namely, when by reference to a

referee by the District Forum or the Court which was done in the instant case as it is done under the relevant provisions of CPC and the Original

Side Rules, is wholly misconceived. The Consumer Forum under the Consumer Protection Act is not a Court and the Section 75 and Order

XXVI. Rule 10 and 10-A, provisions of the CPC relating to reference of a matter to a referee are not applicable at all to a proceeding under the

Consumer Protection Act itself and the provision relating to reference of a matter to a referee is not one of them. That apart the Indian Electricity

Act being a special statute will override the general provisions of law and the Electricity Act also does not contain or even to contemplated such a

provision. That apart factually also it cannot be said that the impugned order of the District Forum never directed that the report of the referee is to

be placed before the Forum for its final decision.

17. It has been further contended by the respondent CESC that provision of Section 26(6) only apply when an application is made by either of the

party raising such a dispute before the Electrical Inspector and in such a case before making the application 7 days notice to be served upon the

opposite side, both of which are wanting in the present case.

18. It however, appears from the records that after the District Consumer Forum passed the aforesaid order directing that the matter be referred

to the Chief Electrical Inspector for adjudication, an application was made by the petitioner before the Chief Electrical Inspector, on 8th of August.

1994, raising time disputes in respect of the impugned bill including the disputes as to the correctness meter and only after such application the Chief

Electrical Inspector referred the disputes to an Electrical Inspector. There cannot be any manner of doubt factually also that the adjudication which

was made by Electrical Inspector was under the provisions of Section 26(2) of the Indian Electricity Act.

19. Submission made on behalf of the CESC that in absence of such notice under the proviso of Section 26(6) of the Act. the adjudication in

question could not have been made u/s 26(6) of the Act is wholly misconceived and devoid of any merit. Because of the impugned order passed

by the District Forum itself the CESC was fully aware that such disputes has been referred to the Chief Electrical Inspector under the provisions of

the said Act. Absence of any notice under the proviso of subsection 6 of Section 26 of the Act does not take away the adjudication made from the

provision of sub-section 6 of Section 26 of the said Act particularly when it is not the case of the respondent that at the time of hearing of the

disputes before the Electrical Inspector they were not given any hearing or they suffered in any manner whatsoever in absence of such notice.

20. The other contention of the respondents that because of the order passed by the District Forum that the order passed by the Electrical

Inspector will be final and binding and therefore the same cannot be appealed against is also not tenable. When such an order is even passed by a

Court, the decision in question must be a proper decision in accordance with law and if such decision is not made in accordance with law, the

same will certainly be open to challenge before the Appellate Authority. The decision of Sabyasachi Mukherjee, J as His Lordships as he then was

in the case of Jaykishore Pande v. Biswanath Ahir, 84 Cal WN 795 and which was followed by B.C. Roy, J. as His Lordship then was in the case

of Pinaki Ranjan Bharati v. State of West Bengal, 1982(1) Cal LJ 37, para 11 will support such position of law. In the instant case, the real

challenge of the petitioner of the order passed by the Electrical Inspector before the Appellate Authority, inter alia, was on the ground that the

same is not in accordance with law and therefore the Appellate Authority should have entertained the appeal and considered the appeal on merits.

I am further of the view that the District Consumer Forum having limited jurisdiction in the matter of Consumers disputes under the Consumer

Protection Act and following a summary procedure, by directing adjudication of the dispute by the Chief Electrical Inspector under the provision of

the Indian Electricity Act, cannot take away the right of appeal of a person if in same is provided for in the Act.

21. For the reasons stated above this writ application succeeds and the impugned order passed by the Appellant Authority on 25th April, 1995

being Annexure ""0" is set aside. The appellate Authority is now directed to entertain the appeal preferred by the petitioner and to decide the same

in accordance with law after giving hearing to both the parties within two months from the communication of this order.

There will be no order as to costs.