

(2013) 01 MP CK 0156

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 7319, 7320, 8215, 8216 of 2011 and 3546, 3547, 3551 and 4375 of 2012

M.P. Madhya Kshetra Vidyut Vitran Co. Ltd.

APPELLANT

Vs

Savitri Devi

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Electricity Act, 2003 — Section 126, 126(3), 126(6), 126(6)(b), 127
Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(2)
Suits Valuation Act, 1887 — Section 11

Citation : AIR 2013 MP 125 : (2013) ILR (MP) 1027 : (2013) 2 JLJ 219 : (2013) 3 MPHT 247 : (2013) 2 MPJR 281 : (2013) 2 MPLJ 345

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Vivek Jain, for the Appellant; A.V. Bhardwaj in W.P. Nos. 7319 and 7320 of 2011, J.P. Kushwah in W.P. No. 8215 of 2011, B.D. Jain in W.P. No. 8216 of 2011, K.K. Shrivastava in W.P. No. 3546 of 2012, Abhishek Parashar in W.P. No. 3547 of 2012 and Rajesh Mittal in W.P. No. 3551 of 2012, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In these batch of petitions similar questions are involved, and therefore, with the consent of parties, matters are analogously heard and decided by this common order. The facts are taken from W.P. No. 7319/2011. The Madhya Pradesh Madhya Kshetra Vidyut Vitaran Company Limited (the Company) has filed this writ petition against the order of Electricity Consumer Grievances Redressal Forum (the Forum) dated 26-9-2011. The respondent/consumer filed an application u/s 42(5) of the Electricity Act, 2003 before the Forum. The respondent stated that she is a consumer and her electricity meter is placed outside her shop. On 25-4-2011 the Vigilance Team of the Company checked the said electricity connection/meter and prepared a provisional bill. By communication dated 30-4-2011 (Annexure P/6), an amount of Rs. 66,584/- was provisionally assessed and the respondent was directed to either accept this

amount or file her objection.

2. Shri Vivek Jain, learned counsel for the petitioner, submits that in these batch of petitions in certain matters, objections were taken about jurisdiction and maintainability of the complaint/proceedings before the Forum and in certain cases, those objections were not taken. He submits that the Forum had inherent lack of jurisdiction, and therefore, interference be made by this Court. He relied on certain provisions of the Electricity Act and the regulations by which the Forum was constituted. The regulation is known as MPERC (Establishment of Forum and Electricity Ombudsman for Redressal of Grievances of the Consumers) (Revision-1) Regulations, 2009 (hereinafter called as "Regulations").

3. Per contra, Shri A.V. Bhardwaj, Shri J.P. Kushwah, Shri B.D. Jain, Shri K.K. Shrivastava, Shri Abhishek Parashar and Shri Rajesh Mittal, learned counsel for the respondents, supported the order passed by the Forum. In cases where no objection about maintainability of the proceedings before the Forum is taken by the Company, learned counsel for the respective respondent submit that once the Company has submitted to the jurisdiction of the Forum, it is no more open for the Company to state for the first time before this Court that the Forum was lacking jurisdiction. The main contention of learned counsel for the respondents is that it was obligatory on the part of the Company to establish their specific case u/s 126 of the Electricity Act, 2003 before the Forum. Only when the said case was established to the hilt before the Forum, a conclusion can be drawn that the Forum had no jurisdiction. In absence thereof, it cannot be said that Forum had no jurisdiction. By drawing the attention of this Court on the language of section 126 of the Electricity Act, the learned counsel for the respondents stated that when it is not in dispute that respondents had an authorized electricity connection, mere over-drawal of electricity beyond permissible limit will not amount to unauthorized use of electricity within the meaning of section 126 of the Electricity Act.

4. Shri A.V. Bhardwaj, learned counsel for one of the respondents, submits that in Dr. Hari Singh Gaur Vishwavidyalaya and Another Vs. Rajeshwar Yadav, , Dr. Hari Singh Gaur Vishwavidyalaya Sugar (M.P.) and Anr. vs. Rajeshwar Yadav, this Court interpreted section 2(2) Explanation of the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 and opined that the word "petitioner" used in the Explanation does not mean that petitioner who files a writ petition, but to understand as a party who files the Writ Appeal. He submits that the provisions of the Regulations are to be interpreted in the same manner, and therefore, it will be open for both the parties to prefer appeal against the order of the Forum.

5. In rejoinder submission, Shri Vivek Jain, learned counsel for the petitioner submits that against an order passed u/s 126, appeal lies u/s 127 to the statutory appellate authority and as per the Regulations, there was a specific bar to deal with the matters which are arising out of certain provisions of certain chapters mentioned in the Regulations. In view of this specific bar, there was an

inherent lack of jurisdiction on the part of the Forum and the Forum has erred in entertaining the matters. Lastly it is stated that there is a difference between pecuniary jurisdiction and jurisdiction with regard to subject-matter. He submits that in the present case, the lack of jurisdiction is with regard to subject-matter which amounts to inherent lack of jurisdiction, and therefore, whether or not such objection is taken, interference can be made at any stage. He cited certain judgments in this regard.

6. I have heard learned counsel for the parties and perused the record.

7. The first contention of the consumers/respondents is that under the Regulations the Forum had jurisdiction. Another limb of the argument is that the case of over-drawal of electricity beyond authorized limit does not fall within the ambit of section 126 of the Electricity Act. It is apt to quote the relevant provisions to deal with this facet. The relevant portion of section 126 of the Electricity Act, 2003 reads as under:--

126. Assessment.-- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person is indulging in unauthorised use of electricity, he shall provisionally assess to the best of his judgment the electricity charges payable by such person or by any other person benefited by such use.

(2).....

(3).....

(4).....

(5) If the assessing officer reaches to the conclusion that unauthorised use of electricity has taken place, the assessment shall be made for the entire period during which such unauthorised use of electricity has taken place and if, however, the period during which such unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection.

(6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in sub-section (5).

Explanation.-- For the purpose of this section,--

(a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government;

(b) "unauthorised use of electricity" means the usage of electricity--

(i) by any artificial means; or

(ii) by a means not authorised by the concerned person or authority or licensee;

or

(iii) through a tampered meter; or

(iv) for the purpose other than for which the usage of electricity was authorised; or (v) for the premises or areas other than those for which the supply of electricity was authorised.

8. It is not in dispute that against a final order made u/s 126, an appeal lies to prescribed authority u/s 127 of the Electricity Act. The first question is whether over-drawal of electricity amounts to unauthorised use of electricity? The basic contention of the respondents is that u/s 126(6)(b) of the Electricity Act, over-drawal of electricity is not covered.

9. In the opinion of this Court, the curtains are finally drawn on this issue by the Supreme Court in the case reported in Punjab State Electricity Board Vs. Vishwa Caliber Builders Pvt. Ltd., Following this judgment, in its recent judgment reported in The Executive Engineer and Another Vs. Sri Seetaram Rice Mill, Executive Engineer, Southern Electricity Supply Company of Orissa Limited (SOUTHCO) and another vs. Sri Seetaram Rice Mill the Apex Court opined in para 76 as under:-

76. The consistent view of this Court would support the proposition that the cases of excess load of consumption would be squarely covered under Explanation (b)(iv) of section 126 of the 2003 Act. Once this factor is established, then the assessing officer has to pass the final order of assessment in terms of sections 126(3) to 126(6) of the 2003 Act.

(Emphasis Added)

Thus, it can be safely concluded that cases of excess load of consumption are squarely covered under Explanation (b)(iv) of section 126 of the Electricity Act, 2003. Thus, this contention raised by the respondents is rejected.

10. Coming to the question whether the Forum had jurisdiction, it is profitable to quote certain definitions from the Regulations. Clause 2.4 (d) defines complainant as under:--

(d) "Complainant" means-

(i) a consumer as defined under clause (15) of section 2 of the Act; or

(ii) an applicant for new connection; or

(iii) any registered consumer association; or

(iv) any unregistered association of consumers, where the consumers have similar interest; or

(v) in case of death of a consumer, his legal heirs or representatives;

Clause 2.4 (e) defines complaint as under:-

(e) "Complaint" means any representation in writing made by a complainant regarding redressal of grievance.

Clause 2.4 (m) which deals with grievance reads as under:--

(m) "Grievance" shall mean a dissatisfaction of the Consumer arising out of the failure of the Licensee to register or redress a Complaint and shall include any dispute between the Consumer and the Licensee with regard to any Complaint or with regard to any action taken by the Licensee in relation to or pursuant to a complaint filed by the affected person. However, the matters falling within the purview of any of the following provisions of the Act will not form a grievance under these Regulations:

- (i) Unauthorised use of electricity as provided u/s 126 of the Act;
- (ii) Offences and penalties as provided under sections 135 to 139 of the Act;
- (iii) Compensation related to accident in the distribution, supply or use of electricity as provided u/s 161 of the Act; and
- (iv) Recovery of arrears where the bill amount is not disputed.

11. A bare perusal of the aforesaid definitions, makes it crystal clear that Regulation making authority has consciously dealt with the aspect as to who can prefer a complaint. A minute reading of the aforesaid definitions will show that such grievance or complaint can be made by the consumer. Clause 2.4 (e) and (m) i.e. complaint and grievance are interwoven. By way of complaint, the complainant has to seek redressal of his grievance and grievance is a written note of dissatisfaction of the consumer arising out of the failure of the Licensee, and therefore, the Regulations are worded in a manner which specifies that the complaint can be preferred only by an aggrieved consumer. Thus, the judgment cited by Shri A.V. Bhardwaj in Dr. Hari Singh Gaur Vishwavidyalaya Sagar (supra) has no role to play in the context regulations are drafted, it cannot be compared with the M.P. Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhinyam, 2005. This is settled principle of interpretation of statute that a statute has to be interpreted in the context it is drafted along with the aim and object. The aforesaid consideration would show that the said judgment in Dr. Hari Singh Gaur Vishwavidyalaya Sagar (supra) is of no assistance to the respondents.

12. The definition of "grievance" excludes the problems arising out of unauthorised use of electricity u/s 126 of the Electricity Act and certain other provisions. Thus, consciously the Regulation making authority has excluded the complaint arising out of action u/s 126 of the Electricity Act. The document, Annexure P/6, dated 30-4-2011 on its forehead clearly shows that the action was taken u/s 126/ 135 of the Act. Both the grievances arising out of those sections are excluded from the purview of "grievance". Thus, consciously a separate Forum was prescribed for problems arising out of sections 126 and 135 etc.

13. Clause 3.35 deals with the jurisdiction of the Forum which reads as under:--

3.35 Notwithstanding the above, the Forum shall not entertain any representation in regard to the matters which are subject-matters of existing or proposed proceedings before the Commission or before any other authority including those under part X, XI, XII, XIV, XV and XVI of the Act.

The said provision makes it crystal clear that no proceedings can be entertained by the Forum which are arising out of certain Chapters of the Electricity Act. It includes Chapter XII and XIV of the Electricity Act. Thus, there is a specific bar about jurisdiction of the Forum with regard to proceedings/orders arising out of certain sections and Chapters of Electricity. Act. The question of lack of jurisdiction is to be examined in the context of the aforesaid provisions of the Regulations.

14. Shri B.D. Jain, learned counsel for the respondent in one matter, stated that it was not established before the Forum that a case u/s 126 of the Electricity Act is made out. In absence thereof, the Forum cannot be precluded to examine the action of the Company. In my opinion, this argument is misconceived and lacks substance. The order Annexure P/6 clearly shows that action was initiated u/s 126/ 135 of the Electricity Act. The definition of "complaint" read with "grievance" clearly shows that such action is beyond the judicial review of the Forum under the Regulations. Clause 3.35 makes it clear like noon day that there is a specific bar regarding certain subject-matters for the Forum and with regard to certain Chapters which includes Chapter XII and XIV. Thus, in the opinion of this Court, the Forum had no jurisdiction even to examine whether a clinching case u/s 126 of the Electricity Act is made out. Undoubtedly, sections 126/ 135 fall within those chapters which are beyond the jurisdiction of the Forum.

15. The second question is related to those cases where admittedly the Company had not taken objection regarding maintainability of the matter before the Forum. The question is whether in those cases the judicial review of this Court is barred or whether the Forum's order can be upheld?

16. The Apex Court way back in Kiran Singh and Others Vs. Chaman Paswan and Others, and others opined in para 6 as under:--

6. The answer to these contentions must depend on what the position in law is when a Court entertains a suit or an appeal over which it has no jurisdiction, and what the effect of section 11 of the Suits Valuation Act is on that position. It is a fundamental principle well established that a decree passed by a Court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject-matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. If the question now under consideration fell to be determined only on the application of general principles governing the matter, there can be no doubt that the District Court of Monghyr

was coram non judice, and that its judgment and decree would be nullities. The question is what is the effect of section 11 of the Suits Valuation Act on this position.

17. A bare perusal of this para shows that where the Court/Forum lacks inherent jurisdiction, this objection can be taken at any stage and even at the stage of execution. The ratio of this case is consistently followed by Supreme Court in catena of judgments. In Harshad Chiman Lal Modi Vs. DLF Universal and Another, the Apex Court has followed this view. In Hasham Abbas Sayyad Vs. Usman Abbas Sayyad and Others, the Apex Court held as under:--

22. The core question is as to whether an order passed by a person lacking inherent Jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the Tribunal/Court which has no authority in that behalf. Any order passed by a Court without jurisdiction would be coram non judice, being a nullity, the same ordinarily should not be given effect to. [See Chief Justice of A.P. vs. L.V.A. Dixitulu and MD, Army Welfare Housing Organisation vs. Sumangal Services (P) Ltd.]

23. This aspect of the matter has recently been considered by this Court in Harshad Chiman Lal Modi vs. DLF Universal Ltd. in the following terms: (SCC pp. 803-04, para 30)

30. We are unable to uphold the contention. The jurisdiction of a Court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a Court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a Court having no jurisdiction is a nullity.

(Emphasis Added)

18. In S. Sethuraman Vs. R. Venkataraman and Others, and others Apex Court held that jurisdiction of this Court under Article 226 with regard to maintainability of a matter is not hit by estoppel. Despite having submitted to the jurisdiction of appellate Authority, the petitioner could not be estopped from challenging the final order of the appellate authority through a writ petition. The Division Bench of this Court in the case reported in Qutubuddin Vs. M.P. Paschim Kshetra Vidyut Vitran Co. Ltd. and Others, , Qutubuddin vs. M.P. Pashchim Kshetra Vidyut Vitran Co. Ltd. and others opined as under in para 7:--

The definition of the term "Grievance" specifically excludes from its ambit the "unauthorised use of electricity", as provided u/s 126 of the Act. In the circumstances, the Forum established u/s 42(5) of the Act is not empowered to deal with the grievances of the consumers regarding "unauthorised use of electricity", as provided u/s 126 of the Act.

19. In the light of the aforesaid judgments read with the provisions of the Regulations makes it clear that there was a specific method by which a complaint can be preferred for a grievance. If a problem does not fall within the ambit of "complaint" and "grievance" under the Regulations, the Forum cannot entertain it. Bar created under clause 3.35 also excludes jurisdiction of the Forum in certain matters. Thus, if beyond the aforesaid, the Forum had exceeded jurisdiction and entertained the matters, in my opinion, it is a case of inherent lack of jurisdiction on the part of the Tribunal, and therefore, whether or not such objection is taken before the Forum, this Court can interfere in the matter. This objection arising out of cases where the Company has not taken the objection before the Forum is also of no assistance to the respondents. On the basis of aforesaid analysis, it is clear that the Forum had no jurisdiction to entertain and deal with the matters. Hence, the orders of the Forum impugned herein are without authority of law and cannot be upheld. Consequently, the orders impugned (Annexure P/1) are set aside. The Writ Petitions are allowed. However, it is made clear that the consumers/respondents herein are at liberty to avail the remedy available to them under the law and if they avail the said remedy promptly, time consumed before the Forum and this Court will not be taken into account for the purpose of counting limitation under any law. No costs.