

*Before Rameshwar Singh Malik, J.*

**UTTAR HARYANA BIJLIVITRAN NIGAM—Petitioner**

*versus*

**HARJIT SINGH—Respondent**

**CWP No. 14405 of 2013**

July 9, 2013

*A. Constitution of India, 1950 - Art. 226/227 - Writ Jurisdiction - Electricity Act, 2003 - S.145 - Suit filed in Civil Court against disconnection of electricity supply on account of default in payment of electricity charges - Whether civil court jurisdiction barred under Section 145 of Electricity Act 2003 for determining issue under Section 56 of the Act - Held, Civil Court jurisdiction*

*is restricted qua matters arising out of the actions taken by the authorities under Section 126 of Act or any orders passed by the Appellate Authority under Section 127 of the Act - Section 42 of the Act does not provide that jurisdiction of the civil court shall be barred upon setting up of the Forum under the Act.*

*Held*, that the legislature, in its wisdom, has restricted the jurisdiction of the civil court only qua the matters arising out of the actions taken by the authorities under Section 126 of the Act or any orders passed by an appellate authority under Section 127 of the Act and the connected matters covered there under. Since in the present case, impugned action has been admittedly taken by the petitioner under Section 56 of the Act, there was no scope, whatsoever, of barring the jurisdiction of the civil court. Thus, the learned civil court has committed no error of law, while passing the impugned order, which deserves to be upheld for this reason, as well.

(Para 13)

**B. Electricity Act, 2003-S. 42(5) - Doctrine of Election - Consumer has an option to take resort to the grievance redressal system under Section 42(5) of the Act before approaching the Civil Court - In case not satisfied with the outcome, the consumer can still approach the Civil Court for adjudication of his dispute - Writ Petition dismissed.**

*Held*, that Section 42 does not provide that the jurisdiction of civil court shall be barred once the forum is created and comes into action. Rather Section 42(8) specifically states that provisions of Sub-section (5) (6) and (7) shall be without prejudice to the right of consumer which he may have apart from the right conferred upon him by these subsections. If these sub-sections had not been there, the consumers only remedy for redressal would have been to approach the civil court. No other mechanism is provided in the Electricity Act where a consumer could go against the faulty bills. Thus where a bill is faulty, the consumer has an option that before approaching the civil court he may take resort to Grievance Redressal system created under Section 42(5). However, even after approaching to the Grievance Redressal system, if he is not satisfied, he still has the remedy to approach the civil court for adjudication of his dispute.

(Para 14)

Suyash M. Guru, Advocate, for the petitioner.

**RAMESHWAR SINGH MALIK, J.**

(1) The short but important question of law that falls for consideration of this court in the instant writ petition is, whether the civil court jurisdiction under Section 145 of the Electricity Act, 2003 (for short 'the Act') for determining any issue arising under Section 56 of the Act is barred or it would be restricted only qua the issues arising out of any order passed under Sections 126 and 127 of the Act.

(2) Facts first. The present writ petition is directed against the order dated 3.12.2012 (Annexure P-1), passed by the learned Civil Judge (S.D.) Naraingarh, whereby the learned Civil Judge issued direction to the petitioner to restore the electric connection, subject to deposit of an amount of 40% of bill amount by the plaintiff within 15 days. The impugned order came to be passed by the learned Civil Judge in an application filed under Order 39 Rules 1 and 2 read with Section 151 CPC in the suit for declaration. The suit was filed by the present respondent challenging the action of the petitioner, disconnecting his electric supply in alleged default of payment of electricity charges. The respondent alleged that the electricity bill (Annexure P-2) raised by the petitioner was inflated and faulty, thus, illegal. He also challenged the order (Annexure P-3) disconnecting his electric supply. Details in this regard find mentioned in the plaint (Annexure P-4). Petitioner filed its written statement (Annexure P-5), wherein it did not raise the issue of jurisdiction, as such. It is pertinent to note here that respondent, as per his allegations levelled in the plaint (Annexure P-4), had been consuming electricity for domestic purposes and the electric bill raised was for Rs.79745/- on account of alleged arrears. In this factual background of the matter, the present writ petition has been filed.

(3) While raising his solitary argument, learned counsel for the petitioner submits that the impugned interim order dated 3.12.2012 (Annexure P-1), passed in an application under Order 39 Rules 1 and 2 read with Section 151 CPC in a suit for declaration, filed by the respondent was without jurisdiction, because the jurisdiction of the civil court was barred under Section 145 of the Act. He further submits that since the learned civil court had no jurisdiction to entertain the suit itself, it had no jurisdiction to pass the impugned order, as well. In this regard, he refers to Section 56 of the Act, so as to submit that respondent should have gone before the Consumer Grievance Redressal Forum established under Section 42(5) of

the Act. He prays for setting aside the impugned order by allowing the present writ petition. To substantiate his arguments, learned counsel for the petitioner relies upon the judgements of the Hon'ble Supreme Court in *Maharashtra Electricity Regulatory Commission versus Reliance Energy Limited and others (1)*, *Haryana State Electricity Board versus Mam Chand (2)*, *Accounts Officers, Jharkhand State Electricity Board and others versus Anwar Ali (3)* and a judgement of Delhi High Court in *Dheeraj Singh versus B.S.E.S. Yamuna Power Limited (4)*.

(4) Having heard the learned counsel for the petitioner at considerable length, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this court is of the considered opinion that present one is a misconceived writ petition, wherein no interference is warranted at the hands of this court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India. To say so, reasons are more than one, which are being recorded hereinafter.

(5) Since the issue herein is of the jurisdiction of the civil court, it is appropriate to reproduce Section 145 of the Act and the same reads as under :-

**“145. Civil court not to have jurisdiction** -- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an assessing officer referred to in Section 126 or an appellate authority referred to in section 127 or the adjudicating officer appointed under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

(6) The consumer-respondent has filed the civil suit before the learned court of competent jurisdiction, challenging the action of the petitioner taken under Section 56 of the Act, which reads as under :-

**“56. Disconnection of supply in default of payment** -- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from him to a licensee or the

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- (1) (2007) 8 SCC 381
  - (2) (2006) 4 SCC 649
  - (3) (2007) 11 SCC 753
  - (4) 127(2006) DLT 525

generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days notice in writing to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid, but no longer :

Provided that the supply of electricity shall not be cut off if such person deposits, under protect -

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months, whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

(7) The learned counsel for the petitioner has argued that the respondent-consumer ought to have gone to the Consumer Grievance Redressal Forum constituted under Section 42(5) of the Act. It is also pertinent to reproduce the relevant extract of Section 42. The relevant sub-sections of Section 42, for the purpose of deciding the instant petition are sub-sections 5,6,7 and 8 and the same read as under :-

**“42. Duties of distribution licensees and open access -**

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(5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.

(6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.

(7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.

(8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights conferred upon him by those subsections."

(8) A combined reading of the above said provisions of law would make it clear that the civil court jurisdiction is barred only to the limited extent i.e. for the matters arising out of any action taken under Section 126 or any order passed under Section 127 of the Act. The argument raised by learned counsel for the petitioner seems to be attractive at the first blush, however, when examined in context of the above said provisions of law, the same has been found to be felicitous, thus, liable to be rejected.

(9) It is undisputed factual aspect in the present case that the dispute between the parties clearly falls within the scope of Section 56 of the Act and this is what the pleaded case of the petitioner. Learned counsel for the petitioner strenuously argued that remedy available to the respondent would have been only under sub-section 5 of Section 42 of the Act. However, when this argument is examined in view of the provisions of sub-section 8 of Section 42 of the Act, the argument raised by learned counsel for the petitioner falls flat. It is so said because the only harmonious interpretation of Section 42(8) is that the consumer like the respondent herein, has been given the choice either to avail the remedy under Section 42(5) of the Act or he may approach the civil court. Notwithstanding sub-sections 5, 6, and 7 of Section 42 of the Act, subsection 8 thereof makes

it very clear that the provisions contained in subsections 5,6 and 7 shall be without prejudice to the right of the consumer, which he may have apart from the rights conferred upon him by these subsections. When this specific query was put to learned counsel for the petitioner, he had no answer. Learned counsel for the petitioner failed to substantiate his argument in this regard. Having said that, this court feels no hesitation to conclude that the respondent was entitled to choose either to approach the Consumer Grievance Redressal Forum constituted under Section 42(5) of the Act or to go to the civil court invoking the provisions of Section 42(8) read with Section 145 of the Act.

(10) Giving due regard to the legislative intent behind the object sought to be achieved, while framing this piece of legislation, it is unhesitatingly held that the respondent was entitled to avail the remedy of civil suit approaching the learned civil court of competent jurisdiction. That is what has been done by the respondent in the present case. The learned civil court has not exceeded its jurisdiction, while entertaining the civil suit filed by the respondent and also while passing the impugned interim order dated 3.12.2013 (Annexure P-1), which deserves to be upheld.

(11) So far as the judgements relied upon by learned counsel for the petitioner are concerned, all the four judgements were rendered on entirely different set of facts, thus, clearly distinguishable. In the first judgement in *Maharashtra Electricity Regulatory Commission (supra)*, the issue was between the Commission and the licensee, besides the facts were totally different. There was no dispute involved in that case between a licensee and consumer, which is the issue involved herein. The second judgement in Mam Chand's case (supra) was also based on different facts. The issue involved therein had arisen out of an assessment made under Section 126 of the Act, which is not the case here. Similarly, in *Anwar Ali's case (supra)*, the issue raised was regarding the jurisdiction of Consumer Forum under the Consumer Protection Act, 1986, whereas there is no such issue involved in the present case. Again, in the judgement of Delhi High Court rendered in *Dheeraj Singh's case (supra)* scope of Section 42(8) of the Act was not even referred. In that case, the consumer has directly approached the High Court filing a writ petition in respect of alleged faulty bills. While dismissing the writ petition, the Delhi High Court relegated the consumer to his alternative remedy available to him under Section 42(5) and (6) of

the Act. It was observed that once the grievance cell was created under the Act, consumer should not have straightway rushed to the High Court. The facts of the present case, as discussed herein above are entirely different and the judgements relied upon by learned counsel for the petitioner are of no help to him, being clearly distinguishable on facts.

(12) Further, it is the settled proposition of law that facts and circumstances of each case are to be seen, examined and appreciated first before applying any codified or judgemade law thereto. Some times, even one additional fact or circumstance can make the world of difference, as held by the Hon'ble Supreme Court in *Padmausundrao Rao and another versus State of Tamil Nadu and others* (5).

(13) The legislature, in its wisdom, has restricted the jurisdiction of the civil court only qua the matters arising out of the actions taken by the authorities under Section 126 of the Act or any orders passed by an appellate authority under Section 127 of the Act and the connected matters covered thereunder. Since in the present case, impugned action has been admittedly taken by the petitioner under Section 56 of the Act, there was no scope, whatsoever, of barring the jurisdiction of the civil court. Thus, the learned civil court has committed no error of law, while passing the impugned order, which deserves to be upheld for this reason, as well.

(14) The view taken by this court also finds support from the judgement of the Delhi High Court in *BSEB Rajdhani Power Ltd. versus Ashok Kumar* (6) and the judgements of this court in *PSEB, Patiala and others versus M/s Guru Nanak Agriculture Engineering Works and others* (7) and *M/s Bharat Auto Care versus PSEB and another* (8). The relevant observations made in *Ashok Kumar's case (supra)*, read as under :-

“5. It is apparent that Section 145 of Electricity Act is not an omnibus Section which restricts the jurisdiction of civil court in respect of all and every matter that may arise concerning use of electricity by a consumer. Section 145 bars the jurisdiction of civil court only in

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(5) (2002) 3 SCC 533

(6) 2008 (72) AIC 613

(7) 2007 (2) PLR 363

(8) 2012 (5) RCR (Civil) 64



respect of those matters which fall under Section 126 and 127. No other interpretation can be given to Section 145. Adverting to Section 42(5) and (6) of the Electricity Act, it is clear that these two provisions put an obligation on the distribution licensee to create a forum for grievance redressal of the consumer in accordance with guidelines laid down by the State Commission and an option is given to the consumer to make a representation for redressal of his grievance to the forum and if he is not satisfied with the action taken by the forum then to approach ombudsman to be appointed by the State Commission.

6. Section 42 does not provide that the jurisdiction of civil court shall be barred once the forum is created and comes into action. Rather Section 42(8) specifically states that provisions of Sub-section (5) (6) and (7) shall be without prejudice to the right of consumer which he may have apart from the right conferred upon him by these subsections. If these sub-sections had not been there, the consumers only remedy for redressal would have been to approach the civil court. No other mechanism is provided in the Electricity Act where a consumer could go against the faulty bills. Thus where a bill is faulty, the consumer has an option that before approaching the civil court he may take resort to Grievance Redressal system created under Section 42(5). However, even after approaching to the Grievance Redressal system, if he is not satisfied, he still has the remedy to approach the civil court for adjudication of his dispute.

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When the attention of the court was drawn to Section 42(8) the court observed that if petitioner has rights before any other forum, he can avail those rights and that would not mean that principle of alternate remedy available to him under law has to be ignored in view of Section 42(8). This only means that Section 42(8) could also be resorted by the consumer as it provided for alternate remedy. The High Court was only concerned with the flood of writ petitions that may come to High court despite the fact that the Grievance Redressal system was provided in the Act itself.

8. This court had not observed that the jurisdiction of civil court was barred. Even otherwise it is settled law that exclusion of jurisdiction of a civil court must be construed very strictly. Ordinarily, a civil court has jurisdiction to entertain all civil disputes and unless and until the jurisdiction of civil court is barred specifically, the court cannot infer the barring of jurisdiction of civil court.”

(15) Similarly, the observations made by this court in *M/s Guru Nanak Agriculture Engineering Work's case (supra)*, which can be gainfully followed in the present case, read as under :-

“2. The only contention of the learned Sr. counsel for the petitioners is that in view of the provisions of Section 145 of the Electricity Act, 2003 the civil court did not have the jurisdiction to entertain and try the suit and, therefore, no injunction could have been granted.

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5. Both the courts below have granted injunction against the demand raised by the petitioners. The reading of Section 145 with Section 126 of the Electricity Act, 2003 shows that the matter in dispute in the present suit is not covered under Section 126 or 127 of the Act and, therefore, jurisdiction of civil court could not be said to have been barred.”

(16) The above said observations made in *Ashok Kumar's case (supra)* as well as in *Guru Nanak Engineering Works' case (supra)* aptly apply to the facts of the present case. Once the legislature has granted this liberty to the consumer under Section 42(8) of the Act that the provisions of sub-sections 5, 6 and 7 of Section 42 of the Act shall be without prejudice to his right to seek the redressal of his grievance, such a valuable statutory right conferred on the consumer cannot be taken away.

(17) In fact, sub-section 8 of Section 42 of the Act has the overriding effect on sub-sections 5, 6 and 7 of Section 42 of the Act, meaning thereby notwithstanding his right under sub-sections 5, 6 and 7, the consumer would be free to avail his other rights, including approaching the civil court, seeking redressal of his grievance. In this view of the matter, the argument raised by learned counsel for the petitioner has been found to be without

any force. He has failed to point out any jurisdictional error in the impugned order or patent illegality apparent on the record of the case, particularly when the impugned order was passed by the learned civil court in the presence of learned counsel for both the parties.

(18) No other argument was raised.

(19) Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this court is of the considered view that the present writ petition is misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

(20) Resultantly, the instant writ petition stands dismissed, however, with no order as to costs.

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*S. Gupta*