

Redressal of Electricity Consumers' Disputes: Judicial Approach

Abstract

The constitution of India provides for social and economic justice of which consumer protection is also a part. Welfare of the consumer can be achieved only by protecting them from well organized world of seller of goods and services. To fulfill the aspirations of the consumer, Consumer Protection Act, 1986 was passed. Today modern society lives and thrives upon services of numerous kinds like banking, housing, insurance, transport, boarding, lodging etc. Electricity is also covered among all these services. Cases relating to deficiency of service relating to electricity occupy most of the consumer dispute cases. This paper explores approach of judiciary toward these cases.

Keywords: Consumer, Protection, Deficiency in Service.

Introduction

Social and economic justice is enshrined in the Constitution of India¹, of which consumer justice and protection is also a part. Welfare of the consumer can be done by safeguarding their rights, by protecting them from unfair trade practices and saving them from being exploited by well organized world of sellers of goods and services².

Following the constitutional mandate a number of legislations have been enacted in the field of consumer protection, but all these scattered pieces of legislations³ are not efficient in protecting the consumers as the remedies provided are costly, troublesome and time consuming. Moreover, the impact of these legislations in protecting the consumers has been relatively small⁴. In view of the aforesaid shortcomings, new problems had emerged on the horizons of consumerism changing the trends of consumer needs, hence the Consumer Protection Act, 1986 was enacted in India. This Act marks the growth of enlightened consumer movement in our country⁵.

The Act aims to protect the economic interest of the consumers as understood in the commercial sense as a purchaser of goods and in the large sense of user of services⁶. One of the laudable features of the Act is that it provides relief to consumers, if they suffer loss or injury due to deficiency of services. In all developed economics, the concept of services has assumed great importance. A modern society lives and thrives upon services of numerous kinds which have become indispensable for comfortable and orderly existence of human being⁷. According to the CPA, "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, boarding or lodging or both housing, construction, entertainment, amusement or the purveying of news or other information., but does not include the rendering of any service free of charge or under a contract of personal service.⁸ Our increasing stride in to modern standard of life brings in a corresponding increase in the incidence of other variants of consumer distress like the lapses in the services offered by various utilities, the airlines, railways, banks insurance, electricity boards, etc.⁹

Cases relating to deficiency of service continue to occupy most of the time and attention of Consumer Dispute Redressal Agencies. In particular, complaints of deficient services of public utilities, insurance and banking constitute significant portion of their workload.¹⁰

Objective of the Study

In India there are various causes related to inefficient electricity services. Therefore this paper explores approach of judiciary towards these cases and how the rights of consumer are being protected.

In order to protect the rights of consumer following measure taken by the legislature for protection of the electricity consumer is in the form of the Electricity Act, 2003 and Consumer Protection Act 1986.



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The Electricity Act, 2003

The Electricity Act, 2003 is the latest comprehensive enactment which has been passed to deal with various matters relating to generation, transmission, distribution, trading and use of electricity. The Act aims at taking measures conducive to the development of electricity industry, through promotion of competition and protection of the interest of the consumers in terms of supply and rationalization of tariff¹¹. The policy of the Act is to promote competition in electricity industry which is of great benefit to the consumers as it could enable them to choose supply from the best servicing undertakings in their respective areas. Accordingly the consumer needs not to be at the mercy of the public undertakings power utilities and face increasing power cuts for long hours¹². To prevent the theft of electricity, the States are required to set up special courts to try cases relating to electricity speedily¹³. The Act has made express provisions about the manner and conditions of supplying electricity to consumers and to protect them from exploitation by private trading agencies¹⁴.

Both the legislations, i.e., the Consumer Protection Act and the Electricity Act have a significant bearing on the protection of the consumer interests. These two Acts provide the basic policies and enforcement mechanism envisaged for the protection of the consumers enjoying the services of electricity. In this paper endeavor has been made to explore applicability of the Acts in electricity service.

Electricity and Consumer

Every person is a consumer because he uses or consumes goods and services. A person is not only a consumer when he buys or uses groceries or automobiles or clothes but also a consumer when he makes use of public utility services¹⁵.

Consumers are of two distinct categories i.e. purchaser of goods and hirer of services. The purchaser of goods means any person who buys any goods for consumption and not for resale or for any commercial purpose; and the hirer of the services includes a person who hires any service for consideration. The concept of services has received prominence in recent years in India as a result of industrialization and rapid urbanization. Public Utility Services such as transport, banking, insurance and essential services like electricity have become indispensable for orderly existence in every developed society¹⁶. To set the redressal machinery in motion, the consumer has, first of all, to file a complaint before the redressal agency having Jurisdiction in his case.

In order to succeed, in a complaint against services including electricity, the complainant must establish that there was deficiency in service provided as defined in sec 2(1) (g) of the Act that means, "any fault, imperfection, shortcoming or inadequacy in the 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 contract or otherwise in relation to any service."¹⁷ Energy is of universal importance for development and

developmental existence for both developed and developing countries. Corporate bodies like the State Electricity Boards providing electricity for a price to the consumers render service within the ambit of the Consumer Protection Act. Sale of electricity is for consideration and supply of electricity on a continuing basis over a period of time against payment, therefore is hiring of services under the said Act. Hence a person who uses electricity becomes a consumer¹⁸.

Judicial Attitude

A perusal of cases reveals how the consumer courts have shown utmost circumspection in passing orders against electricity undertakings. In *Dr. Dhirubajyati Benerjee v. P. Singh*¹⁹ the complainant, a well know medical practitioner, went to the opposite party's video library, on the first floor, to hire a cassette. On one hand of the staircase there was metal bannister which came in contact with live electric wire. The complainant got electrocuted thereby, and suffered physical, mental and financial loss. The opposite party was held liable to pay compensation of Rs. 15000 for his negligence. The Supreme Court in *L.D.A. v. M.K. Gandhi*²⁰, observed that even the supply of electricity or gas which throughout the country is being made, mainly by statutory authority is included in the definition of service. The intention of the legislature is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of duty and function performed by it is service or even facility. Delay in providing the sanctioned additional load also amounts to deficiency in service. In *Executive Engineer, O and M, Tamil Nadu v. Electricity Board and others*²¹, it was held that the unexplained delay in providing additional load, which had already been sanctioned, was a deficiency in service. In *Gita Rani v. S.S. Bankura*²², the defective electricity meter on the complainant's premises was not replaced in spite of repeated reminders. This was held to be negligence and deficiency in the service on the part of the complaint for harassment and mental pain caused to him. In *Haryana State Electricity Board v. Naresh Kumar*²³, it was held that disconnection of supply of electricity without prior notice, is a deficiency in service. In this case supply of electricity was disconnected without prior notice under the order of the state commission. There was held to be deficiency in services and compensation was awarded to the complainant.

In *Haryana Electricity Board v. Tanuj Rashi poultry farm*²⁴, the complainant was having an electricity connection for his poultry farm. An electric transformer got burnt, the same was not replaced for 25 days, whereby the electric supply to the poultry farm got disrupted and some birds died as a result thereof. The opposite party demanded Rs.12560 from the complainant without justification, which was paid under protest. The State Commission ordered the refund of Rs. 12560 and allowed compensation of Rs. 75000 to the complainant for loss of the birds.

Disruption of electric supply to an orange garden due to theft of wire²⁵, refusal of a new connection to a factory unless the outstanding arrears

of the existing connection were cleared, and an effort to recover arrears for a period of eight years to from a factory due to slow running of the meter, without recourse to the prescribed procedure have all been declared as matters of deficiency²⁶. In another case²⁷, death occurred due to electrocution as 33 K V overhead line was touching the ground. Cause of action was attributed to omissions and commissions on the part of officials of the grid corporation, energy department. Considering the fact that bereaved family belonged to down trodden class of society and that there was infringement of Art. 21 of the Constitution, the court directed the corporation to make an ex-gratia payment of Rs. 50,000 with 6% interest to legal heirs of the victim. It has to be noted that courts have started giving compensation for breach of human rights and this is a healthy development. *M. P. Electricity Board v. Shail Kumar*²⁸ is an example of electrocution wherein a cyclist was killed instantaneously. The Board tried to defend on the ground that the electrocution was due to clandestine pilferage committed by a stranger unauthorizedly siphoning the electric energy from supply line. Rejecting the defence the court ordered the Board to pay a compensation of Rs. 4.34 lakhs.

In *N. Kunchi Babu v. A.P. Transco*²⁹, electric wires were touching the balcony of complainant's house as a result of which his minor daughter was electrocuted and became physically disabled. There was failure on the part of the Electricity Supply Board to maintain minimum distance as per norms prescribed under the Electricity Act. The deficiency in service was proved; hence complainant was entitled to compensation, cost and also the medical expenses of his daughter.

In *Karnataka Power Transmission Corporation v. Ashok Iron Works Pvt. Ltd.*³⁰, the Appellant Corporation contended that the complaint filed by respondent by respondent was not maintainable as:

- a) Company is not a person under the CP act,
- b) The complainant is not a consumer as it has purchased the electricity for commercial purpose, and
- c) Disputes relating to sale and supply of electricity were not covered under service.

The Apex court rejected all the contentions of the appellant and held that any person mentioned in the definition of 'consumer' includes company and the supply of electricity by the corporation to consumer was not sale of goods and 'service' was not limited to providing facilities in connection with electricity and there was deficiency in service. Moreover in the case, the exclusion on the account of commercial purpose is not applicable since the cause of action arose before the amendment was made in the CPA.

However in *UP Power Corp. Ltd. v. Anis Ahmed*³¹, the court held that the service does not include service for commercial purpose. Furthermore any person who uses the electricity without authorization cannot be the complainant. A complaint can be filed under CPA if there is allegation of unfair trade or restrictive trade practice; however the case of

assessment and unauthorized use can be made before the authorities constituted under the Electricity Act.

In *Travancore Oxygen Ltd. v. Kerala State Electricity Board*³², the complainant alleged irregular electric supply and supply of low voltage electricity by the opposite party resulting in closure of plant on various occasions during the past few years. Since voltage fluctuations were not due to willful action on the part of the Board, it was held that there was no deficiency in service.

Where the meter having been found to be tampered and there was electricity theft noticed by the opposite party and FIR had already been lodged about this power theft, the Board demanded payment of unmetered consumption of electricity, additional security deposit and re-connection charges. It was held that disconnection in case of electric theft or pilferage does not amount to deficiency in service and no prior notice in such case was necessary. Reconnection could only be possible on payment of demanded amount. Therefore, the order of the forum allowing complaint was set aside by the state commission for their protection and welfare³³. However, the list of cases is endless but all the above cited cases indicate that the machinery for the settlement of consumer dispute is working in accordance with the spirit of legislation and is protecting the interest to the optimum possible.

Conclusion

The concept of service has received prominence in the recent years in India as a result of industrialization and rapid urbanization. In modern urban societies, services greatly contribute to social mobility and security of city dwellers. Public utility services like electricity have become indispensable for orderly existence³⁴. The Consumer Protection Act has introduced the notion of 'deficiency of services' and has made it an actionable wrong. The Act requires providers of service to be more objective and care taking more in public services. The electricity has taken into the category of service and persons to whom the service is rendered become consumer of the service. The significant decisions of the Supreme Court and national commission have contributed greatly to the development of law on the subject. Though the courts are providing relief to the consumers, but it has aptly maintained that the theft cases donot amount to deficiency of service³⁵ The consumers for whom the legislation was intended are getting relief as the law is expanding. The consumer should be made aware of their rights and remedies under the Consumer Protection Act. The bitter truth is that they do not know about their rights and hence they sleep in darkness. We need to accelerate the consumer awareness and consumer education to make this social welfare legislation more purposeful. The manufacturers and suppliers of the services must realize that the consumer is the nucleus of economy and cannot achieve their basic objective without consumer satisfaction.

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