

(2011) 07 GUJ CK 0085
In the Gujarat High Court

Case No : Letters Patent Appeal No. 318 of 2010 in Spl. C.A. No. 9502 of 2010

Paschim Gujarat Vij Co. Ltd.

APPELLANT

Vs

District Consumer Redressal Forum, Bhuj and Another

RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 15, 2(1)
Electricity Act, 2003 — Section 126, 135, 153, 154, 42

Citation : (2011) 3 GLR 2286 : (2012) 1 RCR(Civil) 757 : (2012) 1 RCR(Civil) 757

Hon'ble Judges : S.J. Mukhopadhaya, J;J.B. Pardiwala, J

Bench : Division Bench

Advocate : Lilu K. Bhaya, for the Appellant; Nalin K. Thakker, for the Respondent

Judgement

J.B. Pardiwala, J.—In this appeal, the appellant-Paschim Gujarat Vij Company Ltd. challenges judgment and order dated 16-8-2010 passed by learned Single Judge in Special Civil Application No. 9502 of 2010, whereby learned Single Judge disposed of the petition by relegating the appellant to avail of alternative remedy of preferring appeal before the State Consumers Commission against the order passed by Consumer Forum, Bhuj,

2. Facts relevant for the purpose of deciding this appeal can be summarized as under :

2.1. Appellant herein released one electric connection in favour of respondent No. 2 bearing Consumer No. 38202-3027-7. The inspection squad of the appellant-Company visited the premises for the purpose of inspection and found some tampering with the meter. The meter was sent to the laboratory for the inspection. Appellant issued notice dated 5-7-2007 to respondent No. 2 to remain present in the laboratory at the time of testing of the meter. However, respondent No. 2 failed to turn up for the said purpose. Once again, a notice was issued on 4-8-2007; even on that date, respondent No. 2 failed to turn up and

did not remain present. Thereafter, on 22-10-2007, inspection was carried out of the meter in presence of respondent No. 2 and it was found that led seal wire was re-fixed. It was also found that six pieces of match box were inserted in the meter. There was space between the meter gear assembly and disc. By doing this, the disc could move but the digits of the counter would not move and proper reading of the meter would not take place. As a result of which, due to overload the meter coil got burnt. At the end of the inspection, it was concluded that the meter was tampered from inside and the electric connection was tampered in such a way that the correct consumption of the electricity is not recorded.

2.2. Appellant herein issued bill to respondent No. 2 for an amount of Rs. 1,23,365-01 ps. dated 20-12-2007. Respondent No. 2 represented before the appellant that there is a mistake in the bill, and therefore, once again a revised bill of Rs. 1,21,343-62 ps. was issued to the respondent No. 2 along with letter dated 31-12-2007.

2.3. It appears that respondent No. 2 approached the Consumer Disputes Redressal Forum, Bhuj at Kutch by filing Complaint No. 234 of 2007 and prayed for quashing and setting aside of the bill issued to respondent No. 2 by the appellant. The Consumer Disputes Redressal Forum; District Kutch at Bhuj, vide order dated 8-2-2010, partly allowed the complaint and quashed and set aside the bill issued u/s 135 of the Electricity Act, 2003, and further directed the appellant herein to issue revised bill under Sec. 126 of the Electricity Act, 2003.

2.4. Record reveals that the appellant herein being aggrieved and dissatisfied with the order passed by the Consumer Disputes Redressal Forum, District Kutch at Bhuj, in Complaint No. 234 of 2007 preferred Special Civil Application No. 9502 of 2010 before this Court contending that the Consumer Forum had no jurisdiction to entertain the complaint in cases of theft of electricity under Sec. 135 of the Electricity Act, 2003 and that only the Special Court constituted under the Electricity Act, 2003 has jurisdiction to entertain such complaint.

2.5. It appears that learned Single Judge, vide judgment and order dated 16-8-2010, disposed of the petition without going into merits relegating the appellant to avail of the alternative remedy of preferring an appeal before the State Forum under Sec. 15 of the Consumer Protection Act, 1986.

2.6. Feeling aggrieved and dissatisfied with the order of learned Single Judge, the appellant have preferred this present appeal.

3. We have heard learned Counsel, Ms. Lilu K. Bhaya for the appellant-Company and Mr. Nalin Thakkar for respondent No. 2-Consumer.

4. Learned Counsel for the appellant would submit that learned Single Judge ought to have entertained the petition only on the ground that in cases of theft of electricity under Sec. 135 of the Electricity Act, 2003, the Consumers Forum has no jurisdiction to entertain the complaint. Counsel would submit that the

order passed by the Consumers Forum is without jurisdiction and such an order can definitely be quashed under Art. 226, even if there is an alternative remedy by way of a statutory appeal. Learned Counsel would further submit that under the provision of Sec. 153 of the Electricity Act, 2003, such Courts have been constituted and in view of the provisions of Secs. 153 and 154 of the Electricity Act, Consumer Court has no jurisdiction to entertain any complaint concerning theft of electricity under Sec. 135 of the Electricity Act, 2003.

5. Per contra, learned Counsel, Mr. Thakkar, appearing for respondent No. 2-Consumer, submitted that learned Single Judge had rightly not entertained the petition on the ground of alternative remedy being available under the Consumers Act, 1986 by way of a statutory appeal before the State Forum. He would submit that ordinarily, when there is an alternative remedy in the forum of a statutory appeal, High Court should not exercise powers under Art. 226 of the Constitution. Learned Counsel submitted that no error can be said to have been committed by learned Single Judge warranting any interference at our hands in this appeal.

6. Having given our anxious thoughts and considerations to the contentions of the respective parties, we are of the view that learned Single Judge ought not to have refused to look into the matter on merits on the ground of statutory remedy of appeal being available to the appellant. However, the entire issue, as regards the jurisdiction of Consumers Forum to entertain complaint involving theft of electricity, now stands concluded with the recent pronouncement of judgment of Division Bench of this Court rendered in Letters Patent Appeal No. 1759 of 2010 and other analogous appeals decided on 21-6-2011. This Court has taken the following view :

36. The term "deficiency" is defined under Sec. 2(1)(g) of the Consumer Protection Act, 1986, which reads as follows :-

2(1)(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under any law for the time-being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

37. In the present case, we find that there is no allegation relating to any deficiency on the part of the Electricity Companies alleged by one or other complainants. There is nothing on record to suggest that any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which was required to be maintained by or under any law or has been undertaken to be performed by the Electricity Company to allege deficiency.

38. The complainants moved against the bill raised under Sec. 126 of the Electricity Act, 2003, which relates to indulging in unauthorized use of electricity or against the measures under Sec. 135, which constituted an offence for which penalties are prescribed. Thus, there was no deficiency in service on the part of

the Electricity Companies.

Therefore, even if it is accepted that in the case of deficiency in service by the Electricity Companies in supply of electricity, the person can file a complaint before the Consumer Dispute Redressal Forum under the Consumer Protection Act, 1986, but in absence of any such allegation, no such petition is maintainable before the Consumer Disputes Redressal Forum constituted under the Consumer Protection Act, 1986. In a case where the bill is raised alleging indulgence in unauthorized use of electricity by a person under Sec. 126 of the Electricity Act, 2003 or the measures or the penal action taken for the offence under Sec. 135 of the Electricity Act, 2003, in absence of any provision made under the Consumer Protection Act, 1986 to entertain any complaint or any such action, we hold that the petitions preferred by the consumer-appellants were not maintainable before the Consumer Disputes Redressal Forum.

41. In view of the aforesaid discussion, we summarize our findings as follows :

(a) The finding of the learned Single Judge that there is a third forum of appeal under Sec. 42 of the Electricity Act, 2003 in this type of cases under Sec. 126 or Sec. 135, is incorrect and does not lay down a correct law.

(b) The jurisdiction of the Consumer Court in the matter of deficiency in service on the part of the Electricity Company is not ousted in view of the provisions of the Electricity Act, 2003. The finding of the learned Single Judge to that extent in general that the consumer forum has no jurisdiction to entertain complaints in respect of the matter pertaining to supply of electricity against the Electricity Company is incorrect and does not lay down a correct law.

(c) In a case where the bill is raised alleging indulgence in unauthorized use of electricity by a person under Sec. 126 of the Electricity Act, 2003 or the measures or the penal action taken for the offence under Sec. 135 of the Electricity Act, 2003, in absence of any provision made under the Consumer Protection Act, 1986 to entertain any complaint or any such action, the petitions preferred by the consumer are not maintainable before the Consumer Disputes Redressal Forum.

42. For the reasons aforesaid, we hold that the Consumer Disputes Redressal Commission have erred in coming to the conclusion that the Consumer Disputes Redressal Commission has jurisdiction to try cases against assessment made under Sec. 126 or theft of energy under Sec. 135 and the learned Single Judge rightly interfered with those orders and set aside the orders.

7. In this view of the matter, we have no hesitation in coming to the conclusion that judgment and order passed by learned Single Judge dated 16-8-2010 deserves to be quashed and set aside, and consequently, judgment and order dated 8-2-2010 passed by Consumer Disputes Redressal Forum, Dist. Kutch at Bhuj in Complaint No. 234 of 2007 also deserves to be quashed and set aside. It would not be out of place to observe as this being an issue purely of law that

where a party challenges the jurisdiction of the adjudicating authority or the validity of the enquiry itself or the impugned order on the ground that there is an ex-facie error thereunder, he need not wait until he has exhausted the alternative remedy, and therefore, he can file a petition under Arts. 226 and 227 to set aside the impugned order without having recourse to such alternative remedy. We may quote a Division Bench judgment of this High Court in case of Bapalal Khushaldas Gosalia v. R. Prasad, Collector of Central Excise, Baroda, reported in 1964 GLR 633 wherein, a Division Bench observed as under :

It is, however, well-settled that where a petitioner challenges the jurisdiction of the adjudicating authority or the validity of the enquiry itself or the impugned order on the ground that there is an ex-facie error thereunder, he need not wait until he has exhausted the alternative remedy, and therefore, can file a petition to set aside the impugned order without having recourse to such alternative remedy.

8. In view of the aforesaid discussion, the judgment and order passed by learned Single Judge dated 16-8-2010 in Special Civil Application No. 9502 of 2010 is hereby quashed and set aside. Special Civil Application No. 9502 of 2010 is hereby allowed, and consequently, judgment and order dated 8-2-2010 passed by Consumer Disputes Redressal Forum, District : Kutch at Bhuj in Complaint No. 234 of 2007 is also hereby quashed and set aside.