

(1996) 03 CAL CK 0057
In the Calcutta High Court
Case No : C.O. 11015 (W) 1995

M/s. Bengal Iron Trading Co. and others APPELLANT
Vs
Appellate Authority and Dy. Secretary to the Government of RESPONDENT
West Bengal and others

Date of Decision : 06-03-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 26 Rule 10, Order 26 Rule 10A, 75
Consumer Protection Act, 1986 — Section 12
Electricity Act, 1910 — Section 13(2), 16(3), 19(2), 21(4), 22(A)(2)

Citation : AIR 1997 Cal 1 : (1996) 2 CALLT 155 : (1997) 3 CivCC 482 : (1997) 3 CivCC 482 : (1997) 1 RCR(Civil) 3

Hon'ble Judges : Samaresh Banerjee, J

Bench : Single Bench

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

Judgement

1. 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 under S. 36(2) of the Indian Electricity Act, 1910, rejecting the appeal of the petitioner against the order dated 23rd

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

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 the aforesaid complaint by directing, inter alia. ""So ordered that the

impugned bill for March, 1995 be referred to CEI W.B. 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 under 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 C.E.S.C. 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 KN as average maximum demand per month for months of January,

February and March, 1994 respectively and power factor 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 under S. 36(2) of (he said Electricity Act.

The C.E.S.C. 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

under S. 36(2) of the Act. It was further contended by the respondents C.E.S.C. 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 the C.E.S.C. that the

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

District Forum having held 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 both parties, agreed that the

matter can be disposed of finally without any affidavit and accordingly both the 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 provision Act as adjudication was made by the Electrical Inspector in terms of S. 26(6) of the said Act, such determination of

dispute being exclusively within his jurisdiction under said S. 26(6) of the said 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 under 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 under 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, reported in Punjab State Electricity Board Vs. Bassi Cold Storage, Khara and another, that there cannot be an arbitration to

adjudicate a dispute under the Electricity Act when there is no provisions for 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 C.E.S.C. on the other hand that the provisions of S. 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 S. 26(6) of the Electricity Act.

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 Chap. 27 in respect thereof and under S. 75 and O.26, Rules 10 and 10A of

the Court of Civil Procedure.

9. 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.

10. 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 S. 26(6) as also other provisions of the Electricity Act, 1910.

11. 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.

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

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

an adjudication is to be made by an Electrical Inspector as to the differences and disputes between the two parties as to the correctness of the

meters, does not contain any provision for referring such disputes to arbitration.

13. 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 S.

26(6) of said Act.

14. I accept the submission of Mr. Sakti 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.

15. The submission of the learned counsel appearing for the C.E.S.C. 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 S. 75 and 0.26, Rules 10

and 10A 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. The provisions of CPC which are applicable are enumerated in 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 provision

of law and the Electricity Act also does not contain or even contemplate such a provision. Factually also it cannot be said that the impugned order

of the District Forum was a reference to a referee as the District Forum never directed that the report of the referee is to be placed before the

Forum for its final decision.

16. It has been further contended by the respondent C.E.S.C. that provision of S. 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 is to be served upon the

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

17. It however, appears from the records that after the District 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 the disputes in respect of the impugned bill including the disputes as to the correctness of 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 provision of S. 26(6) of the Indian Electricity Act.

18. Submission made on behalf of the C.E.S.C. that in absence of such notice under the proviso of S. 26(2) of the Act, the adjudication in

question could not have been under 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 C.E.S.C. was fully aware that such disputes has been referred to the Chief Electrical Inspector under the provisions of

the Electricity Act. Absence of any notice under the proviso of sub-section (6) of S. 26 of the Act does not take away the adjudication made from

the purview of sub-section (6) of S. 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.

19. The other contention of the respondent dents that because of the order passed by the Dist. 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 Sabya-sachi Mukherjee, J. as his Lordship the then was in

the case of Jaykishore Pande Vs. Union of India, and which was followed by B. C. Roy, J. as his Lordship the then was, in the case of Pinaki

Ranjan Bharati v. State of West Bengal, reported in 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 Consumers 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 the same is provided for in the Act.

20. For the reasons stated above the writ application succeeds and the impugned order passed by the appellate authority on 25th April, 1995

being Annexure ""O"" 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.

21. There will be no order as to costs.

22. Petition allowed.