

**Before the
Bihar Electricity Regulatory Commission
Patna**

Dated the 11th April, 2008

Present :

- 1. B.K. Halder – Chairman**
- 2. S.K. Jayaswal – Member**

Suo-Motu Proceeding 1/08

In the matter of :

Smt. Poonam Verma through Sri Sunil Kumar Verma..... Petitioner

Versus

- 1. Secretary, Bihar State Electricity Board**
- 2. Executive Engineer, Electricity Supply Division,
Bankipur, PESU Respondents**

&

Complaint Case No. 1/08

In the matter of :

M/s Gramin Cold Storage (Pvt.) Ltd. & Ors. Petitioners

Versus

Bihar State Electricity Board & Ors. Respondents

Counsel for Petitioners Sri S.S. Rekhi

Counsel for Respondents Sri Raju Giri

ORDER

Learned counsels for the parties were heard.

In order to appreciate the controversy involved, it is apposite to notice the background which made the issue debatable and also of academic interest.

One Poonam Verma, owner of a shop getting aggrieved on non redressal of her grievance by the Bihar State Electricity Board, the Licensee (hereinafter referred to as

BSEB or Board), approached Consumer Grievance Redressal Forum, constituted by the Licensee in terms of guidelines issued by the Bihar Electricity Regulatory Commission under Section 42(5) of the Electricity Act, 2003. It seems that the said Poonam Verma had a complaint before the Licensee about non receipt of electricity bill in respect of consumption of electricity of her establishment, so as to avail One Time Settlement Scheme launched by the Licensee and also that interest due on the dues may be waived. She also raised disputes in the matter of sanctioned load which in her term was 1kW. As there had been no redressal of her grievance by the respondents, she as a consumer, approached Consumer Grievance Redressal Forum, Patna (hereinafter referred to as Forum) seeking relief claimed by her. The said Forum having given due audience to the parties, rendered a finding making the Licensee answerable on whose behalf one of the respondents was working as functionary, and directed restoration of electricity service connection to the petitioner and also to facilitate payment of dues in instalments waiving the interest levied on her. As there was no follow up action by the Licensee in terms of the directives issued by the Forum, the said Poonam Verma through Sri Sunil Kumar Verma approached Bihar Electricity Regulatory Commission to ensure compliance of the orders issued by the Forum. The Commission in its turn asked BSEB to ensure compliance of the order of the Forum, in response to which the latter raised question of jurisdiction of the Consumer Grievance Redressal Forum and took a view that since in terms of Clause-2(1)(g) of the Consumer Grievance Redressal Forum and Ombudsman Regulations, 2006 (hereinafter referred to as Regulation) and also the Consumer Protection Act, 1986, the person having obtained electricity for purposes other than "own use", was not a "consumer", the Redressal Forum was not competent to adjudicate in the matter.

The Commission, pursuant to this, in response to the said communication received from the Licensee, held that since supply of electricity to a person is in the nature of service provided to him/her by the Licensee for which he/she has to pay fixed charges, the Licensee can well be faulted for deficiency on its part by the Forum. This was not the end of the story, as Bihar State Electricity Board again reiterated its view citing reference of the Consumer Grievance Redressal Forum Regulations and also the Consumer Protection Act, 1986 and moved the Commission for reconsideration of the matter. Since Commission and Board had been exchanging in black and white, in backdrop of significance of the issue involved therein, the Commission considered it appropriate that it should address the issue in a proceeding giving audience to the parties, following which notices were issued to the petitioner and also the respondents to file written statements so that there may be full-dress hearing to arrive at a logical conclusion.

Incidentally, pursuant to this, a petition came to be filed before the Commission by M/s Gramin Cold Storage (Pvt.) Ltd. and two others with same sort of their own grievance against the Licensee, as even after redressal of their grievance by the Consumer Grievance Redressal Forum, the BSEB was not implementing the directives of the Forum. The petitioners vide Annexure-1 dt. 13.11.2007 brought to the notice of the Commission along with said petition of complaint that while the Board was making communication with the Commission, it issued a general order to the field officers that only in those cases in which the electricity was used by persons for their own use, findings recorded by the Consumer Grievance Redressal Forum need to be implemented. One may appreciate that Poonam Verma, M/s Gramin Cold Storage (Pvt.)Ltd., M/s Maa Sheet Grih (Pvt) Ltd. and M/s Parwati Industries had knocked the door of Consumer Grievance Redressal Forum and they also got some sort of interim

relief which needed to be implemented by follow up action by the Licensee, but since there has been no response by the latter for implementation of the order of the Forum, they have come up before the Commission to ensure compliance of different provisions of the Act and also the Regulation framed by the Commission, and that apart, with the aid of Annexure-1 all these three petitioners including M/s Gramin Cold Storage (Pvt.)Ltd., M/s Maa Sheet Grih (Pvt) Ltd. and M/s Parwati Industries seek to highlight that by misinterpreting the expression of "consumer" as defined in the Electricity Act, 2003 and also the Consumer Grievance Redressal Forum and Ombudsman Regulations 2006, the Licensee would exclude, a large number of persons from the domain of Consumer Grievance Redressal Forum treating them not to be "consumers" in terms of provisions of the Act and also the Regulation framed by this Commission. Almost similar issue is involved in case of Poonam Verma, also, as in her case also, the Licensee was not implementing the orders of the Consumer Grievance Redressal Forum under the mistaken interpretation that she was not a "consumer" in terms of the Act and also the Regulation. Though it is brought to our notice that some sort of interim relief, pursuant to notice issued to the Licensee in the instant proceeding, have been granted to M/s Gramin Cold Storage (Pvt.)Ltd., M/s Maa Sheet Grih (Pvt) Ltd. and that the matter of the third petitioner M/s Parwati Industries also was under consideration of the Licensee. It is how that the Commission considering the significance of the issue involved clubbed together cases of Poonam Verma & rest three petitioners and took up this matter in a proceeding giving audience to the parties.

The thrust of argument of the respondents has been that since all these three petitioners and also Poonam Verma were industrial/commercial consumers, their cases would not fall within the ambit of "consumer" as defined in Clause 2(1)(g) of the Regulation which is as under :

"2(1)(g)– Consumer means any person who is supplied with electricity for his own use by a Licensee and includes any person whose premises are connected for the purpose of receiving electricity with the works of the Licensee or a person whose electricity supply is disconnected by a Licensee or the person who has applied for the connection for receiving electricity from a Licensee as the case may be."

The contentions were raised before us that both under the Electricity Act, 2003 also the Regulation, only those persons are "consumers" who are supplied with electricity for their "own use" by a Licensee and whose premises are connected for the purpose for receiving electricity. Taking assistance from the Consumer Protection Act, 1986 the learned counsel appearing for the respondents would urge that the Consumer Grievance Redressal Forum constituted by the Licensee in terms of Regulation framed by the Commission is on the same footing as District Forum established under Clause (A) of Section 9 of the Consumer Protection Act, 1986. Citing provisions of Clause-2(2) of the said Regulation, the argument is that words and expressions used and not defined in the Regulations but defined in the Electricity Act, 2003 or the Consumer Protection Act, 1986 shall have the meaning respectively assigned to them in these Acts. The learned counsel putting the Electricity Act, 2003 at par with Consumer Protection Act, 1986 so far expression "consumer" has been defined in these two Acts, would urge that since person who avails services for commercial purposes would not fall within the ambit of "consumer" under the Consumer Protection Act, 1986, the same analogy need to be adopted in case of "consumer" defined in the Electricity Act and also the Regulation.

We have given our thoughtful consideration to the issue involved herein and also the lucid submissions made at bar and we wish to assign reasoning for the logical conclusion which can be eventually drawn. Both the Consumer Protection Act, 1986

and the Electricity Act, 2003 are two and distinct Acts legislated by the Parliament keeping in view the protection of interest of the consumers. Though provision of Section (2)(d) of the Consumer Protection Act expressly bars such persons to be "consumers" who either obtain such goods or avail such service for resale or commercial purposes, the expression occurring neither in Section (2)(15) of the Electricity Act nor Clause-2 (1)(g) in the Regulation, keeps such persons out of domain of "consumers" who utilise electricity for purposes other than "own use".

One may appreciate that the definition of "consumer" both under the Indian Electricity Act 1910 as well as in the new Electricity Act 2003 consists of two components, though in the previous Act, to make latter part of the definition more explicit, the word "for own use" was conspicuously absent. The definition of "consumer" as provided in the Electricity Act, 2003 is to make its first part more explicit by adding the word "for his own use" and thereby it makes it quite explicit that "consumer" is also a person who is supplied with electricity "for his own use" and also includes a person whose premises are for the time being connected for the purpose of receiving electricity. This makes it explicitly clear that if the premises are connected for the purpose of receiving electricity, that too would squarely fall within the ambit of definition of "consumer". Though word "for own use" has been purposely added in the new Act, it reserves the core feature of the previous Act also and definition of "consumer" provided in the new Act has been purposely couched in such a way so as to give wide interpretation of the word "used" therein. Both parts of definition of "consumer" in the new Act should be read together and not in isolation, and that apart, it is an elementary rule that construction of a Section or provision is to be made of all parts together and it is not permissible to omit any part of it, as the statute must be read as a whole. The definition of word "consumer" as provided in the Regulation also is nothing but a replica

of the definition of word 'consumer' provided in the Electricity Act, 2003. No provision in the Regulation or bylaws should be construed to be in derogation of the Act as the Act has overriding effect.

Though we are of the firm view that expression of word 'consumer' as occurring in Section (2)(15) of the Electricity Act and also such expression occurring in the Regulation would not be covered in entirety by the expression of "consumer" occurring in Consumer Protection Act, 1986, yet we wish to judge the substance of the argument raised on this score by the learned counsel for the respondents. The explanation to the definition "consumer" in the Consumer Protection Act 1986 has been added by way of an amendment in 1993 which reads as under:

Explanation – " For the purpose of sub section (1) commercial purpose does not include use by a person of goods brought and used by him exclusively for the purpose of earning his livelihood by means of self-employment."

The Apex court of the land in case of (Cheema Engineering Services Vs. Rajan Singh 1997)-1 S.C. cases 131 had occasion to interpret the statute in this context and it was held that whether the venture of a person was for the purpose of self-employment and he was using such machinery for self-employment, is a matter of evidence and unless there is evidence and on consideration thereof it is concluded that the machine was used only for self-employment to earn his livelihood without sense of commercial purpose by employing on regular basis, no other conclusion can be drawn. The Apex court also held that manufacturing and sale in a commercial way may also be to earn livelihood but merely earning livelihood in commercial business does not mean that it is for commercial purposes.

In the case of Remington Rand of India Ltd. Vs. Pioneer Typewriter Co. Ltd. reported in 1996 CPJ 317 (NC) the National Consumer Disputes Redressal Commission,

New Delhi held that since the complainant was not engaged in **large scale profit** making business, he was a "consumer" and entitled to claim relief before the Consumer Fora. In case of Laxmi Engineering Works Vs. P.S.G. Industrial Institute reported in (1995) CPJ 1(SC) the Apex Court of the land had occasion to interpret the word "commercial purpose" and held that the explanation added in the definition of "consumer" by an amendment in the Consumer Protection Act clarifies that in certain situations purchase of goods for commercial purposes would not yet take the purchaser, out of definition of expression "consumer". If the commercial use is by the purchaser himself for the purpose of earning his livelihood by means of self-employment, such purchaser of good is yet a consumer. The Apex Court, however, held that expression "large scale" is not a very precise expression and what is "commercial purposes" is a question of fact to be decided on facts of each case. It is not value of goods that matters but the purpose to which the goods is bought to. In that case the appellant had purchased a lathe machine to operate himself for earning his livelihood and in that backdrop the Apex Court held that he was a "consumer" within the meaning of Consumer Protection Act.

In case of Madhya Pradesh Electricity Board Vs. Shiv Narayan reported in (2005) 7 SCC-283 the Apex Court of the land held that "own use" did not necessarily mean domestic. If it is not domestic, it may be non-domestic but it does not automatically become commercial. The word 'non-domestic' and 'commercial' are not interchangeable. In case of Laxmi Narayan Rice Mill Vs. the Food Corporation of India reported in 1996 (4)CPJ-512 National Consumer Dispute Redressal Commission while considering expression of word "consumer", laid stress to see as to whether the transaction was of **huge nature** and if the answer was not affirmative, that would keep such person out of domain of word "consumer" in the Consumer Protection Act, 1986.

As has been noticed earlier that the Hon'ble Supreme Court of India held that for "own use" did not necessarily mean only 'domestic' and if it is not domestic it may be non-domestic but it does not automatically become 'commercial'. It does not require any strong argument to justify the conclusion that simply because a person has set up a machine though not of large venture with an object to earn livelihood, that would not oust him from the classification of being "consumer" under the Consumer Protection Act, 1986. Two decisions of Consumer Dispute Redressal Forum, Andhra Pradesh has come to our notice reported in- II (1993) CPJ 874 Shree Manufacturing Co. Vs. Andhra Pradesh Electricity Board and other 1993(2) CPR-Anand Ice Factory Vs. Assistant Divisional Engineer, Andhra Pradesh State Electricity Board in which it was held that electricity was "goods" and if used for "commercial purposes" then the person getting electricity was not a "consumer". However in plethora of decisions one of which reported in 1(1992) CPJ-73 (NC)-Manju Singh Chouhan Vs. Madhya Pradesh Electricity Board and another, the National Consumer Dispute Redressal Commission overruling the ratio of decisions of Consumer Dispute Redressal Commission, Andhra Pradesh has taken a view that any outfit obtaining electricity for domestic or commercial use will continue to be "consumers" as long as **electricity is not sold by them**. The corporate bodies like the State Electricity Board render services under Section 2(1)(o) of Consumer Protection Act and that the sale of electricity is for consideration and supply of electricity on a continuing basis over a period of time against payment and therefore it is hiring of service under Section 2(d)(ii) of Consumer Protection Act.

From the foregoing discussion the focal points which emerge are that only trading on **large venture** with an object of earning profit would constitute commercial activity for exclusion of a person from classification of "consumer" under Consumer Protection Act, 1986. Whatever may be the popular conception, it is trite that the

expression of word "consumer" even under the Consumer Protection Act, 1986 is not free without riders as we have noticed earlier and no line can be drawn to single out a person for using electricity for own use and for purposes other than own use, as each case has to be judged on its own merit to qualify a person "consumer" even under the Consumer Protection Act, 1986. Though in our considered opinion the expression of word "consumer" occurring in the Electricity Act, 2003 or the Regulation is not covered in entirety by the definition of consumer occurring in Consumer Protection Act, 1986, yet we have made discussion over use of this word in the Consumer Protection Act to appreciate the contention raised at bar in this context. All these decisions, citation of which has been made above are in the context of provisions of Consumer Protection Act, 1986, though in some cases the matter under consideration was use of electricity by a person. We have come across a decision of the Hon'ble Supreme Court of India reported in (2007) 3 BLJR 3066(SC) Accounts Officer, Jharkhand State Electricity Board and another Vs. Anwar Ali in which the Hon'ble Apex Court remitted the matter to the National Commission to record a positive finding as it had not addressed itself to the question as to whether the consumer of electricity was covered by definition of consumer as defined in Section 2(o) of the Consumer Protection Act, 1986.

The learned counsel for the respondents while citing provisions of the Regulation would urge that the "words and expression used and not defined in these Regulations but defined in the Electricity Act, 2003 or the Consumer Protection Act, 1986 shall have the meanings respectively assigned to them in these Acts." **We wish to reiterate at the cost of the petition that both the Consumer Protection Act, 1986 and the Electricity Act, 2003 are two and distinct Acts operating in their own field. The expression of "consumer" have been defined differently in both the Acts but it does not mean that they are inconsistent with each other and if that be so then provisions of**

Section 173 of the Electricity Act 2003 shall operate, which is not the case before us and that apart one may also take notice of provisions of Section 173 of the Electricity Act, 2003 which says that this shall have overriding effect notwithstanding anything inconsistent in any other law or instrument and lastly one may take notice of the provisions of Section 175 of the Act also which says that provisions of this Act are in addition to and not in derogation of any other law for the time being in force. Since the word "consumer" has been well defined in the Electricity Act, 2003 and also the Regulation, one should not seek meaning of this expression from the Consumer Protection Act, 1986 as it is not expected that every word used in the definition should be elaborately defined either in the Act or Regulation. In our view the word "consumer" is a comprehensive expression and such a narrow construction of it, as has been urged at bar on behalf of the respondents, is neither warranted by the scheme behind the legislation of Electricity Act, 2003 nor the object of the enactment.

Clause 1.8 of the National Electricity Policy notified by the Govt. of India highlights the aims of the policy as under :

"The National Electricity Policy aims at laying guidelines for accelerated development of the power sector, providing supply of electricity to all areas and **protecting interest of consumers** and other stakeholders keeping in view the availability of energy resources, technology available to exploit these resources, economics of generation using different resources and energy security issues."

In the preamble of the Electricity Act, 2003 it has been said as under :

"An act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity and generally for taking measures conducive to

development of electricity industry, promoting competition therein, **protecting interest of consumers** or incidental thereto."

Both the provisions made in the National Electricity Policy and also the preamble of the Electricity Act, 2003 affords useful assistance to ascertain intent of legislation for which it was enacted and there is no gainsaying in the fact that one of the objectives behind the scheme was also to provide for **protection of interest of consumers**. Use of the word "protection" furnishes key to the minds of makers of Act. Various definitions and provisions which elaborately attempt to achieve this object have to be considered in this light without departing from the settled view that preamble cannot control otherwise plain meaning of a provision and that apart expression of "consumer" or expression of word safeguarding consumer interest occurs in Section 22, 24, 38(2)(d)(ii), 39(2)(d)(ii), 40(c)(ii), 42(4)(5)(6)(7)(8), 49, 53(g), 55(1), 56(2), 61(d), 62(3), 65, 81(iv), 86(1) (a), 88(iv), 94(3), 135(1)(ii), 138(1)(d), 152(1)(2)(4), 154(5)(6), and 163(3). Let us for a moment examine the various provisions of the Act which speak about consumer or consumer's interest. Section 22(1), Section 81(iv) and Section 88(iv) speaks about **protection of interest of consumer**. If narrow construction of expression of "consumer" is given, then does it mean that these Sections speak about protection of interest of only those persons who use electricity **for their own use**. Provisions of Section 42(5) of the Act is not confined to the right of consumers using electricity for own use, it must be given wide interpretation. Likewise Section 61(d) too speaks about **safeguarding of interest of consumer** and this provision is in the context of determination of tariff. If interpretation of expression "consumer" is confined to the person using electricity for their own use only, then we are afraid that large number of persons who have been supplied with electricity by the Licensee shall be beyond the purview of tariff and recovery of cost of electricity from such persons by way of tariff would be rather

impermissible under the Act. Section 62(3) speaks about subsidy to a class of consumers and if the same analogy is applied here too, does it mean that the interpretation would be confined to a person using electricity for own use. The provisions of Section 55(1) says that there shall be no supply of electricity without installation of a correct meter and the consumer is to give security for the price of a meter. The provision of Section 56 is in respect of disconnection of supply of electricity on default of payment and also recovery of arrears. Here too we fail to understand that if narrow construction of expression is given as has been the case of the respondents, does it mean that those persons using electricity otherwise than for own use shall not be required to get installed a meter and make provision of security therefore and shall also be immune from disconnection of supply of electricity even if there has been default in payment and also that no arrears shall be recoverable from them. Section 94(3) is about representing interest of consumers in a proceeding before Commission. Provisions of Section 135(1)(ii) is about penal provision for theft or abstraction of energy. Provisions of Section 138(1)(b) is about penal provision for interference in meter or works of a Licensee. Provision of Section 154 (5)(6) speaks about powers of special court in case of theft of energy for determining civil liability of the wrong doers. Provision of Section 163(3) speaks about power of the Licensee to enter premises and remove fittings or other apparatus when a consumer refuses to allow a Licensee or any person authorized to enter his premises. Here too one can appreciate that if expression consumer is given a narrow connotation, the new Act shall be a paradise for the defaulters and wrong doers, as neither their premises can be searched by the Licensee nor rigour of penal provision can be fastened against them as they would be beyond the purview of consumer and will claim immunity on the pretext of using electricity for their own use. In provisions of Section

152 of the Act the parliament consistently and deliberately uses word "person" and "consumer" presumably to highlight significance of these two words distinctly.

If narrow construction of expression occurring in the Electricity Act, 2003 or the Regulation is adopted as has been the contention raised on behalf of the respondents, the beneficial intent behind the Act shall remain confined to a handful of persons. Such a narrow construction of the definition of consumer confining it to only those persons using electricity for their own use will dilute the laudable objects of the interest of all class of consumers for which the Act was legislated by the parliament. If it is accepted that it will qualify only for persons who have obtained electricity exclusively for domestic use, then we are afraid the purpose of the scheme behind the Act shall be totally defeated.

While making these deliberations we are not oblivious that in case of consumer disputes the Electricity Regulatory Commission shall have no jurisdiction. However, this fact cannot be lost sight of that right from Poonam Verma to all these three subsequent petitioners who approached the Commission at a point of time, had ventilated their grievance before the Consumer Fora (Consumer Grievance Redressal Forum constituted under the Regulation) and only when the finding recorded by Consumer Fora was not implemented by the Licensee, that they approached the Commission. We are, however, not concerned with the disputes of individual consumers which were raised before the Consumer Fora, but when it is brought to notice of the Commission that there has been harassment to the public at large by the Licensee or the Licensee has failed to observe with any of the provisions of the Act or the rules or the regulations made thereunder, it may require the Licensee to take such action in respect of such matter as the Commission may think proper. Since there has been no due observance of the provisions of the Act or the Regulation due to misinterpretation of the

statute, the Commission would be well within its power to ask the Licensee to take certain action and we may profitably quote provisions of Section 128 of the Electricity Act, 2003 and we are fortified in our view from the observations made by the Apex Court of the land. In view of such statutory provision, the Commission is well within powers requiring Licensee to take such actions in respect of any matter coming to its notice. We may hasten to add that appointment of investigating agency under provision of Section 128 of the Electricity Act, 2003 is not mandatory but directory for ascertainment of the fact. The Commission has power to issue general directives to prevent abuse or harassment to the public. The learned counsel would draw our attention to the observation made by the Hon'ble Supreme Court of India in a case reported in (2007) 8 Supreme Court case 381 Maharashtra Electricity Regulatory Commission Vs. Reliance Energy Limited and others. In the case cited at bar the individual consumers instead of knocking the door of the Consumer Fora had approached the Electricity Regulatory Commission for redressal of their consumer dispute. It was in that backdrop that the Hon'ble Apex Court held that while the Commission had a power to issue general direction to prevent harassment to the public at large by its Licensee/Distribution Companies, blanket directive to refund the amount collected by the Licensee..... was not warranted. We would confine ourselves in the light of foregoing discussion to the Annexure-1 taking recourse to which the Licensee seeks to confine jurisdiction of Consumer Fora only for persons using electricity for own use and issued a general directive to the field officers that findings of the Consumer Fora need to be implemented only in cases of person using electricity **for his own use**. Though in written statement it is stated that when a person was using electricity for commercial purpose he would not be classified as consumer, we are constrained to observe that use of word "commercial" occurs neither in the Act nor in the Regulation. It is a mistaken

interpretation of the provisions of the statute and the view taken by the respondents appear to be patently erroneous.

Having bestowed our thoughtful consideration to the submissions made at bar on behalf of the parties and also in view of authoritative decisions/judicial pronouncement, we are inclined to adopt or subscribe to the views of the Consumer Dispute Redressal Commission, Karnataka reported in 1996(4) CTJ Page 512- Laxmi Narayan Rice Mill Vs. Food Corporation of India which stipulates that a person who obtains goods for resale cannot be classified as a "consumer". **Almost in similar terms the National Consumer Dispute Redressal Commission classified a person to be "consumer" and adopting the same view we hold that any outfit obtaining electricity for domestic or commercial use will continue to be "consumers" as long as electricity is not sold by them.**

We are shocked to notice that while the matter was being deliberated through correspondence between the Commission and the Board in the matter of Poonam Verma as to whether she would fall within the ambit of the consumer so as to approach the Consumer Fora, the Board issued general directives vide Annexure-1 to its field officers which in our view was most unwarranted. **We accordingly hold that the communication made by the Licensee to the field officers as contained in Annexure-1 would not be operative as vitiated by illegality and enforcement of that order would stand terminated forthwith and would not be operative any longer.**

Both the proceedings are disposed of in the above terms at admission stage itself.

However, there would be no order as to cost.

Sd/-
(S.K. Jayaswal)
Member

Sd/-
(B.K. Halder)
Chairman