(2012) 03 DEL CK 0306

In the Delhi High Court

Case No : Writ Petition (C) 12201 of 2009 and C.M.No. 12423 of 2009

North Delhi Power Ltd. APPELLANT

Vs

Indian Hydraulic Industries (P) Ltd. RESPONDENT

Date of Decision : 26-03-2012

Acts Referred:
Electricity Act, 2003 — Section 42

Citation : (2012) 129 DRJ 644

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : K. Datta, for Mr. Manish Srivastava, for the Appellant; P.K. Malik, Ado. for R-1, Mr. S.C. Gupta, for R-2, for the Respondent

Final Decision : Allowed

Judgement

Hima Kohli, J.—The petitioner/NDPL is aggrieved by the order dated 31.08.2009 passed by the Consumer Grievance Redressal Forum (CGRF) for NDPL on a complaint filed by the respondent No. 1/Consumer for refund of the excess amount stated to have been recovered from it by the predecessor-in-interest of the petitioner on account of the delay in reduction of load from LIP to SIP category. By the impugned order dated 31.08.2009, two preliminary objections raised by the petitioner as to the maintainability of the complaint filed by respondent No. 1, firstly that the matter was liable to be referred to arbitration in accordance with the terms and conditions of the agreement governing the parties and secondly, that the complaint was barred by limitation, were turned down.

2. Briefly stated, the facts of the case are that on 15.02.1980 respondent No. 1/ Consumer had entered into an agreement with the predecessor-in-interest of the petitioner, namely, Delhi Electricity Supply Undertaking (DESU) for the supply of bulk energy. The said agreement contained an arbitration clause. On 27.07.1992, respondent No. 1/Consumer had approached DESU for reduction of load. Correspondence was exchanged between the respondent No. 1/ Consumer and DESU from the year 1992 to 1999 for completion of the commercial formalities

for reduction of load. As per the respondent No. 1/Consumer, in the year 1999, it had completed all the requisite commercial formalities and its load was reduced accordingly. It is the case of respondent No. 1 that thereafter, it exchanged voluminous correspondence with the petitioner/NDPL till May, 2005 seeking refund of the purported excess charges recovered from it by the predecessor-in-interest of the petitioner.

3. The stand of the respondent No. 1/Consumer is that vide letter dated 21.07.2005, the petitioner had informed it that as per the records, the load had not been converted from LIP to SIP due to non-completion of some commercial formalities. Respondent No. 1/ Consumer was, therefore, directed to contact the office of the petitioner for resolving the said issue. Respondent No. 1/Consumer claims that meetings took place between its officers and the petitioner and finally in the year 2008, it approached the Monopolies and Restrictive Trace Practices (MRTP) Commission claiming a refund of the excess amount of ''23,90,162. 51 with interest from the petitioner.

4. As per the records, the aforesaid complaint filed by respondent No. 1/ Consumer before the MRTP Commission was disposed of vide order dated 02.09.2008 observing inter alia that there was an Authority appointed under the Electricity Act, 2003 to deal with such matters. As a result, the respondent No. 1/ Consumer was granted liberty to approach the said Authority. Thereafter, respondent No. 1/ Consumer filed a complaint case before the Consumer Grievance Redressal Forum (CGRF) praying inter alia for refund of the excess amount of'' 23,90,162.51 with interest@ 18% payable from December, 1997 and a further amount of Rs. 70,821/- with interest @18% payable from September, 1996 and a sum of Rs. 10,00,000/- as compensation.

5. Upon notice being issued to the petitioner/NDPL in the aforesaid complaint case, preliminary objections were raised by the petitioner/NDPL as regards the maintainability of the said petition. One of the objections raised was that the dispute related to the year 1993 and, therefore, the case was hopelessly barred by limitation.

6. The preliminary objections raised by the petitioner/NDPL were considered and overruled by the CGRF in the impugned order dated 31.08.2009. Aggrieved by the aforesaid order, the petitioner/NDPL has approached this Court in this petition.

7. Counsel for the petitioner/NDPL submits that the impugned order is erroneous and liable to be set aside for the reasons that the CGRF failed to appreciate the fact that the limitation for taking any action against the petitioner for refund of the alleged excess amount paid by respondent No. 1/Consumer had expired in the year 1995 itself for the reason that the limitation prescribed for taking such an action for recovery of money is three years and the cause of action in the present case had accrued in favour of respondent No. 1/Consumer in the year 1992-93. He further urged that reliance placed by respondent No. 1/Consumer

on the letter dated 21.07.2005 issued by the petitioner to it to come for a meeting for settlement of the grievance, cannot be treated as an acknowledgement of dues within the meaning of the Limitation Act and in any case, the said letter only referred to the non-completion of some commercial formalities on the part of respondent No. 1/Consumer for converting the connection from LIP to SIP. Further, it is submitted that it is not the case of respondent No. 1/Consumer that the conversion of the load had taken place in the year 2005 rather, it is the stand of respondent No. 1 in its complaint that the petitioner had converted the load from LIP to SIP in the year 1999.

8. This court has heard the counsels for the parties and perused the impugned order. The facts of the case as narrated above are undisputed and, therefore, need not detain the Court. The only issue that has been argued on behalf of the petitioner is that while dismissing the objections raised by the petitioner/NDPL with regard to limitation, no reasons whatsoever have been assigned for the same by the CGRF,

9. A perusal of the impugned order reveals that after taking note of the stand of both the sides as also the decisions relied upon by the counsels for the parties, the CGRF had observed that prima facie the case indicated that the request for reduction of load had been initially made by the complainant in July, 1992 and the tariff had been changed from LIP to SIP in the month of March, 1999. It was further observed that the complainant (respondent No. 1 herein) had sought relief to the extent of ''80 lacs approximately in the case. Immediately thereafter, comes the operative para of the impugned order wherein the CGRF has overruled the preliminary objections raised by the petitioner/NDPL with regard to the arbitration clause governing the parties and the limitation aspect and then proceeded to adjourn the case for hearing arguments on merits.

10. There is no discussion, much less any reasoning reflected in the impugned order for arriving at the aforesaid conclusion. The stand taken by the petitioner/ NDPL that the complaint filed by respondent No. 1/Consumer was barred by limitation as the cause of action had arisen in the year 1993 whereas, it had not filed any claim before any judicial forum till as late as the year 2008 when it approached the MRTP Commission for the first time, is borne out from the records and the same has not even been disputed by the respondent No. 1/ Consumer.

11. The submission of the counsel for respondent No. 1/Consumer that the letter dated 21.07.2005 issued by the petitioner/NDPL gives a fresh cause of action to the respondent No. 1/Consumer is untenable for the reason that a perusal of the aforesaid letter reveals that the petitioner had only replied to the request made by the respondent No. 1 for refund of the security and the purported excess charges deposited by it, in the light of the completion of the commercial formalities and it was not as if the petitioner/ NDPL had acknowledged that any outstanding dues were to be refunded by it to the respondent No. 1/Consumer.

12. It is also relevant to note that the cause of action for filing a claim of recovery against the petitioner/NDPL had accrued in favour of respondent No. 1/ Consumer way back in the year 1993. Even if, the period of three years is reckoned from the year 1999, i.e., the year when the connection was apparently converted from LIP to SIP, it would have taken the respondent No. 1/Consumer upto the year 2002 and not beyond that. Respondent No. 1, however, approached the MRTP Commission after a period of six years therefrom, i.e., in the year 2008 and it approached the CGRF after a period of seven years therefrom, i.e., in the year 2009. While the complaint of the respondent No. 1/ Consumer filed before the MRTP Commission was rejected with liberty granted to it to approach the appropriate forum under the Electricity Act, it is a matter of record that respondent No. 1 approached the CGRF only in the year 2009, after about six months after the order of the MRTP Commission was passed. Even in the complaint filed before the CGRF, respondent No. 1 had again claimed that the period of limitation stood extended in its favour by predicating its case on the letter dated 21.07.2005 addressed by the petitioner to it.

13. The fact remains that for the purpose of calculating limitation, only the complaint filed by the respondent No. 1/Consumer is required to be examined and a perusal of the application filed by it before the CGRF reveals that the respondent No. 1 had itself acknowledged in paras 27 and 30 thereof that the petitioner/NDPL had converted the connection from LIP to SIP in March, 1999 and it had installed a new meter on the basis of completion of commercial formalities, that had taken place long ago. In such circumstances, the complaint of respondent No. 1/Consumer was not maintainable before the CGRF, the same being hopelessly barred by limitation.

14. At this stage, counsel for respondent No. 1/Consumer states that if the petitioner/NDPL had a grievance against the order of the CGRF, it was for it to have approached the Ombudsman by preferring an appeal instead of filing the present petition. The aforesaid submission is, however, devoid of merits for the reason that sub-section 6 of Section 42 of the Electricity Act, 2003 prescribes that a consumer, who is aggrieved by non-redressal of grievance before the CGRF can approach the Ombudsman in appeal but the said provision does not give any such option to the Discom like the petitioner herein. In such circumstances, reliance placed by learned counsel for respondent No. 1/ Consumer on the Delhi Electricity Regulatory Commission (Guidelines for establishment of Forum for Redressal of Grievances of the Consumers and Ombudsman) Regulations, 2003 cannot be of any assistance as the Regulations have been framed under the Act. In any case, even Regulation 19, referred to by the counsel for the respondent No. 1/Consumer, does not empower the Ombudsman to entertain an appeal filed by a Discom as the said forum is empowered to receive representations only from the complainants aggrieved by an order of the Forum.

15. In view of the aforesaid facts and circumstances, the present petition

succeeds and the same is allowed. The impugned order dated 31.08.2009 passed by the CGRF is quashed and set aside and it is held that the complaint filed by the respondent No. 1/Consumer is hopelessly barred by limitation and, therefore, rejected. Parties are left to bear their own costs.