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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Jun-03-1997

Judge : A.P. Chowdhri, President &Amp; Desh Bandhu, Member

Appeal No. : Case No. A 526 of 1996

Appellant : Vikas and Co.

Respondent : Delhi Electric Supply Undertaking

Judgement :

A.P. Chowdhri, President:

1. Brief facts giving rise to this appeal are that M/s. Vikas andCo. a partnership concern had two connections namely Nos. 640062 IP and 640061 IL. The opposite party raised two bills of Rs. 21,058.08 and Rs. 5,218.13 for the said connections respectively. These were payable upto 28.3.1989. The bills having not been paid, both the aforesaid connections were disconnected on the ground of non-payment on 7.8.1989. On 16.3.1991, the complainant made a request for restoration of the connections followed by a legal notice dated 1.3.1993 but the connections were not restored and, accordingly, complaint was filed before the District Forum on 11.7.1994. Written version was filed on behalf of the opposite party. Whereas some other objections were raised, no plea of limitation was taken. The District Forum on its own took up the question of limitation and observed that

disconnection had been made in August 1989 and the com plaint was filed by July, 1994 and the same was hopelessly barred in limitation. For certain other reasons as well stated in the judgment the complaint was dismissed with Rs. 2,000/ as costs. Aggrieved the complainant has preferred this appeal. We have heard both the parties and have carefully gone through the records.

2. Two other facts may be noted. The Chief Secretary, Delhi appears to have issued instructions dated 6.3.1990 to the effect that no new connection is to be given to industrial units situated in Anand Parbat area. The second fact to be noted is that the opposite party on its own revised the bills. Instead of Rs. 21,058.08 the revised bill was for Rs. 794.60 and instead of the original bill of Rs. 5,218.13 the bill was revised for Rs. 698.60, the revised bills were payable upto 31.8.1995. They were, accordingly, paid within the prescribed time.

3. The first question arising for consideration is regarding limitation. In most of the cases like the present one, the question of limitation is a mixed question of law and fact. It follows that unless the plea of limitation is taken, the question of limitation cannot be properly gone into and decided. Admittedly, in the facts of the present case, the plea of limitation had not been raised and after careful consideration, we do not permit the same to be raised at the stage of appeal. For this view we rely on a decision of Uttar Pradesh Consumer Disputes Redressal Com mission in National Insurance Co. Ltd. v. Jagdish Prasad Maurya, I (1996) CPJ 240 which has relied on a decision of the National Commission in Sh. Chamundi Mopeds Ltd. v. Mumbai Grahak Panchayat, II (1992) CPJ 514 (NC). We, there fore, hold that the complaint could not be dismissed on the ground of limitation. Finding to the contrary by the District Forum II is set aside.

4. With regard to instructions of the Chief Secretary we may point out that a reference thereto was made in the written statement filed before the District Forum but the said instructions were neither produced before the District Forum nor in appeal before us. In any case, it has been rightly submitted by Mr. Dwivedi that the said instructions related to issuance of new connections and did not relate to old connections. Admittedly, the connections in question had been sanctioned long before the said instructions of the Chief Secretary dated 6.3.1990. It may be added

that the instructions of the Chief Secretary did not purport to have been issued under the Indian Electricity Act. It appears to be an administrative decision and in the facts and circumstances of the present case, it was not applicable to the present case. In view of the admitted facts the disconnection was illegal on two counts: (a) that no notice u /Section 24 of the Indian Electricity Act was served prior to disconnection, and (b) the disconnection was illegal in that it was carried out on account of non payment of two bills which were revised in 1995 by the department itself. In other words, the disconnection had been carried out on the ground of default in the payment of dues, which, according to the department's subsequent revision related to amounts, which were not due.

5. There is reference to dissolution of the partnership. The facts on record show that the original partnership under the name and style of Vikas and Co. was dissolved on 31.3.1984 but it was re constituted with the same partners on 1.4.1984. The dissolution, therefore, was only for a temporary period of a few days and the same did not furnish any reason for denying the restoration of the connections.

6. In April 1989 two other connection Nos. 142727 and 142728 were released for the same premises in favour of M / s. Sunrise Liable Co. It has not been shown to us how the release of connection in favour of another person may furnish any justification for refusing the restoration of the connections when the dues as revised by the department had been cleared. We, there fore, direct the respondent to restore two connections subject to appellant complying with necessary formalities within a period of two months from the date of receipt of a copy of this order. A copy of this order be conveyed to the parties as well as District Forum II.

Appeal allowed.