
(1990) 02 AHC CK 0084

In the Allahabad High Court

Case No : Writ Petition No. 1213 of 1989 connected with Writ Petition No. 3409 of 1989 and 859 of 1990

Union of India and Others

APPELLANT

Vs

Mrs. S. Prakash and Others

RESPONDENT

Date of Decision : 05-02-1990

Acts Referred:

Consumer Protection Act, 1986 — Section 15, 2, 2(d), 2(o), 3
Electricity (Supply) Act, 1948 — Section 42
Electricity Act, 1910 — Section 17, 18, 19
Telegraph Act, 1885 — Section 10, 3(1), 3(3), 3(4), 4

Citation : (1990) 02 AHC CK 0084

Hon'ble Judges : U.C. Srivastava, J; S.H.A. Raza, J

Bench : Division Bench

Advocate : U.K. Dhaon, for the Appellant;

Final Decision : Dismissed

Judgement

S.H.A. Raza, J.—These three writ petitioners have been filed by the Union of India and by the Chief General Manager, Tele-communication challenging the order passed by the District Consumers Disputes Redressal Forum, district Lucknow on the ground that Section 3 of Consumers Protection Act (hereinafter referred to as the C.P.Act) does not apply to the department of Tele-communication and cannot award compensation to the subscriber and as such the order passed by the Forum is without jurisdiction and further the subscriber will not be a consumer as defined u/s 2 of the C.P.Act and as such no complaint of such a subscriber could be entertained and damages could be awarded and the dispute so raised by the subscriber could be covered by Section 7-B of Indian Telegraph Act (hereinafter referred to I.T. Act) which provides for a reference of dispute of the arbitrator. The complaint made by the subscriber before the consumer Forum against telecommunication department as that the telephonic services are very unsatisfactory and telephones mostly remain out order and the subscribers are suffering great loss and even though the telephones remain out

of order yet the subscribers are saddled with a huge bill. The Consumer Forum to whom they complaint was made, allowed the complaint and directed the Tele-communication department to pay damages to them against which the Union of India has directly come up before this Court without filing any appeal.

2. On behalf of opposite parties a preliminary objection has been raised that in view of provisions of Section 15 of C.P.Act, 1986 an appeal against the order passed by District Consumers Forum lies to the State Commission and no appeal having been filed, the writ petition is not entertainable and is liable to be dismissed on the ground of availability of alternative remedy.

3. On behalf of petitioners it has been contended that alternative remedy in this case is not efficacious inasmuch as the view taken by the District Consumers Forum (for short referred to as the "Forum") has been affirmed by the State Commission in another case and it has taken a similar view and as such to approach the appellate authority u/s 15 of the said Act will be futile exercise and alternative remedy in this case will not be available. In the circumstances, we agree with the contentions raised by the learned counsel for the Union of India that when appeal is a futile exercise and the appellate authority has already on a particular question expressed its opinion and has taken a particular view, the filing of appeal will be an exercise in futility and as such writ petition can be entertained.

4. The Preamble of C.P.Act, 1986 provides:

"An Act to provide for better protection of the interests of consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumers" disputes and for matters connected therewith."

Section 2 of the C.P.Act defines various words. The word "consumer" has been defined u/s 2(d) and the same, reads as under: -

(b) "consumer" means any person who, -

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any user of as such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when use such is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

The definition of consumer in the "Act" mentioned above is very comprehensive. It not only includes itself with one who buys goods for a consideration notwithstanding the way in which the consideration is paid or promised, but it also includes one who hires any service for a consideration which has been paid or promised and beneficiaries of such persons are included within the meaning of the same. The word "service" has been defined in Section 2 (o) of the Act which reads thus: -

"2(o) "Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both entertainment amusement or the purveying a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

The definition of service under the Act too is of very wide import and it includes any service which is available to its potential users and is illustrative in nature and it also includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both etc. excluding the rendering of any service free of charge or under a contract of personal service. The services have been specifically mentioned in the said definition clause which are mostly rendered by the "State" or by the "Instrumentalities" of the State including statutory bodies or private bodies, but most of these services do not play significant role in the matter of supply of electrical energy. So far as the supply of electrical energy in the country is concerned, it is either supplied by the State or by other Statutory bodies and if there are any private bodies any were then they are also subject to the inhibitions and prohibitions laid down in the electricity laws of the country.

5. Section 4 of the Indian Telegraph Act provides that the Central Government shall have the exclusive privilege of establishing maintaining and working telegraphs and also to grant licence. This section makes it clear the establishment, maintenance and work of the Telegraph is in the hands of the Central Government which has got exclusive privilege in respect of the same.

6. The word "telegraph" has been defined in Section 3(1); the word "message" has been defined in Section 3(3) and the word "telegraph line" has been defined in Section 3(4) of the Indian Telegraph Act, and the same are as follows: -

"3 (1). "Telegraph" means any appliance, instrument material or apparatus used or capable of use for transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature"by wire, visual or other electromagnetic emissions, Radio waves or Hertzian waves, galvanic, electric or magnetic means," "3(3). "Message" means any communication sent by telegraph, or given to a telegraph officer to be sent by telegraph or to be delivered." "3(4). "telegraph line" means a wire or wires used for the purpose of a telegraph with any causing, coating, tube or pipe enclosing the same and any appliances and

apparatus connected therewith for the purpose of fixing or insulating the same."

7. The definition of "telegraph" as given in the Act will also mean any appliance, instrument, or apparatus used for transmission or reception of signs, signals, writing images and sounds or intelligence of any nature through wire etc. including electricity and in view of this definition, which is, of wide import, the word "telegraph" means appliance, instrument or apparatus used for transmission or reception of signs, signals, images etc. through electric wires with the use of electricity or waves.

8. In *The Senior Electric Inspector and Others Vs. Laxmi Narayan Chopra and Others*, it was observed: -

"A combined reading of the provisions of Section 2, Electricity Act and Section 3(4) of Telegraph Act, may be expressed thus:

"Telephone line" means a wire of wires used for the purpose of an appliance or apparatus for receiving telegraphic or other communications by means of electricity".

9. The telephone is, thus, telegraph and the lines are "telegraph lines" and it is the exclusive privilege of the Central Government to maintain, establish and work the same. Under the Indian Telegraph Rules, it is the Central Government which grants telephone connections to persons, i.e. the subscribers and one who gets a telephone is a subscriber of the same. The powers of the telegraph authority are very wide in the matter of telegraphic lines, poles etc. which is evident from Section 10 of the Indian Telegraph Act which reads as under: -

"10. Power for, telegraph authority to place and maintain telegraph lines and posts - The Telegraph authority may, from time to time place and maintain a telegraph line under, over along or across, the posts in or upon, any immovable property:

Provides that....."

10. The telephone services are dependent on the electricity. The power to place wires, poles etc. rest with the State Electricity Board and it is through electric connections also the same can work. This is also evident from Section 42 of the Electricity Supply Act, 1948 which reads as under: -

"42.(1) Notwithstanding anything contained in Sections 12 to 16 and 18 and 19 of the Indian Electricity Act, 1910 (9 of 1919) but without prejudice to the requirements of Section 17 of that Act where provision in such behalf is made in a sanctioned scheme, the Board shall have, for the placing of any wires, poles, wall brackets, stays apparatus and appliances for the transmission and distribution of electricity, or for the communications necessary for the proper co-ordination of the works of the Board, all the powers which the telegraph authority possess under Part III of the Indian Telegraph Act, 1885 (13 of 1885) with regard to a telegraph establishment or maintained by the Government or to

be so established or maintained:

Provided....."

11. The subscriber of the telephone hires the service from the Central Government for a consideration and that consideration is in the nature of rental charges etc. The Department of telegraph or tele-communication, thus, renders service to a subscriber by hire and the words "consumer" and "subscriber" are within the meaning of Consumer Protection Act. The services are rendered by the Central Government through its tele-communication, department to the subscribers and consequently the services rendered are services within the meaning of the Consumers Protection Act. In view of the fact that a subscriber is a consumer within the meaning of Consumer Protection Act the Consumer Forum has got full jurisdiction to entertain a complaint in the matter of services rendered by the tele-communication department. The Consumers Protection Act is a latter act and it received the assent of the President subsequently and the dispute raised by the consumers are to be adjudicated upon under the Consumer Protection Act, and the Arbitration Clause u/s 7-B of the Indian Telegraph Act will not oust the jurisdiction of the Consumer forum and the plea that the dispute of this nature is to be raised u/s 7-B of the Indian Telegraph Act is not sustainable and the nature of dispute raised in this petition can be said to be outside the purview of Section 7-B of the Indian Telegraph Act and even if it would be said that such disputes are covered by Section 7-B of the Act, it cannot be an alternative remedy for redressal of the grievances raised in this petition. The ultimate relief which a person can get u/s 7-B of the Indian Telegraph Act, obviously, cannot stand in the way of speedy and effective relief which can be granted by the Consumer Forum.

12. The objection raised on behalf of the Union of India as to the availability of Section 7-B of the Indian Telegraph Act, thus, fails. So far as the merits of this case are concerned, the learned standing counsel for the Union of India could not dispute that the reasons spelt out in the order were correctly arrived at by the District Consumers" Forum and which are also unassailable and there is no material to show anything to the contrary.

13. In this view of the matter, the writ petitions are dismissed. However, there will be no order as to costs.