

(2008) 11 DEL CK 0227

Delhi High Court

Case No: FAO No. 304 of 2008

Shri Kishan Kumar

APPELLANT

Vs

Manager (Business), BSES
Rajdhani Power Ltd. and Another

RESPONDENT

Date of Decision: Nov. 7, 2008

Acts Referred:

- Delhi Electricity Reform Act, 2000 - Section 11, 2, 3, 3(1), 42
- Electricity Act, 2003 - Section 42(5), 42(6), 42(7)

Citation: (2008) 155 DLT 449

Hon'ble Judges: Sudershan Kumar Misra, J

Bench: Single Bench

Advocate: R.K. Bhardwaj, for the Appellant; Mandeep Singh and Vinaik, for the Respondent

Final Decision: Dismissed

Judgement

Sudershan Kumar Misra, J.

The appellant has instituted this appeal u/s 42 of the Delhi Electricity Reforms Act, 2000 against an order passed by the Consumer Grievance Redressal Forum (hereinafter referred to as "the Forum") on 10.4.2008. Admittedly, in passing the impugned orders, the Forum was exercising powers u/s 42(5) of the Electricity Act, 2003.

2. At the outset, Counsel for the respondent has taken an objection to the maintainability of the appeal itself. He submits that since the impugned order was passed by the Forum u/s 42(5) of the Electricity Act, 2003, any appeal against an order of that Forum can only lie with the Ombudsman in terms of Section 42(6) and (7) of that Act, and the institution of the present appeal before this Court u/s 42 of the Delhi Electricity Reforms Act, 2000 instead, is misconceived.

3. The essence of the argument put forward by the learned Counsel for the respondent is that Section 42 of the Delhi Electricity Reforms Act, 2000 envisages an appeal only by a person aggrieved of any decision or order of the Commission passed under that Act. The expression, "commission", has also been defined u/s 2(c) of that Act to mean the Delhi Electricity Regulatory Commission mentioned u/s 3 in part-II thereof. He submits that the impugned decision in the instant matter is admittedly of the Consumer Grievance Redressal Forum, which is an entirely different body and cannot be substituted by the Delhi Electricity Regulatory Commission, envisaged u/s 42 of the Delhi Electricity Reform Act, 2000.

4. The contention of the learned Counsel for the respondent deserves to be accepted. In fact, Section 42 of the Delhi Electricity Reforms Act, 2000 refers only to the Delhi Electricity Regulatory Commission and none other. This is also borne out from Section 3(1) of that Act which categorically states that the Delhi Electricity Regulatory Commission shall hereinafter be referred to as "the commission" in that Act. For that reason also, it follows that the reference to "the commission" u/s 42 of the Delhi Electricity Reforms Act, 2000, must necessarily be confined only to the Delhi Electricity Regulatory Commission and cannot include within its ambit the Consumer Grievance Redressal Forum envisaged under the Electricity Act 2003, more so, when the latter is a completely different enactment altogether. In addition, even Section 11 of the Delhi Electricity Reforms Act, 2000, makes it very clear that functions of the Commission envisaged under that Act are quite different from the functions carried out by the Consumer Grievance Redressal Forum established under the Electricity Act, 2003.

5. Furthermore, Section 42(5) of the Electricity Act, 2003, envisages establishment of a Forum for redressal of the grievance of consumers. It is this forum which has admittedly passed the impugned order in the case at hand. Learned Counsel for the appellant placed reliance on the order of a Single Judge of this court passed on 14.1.2008 in Writ Petition No. 321/2008 filed by the appellant whereby this court declined to entertain the writ petition in view of the establishment of the Consumer Grievance Redressal Forum u/s 42(5) of the Electricity Act, 2003. According to learned Counsel for the appellant, this order recognizes the right of the appellant to file the instant appeal in case he is dis-satisfied with the decision of the Consumer Grievance Redressal Forum. He says that it is for that reason that the appellant has approached this court. To my mind, the aforesaid order dated 14.01.2008 passed in Writ petition No. 321/2008, which has been annexed by the appellant, does not lay down any such proposition. It merely declines to entertain the writ petition in view of the existence of the Consumer Grievance Redressal Forum envisaged u/s 42(5) of the Electricity Act, 2003. It further states that keeping in view the nature of the dispute, it would be appropriate that the appellant should approach the said Forum. That order cannot be taken as a decision, direction or permission to the appellant to institute this appeal before the High Court even though no such appeal is available to him under the Electricity Act, 2003.

6. Various tribunals and courts exercise specific jurisdiction conferred on them under the law. In case a court or a tribunal is vested with more than one jurisdiction, then in that event, it is open to a party to invoke the appropriate jurisdiction. For example, a Civil Court may have original jurisdiction as well as testamentary and appellate jurisdiction. In that case, it is open to the petitioner to invoke any of the jurisdictions that vest in, and are therefore exercisable by, such a court. At the same time, no petitioner can validly invoke jurisdiction of a tribunal or a court inviting it to exercise any jurisdiction which is not vested in that Court or tribunal in the first place. In this case, admittedly, the appellant invoked the jurisdiction of the Consumer Grievance Redressal Forum u/s 42(5) of the Electricity Act, 2003. At the same time, the jurisdiction which was exercised by that Forum was also the one which was vested in it u/s 42(5) of the Electricity Act. The same Act further provides that in case anybody is aggrieved of any order passed by this Forum, he can prefer an appeal to the Ombudsman in terms of Sub-sections 6 and 7 of Section 42 of the same Act. In this manner, the appellate jurisdiction to hear appeals against orders of the Forum passed u/s 42(5) of the Electricity Act, 2003 lies with the ombudsman only, and that is where a dis-satisfied party can go. It is not open to a party who invokes the jurisdiction of the Forum u/s 42(5) of the Electricity Act, 2003 to file an appeal against an order passed by that Forum u/s 42 of the Delhi Electricity Reforms Act, 2000 because the later is a completely different statute and the appellate forum envisaged thereunder is not available to a party, such as the appellant herein, who is dis-satisfied by a decision under the Electricity Act, 2003.

7. In this context, the observations of the Supreme Court in the case of [State of Haryana Vs. M/s. Maruti Udyog Ltd. Ors.](#), are apposite:

Right of appeal is the creature of the statute and has to be exercised within the limits and according to the procedure provided by law. It is filed for invoking the powers of a superior court to redress the error of the court below, if any. No right of appeal can be conferred except by express words. An appeal, for its maintainability, must have a clear authority of law.

8. The nature of jurisdiction exercised by the forum under Sections 42(5) and 42(6) under the Electricity Act, 2003 has been set down by the Supreme Court in the case of [Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Ltd. and Others](#), wherein the Court held that where the Statute concerned had created a proper forum/ombudsman for the redressal of grievances of individual consumers, the consumers can only resort to these bodies for redressal of their grievances. The proper forum in such cases is thus Section 42(5), and thereafter, Section 42(6) of the Electricity Act, 2003.

9. The appellate jurisdiction conferred on this court by Section 42 of the Delhi Electricity Reforms Act, 2000 is quite different. It is conferred for the purpose of hearing grievances against orders that have been passed under the Delhi Electricity Reforms Act, 2000 only, and that cannot be read to mean that the appellate

jurisdiction conferred under that Act is also exercisable with regard to the orders passed u/s 42(5) of the Electricity Act, 2003, which is an entirely different statute. Therefore, to my mind, the reliance of learned Counsel for the appellant on Section 42 of the Delhi Electricity Reforms Act, 2000 is misconceived.

10. Looking to the grievance of the appellant, it is obvious that even the original jurisdiction under the Delhi Electricity Reforms Act, 2000 was not available to him. It is perhaps for the reason that he did not approach the Commission under the Delhi Electricity Reforms Act, 2000 and moved the Consumer Grievance Redressal Forum under the Electricity Act, 2003, instead.

11. Since the dispute raised by the appellant did not fall within the purview of the jurisdiction exercised by the Delhi Electricity Regulatory Commission under the Delhi Electricity Reforms Act, 2000 in the first place, there can be no question of the right of appeal to the High Court envisaged under the said Act being available to the appellant. The High Court exercises appellate jurisdiction against the orders of various forums including the Civil and Criminal Courts, as also against the decisions of various bodies constituted under diverse statutes. The scope and availability of the appellate jurisdiction when exercised by the High Court in any manner is circumscribed by the relevant statute under which the same is envisaged.

12. For all these reasons, I find that this court does not have jurisdiction to entertain this appeal and the same is not maintainable on this ground.

13. The appeal is accordingly dismissed.

14. Since the matter has not been examined on merits, it would be open to the appellant to pursue any other remedy to which he may be entitled to as per law.

CM No. 12841/2008

15. Since the appeal has been dismissed, this application does not survive and is disposed of as such.