

(2014) 09 CAL CK 0076

Calcutta High Court

Case No: CO 1120 of 2009

West Bengal State Electricity
Distribution Company Limited

APPELLANT

Vs

Sujit Kumar Khatua

RESPONDENT

Date of Decision: Sept. 24, 2014

Acts Referred:

- Constitution of India, 1950 - Article 227
- Consumer Protection Act, 1986 - Section 21(b)

Citation: (2015) 1 CHN 556 : (2015) 3 WBLR 341

Hon'ble Judges: Subrata Talukdar, J

Bench: Single Bench

Advocate: Srijan Nayek, Raja Saha, Shovan Banerjee and Arindam Mitra, Advocate for the Appellant; Golam Mustafa and Subir Sabud, Advocate for the Respondent

Judgement

Subrata Talukdar, J.

By filing this application under Article 227 of the Constitution of India the West Bengal State Electricity Distribution Company Limited (for short WBSEDCL) & Ors challenge the order dated 12th January, 2009 passed by the Id. State Consumer Dispute Redressal Commission, West Bengal (for short the Commission) in SC case No. 453/A/2006 under the Consumer Protection Act, 1986.

2. By the said order impugned the Id. Commission was pleased to affirm the order dated 16th November 2006 passed by the Id. District Consumer Dispute Redressal Forum (for short the Forum), Tamluk in Consumer case No. 10 of 2004. By the order dated 16th November, 2006 the Id. Forum was pleased to direct the WBSEDCL to supply electricity connection to the present Opposite Parties (OPs)/Complainants within 15 days of clearing the arrears, if any.

3. The Id. Forum was further pleased to direct the WBSEDCL to restore the overhead connection, if there be any fault, also within 15 days of the date of the order. Along

with such direction the Id. Forum) awarded compensation of Rs. 500 to the present OPs/Complainants for the "inordinate delay" in giving electricity connection. Such compensation was directed to be paid within a fortnight from date failing which the order dated 16th November, 2006 could be put to execution by the complainants.

4. Being aggrieved by the quantum of compensation awarded by the Id. Forum, the present OP/Complainant filed an appeal before the Id. Commission being SC Case No. 453/A/06. Disposing of the appeal by order dated 12th January 2009 the Id. Commission was pleased to, inter alia, hold that the complainant is entitled to receive compensation for the deficiency in service suffered on account of the gross delay in giving initial electricity connection. Accordingly, a compensation of Rs. 30,000 was granted by the Id. Commission in favour of the complainant. In default of payment of the said compensation within the period of 60 days stipulated by the Id. Commission, the complainant was entitled to recover the same from WBSEDCL in accordance with law at interest of 10 per cent per annum till realisation.

5. Aggrieved by the order of the Id. Commission awarding enhanced compensation WBSEDCL has preferred the present CO 1120 of 2009.

6. Sri Srijan Nayek, Id. Counsel for the petitioner/WBSEDCL makes the following submissions:-

A) The Electricity Code is a complete code for redressal of grievances in such matters. Neither the Id. Forum nor the Id. Commission should have entertained any Dispute under the Electricity Code. The resolution of Disputes between the licensee, viz. WBSEDCL and the consumer is provided under the Code and, in view of such alternative remedy the complainant/consumer cannot be allowed to go forum shopping by avoiding the provisions of the Code and taking recourse to the law of consumer protection.

B) Taking this Court to the order of the Id. Forum dated 16th November, 2006 Sri Nayek points out that the Id. Forum did not come to any inculpatory conclusion of deficiency of service committed by WBSEDCL. On the contrary, from a plain reading of the order dated 16th November, 2006 it shall be evident that the Id. Forum directed the complainant/consumer to pay in full the amount of charges due to WBSEDCL as a condition precedent for availing of the electricity connection. In view of a such direction the award of compensation of Rs. 500 by the Id. Forum was utterly uncalled for.

C) Sri Nayek points out that the cause of action pertaining to the complaint arose in the year 1997 and the complainant/consumer knocked on the doors of the Id. Forum after a delay of 7 years. Such delay is proscribed by the statute, viz. the Consumer Protection Act, 1986 (as amended up to date) (for short the CP Act) since the said Act provides for a limitation of two years from the accrual of the cause of action to file a complaint. In such circumstances it was thoroughly unwarranted on the part the Id. Forum to grant compensation of Rs. 500 and, the Id. Commission to raise the same

exorbitantly to Rs. 30,000.

D) On the point of maintainability of the present Revisional Application Sri Nayek asserts that CO 1120 of 2009 has travelled a long way since its initial filing before this Court and, therefore, the objection on maintainability is no more res integra. At this stage of final hearing of CO 1120 of 2009 the present OP/Complainant is precluded from raising such objection. Sri Nayek submits that considering the previous orders passed by this Court from time to time during the journey of CO 1120 of 2009 from the stage of its filing to the present stage of final hearing as well as the conduct of the parties, it must be presumed that the jurisdiction of this Court is not ousted.

7. Per Contra Sri Gulam Mustafa, Learned Counsel appearing for the OPs has submitted as follows:-

i) That the present CO 1120 of 2009 is not maintainable. The CP Act provides for an alternative relief of challenge to orders of the Id. Commission. Such challenge is by way of exercise of jurisdiction by the Id. National Commission u/s 21(b) of the said CP Act.

ii) Sri Mustafa submits that the order impugned of the Id. Commission dated 12th January, 2009 is an order passed on merits. Such order passed on merits is only amenable to appeal or revision under the provisions of the special statute under which the order was passed. Such special statute being the CP Act, the order can be only challenged under the provisions of the said Act.

iii) Sri Mustafa draws the attention of this Court to the order of an Hon"ble Single Bench dated 11th August, 2008 passed in CO 393 of 2008 between the same parties. By the said order dated 11th August, 2008 which is annexed to CO 1120 of 2009 the Hon"ble Single Bench of this Court was pleased to set aside an order of the Id. Commission dated 6th December 2007 with a direction to the Id. Commission to hear out SC Case No. 453/A/06 afresh in the light of the observations made in the order. The Hon"ble Bench was pleased to direct that the disposal of SC Case No. 453/A/06 be made expeditiously as possible within a period of six months but not later than 8 months from the date of communication of the order. The Hon"ble Single Bench was pleased to hold as follows:-

"Since this Court has decided the instant application only on the point of Jurisdiction, all points regarding Merits of the case are kept open to be decided by the learned State Commission, without being influenced in any manner by any observation made herein."

iv) Drawing inspiration from the order dated 11th August, 2008 Sri Mustafa points out that the said SC Case No. 453/A/06 pending between the parties, which is also the subject matter of CO 1120 of 2009 was directed to be disposed of by the Hon"ble Single Bench and the exercise of jurisdiction by the Id. Commission stood confirmed.

WBSEDCL, being a party to such order, cannot reopen the question of jurisdiction afresh. According to Sri Mustafa, pursuant to the direction of the Hon"ble Bench dated 11th August, 2008, the Id. Commission proceeded to decide the issue on merits and the issue of its jurisdiction cannot be reopened by WBSEDCL in this application under Article 227. The remedy lies in filing an appeal or revision u/s 21(b) of the CP Act. Sri Mustafa therefore strongly submits that the present CO 1120 of 2009 is not maintainable.

v) Sri Mustafa also takes this Court to the grounds of appeal as agitated on behalf WBSEDCL before the Id. Commission as also, the grounds of revision taken in CO 1120 of 2009. Sri Mustafa submits that at no point of time WBSEDCL has alleged lack of jurisdiction on the part of the Id. Commission to hear the case. In any event, the solemn order of the Hon"ble Single Bench dated 11th August, 2008 clinches the issue of jurisdiction and the same is barred under res judicata and the principles analogous thereto.

8. Heard the parties. Considered the materials on record.

9. This Court is of the considered opinion that exercise of Jurisdiction of the High Court under Article 227 of the Constitution of India is in the nature of a self-imposed restriction. There is no absolute bar on exercise of Jurisdiction by the High Court in matters arising out of the CP Act and, in appropriate cases such Jurisdiction can be exercised. The following paragraphs in the judgment reported in [Manager, Divisional Office-III, National Insurance Co. Ltd. Vs. Subrata Baran Sen and Another](#) in the matter of Manager, Divisional Office-III, National Insurance Co. Ltd. Vs. Subrata Baran Sen may be usefully reproduced:-

"31) The series of judgments cited by the opposite party No. 1 for the proposition that the High Court should not exercise the power conferred under Article 227 of the Constitution of India if there is an efficacious alternative remedy available to the petitioner. I do not want to deal those aspects as all the judgments relied on by the opposite party No. 1 does not say that there is a complete ouster of the jurisdiction of the High Court because of the existence of the alternative remedy. As indicate above it is a self-imposed restriction which the High Court must bare if the alternative remedy is sufficient to grant the relief claimed by the petitioner before it.

32) The High Court in exercise of its power under Article 227 of the Constitution should be slow and circumspect in judging the cause to avoid the reappraisal of the fact. It is only to keep the Subordinate Courts and Tribunals within the statutory bounds such power should be exercised. The High Court can also exercise its power under Article 227 of the Constitution if there is an error manifest on the face of it or for ends of justice.

33) Both the Forums have factually found the entitlement of the opposite party No. 1 and as such this Court in exercise of power under Article 227 of the Constitution should not interfere with such discretionary powers based on factual matrix.

34) Thus, this Court does not find any merit in the revisional application nor does it find any infirmity or illegality in the impugned order.

35) The revisional application, therefore, is dismissed."

10. However, law has also been noticed by this Hon"ble Court in [Gopal Das Vs. Ajoy Mukherjee and Another](#), in the matter of Gopal Das Vs. Ajoy Mukherjee under a special statute where alternative remedy is provided, this Court may refrain from exercising its powers under Article 227 of the Constitution of India except under certain conditions. Paragraphs 19, 20, 21 of the said decision read as follows:-

"19) There is no denial that the petitioner O.P. could have moved the National Consumer Commission u/s 21(b) of the Act of 1986 against the impugned order of State Commission. However, said alternative remedy by itself may not be ground for High Court to refuse to exercise its jurisdiction under Article 227 of the Constitution of India if it can be shown that any of the following conditions are fulfilled namely (i) such alternative remedy would not be an efficacious one, or (ii) the order was passed by an authority without jurisdiction, or (iii) an order has been passed by an authority in violation of the principles of natural justice.

20) In the case in hand, it has already been found that the petitioner has failed to make out a case of passing order by an authority without jurisdiction or in violation of principles of natural justice.

21) In terms of section 21(b) of the Act of 1986 the National Commission has jurisdiction to call for the records and pass appropriate orders for any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. It is thus clear that the present petitioner had an alternative remedy before the National Commission in terms of section 21(b) of the Act of 1986 and said alternative remedy cannot be said to be not an efficacious one. As much, on that score also the present application was not entertainable."

11. This Court is of the considered opinion that in the facts of this case the issue of deficiency of service as considered by the Id. Forum and affirmed by the Id. Commission is a finding on merits. The award of compensation is a corollary to the finding on merits arrived at by both the fora.

12. This Court also notices that by the order dated 11th August 2008 an Hon"ble Single Bench was pleased to settle the issue of Jurisdiction by directing the Id. Commission to conclude the matter within a specified period. As rightly pointed out by Sri Mustafa WBSEDCL accepted the decision of the Hon"ble Bench and fought the case on merits before the Id. Commission. The order of 11th August, 2008 was not challenged by WBSEDCL. Having acquiesced to the order dated 11th August 2008

and consequently to the jurisdiction of the Id. Commission, WBSEDCL is now estopped from raising such issue at the present stage.

13. This Court is, therefore, also persuaded to accept the submission of Sri Mustafa that upon an adjudication on merits under a special statute, the path to further legal remedies must be also followed under the said special statute. In such view of the matter the remedy of appeal or revision u/s 21(b) of the CP Act stares in the face. No issue of lack of jurisdiction of the Id. Commission has been pleaded by WBSEDCL in the present CO 1120 of 2009 or, can be raised at all pursuant to the steps taken by it under the blessings of the order dated 11th August 2008. In such view of the matter the self-imposed restriction of this Hon"ble Court to address itself on the Hamletian dilemma of "to be or not to be" in exercise of its Jurisdiction under Article 227 must be answered in the negative having regard to the particular facts of this case. This Court further notices that the exigencies noticed in National Insurance and Gopal Das" case (supra) warranting exercise of supervisory jurisdiction are absent in the facts of this case.

14. In the back drop of the above discussion this Court finds no reason to interfere with the order impugned dated 12th January, 2009.

15. CO 1120 of 2009 is accordingly dismissed.

16. There will be, however, no order as to costs.

17. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of all requisite formalities.