

(2012) 02 CAL CK 0075
In the Calcutta High Court
Case No : CO. No. 2061 of 2009

West Bengal State Electricity Distribution Company Limited	APPELLANT
Vs	
Ram Krishna Tiwari	RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, 13, 2
Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 12, 13, 14, 16, 18
Government of India Act, 1915 — Section 107
Government of India Act, 1935 — Section 107, 224
Penal Code, 1860 (IPC) — Section 193, 195, 228

Citation : (2012) 2 CALLT 69 : (2012) 4 CHN 264

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Srijan Nayak and Mr. Shovan Bandopadhyay, for the Appellant; N.R. Mukherjee, Aautam Dey, Falguni Banerjee and Mr. Anirban Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Harish Tandon, J.—The petitioner being the Distribution Company have challenged the order of the State Consumer Disputes Redressal Commission (referred to as State Commission) which affirmed the order of the District Consumer Disputes and Redressal Forum, Purulia in an instant revisional application. The facts are more less undisputed. The opposite party applied for a new connection at his premises and deposited the requisite prescribed fees. The petitioner shows inability to provide new connection on the basis of an allegation that the father of the opposite party is a defaulter in payment of the electricity dues. The opposite party denied the aforesaid allegation and pleaded that there is no nexus between him and the said defaulting consumer. Subsequently the opposite party filed complaint before the District Consumer Disputes and Redressal Forum u/s 12 of the Consumer Protection Act, 1986.

2. The District Consumer Disputes and Redressal Forum allowed the said complaint by observing that there is no nexus between the defaulting consumer and the opposite party which was affirmed by the State Commission in an appeal filed by the petitioner.

3. Mr. Srijan Nayak attacked the impugned order on the ground that the Distribution Company can impose the condition for granting new connection and can decline to grant new connection unless the dues on the premises is paid off. To buttress the submission, he heavily relies upon a judgment of the Supreme Court in case of Paschimanchal Vidyut Vitran Nigam Ltd. and Others Vs. DVS Steels and Alloys Pvt. Ltd. and Others, . He further contends that the subsequent purchaser or the person seeking new connection can be directed to pay the old dues of the premises by the Distribution Company/Licensee and placed reliance upon unreported judgment rendered in case of M. K. & Sons v. CESC Ltd. & Ors. (W.P. No. 9389(w) of 2009 decided on 06.09.2010), Assistant Engineer, Krishnapur Group Electric Supply v. West Bengal State Electricity Distribution Company Ltd. and Anr. v. Ravi Jain (FMA 2427 of 2010 decided on 07.03.2010), Assistant Engineer, Krishnapur Group Electric Supply &Anr. v. Nirmal Kumar Mondal & Anr. (MAT 669 of 2010 decided on 21.05.2010) and a judgment of the National Consumer Disputes Redressal Commission delivered in case of C.E.S.C. Ltd. & Anr. v. Sanjib Jaiswal (Revision petition No. 4002 of 2007 decided on 02.02.2010. He further submits that the order of the State Commission is not sustainable having passed by two members only in view of the provisions contained under the Consumer Protection Act and placed reliance upon an unreported judgement of this court in case of West Bengal State Electricity Distribution Company Ltd. & Ors. v. Sanjit Kumar Khatua & Ors. (CO. 393 of 2008 decided on 11.08.2008).

4. Mr. N. R. Mukherjee, the learned Advocate appearing for the opposite party submits that the District Consumer Disputes and Redressal Forum as well as the State Commission concurrently found that there is no nexus between the defaulting consumer and the opposite party and such finding of fact should not be interfered by the High Court in exercise of the power under Article 227 of the Constitution and placed reliance upon the following judgments:

- (1) Ouseph Mathai and Others Vs. M. Abdul Khadir,
- (2) Laxmikant Revchand Bhojwani and Another Vs. Pratapsing Mohansingh Pardeshi Deceased through his Heirs and Legal Representatives,
- (3) Radhey Shyam and Another Vs. Chhabi Nath and Others,
- (4) Mani Nariman Daruwala and Bharucha & Ors v. Meharji K. Karkaria & Anr. reported in AIR 1991 SC 1494.

6. He further submits that in case of a fresh connection the third party cannot be compelled to pay the dues of the erstwhile consumer and placed reliance upon the following judgments:

- (1) Ahmedabad Electricity Co. Ltd. Vs. Gujarat Inns. Pvt. Ltd. and Others,
(2) Haryana State Electricity Board v. M/s Hanuman Rice Mills & Ors. reported in 2010 4 ICC 423 (SC)
(3) M/s Durga Construction Co. & Anr. v. C.E.S.C. Ltd. reported in 2009(2) CLJ 291 (Cal).

6. Lastly he submits that the order passed by the State Commission cannot be set aside in absence of the president and placed reliance upon a judgment of the Supreme Court in case of Gulzari Lal Agarwal Vs. Accounts Officer,

7. From the respective submissions what follows is that both the courts have concurrently held that there is no nexus between the petitioner and the erstwhile defaulting consumer. It is also undisputed that the opposite party applied for new connection or fresh connection at his premises which is not connected with the supply as has been found by the employees of the petitioner at the time of inspection.

8. The points taken by the respective parties could be categorized in the following manner:

1. Whether the order of the State Commission having passed by two members is bad and illegal in absence of the president.
2. Whether the Distribution Company can insist upon the payment of the dues of the erstwhile consumer upon a third party.
3. Whether the High Court in exercise of power under Article 227 of the Constitution can interfere with a concurrent finding, of facts.

Point No. 1:

Before dealing the said point it would be profitable to quote relevant provisions of the Consumer Protection Act which reads thus:

"12. Manner in which complaint shall be made. (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by-(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognized consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on, behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either

in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant;

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, It shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

13. Procedure on admission or complaint - (1) The District Forum shall, on admission of a complaint, if it relates to any goods,-

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum.

(b) Where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) Where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) Before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to

the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) The District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(f) If any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) The District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order u/s 14.

(2) The District Forum shall, if the complaints admitted by it u/s 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed; or if the complaint "relates to any services.

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute-

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum;

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles

of natural justice have not been complied with.

(3A) Every complaint shall be heard as expeditiously as possible and endeavor shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities:

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act:

Provided also that in the event of a complaint being disposed of after the period so specified, the District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(3B) Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

(i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath.

(ii) the discovery and production of any document or other material object producible as evidence.

(iii) the reception of evidence on affidavits.

4. the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source.

5. issuing of any commission for the examination of any witness, and

6. any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure. 1973 (2 of 1974).

(6) where the complaint is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of rule 8 of Order I of the First

Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.

(7) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

14. Finding of the District Forum.--(1) If, after the proceeding conducted u/s 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:-

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

(e) to remove the defects in goods or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five

per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilized in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralize the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(4) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

16. Composition of the State Commission.--(1) Each State Commission shall consist of--

(a) a person who is or has been a judge of a High Court, appointed by the State Government, who shall be its president:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:-

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognized university: and

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the member shall be from amongst persons having a judicial background.

Provided further that a person shall be disqualified for appointment as a member, if he-

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body cooperate owned or controlled by the Government: or

(e) has, in the opinion of the State Government, such financial or to his interest, as is likely to affect prejudicially the discharge by him of his functions as a member: or

(f) has such other disqualifications as may be prescribed by the State Government.

(IA) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:-

(i) President of the State Commission Chairman;

(ii) Secretary of the Law Department of the State Member;

(iii) Secretary in charge of the Department dealing with Consumer Affairs in the State:

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting judge of that High Court to act as Chairman.

(IB) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the president with one or more members as the president may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the

members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (IA) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

18. Procedure applicable to State Commissions, -- The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

22D. Vacancy in the office of the President.--When the office of President of a District Forum, State Commission, or of the National Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the National Commission, as the case may be:

Provided that where a retired judge of a High Court is a member of the National Commission, such member or where the number of such members is more than one, the senior-most person amongst such members, shall preside over the National Commission in the absence of President of that Commission.

29A. Vacancies or defects in appointment not to invalidate orders. -- No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof."

9. On a conjoint reading of the aforesaid provisions it is manifest that the proceeding either before the District Consumer Disputes and Redressal Forum or the State Commission shall be conducted by the president and at least one member thereof sitting together provided that where the member for any reason is unable to conduct the proceeding, the president and other member shall conduct such proceeding de novo. Section 16 of the said Act contemplates the composition of the State Commission whereas Section 18 deals with the procedure applicable to the State commission. In Chapter 4 of the said Act which deals with the Misc. provisions envisages that the act of the proceeding shall not be invalidated by reason of the existence of any vacancy amongst its members.

10. The member is defined in Section 2 (JJ) of the said Act to include the president as well. The Apex Court in case of Gulzari Lal Agarwal (supra) held that by mere reason of absence of the president, the proceeding cannot be non est and the action taken by the State Commission cannot be said to be illegal and void in the following words:

17. After giving careful thought to the rival contentions raised before us, we are of the considered opinion that the relevant provisions which we have quoted hereinabove will have to be construed harmoniously " to promote the cause of the consumers under the Act. As indicated earlier, the definition of member includes the President and a member of a District Forum/State Commission. It is true that sub-section (2) of Section 14 read with Section 18 requires that every proceeding referred to under sub-section (1) shall be conducted by the President of the District Forum/State Commission and at least one member thereof sitting together. Sub-section (2-A) is consequential in the sense that every order made by the State Commission under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding. The procedure applicable to the District Forum is made applicable to the State Commission vide

Section 18 with such modifications as may be necessary. Plain reading of sub-sections

(2) and (2-A) of Section 14 may support the view taken by the National Commission but if these provisions are read with Section 29-A of the Act and sub-rules (9) and (10) of Rule 6, it would be quite clear that it could never be the intention of the legislature to stall or render the State Commission non-functional in the absence of the President either having not been appointed in time due to some valid reasons or if the President is on leave due to certain reasons beyond his control. Sub-sections (2) and (2-A) of Section 14 and Section 18-A of the Act were brought into force with effect from 18-6-1993 whereas Section 29-A was made applicable from 15-6-1991. The Rules of 1987 were brought into force immediately. The complaint before the District Forum by the appellant was filed on 14-10-1993. Therefore, all these amended provisions were very much brought into force when the complaint was filed. Sub-section (2) of Section 14 is a presumptuous provision where the President of the State Commission is functional but it would not be correct to say that if the President of the State Commission is nonfunctional because of one or the other reason, the State Commission would stop its functioning and wait till the President is appointed. In order to avoid such a situation, the State Government has framed the Rules and sub-rules (9) and (10) quoted hereinabove unmistakably provide answer to such a situation as in the present case. The only harmonious construction that could be given to sub-sections (2) and (2-A) of Section 14 read with sub-rules (9) and (10) is that as and when the President of the State Commission is functional, he along with at least one member sitting together shall conduct the proceeding but where the President being non-functional, sub-rules (9) and (10) of Rule 6 will govern the proceedings. Sub-rule (9) provides that where any such vacancy occurs in the office of the President of the State Commission, the senior most (in order of appointment) member holding office for the time being, shall discharge the function of the President until a person is appointed to fill such vacancy. This sub-rule is made with a view to make the State Commission functional in the absence of the President and not to allow the State Commission to render nonfunctional for want of the President. It is well settled that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the section. It is this principle that needs to be made applicable while construing the provision of sub-sections (2) and (2-A) of Section 14 read with sub-rules (9) and (10).

18. The West Bengal Government has framed the Rules in the year 1987 and the object of sub-rules (9) and (10) of Rule 6 appears to us to keep the State Commission functional in the absence of the President. From the impugned order it appears that the attention of the National Commission was not drawn to sub-rules (9) and (10) of Rule 6. It also appears from the record that the validity of sub-rules (9) and (10) of Rule 6 was never challenged. It is made clear that the view which we have taken in this appeal is on the premise that there is no

challenge to the validity of the Rules and they hold the field.

19. Having regard to the composition of the District Forum and the State Commission, it is more appropriate and desirable to make the appointment of the President of the District Forum and the State Commission without any delay since the complaints under the Act involved fairly large stakes which require a judicial approach.

20. In view of the above discussion, we are of the opinion that the National Commission committed an error in holding that order passed by the two members of the State Commission without the junction of the President is "illegal and void". Impugned order to that extent is set aside.

11. However, in unreported judgment delivered in case of Sanjit Kumar Khatua & Ors. (supra), this court did not take notice of the said judgment of the Supreme Court and as such has no binding force. Therefore the order passed by two members of the State Commission in absence of the president cannot be said to be illegal and void.

Point No. 2

The supply of electricity through new connection is rejected by the Distribution Company as the father of the petitioner, erstwhile consumer, is a defaulting in payment of electricity charges. It appears that the premises is partitioned amongst the brothers and it would be evident from the report filed by an officer of the distribution company that the premises of the petitioner is not connected with the supply of electricity.

12. Mr. Nayak heavily relied upon a judgment of the Supreme Court rendered in case of Paschimanchal Vidyut Vitran Nigam Ltd. & Ors. v. DVS Steels and Alloys Pvt. Ltd. & Ors. (supra) to the proposition that the transferee of the premises or a subsequent occupant of a premises can be subjected to the condition by the distribution company to pay the arrear dues with regard to the supply of electricity made to the premises when it was in occupation of the previous owners/occupants. In the said report the Apex Court was considering the point whether the Distribution Company can impose certain conditions for supply of new connection at the premises where exist an outstanding in reference to sub-clauses (g) and (h) of clause 4.3 of Electricity Supply Code which provides that a new connection to such sub-divided premises shall be given only after the share of the outstanding dues attributed to such sub-divided premises is duly paid by the applicant. In case there is a statutory rule governing the conditions relating to the sanction of a new connection of supply of electricity, the Distribution Company can insist upon fulfillment of the requirement unless such conditions are not arbitrary and unreasonable. The Apex Court in the said report does not lay down any proposition as to the payment of the outstanding by a subsequent purchaser/occupant of the premises which would be evident from Paragraph 11 of the said reports which reads thus:

11. The supply of electricity by a distributor to a consumer is "sale of goods". The distributor as the supplier, and the owner/occupier of a premises with whom it enters into a contract for supply of electricity are the parties to the contract. A transferee of the premises or a subsequent occupant of a premises with whom the supplier has no privity of contract cannot obviously be asked pay the dues of his predecessor-in-title or possession, as the amount payable towards supply of electricity does not constitute a "charge" on the premises. A purchaser of a premises, cannot be foisted with the electricity dues of any previous occupant, merely because he happens to be the current owner of the premises. The supplier can therefore neither file a suit nor initiate revenue recovery proceedings against a purchaser of a premises for the outstanding electricity dues of the vendor of the premises in the absence of any contract to the contrary.

13. It is further held therein that if the statutory rule provides for fulfillment of any conditions unless the same is unreasonable and arbitrary, the court should not interfere:

12. But the above legal position is not of any practical help to a purchaser of a premises. When the purchaser of a premises approaches the distributor, seeking a fresh electricity connection to its premises for supply of electricity, the distributor can stipulate the terms subject to which it would supply electricity. It can stipulate as one of the conditions for supply, that the arrears due in regard to the supply of electricity made to the premises when it was in the occupation of the previous owner/occupant, should be cleared before the electricity supply is restored to the premises or a fresh connection is provided to the premises. If any statutory rules govern the conditions relating to sanction of a connection or supply of electricity the distributor can insist upon fulfillment of the requirements of such rules and regulations, if the rules are silent, it can stipulate such terms and conditions as it deems fit and proper to regulate its transactions and dealings. So long as such rules and regulations or the terms and conditions are not arbitrary and unreasonable, Courts will not interfere with them.

(Emphasis Supplied)

14. Admittedly Regulation 3.4.2 of the West Bengal Electricity Regulatory Commission (Standards of Performance of Distribution Licensee Relating to Consumer Services) Regulation, 2005 (the Said Regulation) which has a statutory force provides:

3.4.2: The licensee shall be eligible to recover from a new and subsequent consumer(s) the dues for the Previous and defaulting consumer(s) in respect of the same premises only if a nexus between the previous and defaulting consumers and the new consumer in respect of the same Premises is Proved. The onus of Proving a nexus, if claimed by a licensee shall lie on the licensee

(Emphasis Supplied)

15. Therefore, the Distribution Company can very well recover from the new and

subsequent consumer, the dues of the previous consumer provided it is able to prove the nexus between the two. In case of DVS Steels and Alloys Put. Ltd. and Ors. (supra), there was no such statutory rules and/or regulations relating to recovery of the dues upon establishing the nexus between the new consumer and the defaulting consumer.

16. It is a settled proposition of law that what is decided in the judgment in the facts and circumstances involved therein and a little difference of fact may change the complexion of the decision of the two cases.

17. It is settled law that the court should not place reliance on a decision without discussing as to how the factual situation fits in with the fact situation of the decision on which the reliance is placed. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. (See Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another, , Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, , Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer (Raj.) Thru Smt. Mankanwar Chordia (Dead) and Others, , Deepak Bajaj v. State of Maharastra reported in (2008)16 SCC 14].

18. Even in case of DVS Steels and Alloys Pvt. Ltd. & Ors. (supra), the apex court held that if the statutory rules governed the conditions relating to the connection or supply of electricity, the distribution company can insist the fulfillment thereof. But in absence of any said rule it can stipulates its own condition provided the same is not arbitrary or unreasonable.

19. In case of Nirmal Kumar Mondal & Anr. (supra) the writ petitioner agree to pay the arrear in pro rata basis and on such consensus an order was passed for supply of electricity upon payment of the dues.

20. The subsequent decision cited by Mr. Nayak in case of M.K. & Sons (supra) the Hon"ble Single Bench of this court, on facts, found that there was a nexus between the defaulting consumer and the new consumer and directed the distribution company to effect the new connection upon clearance of the old dues of the defaulting consumer.

21. Subsequently the Supreme Court in case of M/s Hanuman Rice Mills & Ors. (supra) after considering the judgment of DVS Steels and Alloys Put Ltd. and Ors. (supra) held:

9. The position therefore can may be summarized thus:

(i) Electricity arrears do not constitute a charge over the property. Therefore in general law, a transferee of a premises cannot be made liable for the dues of the previous owner/occupier.

(ii) Where the statutory rules or terms and conditions of supply which are statutory in character, authorize the supplier of electricity, to demand from the purchaser of a property claiming re-connection or fresh connection of electricity,

the arrears due by the previous owner/occupier in regard to supply of electricity to such premises, the supplier can recover the arrears from a purchaser."

22. Admittedly both, the District Forum as well as the State Commission, factually found that there is no nexus between the petitioner and the defaulting consumer. Even before this court the petitioner could not successfully prove the nexus between the defaulting consumer and the petitioner.

23. Therefore in view of the regulation 3.4.2 of the said regulation 2005 unless the nexus is proved, the petitioner cannot insist upon the Opposite party No. 1 to pay the dues of the defaulting consumers as condition precedent for supply of new connection.

Point No. 3:

The scope of Article 227 of the Constitution of India has been elaborately discussed in a recent judgment rendered by the Supreme Court in case of *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, in these words:

26. The High Courts power of superintendence under Article 227 of the Constitution has its origin as early as in the Indian High Courts Act of 1861. This concept of superintendence has been borrowed from English Law. The power of superintendence owes its origin to the supervisory jurisdiction of the King's Bench in England. In the Presidency towns of the then Calcutta, Bombay. Madras initially Supreme Court was established under the Regulating Act of 1773. Those Courts were endowed with the power of superintendence, similar to the powers of the King's Bench under the English Law. Then the Indian High Courts in three Presidency towns were endowed with similar jurisdiction of superintendence. Such power was conferred on them u/s 15 of the Indian High Courts Act, 1861.

27. Section 15 of the Indian High Courts Act of 1861 runs as under:

"15. Each of the High Courts established under this Act shall have superintendence over all courts which may be subject to its appellate jurisdiction, and shall have power to call for returns, and to direct the transfer of any suit or appeal for any such court to any other court of equal or superior jurisdiction, and shall have power to make and issue general rules for regulating the practice and proceedings of such courts, and also to prescribe forms for every proceeding in the said courts for which it shall think necessary that a form be provided, and also for keeping all books, entries, and accounts to be kept by the officers, and also to settle tables of fees to be allowed to the Sheriff, Attorneys, and all clerks and officers of the courts, and from time to time to alter any such rule or form or table; and the rules so made, and the forms so framed, and the tables so settled, shall be used and observed in the said courts, provided that such general rules and forms and tables be not inconsistent with the provisions of any law in force, and shall before they are issued have received the sanction, in the Presidency of Fort William of the Governor General-in-Council, and in Madras or Bombay of the Governor-in-Council of the respective Presidencies.

28. Then in the Government of India Act, 1915, Section 107 continued this power of superintendence with the High Court. Section 107 of the Government of India Act, 1915 was structured as follows:

107. Powers of High Court with respect to subordinate courts. Each of the High Courts has superintendence over all courts for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say--

- (a) call for returns;
- (b) direct the transfer of any suit or appeal from any such court to any other court of equal or superior jurisdiction;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (e) settle tables of fees to be allowed to the sheriff, attorneys and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force, and shall require the previous approval, in the case of the High Court at Calcutta, of the Governor General-in-Council, and in other cases of the local Government."

29. In the Government of India Act, 1935 the said Section 107 was continued with slight changes in Section 224 of the Act, which is as follows:

224. Administrative functions of High Courts.-(1) Every High Court shall have superintendence over all courts in India for the time being subject to its appellate jurisdiction, and may do any of the following things, that is to say-

- (a) call for returns,
- (b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts;
- (c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts; and
- (d) settle tables of fees to be allowed to the sheriff, attorneys, and all clerks and officers of courts:

Provided that such rules, forms and tables shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(2) Nothing in this section shall be construed as giving to a High Court any jurisdiction to question any judgment of any inferior court which is not otherwise subject to appeal or revision.

30. The history of this power has been elaborately traced by a Division Bench of the Calcutta High Court in *Jahnabi Prosad Banerjee v. Basudeb Paul* and that was followed in a Division Bench judgment of the Allahabad High Court in *Sukhdeo Baiswar v. Brij Bhushan Misra*.

31. The history of Article 227 has also been traced by this Court in its Constitution Bench judgment in *Waryam Singh v. Amarnath*. In AIR para 13 at p. 217 of the Report this Court observed:

13....The only question raised is as to the nature of the power of superintendence conferred by the article."

About the nature of the power of superintendence this Court relied on the Special Bench judgment delivered by Harries, C.J. in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*.

32. In AIR para 14 at p. 217 of *Waryam Singh* this Court neatly formulated the ambit of High Courts' power under Article 227 in the following words:

14. This power of superintendence conferred by Article 227 is, as pointed out by Harries, C.J., in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee*, to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting mere errors.

33. Harries, C.J. in the Full Bench decision in *Dalmia* stated the principles, on which the High Court can exercise its power under Article 227 very succinctly which we would better quote: (AIR pp. 193-94, para 6)

6. Though this Court has a right to interfere with decisions of courts and tribunals under its power of superintendence, it appears to me that, that right must be exercised most sparingly and only in appropriate cases. The matter was considered by a Bench of this Court in *Manmatha Nath Biswas v. In* that case a Bench over which Sir George Rankin C.J. presided held that Section 107, Government of India Act (which roughly corresponds to Article 227 of the Constitution), does not vest the High Court with limitless power which may be exercised at the Court's discretion to remove the hardship of particular decisions. The power of superintendence it confers is a power of a known and well-recognised character and should be exercised on those judicial principles which give it its character. In general words, the High Court's power of superintendence is a power to keep subordinate courts within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner.

34. In stating the aforesaid principles, Harries. C.J. relied on what was said by George Rankin, C.J. in *Manmatha Nath Biswas v. Emperor*. At AIR p. 134, the learned Chief Justice in *Manmatha Nath* case held:

... superintendence is not a legal Action whereby a High Court Judge is vested with omnipotence but is as Norman, J., had said a term having a legal force and

signification. The general superintendence which this Court has over all jurisdiction subject to appeal is a duty to keep them within the bounds of their authority, to see that they do what their duty requires and that they do it in a legal manner. It does not involve responsibility for the correctness of their decisions, either in fact or law.

35. Nasirullah Beg, J. of the Allahabad High Court in a very well-considered judgment rendered in *Jodhey v. State* discussed the provisions of section 15 of the Indian High Courts Act of 1861, section 107 of the Government of India Act, 1915 and section 224 of the Government of India Act, 1935 and compared them with almost similar provisions of Article 227 of the Constitution. The learned Judge considered the power of the High Court under Article 227 to be plenary and unfettered but at the same time, in para 15 at AIR p. 792 of the Report, the learned Judge held that High Court should be cautious in its exercise. It was made clear, and rightly so, that the power of superintendence is not to be exercised unless there has been (a) an unwarranted assumption of jurisdiction, not vested in a court or tribunal, or (b) gross abuse of jurisdiction, or (c) an unjustifiable refusal to exercise jurisdiction vested in courts or tribunals. The learned Judge clarified if only there is a flagrant abuse of the elementary principle's of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice; power of superintendence can be exercised. This is a discretionary power to be exercised by the Court and cannot be claimed as a matter of right by a party.

36. This Court in its Constitution Bench decision in *Nagendra Nath Bora v. Commr. of Hills Division and Appeals* followed the ratio of the earlier Constitution Bench in *Waryam Singh* about the ambit of High Court's power of superintendence and quoted in *Nagendra Nath* the same passage, which has been excerpted above (see AIR p. 413, para 30 of the Report).

37. The Constitution Bench in *Nagendra Nath*, unanimously speaking through B.P. Sinha, J. (as His Lordship then was) pointed out that High Court's power of interference under Article 227 Is not greater than its power under Article 226 and the power of interference under Article 227 of the Constitution is limited to ensure that the tribunals function within the limits of its authority.

(Emphasis Supplied)

38. The subsequent Constitution Bench decision of this Court on Article 227 of the Constitution, rendered in *State of Gujarat v. Vakhatsinghji Vajesinghji Vaghela* also expressed identical views. Bachawat, J. speaking for the unanimous Constitution Bench opined that the power under Article 227 cannot be fettered by the State Legislature but this supervisory jurisdiction is meant to keep the subordinate tribunal within the limits of their authority and to ensure that they obey law.

39. So the same expression, namely, to keep the courts and tribunals subordinate to the High Court "within the bounds of their authority" used in

Manmatha Nath Biswas, to indicate the ambit of High Court's power of superintendence has been repeated over again and again by this Court in its Constitution Bench decisions".

40. Same principles have been followed by this Court in *Mani Nariman Daruwala v. Phiroz N. Bhatena*, wherein it has been held that in exercise of its jurisdiction under Article 227, the High Court can set aside or reverse finding of an inferior court or tribunal only in a case where there is no evidence or where no reasonable person could possibly have come to the conclusion which the court or tribunal has come to. This Court made it clear that except to this "limited extent" the High Court has no jurisdiction to interfere with the findings of fact (see SCC pp. 149-50, para 18). In coming to the above finding, this Court relied on its previous decision rendered in *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*. The decision in *Chandavarkar* is based on the principle of the Constitution Bench judgments in *Waryam Singh* and *Nagendra Nath* discussed above.

41. To the same effect is the judgment rendered in *Laxmikant Revchand Bhojwani v. Pratapsing Mohansingh Pardeshi*. In SCC para 9 at pp. 579-80 of the Report, this Court clearly reminded the High Court that under Article 227 that it cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. Its exercise must be restricted to grave dereliction of duty and flagrant abuse of fundamental principles of law and justice.

42. Same views have been taken by this Court in respect of the ambit of High Court's power under Article 227 in *Lonand Grampanchayat v. Ramgiri Gosau* (see AIR pp. 222-34, para 5 of the Report) and the decision of this Court in *Jijabai Vithalrao Gajre v. Pathankhan*. The Constitution Bench ratio in *Waryam Singh* about the scope of Article 227 was again followed in *Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand*.

43. In a rather recent decision of the Supreme Court in *Surya Dev Rai v. Ram Chander Rai*, a two-Judge Bench of this Court discussed the principles of interference by the High Court under Article 227. Of course in *Surya Dev Rai* this Court held that a writ of certiorari is maintainable against the order of a civil court, subordinate to the High Court (SCC p. 688, para 19 of the Report). The correctness of that ratio was doubted by another Division Bench of this Court in *Radhey Shyam v. Chhabi Nath* and a request to the Hon'ble Chief Justice for a reference to a larger Bench is pending. But insofar as the formulation of the principles on the scope of interference by the High Court under Article 227 is concerned, there is no divergence of views.

44. In para 38 sub-para (4) at SCC p. 695 of the Report, the following principles have been laid down in *Surya Dev Rai* and they are set out.

38. (4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed

to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction. 45. Sub-paras (5), (7) and (8) of para 38 are also on the same lines and extracted below: (Surya Dev Rai case, SCC pp. 695-96).

38. (5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) * * *

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the above said two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character."

46. Articles 226 and 227 stand on substantially different footing. As noted above, prior to the Constitution, the Chartered High Courts as also the Judicial Committee of the Privy Council could issue prerogative writs in exercise of their original jurisdiction. (See *Umaji Keshao Meshram v. Radhikabai*, SCC at p. 469.) However, after the Constitution every High Court has been conferred with the power to issue writs under Article 226 and these are original proceeding. (*State of U.P. v. Dr. Vijay Anand Maharaj*, AIR p. 951.)

47. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. Therefore, the powers conferred under Articles 226 and 227 are separate and distinct and operate in different

fields. Another distinction between these two jurisdictions is that under Article 226, the High Court normally annuls or quashes an order or proceeding but in exercise of its jurisdiction under Article 227, the High Court, apart from annulling the proceeding, can also substitute the impugned order by the order which the inferior tribunal should have made. (See *Surya Dev Rai*, SCC p. 690, para 25 and also the decision of the Constitution Bench of this Court in *Hari Vishnu Kamath v. Ahmad Ishaque*, AIR p. 243, para 20.)"

24. Article 227 of the Constitution vest the High Court with the power of superintendence which would be exercise sparingly specially to keep the tribunals and courts within the bounds of their authority or where manifest miscarriage of justice has occasioned but should not be exercised to correct the mistake of law or fact.

25. To sum up, the petitioner could not establish and prove the nexus between the opposite party No. 1 and the defaulting consumer either before the District Forum or the State Commission. Unless the nexus is proved the petitioner can not impose any condition for payment of an outstanding dues of the previous consumer under regulation 4.3.2 of regulation 2005.)

26. Such concurrent finding of facts should not be interfered by the High Court in exercise of the power under Article 227 of the Constitution. This court does not find any ground to interfere with the orders impugned herein.

27. The revisional application is therefore dismissed.

28. There shall however no order as to costs. Urgent photostat certified copy of this order, if applied for, be given to the parties on priority basis.