
(2009) 02 PAT CK 0102
In the Patna High Court
Case No : CWJC No. 18528 of 2008

Bikaner Plasto Flex Pvt Ltd.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Electricity Act, 2003 — Section 2(15), 2(49), 42, 42(5), 42(6)

Citation : (2009) 57 BLJR 1142 : (2009) 3 PLJR 12

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Advocate : Suraj Samdarshi, for the Appellant; Vinay Kirti Singh and GA-4, for the Respondent

Judgement

Navaniti Prasad Singh, J.—Heard Mr. Suraj Samdarshi for the petitioner and Shri Vinay Kirti Singh for the Electricity Board and with their consent, this application is being disposed of at this stage itself.

2. The petitioner is being proceeded against in a certificate proceeding for alleged recovery of certain sums of electricity dues. Petitioner filed its objection before the Certificate Court and the Certificate Court is not deciding the objections apparently on the ground that the matters are too technical and the proceeding is pending. He has come to this Court challenging the certificate proceedings. In my view, the challenge before this Court at this stage is misconceived. In this case, it would be relevant to refer to the provisions of the Electricity Act, 2003. Under this Act, the Electricity Board is now deemed to be a distribution licensee and is bound by the obligations cast upon distribution licensee under the Act. u/s 42(5) of the Act, distribution licensee is under an obligation to establish a forum for redressal of grievance of the consumer in accordance with the guidelines as may be specified by the State Regulatory commission. "Consumer" has been defined in the Act by Section 2(15) which is quoted hereunder:

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"Consumer" means any person who is supplied with electricity for his own use by a licensee or the Government or by any other person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and includes any person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person, as the case may be;

3. A reference to the definition of consumer, as aforesaid, would show that it is a very wide definition and includes any person whose premises are connected for receiving electricity of the distribution licensee. Section 2(49) defines a person which includes a Company, Body Corporate, Association etc. Therefore, in this widely defined expression, "Consumer" means every person who receives electricity irrespective of his categorization as domestic, commercial, noncommercial, industrial. Thus seen, there is a statutory obligation on the Electricity Board to constitute a forum for redressal of all types of consumer disputes. "Consumer" here means any one supplied with electricity from the Board. This, of course, is subject to the exception as provided in part - XV of the Act wherein special Courts under special circumstances have been given special power. To that extent, Section 42(5) will not be available. Once an application is made to the forum in terms of Section 42(5) and the for a decides the grievance that becomes statutorily and legally binding on the Board but so far as consumer is concerned, he has a remedy if he is aggrieved by that determination in terms of Section 42(6) of the Act which specifically provides that any consumer aggrieved by non-redressal of his grievance, may represent for redressal of his grievance to an authority known as Ombudsman to be appointed and designated by the State Regulatory Commission. The said Ombudsman has power to settle the grievance in terms of Sub-section (7) of Section 42.

4. It is a matter of great regret and concern that though this Act came as far back as in 2003, the Bihar State Regulatory Commission is still to wake up to its obligation under Sub-section (6) of Section 42 to appoint or designate an Ombudsman in this matter, thus, denying a right to the consumer to redress his grievance. At the Bar, it is also submitted that even in cases where for a established u/s 42(5) passes an order, the Board does not accept the same. I need not dwell on this matter as, in my view, Board has no such discretion in the matter.

5. Here, I may also point out that the right given to a consumer under the scheme of Section 42 of the Act, in terms of Sub-section (8) thereof is without prejudice to the right which the consumer may have apart from rights conferred therein. Therefore, this right of redressal is in addition to any other right that the consumer may have.

6. Thus, in my view, once a specific forum for resolution of consumer dispute is statutorily created, the petitioner is obliged to first approach the said for a which shall be under obligation to determine and address itself to the grievance as raised and adjudicate upon it within the guidelines as may be specified by the

State Regulatory Commission.

7. Thus, I direct that the petitioner should first apply to the said designated for a for redressal of its dispute/grievance and once such a dispute is resolved then the certificate proceedings would, accordingly, proceed. It is expected that the for a would decide the dispute expeditiously so that neither the Board nor the consumer suffer for quick redressal of grievance is advantageous to all.

8. With these directions and observations, the writ petition stands disposed of.

9. Let a copy of this order be sent to Bihar Electricity Regulatory Commission as well as Secretary, Department of Energy, Government of Bihar.