CHAPTER - II

ELECTRICITY LAWS AND SERVICES
Introduction

Energy is the basic element of human activity and an indispensable input to socio-economic development of a country. The present energy scenario has drawn the attention of the scientists the planners and the public alike realising that the process of overall development could be geared up only by adequate energy supply. Now a need has come to assess and reevaluate critically the status of energy to systematically plan our energy developmental programmes to make India Industrially more strong. 1

It is universally recognised that electricity is one of the basic inputs for economic development. It helps in bringing dry lands under irrigation and provides motive power for the development of industries, resulting in increased agricultural and industrial production. The development of industries creates more employment opportunities in rural areas. With the electrification of villages, health, education, water supply, transportation, communication, sanitation and lifestyle systems tend to improve. Thus an all round improvement in the level and standard of living of the people in the rural areas is possible to a great extent through rural electrification.

Perhaps after food, energy is the most important component for economic development in a country and for improving the quality of life of the people. One of the indices of the measurement of prosperity in a country, which is often being used in the per capita energy consumption. This means that both energy production and energy utilisation are the indicators of a country's progress. No industrial development or even large scale food production, water, supply textile manufacture or construction of buildings are possible without adequate supply of energy.

Thus electricity is one of the main pillars of progress and civilization. Ever since its discovery, efforts were made throughout the world to bring it to use for the benefit of the general public, so that electricity can be used both for domestic consumption and for acceleration of industrialization. Generation and distribution of electricity started in India from the very beginning of the Twentieth Century. To regulate generation, distribution and supply of electricity to consumers the first Indian statute on the model of the British Act was the Indian Electricity Act, 1903. It was, however, a tentative measure. Having gained experience in the practical working of the Act, the Government of India decided in 1907 that a permanent legislation should be brought for which a Committee was formed representing electro-technical and commercial interests. On the basis of the report of the Committee a permanent legislation being the Indian Electricity Act, 1910 had been passed. Till Independence the Indian Electricity Act and the original Rules framed there under were the only provisions regulating the licensing of the electric generating and distributing agencies which were mainly under private enterprises and in some places the licencee were also the Local Authorities. Those were the good old days when electricity was cheap, the relationship between the consumer and the Electric
Companies supplying the energy were often direct and the people were not aware of any such thing as load-shedding.  

Electricity laws

At the present moment the Indian Electricity Act, 1910 as amended from time to time, the last being in 1991 and the Electricity (supply) Act, 1948 as amended and the Electricity (supply) Rules, 1956 framed under the Indian Electricity Act, 1910 constitute the Law of Electricity in India. Even though the twin Acts are in operation, the Parliament has given Electricity (Supply) Act, 1948 over-riding effect so far as its provisions are inconsistent with or in derogation of the Indian Electricity Act. This is clearly provided in section 70 of the Electricity (supply) Act, 1948. In so far as the provisions of the Electricity (supply) Act, 1948 are not inconsistent with Indian Electricity Act, 1910, the Electricity (supply) Act shall be in addition to and not in derogation of the Electricity Act, 1910.

The Electric Supply Companies which were given licenses under section 3 of the Indian Electricity Act had to discharge the various obligations to the consumers in the matter of giving new electric connections and in the matter of tariffs and other


5. Ibid.
related matters. But, the significance of the Electricity (supply) Act which has made the State Electricity Boards consulted under section 5 of the Act. Statutory licensees both under the Indian Electricity Act and the Electricity (Supply) Act is that the Electricity (Supply) Act shall be deemed to be the license of the State Electricity Boards for the purpose of the Indian Electricity Act, 1910 but the provisions of Electricity (Supply) Act have not, however, foisted Electricity Boards with all the obligations of ordinary licencees under the Electricity Act.

Section 26 of the Electricity (Supply) Act has in its proviso absolved the State Electricity Boards as a licencee of the duties and obligations in section 3 to 11, sub-sections (2) and (3) of Section 21, Section 22, sub-section (2) of section 22A, Sections 23 and 27 of the Indian Electricity Act in Clauses I to V, VII, IX to XII of the Schedule to the Act. The impact of some of these provisions which are vital for the purpose of consumers under the Act should now be dealt with. Before that we should look to the definition clause of the Indian Electricity Act to see who is a consumer, under that Act, Section 2 (c) defines consumer as follows:

"Consumer means any person who is supplied with energy by a licence or the Government or by any other person engaged in the business of supplying energy to the public under this Act or any other law for the time being in force, and includes any person whose premises are for the time being connected for the purpose of receiving energy with the works of a licencee, the Government or such other person, as the case may be,"
It will be thus seen that a consumer under the Act is not only one who is supplied the energy, but the inclusive definition includes also a person whose premises are for the time being connected for the purpose of receiving energy. This definition sometimes poses a problem when the owner of the house neither has himself taken supply of energy from a licencee nor is residing there. He being a person whose premises are for the time being connected for the purpose of receiving energy may have a chance of harassment if the premises in occupation of the tenant who has himself taken the supply of energy from the licencee. However, different High Courts have come to the rescue of such owners by pronouncing that a tenant in occupation of the building could answer the description of the person whose premises are connected for the purpose of receiving energy.

When one such owner was saddled with the liability to pay electric charges for the energy consumed by the tenant he had to rush to Court and the Bombay High Court has clearly held that where the premises are occupied by the tenant it would be doing violence to the language of section 2 (c) of the Indian Electricity Act to say that an owner of the building is included in the terms of a consumer in cases where the premises are in occupation of a tenant and in such a case such landlord owner cannot be made to pay electric charges for energy consumed by the tenant -- Fatechand Murlidhar V Maharashtra State Electricity
Board, AIR 1985 Bom 71. This definition, therefore, needs reappraisal by the Government so that the owner landlords do not have to face such harassment from the Electricity Company or from the State Electricity Board being faced with the liability to pay electric charges of the premises not at all enjoyed by him. The consumer of electric energy is given certain rights under the Electricity Acts, but as have already indicated in the above that when State Electricity Board is a licencee for the purpose of supplying such energy, the rights of such consumers have to a certain extent be curtailed.

**Statutory right**

Section 22 of the Indian Electricity Act is a very important provision which obligates a licencee to supply energy to every person within the area of supply and shall, except in so far as is otherwise provided by the terms and conditions of the license, be entitled on application to a supply on the same terms as those on which any other person in the same area is entitled in similar circumstances to a corresponding supply, subject however, to the payment of such minimum annual sum as will give the licencee reasonable return on the capital expenditure, etc.

6. Ibid.
This is a statutory right, but the State Electricity Board in view of the specific provisions of the Electricity (Supply) Act, 1948 may not have to perform this statutory obligation on consumers except in case where the distribution mains in the area have been laid down by the State Electricity Board. This is the view of the Supreme Court in State of Uttar Pradesh v Hindustan Aluminium Corporation, AIR 1979 SC 145. It is only where the distribution mains in the area have been laid down by the Board then a consumer can enforce this statutory right of Section 22.

Under section 22 even though the licencee's agreement with the consumer to supply energy is contractual, the basis of such supply is statutory. No discrimination can be made by the licencee between one person and another in the matter of supply of energy on such applications. But, the State Electricity Board assumes a special status in this matter which is an erosion to the right of the consumer. There are further erosions in such right by Section 22 A and 22 B of the Electricity Act.

The quantum demand for electricity consumption has been growing day by day. Being a public utility service largely in demand, electricity department has always been susceptible to public wrath if some thing goes wrong advertantly or inadvertently. The authorities responsible for electricity service must recognise the fact that they are accountable to the public.
The present study is an attempt to let the public be aware of the procedures to make the authorities accountable and establish the concept of their accountability. For this and the public also should know certain aspects of legislation as well as the Electricity Supply Regulations of Karnataka Electricity Board (KEB) as mentioned in Annexure.

---------------------------------------------
ANNEXURE

KARNATAKA ELECTRICITY BOARD (KEB)

ELECTRICITY SUPPLY REGULATIONS - 1988 (Some salient points)

4.10 The wiring of the Consumer's premises shall be carried out as per Regulations 14. The Board reserves the right to prescribe the standard, make type and quality of materials to be used by the contractor.

4.11 Normally, power supply will be arranged within three months of the compliance of the above requirements. The servicing will generally be done in the order of priority of receipt of completion report in respect of each category.

4.12 After the Board's portion of the work is completed, the applicant will be intimated to avail himself of the power supply within thirty days of the intimation.

4.13 In case the power supply is not availed of within thirty days of the intimation as stated above, the installation will be deemed as Serviced on the date of expiry of the said 30 days period and the consumer is liable for payment of the required minimum charges from that date.

4.14. The Service line works from the terminal pole; upto the point of commencement of supply whether overhead or underground, shall be got done by the consumer through a Contractor.

4.19 The consumer shall stand guarantee for a period of one year from the date of service, for the service line work carried out through the Contractor. Any defects arising during this period due to bad workmanship or usage of substandard materials shall be got rectified by the consumer, at his cost.
6.00 APPLICABLE TO IRRIGATION PUMP SETS:

6.01 The application in the prescribed form shall be got registered at the jurisdictional Section/Sub-division Office on payment of registration fee of Rs. 5/-.

6.02 The applicant shall submit along with the application "Water Right Certificate" or khatha certificate from the competent authority to establish his right to draw water from the water source.

6.03 In case, the applicant desires to draw water from river/channel/sub-channel, Nallah, etc., by installing pumpset(s) he shall furnish along with the application a 'NO OBJECTION' certificate to lift water, from the concerned irrigation Department, P.W.D. or Revenue Department as the case may be. If permission to draw water is given only for a particular period of the year, power supply will be arranged and made available only for that period subject to payment of annual minimum as per tariff in force.

6.04 The feasibility criteria for arranging power supply to I.P. sets shall be as prescribed by the Board from time to time.

6.05 Where the above criteria are not satisfied, power supply will not be arranged and the applicant will be informed accordingly. The application will stand cancelled and the registration fee will stand forfeited.

6.06 The Board reserves the right to prescribe the size, capacity, quality, efficiency and type of pumpset and accessories proposed to be installed based on relevant factors namely extent of land holding, crop pattern, ground water availability, head, etc.

6.07 In case the above requirements are not complied with within six months from the date of communication in case of individual consumer and one year in the case of group estimates, the sanction of power, as well as, registration will stand cancelled and the registration fee paid will stand forfeited.

6.08 In the case of group estimates, the Board will not commence its work unless, 80% of the applicants comply with the conditions stipulated under clause 4.05 and Board will not be responsible for the inconvenience caused on this account to the applicants who have already complied with the requirements.
19.00 ACCESS TO CONSUMER'S PREMISES:

19.01 Employees of the Board shall have access at all reasonable time to the premises of the consumer for inspection, meter reading, testing and/or for any other purpose incidental to or connected with the proper maintenance of the supply.

19.02 They shall have access to the premises at anytime for inspection, if there is any reason to suspect breach of the provision of the Act, the Rules and the supply Act, and these Regulations.

19.03 If the consumer or any person purporting to be his representative, deliberately obstructs the Board's employee from inspection of the installation or testing of the installation or any other legitimate act, the installation may be disconnected forthwith and may be kept disconnected till such times the consumer affords necessary facilities for carrying out the inspection or testing.

20.00 PERIODICAL TESTING AND INSPECTION:

20.01 The periodical inspection and testing of the installation will be carried out by the Board in accordance with Rule 46 of the Rules. The charges for such inspection will be included in the power supply bill following inspection, which shall be paid for by the consumer.

20.02 Any defects observed during the inspection will be intimated to the consumer and he shall get it rectified through a contractor within the time stipulated therein. The installation is liable for disconnection, if the defects are not rectified.

However, the consumer is responsible for any defects in the internal wiring which are likely to cause damage or accident.

21.00 DEFECT IN CONSUMER'S PREMISES:

In the event of any defect being discovered in the consumer's wiring or apparatus connected to the system or any section of the consumer's circuit or apparatus, the consumer shall in the absence of the employees of the Board.

22.00 FAILURE OR VARIATION IN SUPPLY

In the event of failure or variation in the voltage-frequency of supply, the consumer shall lodge a complaint with the jurisdictional service station/section office.
Such complaints will be attended to in the shortest possible time free of charges. If supply has failed due to defect in the consumer's system, the consumer will be advised to rectify the defect, keeping the installation disconnected, if the situation so warrants.

The installation will be re-connected after the rectification of the defect is duly certified by a contractor and reported to the Board.

The Board shall not be liable for any claims of loss or damage whatsoever arising out of failure or variation in supply.

METERING, POWER SUPPLY CHARGES AND SECURITY

26.00 METERING:

26.01 No installation other than that exempted shall be serviced without a meter.

Note: (1) The consumer may also instal his own check meters at his option.

(2) The consumers of commercial and industrial installation shall provide cover of approved type to facilitate affixing additional seals.

26.03 The Consumer, unless exempted, shall pay the prescribed meter security deposit.

26.04 The Board shall have the right to recover from the consumer the cost of metering equipment and accessories, lost or damaged in the consumer's premises.

26.05 The Board may provide additional seals, in addition to those normally provided, whenever considered necessary, which shall be acknowledged by the consumer or his representative.

26.06 During periodical inspection testing by the Board, if the seals are to be broken, the same shall be done in the presence of the consumer or his representative. The Board will re-seal the meter and associated equipment when the seal is removed by the Board, which shall be acknowledged by the consumer or his representatives. As endorsement shall be given by the officer breaking the seal to the consumer or his representative to this effect.

26.07 The consumer shall ensure that the metering equipment and seals provided, are not damaged/tampered.
Any damage/tampering of metering equipment or seals will be prima facie evidence of dishonest abstraction of energy.

27.00 READING OF METERS:

27.01 The meter will be read by the Board once in a month, or at such other intervals as prescribed by the Board from time to time.

27.02 The Consumer shall extend all facilities to the Board to read the meter(s).

27.03 The consumer may verify the reading at the time of meter reading.

27.04 In case for any reason the meter is not read during any billing period, the consumer may make adhoc payment based on the consumption during the previous billing period. The amount so paid will be adjusted after the readings are taken during the subsequent billing period.

27.05 If the metering equipment is inaccessible on two consecutive meter reading dates, the consumer will be served with a 7 clear days notice, to keep open the premises for taking the meter reading on the date and time indicated in the notice. If the consumer fails to comply with the requirement, the installation is liable for disconnection without any further notice.

When so disconnected, the installation will be reconnected provided all dues to the Board and reconnection charges are paid.

If the consumer does not come forward for reconnection, he is liable for payment of charges in accordance with the provisions of these regulations and terms of the agreement.

27.06 When the consumer of a domestic installation requests in writing to keep the installation in service for reason that he will be away from his residence, the installation will not be disconnected upto a maximum period of six months provided he pays the minimum/ fixed charges in advance for such period as he intends to be away. When the meter is made accessible by the consumer for taking the meter reading, the entire consumption will be taken as if the consumption was for the last billing period.

28.00 CORRECTNESS OF METER:

28.01 Should the consumer dispute the accuracy of the Board's meter he may upon giving notice and paying the prescribed fee, have the same tested by the Board or the Electrical Inspector.
In the event of the meter being tested by the Board and found to be incorrect beyond the limits of accuracy prescribed in the Rules, the cost of testing and all reasonable expenses incidental thereto, shall be met by the Board and the amount of the bill adjusted in accordance with the result of test taken, with respect to the meter readings of the 3 billing months prior to the month in which the dispute has arisen, due regard being paid to the conditions of working, occupancy, etc., during the previous 3 months.

28.02 In the event of test being undertaken by the Board periodically under Rule 57 (4) of the Rules, and the meter being found to be incorrect beyond permissible limits, such meter shall be calibrated or replaced by good one as the situation warrants. When the meter is found to be slow beyond permissible limits (when tested by MT/RT Division staff), the consumer is liable to pay the difference at normal rates based on the percentage error, for a period of not more than 6 months prior to the test, due regard being paid to the conditions of working, occupancy etc., during this period and upto the date of replacement or rectification of the meter.

Note: The consumer is not liable to pay any penal charges if the revised consumption/demand exceeds the entitlement fixed for the installation.

29.00 METER NOT RECORDING:

29.01 Board will conduct periodical inspection/tests to check the working / correctness of meter. If the meter is found to be faulty, it would be replaced at the earliest.

29.02 If the meter is found not recording (for any reason other than tampering) the consumer will be billed for a period of not more than six billing months preceding the date of inspection/testing on the basis of the average energy consumption of the immediately preceding 3 (three) billing months when the meter was recording properly plus demand/fixed charges.

Notwithstanding, where it is established that a meter is out of order only for a few days in a billing month, the consumption for such period shall be computed on pro-rata basis of the consumption recorded for the remaining number of days in the billing month.

Also, where the recorded consumption is not available fully for three preceding billing months, the available consumption of such lesser period shall be deemed sufficient for computing the consumption, provided consumption of at least one full billing month is clearly established.
Notwithstanding anything specified in this condition, the quantity of electricity supplied shall be assessed by the Board on the basis of production figures of usage of electricity or on such other basis as the Board may deem proper.

29.03 (a) When the recorded consumption of even one full billing month is not available, the installation shall be billed on the basis of the computed demand consumption as indicated below:

30.00 POWER SUPPLY CHARGES:

30.01 The consumer shall pay power supply charges as per the tariff in force from time to time. Where the charges are leviable based on the sanctioned load, the rated load shall be deemed to be the sanctioned load for billing purposes, if the rated load is higher than the sanctioned load.

30.02 The Board will furnish to the Consumer every month or at such intervals, as prescribed by the Board from time to time, the power supply bills for the actual or in its absence, the assessed demand and/or consumption, either at the spot or by post. The amount of the bill will be rounded off to the nearest multiple of 10 paise.

Note: (1) The energy consumption shall be rounded off to the nearest unit.

(2) Non-receipt of the bill by the consumer is not a valid reason for non-payment. The consumer shall notify the office of issue if the bill is not received within 7 days from the meter reading date. Otherwise, it will be deemed that the bills have reached the consumer in due time.

30.03 The bill amount shall be paid within 15 days from the date of presentation of the bill. However, in case of Central Government, State Government and I.P. set installations, payment shall be made within 30 days, failing which interest becomes payable.

Note: 1) If the due date happen to be a holiday for the office of issue, the next working day shall be deemed to be the due date.

2) Any complaint with regard to errors in the bill shall be made either in person or in writing to the office of issue and amount of such bill shall be paid under protest within the due date.
30.04 MODE OF PAYMENT:

(a) The Consumer shall pay the power supply charges at the office of issue or at the jurisdictional cash counters in cash or Demand Draft/cheque issued in favour of Karnataka Electricity Board drawn or any scheduled commercial bank situated at the headquarters of the office of issue along with the bill and obtain receipt. The RR No. and ledger folio No. shall be indicated on the reverse side of the DD/cheque.

Payment by cheque/demand draft sent by post or by money order is also admissible at the consumer's risk, subject to furnishing of RR No. Ledger and folio Number.

36.06 DISCONNECTION OF POWER SUPPLY FOR NON-PAYMENT OF POWER CHARGES:

(a) If the consumer fails to pay the bill amount within the period indicated below, from the date of presentation of the bill,

the Board will serve on the consumer 7 clear days notice for disconnection and if the payment is not made on or before the expiry of the period of notice, the installation will be disconnected:

State and Central Government installations 3 months
I.P. set installations 30 days
All other installations 15 days

(b) Disconnection of power supply will be effected as far as possible before 12 noon and re-connection will be effected on the same day of payment, if possible, otherwise, on the next day.

(c) Disconnection will be normally effected at the Board's cutouts in the consumer's premises. If it is not possible or effective, it will be effected at the pole.

(d) If the consumer produces clear proof of payment at the time of disconnection, the installation will not be disconnected.

(e) If the arrears is Rs. 10/- or less, the installation will not be disconnected.
42.00 SERVICE OF NOTICE:

Any notice to the consumer by the Board shall be deemed to be duly served by the board if it is

(a) sent by post

(OR)

(b) delivered to the person believed to be residing at the address notified to the Board,

(OR)

(c) affixed at a conspicuous part of such premises in case there is no person on whom the same can with reasonable diligence, be delivered.

46.00 APPEALS

46.01 Any Consumer aggrieved by claims made by the Board on grounds of prejudicial use of power or on account of faulty metering equipment or due to any supplemental claims, may file an appeal to the prescribed appellate authority within one month from the date of bill of claims, under intimation to the office of issue, by making payment as indicated below:

a) Dishonest abstraction/consumption/use 50% of the claims or more.

b) other cases 25% of the claims or more.

46.02 The appellate authority may reduce the amount to be deposited by the consumer upto the extent prescribed by the Board from time to time, before admitting the appeal.

The Consumer is liable to pay interest on the amount finally decided by the appellate authority (less the amount paid by the consumer before the due date if any) from the due date of the original claim.

46.03 Depending upon the merits of the case, the second appellate authority may at his discretion, direct the first appellate authority to hear belated appeals.

46.04 The Appellate Authority shall decide the case expeditiously and communicate the orders thereon to the consumer and the office of issue. The consumer shall pay the amount if any,
as decided by the Appellate authority together with interest, within 7 days from the date of the claim from the office of issue failing which the installation will be disconnected without further notice.

In case any amount becomes refundable as per the decision of the Appellate Authority, such amount will be adjusted towards future bills of the Consumer.

46.05 If the Board's Officer-in-charge is not satisfied with the order of the Appellate Authority, he may file an appeal to the second Appellate Authority within one month of the receipt of the orders.

46.06 If the consumer is not satisfied with the orders of the Appellate authority, he may also file a second appeal to the second Appellate Authority within one month of receipt of the order of the first Appellate authority. However, such appeal shall be filed only after payment of the amount as decided by the First Appellate authority, for admitting the appeal.

46.07 Delayed appeals may be entertained at the discretion of the Appellate authority depending upon the merits of the case.

46.08 Action shall be taken either by the Board or the Consumer, as the case may be, in accordance with the decision of the Second Appellate Authority, which is final.

46.09 The following Officers of the Board shall act as Appellate authorities depending on the amount of the claim, as noted below:

<table>
<thead>
<tr>
<th>S.No.</th>
<th>Details of the case</th>
<th>First Appellate authority</th>
<th>Second Appellate authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Claims not exceeding Rs. 1,00,000/-</td>
<td>Jurisdictional Suptdg. Engineer EI, In-charge of Distribution</td>
<td>Jurisdictional Chief Engineer, Electy, In-charge of Distribution</td>
</tr>
<tr>
<td>2.</td>
<td>Claims exceeding Rs. 1,00,000/- but not exceeding Rs. 5,00,000/-</td>
<td>Jurisdictional Chief Engineer, Electy, In-charge of Distribution</td>
<td>BOARD</td>
</tr>
<tr>
<td>3.</td>
<td>Claims exceeding Rs. 5,00,000/-</td>
<td>Chief Engineer, Electy, BOARD (General)</td>
<td></td>
</tr>
</tbody>
</table>
Consumer Protection Act and Electricity Services

With the passing of legislation in the form of Consumer Protection Act, the task has become easier for the electricity consumers to make the electricity department to listen to their grievances. Any lapse on the part of the electricity authorities in providing proper utility service to its consumers is adjudged as a deficiency of service and hence such aggrieved consumers can approach Consumer Redressal fora in the country. Some of the selected judgements given by various consumer forums at district state and national level have been appended here as follows.
STATE CONSUMER DISPUTES REDRESSAL COMMISSION, TAMIL NADU, MADRAS

S.A. Kader, President; R.N. Manickam and Ramani Mathuranayagam, Members

Consumer Protection Council - Appellant

versus

The Chairman, Tamil Nadu Electricity Board & Anr. - Respondents

A.P. No. 230 of 1992

Decided on 25.6.1992

Consumer Protection Act, 1986 - Section 15 - Complainant appealed against order passed by District Forum, dismissing complaint - Sending of application for electric connection on 8.2.1980 not proved - Second application on record - Claim rightly rejected - Whether impugned order calls for any interference? (Yes). (Paras 1, 4 & 6)

Result: Appeal dismissed.

Counsel for the parties:

For the Appellant: Mr. N.L. Rajah, Advocate.

For the Respondents: Mr. R. Muthukrishnan, Advocate.

IMPORTANT POINT

A person who applies for electric connection hires the service for consideration which is promised and is, therefore, “Consumer”.

ORDER


2. The case of the complainant is that on 8.2.1980, he applied for electric connection for agricultural purposes, but he was not given connection. No information was also received in spite of letters. He therefore sent another application on 30.12.1985. For this application also there was no response. Hence this complaint.

3. The opposite parties denied that the complainant applied for electric connection in ’80. No such application dated 8.2.1980 has been received by the opposite parties. The postal acknowledgement produced by the complainant cannot be accepted. The complainant sent an application only on 30.12.1985 and the same has been registered as No. 717 of 85.

4. The District Forum did not accept the case of the complainant that he sent an application for electric connection 8.2.1990, and held that his application was received only on 30.12.1985 and connection will be given according to priority. The District Forum has also held that the complainant is not a consumer as connection has not yet been provided. Hence this appeal:

5. The conclusion of the District Forum that the complainant is not a consumer because he has only applied for electric connection and has not obtained cannot stand. Under Section 2(1)(o) of the Consumer Protection Act, “service” means service of any description which is available to potential users. The complainant is a potential user. Under Section 2(1)(d)(ii) of the Act a person is a consumer who hires any service for consideration which has been paid or promised or partly paid and partly promises. A person who applies for electric connection has to pay the necessary charges after the connection is given. Therefore he is a person who has hired the services of the opposite party for consideration which is promised. We therefore hold that the complainant is a consumer.

6. The claim of the complainant is that he sent an application on 8.2.1980 for electric connection and relied upon the postal acknowledgement dated 11.2.1980. It is the contention of the opposite parties that no such application was received. They are also not in a position to verify, because records are destroyed after a period of 3 years. But there is the fact that the complainant has made an application on 30.12.1985. If he had really sent an application on 8.2.1980, there was no necessity for him to send another application on 30.12.1985. He could have insisted upon the opposite parties to give connection as per the original application. He has not done so. The District Forum has therefore come to the conclusion that the complainant’s claim of having sent an application on 8.2.1980 was not proved. In the circumstances it has rightly dismissed the claim.

7. In the result the appeal fails and is dismissed, but without costs.

Appeal dismissed.
STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, GUJARAT: AHMEDABAD

S.A. Shah, President and Leelaben Trivedi, Member
Govindbhai Karumashibhai - Appellant

versus
Gujarat Electricity Board - Respondent
First Appeal No. 60 of 1992

Decided on 26.6.1992

Consumer Protection Act, 1986 - Section 12 - Energy Bill - Rs. 30,983.23 paid under protest to save disconnection - Accuracy of Bill challenged - Section 14 - Complaint dismissed - Section 15 - Complainant assailed order of District Forum - Electricity both goods and service - Observations not on merits - Parties to adduce evidence - Case need to be remanded - Whether impugned order liable to be decided? (Yes). (Paras 1 & 3)

Result: Appeal allowed.

Counsel for the parties:
For the Appellant: Mr. B.C. Rawal.
For the Respondent: Mr. Y.S. Lakhani.

IMPORTANT POINT
"Electricity" comes in both the heads-goods as well as services.

ORDER (ORAL)

S.A. Shah, President - The appellant is the original complainant who had filed a complaint against the energy bill issued by the Gujarat Electricity Board (Board for short) for Rs. 30,983.23 and it was evident that if this amount was not paid the energy would be discontinued. The complainant has paid this amount under protest because he cannot afford to close down his ice factory in the full season. The contention of the District Forum that at the time when checking was made load of 25 HP motor was connected and, therefore, according to the Board the total connected load was exceeding 55 HP and the complainant was supposed to pay the charges for the excess connected load.

2. Mr. Rawal, the learned advocate appearing on behalf of the complainant submits that his connected load is 55 HP and he can utilise it by using various types of motors so that the energy bill may be as less as possible. It is true that the complainant cannot utilise the motors so as to exceed the total of 55 HP that is the only impediment. But in the instant case it is not even the case of the Board that at the time when the checking was made more than 55 HP motors were actually in operation.

Mr. Rawal further states that whatever is written by the complainant is written out of fear and under mis-apprehension. He was not able to understand the difference of connected load and load which he can utilise. According to Mr. Rawal his client can fix as many motors but he cannot utilise the energy exceeding 55 HP. That is why, according to Mr. Rawal he has employed various types of motors to save the energy bill.

3. Mr. Rawal further states that electricity has been considered to be a service and non-supply of electricity or threatening to disconnect the electricity itself is a deficiency. The Board cannot disconnect the service or prefer bill for the energy which he has not consumed or the Horse power which he has not utilised.

His submission is that this being also a service the Consumer Forum has a jurisdiction to hear all these disputes regarding charges for supply of energy whether the Board can charge for 55 HP or for 76.5 HP. There is no dispute that more energy has been supplied and for that they are charging. We are of the opinion that electricity will come in both the heads - goods as well as services. If the Board intends to charge more rates for the energy supplied it can be said to be deficiency in services or if the Board intends to cut off the energy for invalid reasons it will be a deficiency of services. In these circumstances it was necessary for the learned Judge to hear the complaint on merits since he had jurisdiction to hear the complaint. The complainant had not preferred a complaint for energy supplied to him showing any defect in the supply. He had filed a complaint for services of the electricity which the Board intends to cut off if the alleged improper amount is not paid. Whatever observations made by the District Forum were only for the purpose of deciding the jurisdiction and the same shall not be considered as observations made on merits. We therefore allow the appeal and remand the case to the District Forum to decide in accordance with law after giving full opportunities to both the parties to adduce their evidences.

ORDER

The appeal is allowed. The decision of the District Forum is set aside and the case is remanded to the District Forum to decide in accordance with law. The cost will be the cost in the cause.

Appeal allowed.
STATE CONSUMER DISPUTES REDRES-
SAL COMMISSION, GUJARAT: 
AHMEDABAD

S.A. Shah, President; Dr. R.K. Shah, Member

Gujarat Electricity Board & Anr. - Appellant

versus

Bababhai Dosbhai Mansuri - Respondent

Appeal No. 127 of 1991

with

C.M.A. No. 6 of 1992

Decided on 14.5.1992

Consumer Protection Act, 1986 - Section 12 - Electricity disconnected on ground of theft - Consumer claimed restoration of energy, damages, etc. - Section 14 - Complaint allowed - Section 15 - Opposite parties appealed against order of District Forum - Allegation of theft not conclusively proved - Respondent cannot be deprived from use of electricity - Relief - Case remanded for fresh hearing.

(Paras 1, 2 & 8)

Result: Appeal allowed.

Counsel for the parties:

For the Appellants: Absent

For the Respondent: Mr. Rajiv Mehta.

IMPORTANT POINT

A mere allegation cannot take the place of evidence.

ORDER (ORAL)

S.A. Shah, President - This appeal has been filed by Gujarat Electricity Board and its Executive Engineer who were Opponents in the complaint filed by the Respondent. For the sake of convenience we will address the parties as complainant and Opposite party. The complainant was having an electrical connection for running his flour mill allegedly from the year 1965. It appears that the consumer number is 408 having sanctioned load of 10 HP. It appears that on 18.10.1988 his supply has been disconnected on the alleged ground that the complainant was committing theft. There were exchange of notices and after waiting for little longer time the complainant made a complaint before the District Forum in October, 1990.

2. The opposite party has filed its version and admitted that the complainant was their consumer. But according to the opposite party the complainant has right to get supply on observing the rules and regulations made by the Company. The complainant has, according to the Board committed theft and hence his energy was disconnected on 18.10.1988 after checking was made. The complainant was further given ABCD bill and since the bill was not paid by him the opposite party has not restored the supply. The District Forum has observed that the Deputy Engineer was member of the checking squad which visited the Iitol village and the building of the complainant where the flour mill is situated. While checking the meter and the apparatus the Deputy Engineer came to the conclusion that the complainant had tampered with the meter seals and he had therefore a suspicion that the complainant had committed pilferage and theft. In order to prove these facts, according to the District Forum, the Deputy Engineer has tried to make a panchnama on paper which has been produced at Exh. 14/2. Reading the panchnama the District Forum came to the conclusion that while executing the panchnama the first step required to be taken is to call two panches, inform what they are supposed to do, their names and addresses are to be noted. The expert will reveal all aspects of the matter and will note down the observation of the panches and thereafter their signatures are taken. Whereas in the instant panchnama on Exh. 14/2 name of the panches have not been mentioned. After whole panchnama was recorded the panches refused to sign the same and, therefore, they are relying upon this panchnama not as a panchnama but as a "rojakam" i.e. the procedure adopted by a Deputy Engineer.

The District Forum observed that the Deputy Engineer had merely taken signatures of the Board employees only which has resulted into fiasco of the panchnama. Even though the panchnama was recorded their names and description have not been written. The Board has not produced the affidavit of the employees of the Board in support of its case. Therefore the District Forum came to the conclusion that the panchnama
was one-sided, arbitrary and illegal. The Deputy Engineer could have made this panchkarnawa next day by calling other panchar. The District Forum has, therefore, believed the case of the complainant and passed the order for restoration of electrical energy with Rs. 100/- as token damages and Rs. 100/- towards cont.

3. The following questions arise for our consideration.

1) When the inspection squad visits the local premises of a consumer and finds that the seals have been tampered and suspicion arises as to whether the consumer has tampered with the seals with the intention to commit theft what procedure should be adopted?

2) If the panchnama are not ready to sign the panchnama what should be done?

3) Whether the Board has a right to disconnect the supply if the officer finds that the seals are tampered with?

4) Whether the Board is able to prove that the seals were tampered with.

5) Whether the Board has a right to disconnect and/or refuse restoration in the aforesaid circumstances.

4. We know that there is large scale theft which one can ascertain from the figures of line losses. Therefore it cannot be ruled out that there is no theft of electrical energy with the result that honest consumers are required to pay more charges. We therefore do not rule out the possibility of theft.

5. We are also of the opinion that merely because there was no panchkarnawa obtained in the instant case the District Forum cannot jump to the conclusion that the suspicion of the Deputy Engineer was wrong.

6. However it may not be forgotten that a mere allegation cannot take the place of evidence. In a country where there is a rule of law prevails and particularly when you are taking a step to interfere with the rights of the opposite party, not only the rule of law but also the prudence requires that before such a drastic step is taken there should be sufficient material before the Board to disconnect the supply which was the livelihood of a poor person. The evidence regarding the testing of the meter seals does not establish that there was a theft. The Board had all the materials with it viz. past bills, experts and the persons who had actually sealed the meter. Even if the Court comes to the conclusion that there was some theft the Court has to justify that the ABCD bill given was based upon the valid assumption. How that bill has been made, we do not know. We had adjourned this matter once to enable Mr. Lakhani, the learned advocate of the Board to produce the past bills and the bills for 6 months period prior to the theft. We could have compared these bills and could have found out as to whether the electricity consumption of the complainant during last six months was much below the normal consumption. It can be an indication regarding the theft. Again, the Deputy Engineer could have been examined.

An affidavit has been filed by the Deputy Engineer wherein he has stated only that the complainant was found committing theft of energy and, therefore, the Board has prepared the ABCD bill and since the payment was not made the energy was disconnected. To our opinion this affidavit does not throw any light as to how the Deputy Engineer came to the conclusion that the complainant was committing theft of energy. Assuming for the sake of argument that the two seals were found to be hollow unless it is explained by the Deputy Engineer that it was possible for the consumer to commit theft of electricity on account of these two seals having found to be hollow, it is not possible to jump to the conclusion that he was committing theft.

There is also an evidence on record of the representative of the complainant that two seals were hollow but nobody has stated anywhere that merely these two seals were hollow, it can be said that the complainant has committed theft. The evidence to our opinion is not sufficient to come to that conclusion. Since we are not in a position to take a firm view whether there was a theft or not, we are of the opinion that the case should be remanded to the District Forum. But till it is proved that the complainant has committed a theft, it is neither just nor equitable to deprive the complainant from the use of electricity. We therefore are of the opinion that the Board should restore the electrical energy of the complainant by taking further protection so that he cannot commit any theft and till the complainant makes the payment the Board may not disconnect the energy.

7. We have no advantage of the arguments of the learned advocate of the Board since he has not remained present yesterday and also today.
8. Further there is a defect so far the ABCD bill is concerned. The ABCD bill given to the complainant for payment estimates the consumption at 9185 units and deducting the units already recorded which are 2731, the Board has considered 6454 as theft of electricity. This again is based upon 171 days (Nos. of hours of past six months) x 24 which comes to 4104 hours and contracted load 10 H.P. We are unable to understand as to how this estimate of units has been arrived at. This bill has not been explained by the Deputy Engineer in his affidavit. There is no enough material even for the consumer to understand how the assumption has been made. Therefore the only solution to this problem is to remand the matter for fresh hearing after giving opportunity to both the parties to produce proper evidence.

9. We are of the opinion that the Board should restore the energy but we cannot compel the Board to do the same. In case the Board does not restore the energy the complainant will be entitled to damages which he suffers on account of non-restoration of energy for which also, the complainant can produce evidence before the District Forum.

10. We would have directed the Board to restore the connection but we find that on account of limited scope of Section 14, we have not thought it fit to give such direction.

So far the cross appeal and CMA No. 6/92 is concerned, since we have remanded the matter to the District Forum, the question of cross appeal does not arise. The complainant can agitate the same before the District Forum.

ORDER

The appeal is allowed. The findings of the District Forum is set aside and the matter is remanded to the District Forum to decide in accordance with law after giving opportunity to both parties to produce evidence. Since the appeal is allowed and remanded the complainant can agitate his grievance of compensation. Civil application is disposed of accordingly.

We hope that the Board will restore the energy supply unconditionally to avoid future complications.

Appeal allowed.
3. The complainant has filed a complaint against the electricity bills which are excessive and legally and factually incorrect. The District Forum after hearing both the parties and considering the documents on record came to the conclusion that Rs. 35,571.98 were excess charges demanded under the bill as shown in annexure to the judgment and passed an order directing the G.E.B. to give bills as per the errors and omissions pointed out in Annexure-C and awarded Rs. 5,000/- towards damages and cost. To our opinion the final order is not very clear but one thing is certain that the Board had charged Rs. 35,571.98 more than permissible in their disputed bill.

4. In the appeals before us the learned counsel appearing on behalf of the appellant Board confines himself only to the correctness of the bills and has not raised any other legal contention which were raised before the District Forum. We have, therefore, to find out whether the bills made and demanded by the Board were excessive and if yes, what should be the proper amount. Xerox copy of the bills have been produced.

Our attention has been drawn to the bill dated 31.12.1990 which shows that the current reading was 75742 units whereas the last reading was 49386 units. If we deduct this figure from the current reading the actual use would be 26356 units and not 26456 as mentioned by the writer of the bill. This bill is for 4 months beginning from September to December, 1990. We have not mentioned the actual amount in terms of money payable because both the parties have arrived at the correct figure. But this bill shows that it was for 4 months and had arithmetical error of 100 units.

5. At our request both the parties have applied their mind and have arrived at a correct figure of excess payment and have given a joint purshish duly signed by the complainant and learned advocate of the opposite party and officers of the Board. In the purshish it has been mentioned that the calculation of bills for the disputed period from March 1990 to December 1990 are afresh arrived at by the parties and it is found that actual figure comes to Rs. 27,160.90 whereas the District Forum has arrived at Rs. 41,652.33. The difference demanded by the complainant of Rs. 14,254.01 in fact comes to Rs. 19,174.51. The Board, therefore, will give credit of this amount in the bill already issued for the next period.

Both the parties have further requested that the appeal may be disposed of on the submission made by the parties keeping in mind the above figures.

6. We have considered the arguments of Mr. Lakhani, the learned advocate appearing on behalf of the G.E.B. that the consumer ought to have approached the Board for the difference and cannot by-pass that remedy available to him. We do not find any substance in the argument. So far the figures of consumption of energy and its cost are concerned, both the parties have jointly given the correct figures and, therefore, all the arguments are not required to be decided.

7. We, therefore, broadly agree with the District Forum except the amount of difference. According to the agreement of the parties the difference of Rs. 14,254.01 decided by the District Forum is set aside and in its place the amount of Rs. 27,160.90 will be substituted. That the difference demanded by the complainant of Rs. 14,254.01 is not a correct figure. As agreed by the Board the difference would be Rs. 19,174.51. The Board is directed to give credit of the said amount. These figures have been taken from the joint purshish of both the parties.

8. It may be observed that even though the claimant has demanded the difference of Rs. 14,254.01, the learned advocate of the Board has fairly stated that it should be Rs. 19,174.51. It is a case where the complainant is getting sufficient relief. No doubt, the complainant must have undergone some strain. However, both the parties have arrived at a compromise and have adjusted their respective claims. We, therefore, are of the opinion that the damages of Rs. 5,000/- granted by the District Forum should be reduced to Rs. 1,000/- only.

9. The appeal is, therefore, partly allowed.

ORDER

The appeal is partly allowed. The G.E.B. shall pay the amount stated in the purshish and will also pay Rs. 1,000/- by way of damages. In the circumstances there will be no order as to costs.

Appeal partly allowed.
S.A. Shah, President, R.K. Shah, Member

Gujarat Electricity Board - Appellant

versus

Smt. Sharda Madhusudan Desai - Respondent

First Appeal No. 48 of 1992

Decided on 28-8-1992

Consumer Protection Act, 1986 - Section 12 - Excess voltage - Tubes, TV etc. burnt - Claim for Rs. 663.10 filed - Section 14 - Value of articles plus costs awarded - Section 15 - Opposite party challenged order of District Forum - Complainant suggested damages due to excess voltage - No error regarding findings - Whether impugned order calls for any interference? (No). (Paras 1 to 3)

Result: Appeal dismissed.

Counsel for the parties:
For the Appellant - Mr. M.D. Pandya, Advocate.
For the Respondent - In Person.

IMPORTANT POINT

Damages caused on account of excess voltage of electricity amount to deficiency in service.

ORDER

S.A. Shah, President - The respondent complainant has filed a complaint alleging that on March 12, 1991 at 7.30 P.M. when she reached her home she found both the tube lights of the street adjacent to her house were not working. When she opened the house she smelt something burning and on making enquiry she found that her Keltron voltage stabiliser had burnt and was giving the smell. When she switched on the 5 tube lights of her house some were fused. Four ordinary light bulbs were also fused and one choke of the tube light was also out of order. When she switched on the T.V. she found some smell coming out from the T.V. also. So she put off the main switch and made phone call to the local engineer of the G.E.B. But nobody came to her house on that day. On the next day some persons from the G.E.B. came and made an investigation and found that there was a defect in the meter and they called the wireman to check the wiring. The wireman stated that the wire fitting was O.K. but on account of excess voltage the tube lights, bulbs etc. were burnt. According to the complainant all these items have been burnt/fused on account of excess voltage. She, has, therefore, claimed the value of tubes, chokes, bulbs, cost of stabiliser and Rs. 135/- towards reparation charges of T.V. totalling to Rs. 663.10.

It also appears that the complainant was cross-examined by the advocate of the Board but could not extract any facts in favour of the Board. The complainant had also produced the bills for the purchase of the articles.

2. After considering the evidence on record the District Forum came to the conclusion that such an extensive damage to tubelights, bulbs, stabiliser etc. can occur on account of excess voltage in the supply of electricity and this amounts to deficiency in service. The District Forum, therefore, awarded Rs. 663.10 the value of the articles and Rs. 50/- by way of cost.

3. The Board is relying upon the affidavit of one Mr. Mustafa Abdul Sattar, Dy. Engineer of G.E.B. He has stated that the supply has been given to other persons also from the same post but they have not made any complaint. They have received the complaint of the complainant on 12-3-1991 regarding stoppage of electricity. According to his opinion there was a possibility of defect in the stabiliser of the complainant and if two wires are externally joined such things might happen. We have considered the affidavit of Mr. Mustafa Abdul Sattar but the deponent has not stated that if high voltage is supplied this cannot happen. He has doubted the stabiliser. But when the stabiliser was also fused he has stated that if two wires externally comes together this might happen. We are not impressed by his affidavit or his line of argument.

The stabiliser might be connected with the T.V. or any other instrument but so far the light installation is concerned it is not the case of the appellant opponent that the main lighting conne-
tion was also joined with the stabiliser. In the instant case the stabiliser has also been burnt which generally protects some fluctuation. But the voltage was too high to be adjusted by the stabiliser. The main electricity light installation have been burnt simultaneously is not disputed and the most probable reason is the excess voltage given in this installation. We do not find any error committed by the learned District Forum. On the contrary we are also of the same opinion that the complainant has suffered these damages on account of excess voltage. The District Forum has not awarded any amount for inconvenience, pain and suffering. He has passed the decree for a very small amount. However, there being no cross appeal we do not think it proper to award any amount for inconvenience, pain and suffering.

ORDER
The appeal is dismissed. The order of the District Forum is confirmed. The appellant will bear the cost of the respondent which we quantify at Rs. 150/-.

STATE CONSUMER DISPUTES
REDRESSAL COMMISSION: GUJARAT,
AHMEDABAD
S.A. Shah, President and R.K. Shah, Member
Patel Kantilal Kevaldas - Appellant
versus
The Deputy Engineer Gujarat Electricity Board - Respondent
First Appeal No. 103 of 1992
Decided on 29.7.1992

Consumer Protection Act, 1986 - Section 12 - Excess amount owing to theft of energy - Claim for refund of Rs. 1,276.63 filed - Section 14 - Complaint rejected - Section 15 - Complainant challenged order of District Forum - Theft of Energy not proved - Respondent failed to adduce evidence - Rejection based on no evidence but mere allegation - Whether impugned order liable to be set aside? (Yes).
(Paras 1, 3 & 4).

Result: Appeal allowed.
Counsel for the parties:
For the Appellant: In person.
For the Respondent: Mr. L.A. Desai.

IMPORTANT POINT
Mere allegation in the written statement is no proof of the fact.
and merely because the complainant was present. He has not signed the petition because the same according to him was not correct. In any view of the matter the allegations must be proved, supported by affidavit or by oral evidence and mere allegation in the written statement is no proof of the fact.

We are also surprised to find that the District Forum has also given same judgment without considering the observations made by us. One thing is, therefore, very certain that the Board has not taken the advantage of the opportunity given to it to adduce evidence. In these circumstances we have no alternative except to allow the appeal and set aside the decision of the District Forum which is not based upon any evidence, but based upon mere allegation.

We have time and again stated that mere allegation in the pleading is no proof of the contention thereof. Allegation must be supported by affidavit or by evidence on oath because such requirement of law can be explained. If a person tells a lie on oath or affidavit he can be prosecuted for giving false evidence (perjury) and nobody will come forward to give false evidence on oath because of legal consequence and that is why we are accepting the evidence by way of affidavit or deposition on oath. We, therefore, shall have to allow the appeal.

ORDER

The appeal is allowed. The judgment and order of the District Forum is set aside. We direct that the Gujarat Electricity Board will refund Rs. 1,081.63. The payment shall either be adjusted or paid within 4 weeks from today. The Board will pay the cost of this complaint throughout which we quantify at Rs. 1,500/- i.e. Rs. 150/- for each Court.

We have not decided regarding other bills of the complainant for which the complainant will be entitled to file a complaint if he so desires. Appeal allowed.

STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, DELHI

R.N. Mittal, President; B.L. Anand and Dr. (Mrs.) Avtar Pennathur, Members

Prakash Kishore & Ors. - Complainants

versus

Delhi-Electric Supply Undertaking - Opposite Party

Case No. C-196 of 1991

Decided on 29.1.1992

Consumer Protection Act, 1986 - Section 17 - Bills again raised - Owner of house prayed for quashment of bills - Section 18/14 - Dispute not referred to Electrical Inspector - Opposite party could not raise bills in its own discretion - Demand beyond 6 months - No benefit available under agreement - Whether complaint deserves to be allowed? (Yes) - Costs of Rs. 1,500/- saddled. (Paras 1 to 3 & 8 to 11)

Result: Complaint allowed.

Case referred:

Counsel for the parties:
For the Complainants : Mr. Sanjeev Khanna.

Case No. | K.No. | Dues upto 30th December 1985
---|---|---
1. | 6526505 | Rs. 33599.92
2. | 1224919 | Rs. 4835.50
3. | 1224897 | Rs. 30242.88
4. | 1224900 | Rs. 1424.75
5. | 1224927 | Rs. 6590.94

4. It is next pleaded that there were no dues against them and consequently question of raising the bills did not arise. In any case, if there are any arrears, the same cannot be recovered for the period beyond six months from the date of raising the bills. Accordingly, it is prayed that the bills issued by the respondent be quashed.

5. The complaint has been contested by the respondent. It has been inter-alia pleaded that according to the provision of Section 455 of Delhi
ORDER (ORAL)

R.N. Mittal, President - Briefly the facts are that the complainant is the owner of House No. 15 (under dispute) Aund Lok, New Delhi, which has got 5 Electric Connection numbers as detailed below:-

<table>
<thead>
<tr>
<th>S. No.</th>
<th>K. No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>6526505</td>
</tr>
<tr>
<td>2</td>
<td>1224919</td>
</tr>
<tr>
<td>3</td>
<td>1224897</td>
</tr>
<tr>
<td>4</td>
<td>1224900</td>
</tr>
<tr>
<td>5</td>
<td>1224927</td>
</tr>
</tbody>
</table>

2. It is pleaded that they had been receiving electricity Bills from time to time and making the payments as demanded by the respondent. The last bill was raised by the respondent in May, 1991 and its payment was also made in full. These bills were prepared on the basis of the actual readings.

3. That in the end of July, 1991 they received 5 new bills for the aforesaid K. Nos. for the amounts as detailed below:

- Dues from 1.1.1986 to onwards, upto July, 1991:
  - Rs. 11548.89
  - Rs. 7248.67
  - Rs. 111711.28
  - Rs. 96599.18
  - Rs. 28927.35

Municipal Corporation Act, 1957, they are entitled to recover the amount. It is further pleaded that the bills could not be raised earlier due to the fact that the meter of the complainants went out of order. They also pleaded that in view of the agreement between the parties, they were entitled to recover the amount in dispute.

6. It is contended by the learned Counsel for the complainant that under Section 26(6) of the Electricity Act 1910, the respondent is not entitled to recover the arrears on account of the defect in the meter for a period of more than 6 months from the date when the bills were raised. He submits that the arrears which were being claimed by the respondent were for a period from 1982 till November 1989. The bills were sent to the complainant in July, 1991. Thus all the bills were beyond 6 months from the date when they were sent to the complainant. In view of the provision of Section 26(6) the respondent is not entitled to recover the same from the complainant. On the other hand Mr. P.K. Saxena, General Attorney of the respondent, has argued that there was an agreement between the parties and in terms of the agreement the respondent was entitled to recover the bills for the period under dispute. He submits that through oversight of the Department, the corrected bills were not submitted and there was no bar in recovering the arrears.

7. We have duly considered the arguments. Section 26(6) of the Electricity Act reads as follows:-

"Where any difference or dispute arises as to whether any matter referred to in sub-section (1) is or is not correct, the matter shall be decided upon the application of either party by the electrical Inspector; and where the meter has, in the opinion of such Inspector ceased to be correct such Inspector shall estimate to the amount of energy supplied to the consumer or the electrical quantity contained in the supply, during such time not exceeding six months, as the meter shall not in the opinion of such Inspector, have been correct; but save as aforesaid, the register of the meter shall, in the absence of fraud, be conclusive proof of such amount or quantity;

Provided that before either a licensee or a consumer applies to the Electrical Inspector under this sub-section, he shall give to the other party not less than seven days' notice of his intention so to do."

8. From the bare reading of the Section it is evident, that the respondent is entitled to
the date of raising the bills. It is also evident that the respondent in its own discretion cannot raise the bills but the matter has to be referred to an Electrical Inspector, who alone is entitled to estimate the amount of energy used by the consumer. The respondent in view of the aforesaid provision in our view is not entitled to recover the bills sent by them to the complainant.

9. In the above view we are fortified by a decision of the Delhi High Court in II.D. Shourie v. M.C.D. and another. In that case a similar question, which has arisen before us arose. S.N. Kirpal, J. observed that the maximum period for which a bill can be raised in respect of a defective meter under Section 26(6) is 6 months and not more. Therefore, even if a meter has been defective for, say, a period of 5 years, the revised bill can be for a period not exceeding 6 months. It is further observed by the learned Judge that the provision for a bill not to exceed 6 months would ensure better checking and maintenance by the licensee.

10. Mr. Saxena has drawn our attention to para 9 of the written statement, wherein it is said that when a consumer consumes the electricity, it is his duty to make the payment as per law and in accordance with the rules. The statement of the respondent is of general nature and it cannot be taken into consideration in view of Section 26(6) of the Act. Therefore, the respondent cannot take any benefit from the agreement.

11. Mr. Saxena also referred to Section 455 of the Delhi Municipal Corporation Act, which relates to mode of recovery of dues. It says that in any case not expressly provided for in this Act or any bye law made there under any sum due to the Corporation on account of any change etc., under this Act or any bye-law may be recovered as arrears of tax under the Act. A proviso has been added to the Section which says that no proceedings for the recovery of any sum under this Section shall be commenced after the expiry of 3 years from the date on which such sum becomes due. The Section in our view is not applicable to this case. In this case the amount cannot be said to be due from the complainant in view of Section 26(6) of the Electricity Act. Therefore, the Attorney Mr. Saxena cannot derive any benefit from this Section. I am fortified in this view by the observations of B.N. Kirpal J. in II.D. Shourie's case (supra). The relevant part of the judgment is as follows:

"Section 455 of the Municipal Corporation Act states that no proceedings for recovery of any sum which is due shall be commenced after the expiry of 3 years, on which the sum becomes due. As I have already observed the electricity charges become due after the bill is sent and not earlier. This being so the proviso to Section 455 shall apply only when the bill has been sent and the remedy available with the respondents for filing a suit to recover the said amount would come to an end after three years elapse after the electricity charge have become due and payable. To put it differently, the provision of Section 455 would come into play after the submission of the bill for electricity charges and not earlier."

12. Before parting with the judgment we may observe that the consumption of the bills have been raised after the expiry of 8 years. The matter is very alarming. The General Manager, Delhi Electric Supply Undertaking should institute an inquiry and fixed the responsibility and take proper action against the official concerned for their lapses.

13. No other point was raised before us. For the aforesaid reasons we accept the complaint and direct the respondent not to recover the amount of the impugned bills from the complainant. Cost Rs. 1,500/.

14. If the General Manager, Delhi Electric Supply Undertaking desires that the cost should be recovered from the delinquent official, he is at liberty to do so.

Complaint allowed.
STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, HARYANA, 
CHANDIGARH
S.S. Sandhawalia, President; Basanti Devi and 
Kulwant Singh, Members
Prem Kumar Gupta of Delhi - Appellant 
versus
Secretary, H.S.E.B. & Anr. - Respondents
First Appeal No. 216 of 1992
Decided on 3.8.1992
Consumer Protection Act, 1986 - Section 
12 - Electricity bill paid under protest - Oppo­
site parties kept mum - Consumer claimed 
refund of excess amount - Section 14 - Com­
plaint dismissed - Section 15 - Complainant as­
sailed order of District Forum - Domestic sup­
ply used in shop - Commercial rates rightly 
charged - Findings impeccable- Whether im­
pugned order calls for any interference? (No).
(Paras 1, 5, 9 & 10)
Result: Appeal dismissed.
Counsel/or the parties:
For the Appellant: Appellant in person.
For the Respondents: Mr. K.K. Gupta.

IMPORTANT POINT
The District Forum has the right and the 
privilege to determine its calendar of hearing and 
no possible grievance can be raised on that score.
ORDER
S.S. Sandhawalia, J. - This appeal is 
directed against the considered order of the 
District Forum dismissing the complaint pre­
ferred by the appellant.
2. The complainant-appellant was primarily 
aggrieved by the alleged excess charges made in 
the electricity bill Ex. P.1 with regard to his house 
at village Sampla in District Rohtak. It was his 
case that for the consumption of 326 units of 
electrical energy, he had been wrongfully 
charged an excess amount of Rs. 244.16P, there­
for. It was averred that he had paid the bill amount 
under protest and claimed that he was legally 
entitled to the refund of the aforesaid amount 
from the opposite party with compound interest 
@ 5% per mensum.
3. On notice being issued, the respondent- 
Haryana State Electricity Board (hereinafter 
called the H.S.E.B.) stoutly defended the com­
plaint. Whilst controverting all the material al­
legations of the complainant, it was pointed out that 
he was given an electric connection under domes­
tic category for his use at village Sampla. How­
ever, the complainant unauthorisedly used this 
connection for supplying electricity to a T.V. 
shop run by his son Suresh Kumar on the ground 
floor part of his house and consequently he had to 
be necessarily charged on the commercial tariff as 
per the sale circular No. 2688 dated the 26th of 
August, 1988. It was admitted that the consump­
tion of units was 326, but the charges therefor had 
been rightly levied on a commercial tariff be­
cause of the patent misuse. The other factual 
allegations of the complainant were strongly and 
categorically controverted. The said reply was 
filed through the Executive Engineer and the 
S.D.O. through the Law Officer of the Board at 
Rohtak.
4. In support of the complaint, the appellant 
rested himself content on the documents annexed 
thereto and stepped into the box as his own 
witness. He was cross-examined at considerable 
length which made a sizeable inroad into his case. 
In rebuttal R.W. 1 Krishan Lai, Meter Reader and 
Shri Bhagat Singh, Upper Division Clerk of the 
Board of the Sample Sub Division were examined 
by the respondents and cross-examined at length 
by the complainant. Reliance on behalf of the 
respondents was also placed on documents R-1 to 
R-6.
5. The District Forum in its remarkably 
exhaustive order adverted to every aspect of the 
case and the evidence adduced therein in great 
detail. It came to categoric findings on the appra­
sal of the oral testimony and the documentary 
evidence that the complainant had raised the 
dispute only in respect of the electricity bill issued 
in November 1990, even though he was charged 
at commercial rate since July 1989; that the 
complainant’s house was on the first floor and 
there was a shop on the ground floor, which was 
in his possession, for which he had not obtained
any separate electric connection for the relevant period; that the domestic electric connection of the appellant was being used for commercial purposes and consequently the respondent-Board was perfectly justified in charging commercial tariff from the complainant. Inevitably the complaint was dismissed.

6. Mr. P.K. Gupta had argued his appeal in person with considerable vehemence and persistence. Faced with the up-hill task of assailing the impeccable findings of the District Forum, his challenge thereto was somewhat off the mark as a lay-man. It was first sought to be contended that because the reply was filed jointly by the Executive Engineer and the Sub Divisional Officer, they should have necessarily be put into the witness box and their non-appearance was a fatal flaw in the respondent’s case.

7. We are unable to find any modicum of merit in this contention. Obviously, it was the choice of the respondents to lead what evidence they choose by way of rebuttal. We are inclined to agree with their choice of their two witnesses who could depose directly with regard to their case. One cannot see how the appellant could compel as to what witnesses the respondents should call in their defence because that is a matter entirely within their discretion and privilege. Even otherwise, it would appear that in the present context the evidence of the Executive Engineer and the Sub Divisional Officer would be primarily of a hearsay nature and their non-production in no way affects the merits of the case.

8. Somewhat curiously, it was next argued with considerable vehemence by Mr. Gupta that the District Forum had erred grievously in fixing the hearings of the case invariably on a Wednesday. It was sought to be alleged that this was a peculiar favour to the respondents. We are unable to appreciate how this fact even if accepted, verbatim, is in any way material to the merits of the controversy. Clearly enough the District Forum has the right and the privilege to determine its calendar of hearing and no possible grievance can be raised on that score.

9. Apparently bereft of a firm foundation on the existing record, the appellant had then contended that he had been dragged into numerous litigations on account of the alleged high-handedness of the respondent. An attempt was sought to be made to refer to a number of cases which the appellant has filed in the civil courts with regard to other electricity bills. Obviously enough, this submission is totally off the present record and can hardly be entertained. Even otherwise the fact that the appellant had chosen to assail, the electricity charges in different courts of law is in no way germane to the issue which he had raised before the District Forum. Lastly some attempted reference was made to Ex.R-6 in support of the appellant’s case. This document is a detailed record of the billing pattern of the appellant over a long period. It indicated that he had challenged as many as three other bills in courts of law. We are unable to appreciate how the said respondent’s document can possibly aid the case of the appellant.

10. In a judgment of affirmance, it is unnecessary to traverse the same ground over again, which has been competently done by the District Forum. It would suffice to say that in the absence of any meaningful challenge and even otherwise on an independent appraisal, we are inclined to affirm the same. Added to that is the fact that now complainant’s son had himself sought a separate electric connection for the shop on the ground floor on top of which the residence of the complainant is located. Even in his cross-examination, the appellant had to concede that his house was on the first floor and there was a shop on the ground floor in his possession, but he alleged that this was being used as a godown and had no electric connection whatsoever. This later stand seems to be eroded, if not totally belied, by the fact of the present admission that now the son of the appellant is indeed running a business premises on the ground floor of the building. This fact inevitably goes patently in support of the respondent’s case and was rightly and firmly relied upon by their learned counsel.

11. For all the aforesaid reasons, we regret our inability to find any merit in this appeal which is hereby dismissed. However, we would not wish to burden the appellant-consumer with any costs. Appeal dismissed.
STATE CONSUMER DISPUTES
REDRESSAL COMMISSION; JAIPUR:
RAJASTHAN
S.K.M. Lodha, President; Damodar Thanvi & Mrs. Saria Khan, Members
The Rajasthan Textile Mills - Complainant
versus
The Secretary, Rajasthan State Electricity Board, Jaipur - Opposite Party
Complaint Case No. 100/90
Decided on 3-2-1992
Consumer Protection Act, 1986 - Section 12/17. Complaint praying that demand raised
by opposite party for Rs. 80,903.60 may be set aside and the amount deposited may be or­
dered to be refunded. Demand was raised on 25-1-1985 and the amount was deposited -
Complaint filed on 25-4-1990 is barred by time under the law of limitation. Moreover the
complainant had raised a dispute regarding this amount which was referred to Arbitration.
Award was made by arbitrator on 18-10-1989. Relief claim now would amount to setting
aside the award of arbitrator. There is no deficiency in service by Board. Complaint is liable to be dismissed. (Paras 5 & 6)
Result: Complaint dismissed.
Cases referred:
1. 1(1991) C.P.R. 166.
5. Balachchuri Layout Flat Owner's Association v. Visakhapatnam Urban Development Au­
thority and Ors.; 1(1991) C.P.R. 361.
IMPORTANT POINT
If a suit for the refund of an amount has become time barred a complaint cannot be enter­
tained regarding that amount under the Consumer Protection Act.
ORDER
S.K.M. Lodha, President. - The Rajasthan Textile Mills, Fachpahar Road, Bhiwani Mandi
(Complainant) has filed this complaint against the Secretary, Rajasthan State Electricity Board, Jaipur ("the Opposite Party") under section 12
read with section 17(a)(i) of the Consumer Protection Act, 1986 ("the Act") therein praying that
the demand raised by the opposite party for Rs. 80,903.60 may be set aside and the amount deposited may be ordered to be refunded with
interest @ 24% p.a. The complainant for running its mills takes electricity from the opposite party supplies electricity to it. The opposite party raised
bills which were paid by the complainant. The opposite party raised a demand of arrears of fuel surcharge amounting to Rs. 10,52,775.80 which
was with respect to the period from May 1974 to April 1980. It was alleged by the complainant that there was some electrical mistake. The opposite
party corrected it and finally made a demand for Rs. 9,04,278.32. According to the complainant the demand was unreasonably and illegal. It filed
a writ petition on 26-11-1982. A stay order was passed and the recovery of the amount was
stayed. The writ petition was decided vide order dated 16-5-1983. The opposite party was directed
to revise calculations and fuel surcharge and thereafter to raise a fresh demand. This order was
passed by the learned single Judge of the High Court. A special appeal was preferred and the
Division Bench of the High Court stayed the demand on the conditions mentioned in para 8 of
the complaint. The complainant paid Rs. 3,07,767.84 to the opposite party. The opposite
party raised a fresh demand after revising the same for Rs. 6,38,235.21. The complainant de­
posited Rs. 3,07,767.44. According to that a balance of Rs. 11,356.17 being the half of the revised
demand was paid on 31-8-1983 by cheque. The complainant submitted a bank guarantee for the
balance of demand and interest on 7-10-1983 for Rs. 4 lakhs valid upto 31-10-1984. The opposite
party preferred appeal before the Supreme Court of India against the stay order granted on 19-8-
1983. The Supreme Court stayed the operation of the stay order granted by the Division Bench of
the Rajasthan High Court. The complainant paid the entire amount on 1-6-1984. According to the
complainant, thus, no amount against it was outstanding. No payment was made by the complain-
ant from August 1983 to May 1984 because the High Court had stayed the demand on the conditions mentioned in para 8 of the complaint. The complainant has alleged that the stay order granted on 19-8-1983 continued up to 7-5-1984. The opposite party raised a demand for Rs. 80,903.60 as interest. This demand was raised on 25-1-1985. This related to the interest from 19-8-1983 to 7-5-1984. The opposite party also raised demand of fuel surcharge and other calculation mistakes amounting to Rs. 1,589.74 from July 1984 to January 1985 and mistake in calculation from October 1983 to May 1984 amounting to Rs. 3,634.01. The complainant has submitted a schedule showing the total charge of demand and dates of deposit. As the complainant has raised the dispute it was referred to the Arbitration by the opposite party on 28-1-1985 to the Chief Engineer (O&M)(I) Rajasthan State Electricity Board, Jaipur. The Arbitrator gave it award on 19-10-1989. That award has been submitted with the forwarding letter Annex.-4. This award according to the complainant is illegal, contrary to the Rules and stay order granted by the High Court as the demand of Rs. 80,903.60 was uncalled for, unreasonable and unjust. The complainant has alleged that the complainant is not liable to pay any interest on the amount which was stayed by the High Court. The amount was deposited by the complainant. It has been stated that the amount so deposited was under the threat of disconnection. It, therefore, filed a complaint on 25-4-1990. An amended copy of the complaint was filed after obtaining leave for amendment. The complaint was amended by taking additional grounds in the complaint for setting aside, the demand.

2. The opposite party resisted the complaint stating that the Board has raised the demand of arrears of surcharge amount and the complainant was under an obligation to make payment of the aforesaid demand. It was averred that amount of Rs. 3,19,117.60 which was half of the amount of fresh bill issued by the Board for an amount of Rs. 6,38,235.21 against the Single Bench decision dated 16-5-1983 was stayed by the Division Bench of Rajasthan High Court vide its order dated 19-8-1983 because the operation of the order of the Division Bench was stayed by the Supreme Court vide its order dated 7-5-1984. The order of the Single Bench dated 16-5-1983 was for fuel surcharge bill for the period from May 1974 to December 1980 and for issuing fresh bill for this period fuel surcharge after excluding demand of interest. No direction was issued for further bills. So there is no co-relation between late payment surcharge and interest. According to the opposite party these items are completely separate, having no concern with each other. It was admitted that the Board charges only late payment surcharge at the rate of 2% per month which becomes leviable on the unpaid amount as per provision of Tariff applicable to the complainant as per terms and conditions of H.T. agreement between the complainant and the opposite party. According to it as order of the Division Bench was stayed by the Supreme Court on 7-5-1984 the order of the Single Bench decision dated 16.5.1983 only remained in operation and so from 20-6-1983 only final bill was issued by the Board. It was submitted that all the amounts paid by the complainant against the energy monthly bills were adjusted under the conditions of Supply and Scale of Miscellaneous Charges Relating to the Supply of Electricity ("the Conditions"). Reference was made to condition No. 25(d) of the Conditions. The bank guarantee for Rs. 4 lakhs was submitted by the complainant against the order dated 10-10-1983, passed by the Division Bench and not in respect of the order of the Single Bench. So it was not unreasonable according to the opposite party to recover the outstanding amount till the decision of the special appeal. In support of the complaint Shri Anil Mehta submitted his affidavit.

3. The only question involved is whether the direction for the refund of the amount of
Rs. 80,903.60 in regard to the demand raised on 25-1-1985 should be issued. According to the complainant this related to the interest from 19-8-1983 to 7-5-1984. A perusal of Annex 3 issued by the Assistant Engineer (O & M) R.S.E.B., Bhawan Mandi to the complainant stated that as per record he has deposited the part payment of the month of January 1985, bill and Rs. 80,903.60 are still lying in balance in the account as outstanding.

The material part of Annex. 3 is as follows:

“As per the record you have deposited the part payment of the month January 1985 bill and Rs. 80,903.60 still lying in balance in your account as outstanding. You have made reference of the D.B. order in your intimation letter sent to this office.

If you have obtained any stay from any court for non payment of the balance outstanding amount than the same may be sent to this office within seven days of this letter.

If nothing will be heard from you in this matter then your connection shall be disconnected against non-payment of outstanding dues, without further notice after the seven days of the date of the bill as per contract terms and conditions.”

4. The award made by the Chief Engineer is dated October 18, 1989. The question for consideration which arose before the Arbitrator was whether the payment of Rs. 80,903.60 raised by the Assistant Engineer, Bhawan Mandi against the consumer is legally recoverable or not and if not legally recoverable then is the consumer entitled to get this deposited amount refunded with interest @ 18% or not. The Arbitrator recorded the finding that when the demand is raised and payment is not made, it amounts to non-payment and consumer is liable to pay late payment surcharge for not depositing the amount in time and that the S.B. High Court order only excludes payment of interest and not late payment surcharge. Reference was, therefore, rejected on 18-10-1989. The material part of the Award is as follows:

“It is apparent from the letter of reply submitted by RSEB that payment has been made in terms of order of Supreme Court. The reference does not say a word about the demand not being in conformity with the order of the Supreme Court and, therefore, RTM does not, make out any case of getting refund of the demand raised. Bank Guarantee was submitted in terms of the order of Single Bench of Rajasthan High Court (BG No. 36/84 for Rs. 4 lacs) and the contention of the consumer is that late payment surcharge should have been recovered from this Bank Guarantee because the Board was entitled to encash the Bank Guarantee. This argument does not appeal to me as furnishing of Bank Guarantee is as a security towards payment of energy to be supplied and for the value of meter and other apparatus installed in the premises of the consumer and is returned or adjusted towards electric charges at the time of termination of contract or disconnection of supply. It is no extinction of the right of RSEB to recover the amount. Mere fact that the late payment surcharge was not recovered from the Bank Guarantee does not affect adversely the right to recover this amount. Thus when the demand is raised and payment is not made, it amounts to non-payment and consumer is liable to pay late payment surcharge for not depositing the amount in time.

The S.B. High Court order only excludes
In this complaint the complainant has prayed that the demand raised by the Board for Rs. 80,903.60 may be set aside and the amount deposited may be refunded with interest at the rate of 24% p.a. The complaint has been filed for the refund of the amount together with interest @ 24% p.a. on 25-4-1990. The remedy of the complainant for the refund of the amount had already become barred by time under the law of limitation. It is a stale claim and if the suit for the refund of the amount has become time barred, it is well settled that a complaint under the Act cannot be entertained. See (1991) C.P.R. 166, (1991) C.P.R. 220 and (1991) C.P.R. 1.

5. However, the parties made reference and the arbitrator gave the award on 18-10-1989 and, thereafter, the complainant has filed the complaint. The reliefs claimed by the complainant amounts to the setting aside the order of the Arbitrator dated 18-10-1989, for, he rejected the reference on the question whether the demand of Rs. 80,903.60 by the Assistant Engineer, Bhanwali Mandi against the consumer is legally recoverable or not and if not legally recoverable then is the consumer entitled to get this deposited amount refunded with interest @ 24% p.a. or not. In this case no question of deficiency in service by the Board is involved. The relief which the complainant has claimed in the complaint cannot be granted under the Act for it is well settled that a Redressal Forum established under the Act can grant only those reliefs which have been enumerated in section 14(1) of the Act. The reliefs claimed by the complainant are not covered by it. Reference may be made to RIICO v. Premier Points and Balacheru Layout Flat Owner's Association v. Visakhapatnam Urban Development Authority and others.

6. However, the parties made reference and the arbitrator gave the award on 18-10-1989 and, thereafter, the complainant has filed the complaint. The reliefs claimed by the complainant amounts to the setting aside the order of the Arbitrator dated 18-10-1989, for, he rejected the reference on the question whether the demand of Rs. 80,903.60 by the Assistant Engineer, Bhanwali Mandi against the consumer is legally recoverable or not and if not legally recoverable then is the consumer entitled to get this deposited amount refunded with interest @ 24% p.a. or not. In this case no question of deficiency in service by the Board is involved. The relief which the complainant has claimed in the complaint cannot be granted under the Act for it is well settled that a Redressal Forum established under the Act can grant only those reliefs which have been enumerated in section 14(1) of the Act. The reliefs claimed by the complainant are not covered by it. Reference may be made to RIICO v. Premier Points and Balacheru Layout Flat Owner's Association v. Visakhapatnam Urban Development Authority and others.

7. The complaint shall stand dismissed. The complainant shall pay Rs. 500/- as costs to the opposite party within one month from the date of the receipt of the order.

-Complaint dismissed-

STATE CONSUMER DISPUTES REDRES SAL COMMISSION, GUJARAT: AHMEDABAD

S.A. Shah, President and R.K. Shah, Member - Appeal No. 137 of 1991
The Chief Engineer, Gujarat Electricity Board & 2 Ors. - Appellants

versus

Rana Vanarajsinh Shivubha - Respondent

And

Appeal No. 139 of 1991

Rana Vanarajsinh Shivubha - Appellant

versus

The Chief Engineer, Gujarat Electricity Board & 2 Ors. - Respondents

Both decided on 10.4.1992

Consumer Protection Act, 1986 - Section 12 - Insufficient voltage and withdrawal of energy - Domestic appliances, T.V. etc. not working properly - Consumers of energy claimed damages, etc. - Section 14 - Rs. 1000/- on account of damages awarded - Section 15 - Opposite parties appealed against order of District Forum - Appellants could not escape their obligation and liability - Hardships caused to respondents - Amount of damages very small - Whether impugned order calls for any interference? (No). (Paras 1 & 5)

Result: Appeals dismissed.

Counsel for the parties:
For the Appellants/Respondents - Mr. Y.S. Lakhani
For the Respondent/Appellants - Mr. K.C. Rana

ORDER (ORAL)

S.A. Shah, President - The appellant in Appeal No. 137/91 is the Gujarat Electricity Board and opponent in the complaint filed by the respondent Shri V.S. Rana. For the sake of convenience we will address the parties as complainant and respondent since both the parties have appealed against the same judgment of the District Forum, Surendranagar.

2. The complainant is admittedly a consumer
of the opponent (hereinafter referred to as 'the Board') and is possessing T.V., fridge, grinder machine, tube lights and other domestic appliances. On account of the insufficient voltage and withdrawal of energy he is experiencing different types of hardships. The instruments are not working properly and sometimes not working at all. This has been continuing since long and according to Mr. Rana, the learned advocate of the complainant, the complainant has suffered pain and shock along with the difficulties as stated above. The complainant has, therefore, filed the present complaint and prayed that order may be passed directing the opponent to supply electricity in accordance with the agreed voltage and quantity. He has also prayed for the damages. Unfortunately the amount of damages has not been written but nobody has objected to that.

3. The Board has filed the version and has denied the averments made by the complainant. Though the Board has not accepted that they are supplying low voltage they have stated that proposal to put new transformer has already been sent and in view of the intended installation of the transformer the complainant is not entitled for any relief. The complainant has produced documentary evidence giving list of persons who are getting very low voltage. He has also filed affidavit in support of his contention along with many affidavits of the persons who are also getting less voltage and are having complaint for deficiency in service. Though the complaint is not filed as a public interest litigation in fact he appears to have filed the complaint so as to give relief to the other respondents of the same locality who are suffering the same hardship and difficult situation.

4. After considering the grievance and the arguments of the parties the District Forum has observed that "the opponents therefore cannot escape of their obligation and liability. On query the learned advocate representing the opponents had no good reason to interdict us from concluding against the opponents. The result is that the petition requires to be allowed, and the applicant is required to be compensated so as to make the loss he has sustained good". In other words, the District Forum has believed that not only the complainant but so many persons in the locality were suffering on account of low voltage.

5. Thereafter considering the damages the District Forum has come to the conclusion that there was no specific evidence regarding the damages sustained by the complainant and, therefore, the Forum has to assume the damages on account of deficiency of service of the opponent. Considering the pain, shock and suffering of the complainant and the pains he has taken to collect the affidavit from other parties, we are of the opinion that the judgment of the District Forum may not be disturbed. According to our opinion the applicant is entitled for the damages but in absence of evidence regarding the damages the Forum has awarded Rs. 1000/- by way of pain and suffering. The amount awarded by the District Forum is a very small amount considering the trouble taken by the complainant. We do not propose to make any change in the decision of the District Forum. But we direct that this case may not be taken as a precedent particularly when Mr. Lakhani the learned counsel appearing on behalf of the Board, in view of the purushish has assured us that the Board is going to install a capacitor at the sub-station which will reduce the complaint regarding the voltage to a great extent. He has also stated that the Board is endeavouring to do every possible help to the complainant and the local area. We, therefore, confirm the judgment of the District Forum with the direction that the same may not be treated as a precedent. The purushish is taken on record.

6. Mr. Rana states that his client has not filed the appeal to take any compensation but it was more or less by way of public interest litigation. So far the appeal filed by the consumer is concerned, in absence of evidence regarding the damages we are not inclined to award any damages except the order for cost.

ORDER

Both the appeals will stand dismissed. The order of the District Forum is confirmed. In the circumstances the Board shall pay cost to the respondent complainant which we quantify at Rs. 500/- in appeal No. 137 of 1991. There will be no order as to cost with regard to appeal No. 139 of 1991.

Appeals dismissed.
STATE CONSUMER DISPUTES
REDRESSAL COMMISSION,
RAJASTHAN: JAIPUR

S.K.M. Lodha, President; Damodar Thanvi,
Member

Rajasthan State Electricity Board & Ors
- Opp. Parties/Appellants

versus

Kalu Lal
- Complainant/Respondent

Appeal No. 60 of 1992
Decided on 8.10.1993

(i) Consumer Protection Act, 1986 (as amended by the Consumer Protection Ordinance, 1993) - Section 14(1)(e) - Order can be passed for removing defect or deficiency in service - Direction for reconnection of electric connection after holding disconnection as illegal and deficiency in service is well within the jurisdiction of Redressal Forum. (Para 6)

(ii) Consumer Protection Act, 1986 - Sections 2 & 14 - 10 H.P. electric connection for Flour Mill - During inspection a hole found in the meter - Inspection report signed by complainant - From disparity in the meter readings inference of electricity theft can be drawn - No representation was made by complainant against inspection report - District Forum was not right in holding that Board acted against rules arbitrarily - Order of District Forum direction restoration of connection and awarding damages is unsustainable (Para 9)

Result: Appeal allowed.

Counsel for the Parties:
For the Appellant: R.K. Sharma, Advocate.
For the Respondent: in person.

ORDER

S.K.M. Lodha, President—Being dissatisfied with the order dated 20.2.92 passed by the District Forum, Kota in Complaint Case No. 68/92 the opposite parties have filed this appeal under section 15 of the Consumer Protection Act ("the Act" herein).

2. The complainant-respondent filed a complaint against opposite parties No.1 & 2 (appellants No. 2 and 3). The complainant had obtained an electric connection for his flour mill on 30.5.91 in the name of Suman Flour Mill, Vighyan Nagar, Kota. After the electric connection he has been depositing the amounts of the bills. It was alleged that the employees of the opposite parties have been demanding every month Rs. 100-150 besides the amount of the bills which according to the complainant was illegal. On 24.1.92 in the absence of the complainant the employees of the department came to the flour mill and caused damage to the electric meter. The next day again the employees of the opposite parties came to the flour mill and got the signatures of the complainant obtained on the ground that the meter is out of order and it has to be changed. They threatened the complainant that his meter has been found out of order and, therefore, he will have to deposit Rs. 15,000/- with the Electricity Department and on such deposit the matter will be compounded otherwise electric connection will be disconnected. According to the complainant no amount was outstanding against him and it is the responsibility of the opposite parties to remove the defective meter and to replace it by a new meter. The complainant alleged that on account of the mistake in the meter, they threatened for realising the money and disconnected the electricity. Therefore, the meter should immediately be rectified.

The complaint was filed before the District Forum on 1.2.92 and in support of that the complainant gave his affidavit. With the complaint photostat copy of the receipt for Rs. 1,130/- and three bills were submitted. Besides this a cutting from Navjyoti of January 30, 1991 was also produced.

3. The opposite parties denied the claim of the complainant. It was admitted that the complainant had electric connection for his flour mill. The other facts stated by the complainant were denied. It was alleged that opposite party No. 2 of his own accord went to inspect the flour mill and did inspection after informations to the complainant. He found a hole in the meter which was done with an intention to commit theft of electricity.
He acted against the interest of the Electricity Board. Inspection report was prepared at the scene and signatures were obtained. The complainant had obtained 10 HP electric connection and accordingly Rs. 1,000/- per H.P. i.e. Rs. 10,000/- were determined as payable from the complainant. Letter No. 462 dated 5.2.92 was written to the complainant informing him that 50% of the amount i.e. Rs. 5,000/- should be deposited by him immediately. But the complainant did not deposit the amount. So according to the General Conditions of Supply and Scale of Miscellaneous Charges relating to the Supply of Electricity ("the conditions") the electric connection was disconnected on 6.2.92 at 1.30 p.m. According to rules a sum of Rs. 10,000/- is payable by the complainant. It was alleged that if the complainant makes any complaint about the defective meter he may submit application for it according to the rules. The complainant did not make any application for the defects. Under the head additional pleas it was stated that the complainant has consumed the electricity on 27.7.91, 27.8.91, 25.9.91, 28.10.91, 29.11.91, 25.12.91, 29.1.92 and consumed 510, 252, 177, 259, 97 and 299 units respectively. It was showed that from 29.11.91 to 25.12.91 the complainant misused the electric meter. A plea was taken that the electric connection was given for Suman Flour Mill which is a commercial purpose and, therefore, the complainant is not a consumer as envisaged by the Act. It appears from the record that on 6.2.92 after the disconnection of the electricity, the complainant submitted an application stating that without information the electric connection has been disconnected about which no notice or information was given and so his regular income has stopped. He has, therefore, claimed compensation @ 60/- per day and for mental torture Rs. 5000/- as compensation. In all he claimed Rs. 15,000/- as compensation and prayed for restoration of electric connection.

4. A reply was filed by the opposite parties to this application praying that the application may be disallowed. The District Forum heard the arguments and passed the impugned order on 20.2.92 and granted the reliefs as stated above.

5. Against that the opposite parties have come up in appeal. On 19.11.92 nobody appeared on behalf of the appellants. Resort was made to rule 8(6) of the Consumer Protection (Rajasthan) Rules, 1987 and the arguments of Mr. Shiv Narain Verma, Advocate appearing for the respondent were heard. On 7.1.93 at the request of the learned counsel for the appellants, he was heard and the respondent was also heard in reply to the arguments of the learned counsel for the appellants. It was recorded in the proceedings dated 18.8.93 that the arguments in the appeal were heard by a Bench consisting of the President and Mrs. Saria Khan, Member. Mrs. Saria Khan has not been attending the sittings of the Commission and therefore the arguments will be heard afresh in the appeal. On 20.9.93 learned counsel for the appellants did not come and, therefore, respondent Kalu Lal was heard. On 7.10.93 arguments of Mr. R.K. Sharma, learned counsel for the appellants were heard. The respondent had already been heard on 20.9.93. So on 7.10.93 on being asked whether he wants to make any additional submissions, the respondent stated that he has nothing to add.

6. We have carefully considered the record and the order under appeal in the light of the submissions made by the learned counsel for the appellants and the respondent in-person. Learned counsel for the appellants argued that the District Forum erred in giving a direction for restoration of the electric connection as a redressal forum constituted under the Act can only grant those reliefs which are enumerated under section 14(1) of the Act. The District Forum by giving a direction for granting the electric connection exceeded its jurisdiction. The Consumer Protection Act, 1986 has been amended by Consumer Protection (Amendment) Ordinance, 1993 (Ordinance No. 24/93 now Amendment Act). By section 5 of the Amendment Act, section 14(1) has been amended. In section 14(1) amongst others clause (e) has been inserted. According to which an order can be passed for removing defect or deficiency in service. Direction for reconnection of the electric connection or for restoration of the electric connection is nothing but removal of the deficiency in service. An appeal is the continua-
tion of the proceedings of the complaint and it is heard by a higher (superior) redress forum. The appellate forum exercises the same powers which are exercized by the original forum i.e. District Forum. After 18.6.1993 a direction for restoration of electric connection can be given by a District Forum while passing an order in the complaint. As the State Commission is seized of the appeal, it has power to give a direction for removal of deficiency if any i.e. for restoration of the electric connection. In these circumstances the argument of the learned counsel for the appellants is futile provided a case for restoration of electric connection is made out.

7. It was next argued that the complaint is not with respect to wrong reading of the meter. Inspection of the flour mill was done on 25.1.92 and the inspection report has been produced which is signed by the complainant in which it is written that there is a hole in the meter and that it is a case of electricity theft. It was submitted that according to Condition 29(3) of the Conditions if the electricity is misused or theft of electricity is done, then without notice electric connection can be disconnected and the disconnection of the electricity was according to the rules. The order for disconnection was passed on 27.1.92 and in compliance of that disconnection was made on 6.2.92 and according to letter dated 5.2.92 for compounding, a notice was given to the complainant and if the complainant deposits Rs. 5000/- there will be no disconnection and thus there was no deficiency in service rendered by the opposite parties. There is inspection note dated 25.1.92 of the AEN, Distribution, Sub-Division IV in which it is clearly written in front of entry No. 8 that there is hole in the meter (theft of energy) and load written is 10 HP. This report is signed by the complainant Kalu Lai himself. There is temporary/permanent disconnections order dated 27.1.92 marked as urgent. In this also it is written hole in meter (theft of energy) and the disconnection was made from the pole. Meter reading record card has been produced and in front of the month of September, date being 25.12.91 it was mentioned that there was hole in the meter. Copy of order No. 10520 dated 2.2.91 issued by the Secretary, RSEB, Jaipur copy endorsed to Superintending Engineer (KC), RSEB, Kota is on record. This is with respect to Scheme for settlement of cases for theft of energy and malicious interference with the metering equipment in lieu of cash compensation.

8. Photostat copy of the notice of provisional assessment and bearing under condition 29-I was also placed on record which was issued to the complainant. It is dated 5.2.92. It is mentioned therein that during inspection hole in meter and theft of electric energy was noticed. This also recites the amount of compensation payable by the complainant to the Board under the relevant Conditions was provisionally assessed at Rs. 10,000/-. The complainant was directed by the said notice to pay to the Board 50% amount provisionally assessed; if the complainant desired the continuity of supply/restoration of disconnected supply, in the office of the AEN, RSEB, Kota. He was also asked to submit to the officer indicated in para 4 of the notice on or before the date fixed any representation in the matter or against the said provisional assessment. It is written that sanctioned load is 10 HP and the amount comes to Rs. 10,000/-. The complainant never complained about the defective meter. Had he done so he would have deposited the inspection fee along with an application for the purpose. From the readings of the meter stated hereinabove it is clear that the complainant had misused the electricity from 29.11.91 to 25.12.91.

9. From the facts stated above it is clear that the matter is not of a defective meter for the purpose of reading but it is a matter of theft. The case of the opposite parties is that F.I.R. was lodged on 14.2.92 which was registered as Case No. 67/92. In pursuance of that the meter installed in the premises of the complainant was forfeited. The case of the complainant is that on 24.1.92 the employees of the opposite parties came to the premises of the complainant and caused damage to the meter. Despite resistance by women they took away the meter. Having considered the materials on record we find that it is not a case of defective meter but of a theft. Inspection report was prepared and it was found that there was a
hole in the meter and that inspection report was signed by the complainant. After the disconnection order dated 27.1.92 electric connection was disconnected. The complainant has given the affidavit dated 1.2.92 in support of the complaint. But the facts stated in the affidavit are contrary to the record. The District Forum was not right in holding that opposite party No. 2 acted against rules arbitrarily and disconnected the electric connection. From the facts stated this inference cannot be drawn that the matter is of carelessness and fault. The electricity is consumed in a flour mill and, therefore, from disparity in the meter readings, inference of electricity theft can be drawn. Meter inspection report dated 27.1.92 is signed by Kalu Lal wherein it is stated that there is a hole in the meter and theft of energy. If the statement made therein was wrong nothing prevented the complainant in making the representation in this regard. A notice was given to him in regard to provisional assessment bearing under Condition 29-J on 5.2.92. Soon thereafter he filed the complaint. For the aforesaid reasons we are unable to uphold the order of the District Forum, Kota dated 29.2.92. The directions which the District Forum has given cannot be issued for, the complainant himself is to be blamed for the disconnection of the electricity and as the disconnection was properly done, there was no question of award of compensation to the tune of Rs. 5,000/- on the ground that the complainant could not do his business.

10. For the reasons aforesaid, we are constrained to allow the appeal and set aside the order dated 20.2.92 passed by the District Forum, Kota in Complaint Case No. 68/92. The complaint of the complainant shall stand dismissed. The complainant–respondent shall pay Rs. 300/- as costs to the appellants-opposite parties.

Appeal allowed.

*****

STATE CONSUMER DISPUTES REDRESSAL COMMISSION: WEST BENGAL

Jyotirmoyee Nag, President; Prof. Sunil Kanti Kar & Mrs. Sikharani Dutta, Members

West Bengal State Electricity Board - Appellant versus

Paharimata Cold Storage - Respondent

S.C. Case No. 471/A/1993

Decided on 3.5.1994

(i) Consumer Protection Act, 1986 - Order passed & signed by the President alone of the District Forum - Order is unsustainable.

(Para 2)

(ii) Consumer Protection Act, 1986 - Sections 2 & 14 - Order restraining Electricity Board from disconnecting the supply line to Cold Storage of Complainant subject to payment of Rs. 85,000/- against inflated bill for Rs. 1,54,275/- passed by District Forum - Taking advantage of stay of operation of order Board disconnected the electricity - Order of District Forum not bad except that if suffered technical defect - Appellant to restore the supply line forthwith.

(Paras 3 & 4)

Result: Appeal disposed of accordingly.

IMPORTANT POINT

Order passed by District Forum directing Electricity Board to not to disconnect supply line subject to complainant depositing an amount of Rs. 85,000/- against inflated bill of Rs. 1,54,275 can not be said bad & unsustainable.

ORDER

Prof. Sunil Kanti Kar, Member - This revisional petition is preferred by the West Bengal State Electricity Board against the order No. 2 dated 14.10.1993 in Complaint Case No. 56 of 1993 passed by the District Consumer Disputes Redressal Forum, Midnapore. In the said impugned order, the Ld. President sitting singly passed an order restraining the appellant from disconnection of the supply line to the respondent's cold storage subject to payment of Rs. 85,000/- against the inflated bill dated 5.10.1993 for Rs. 1,54,275, the said order is impugned in this present revision case. The respondent raised a preliminary objection that the revision has preferred under section 17 (b) of the Consumer Protection Act filed by the appellant is not maintainable as the order impugned passed by the District Forum, Midnapore is an appealable order.
According to law the order should be signed at least by two members out of 3 members in a bench constituted under the provisions of the Consumer Protection Act.

Due to said inherent defect in the order passed by the President as a sole member of the District Forum, it is a clear violation of the provisions of the law under the Consumer Protection Act and as such it could not be sustained.

3. It is to be noted that the appellant taking advantage of the stay of operation of the order dated 14.10.1993 in Complaint Case No. 56 of 1993 passed by this Commission, the appellant has disconnected the supply line of the Respondent's Cold Storage, thus causing irreparable loss and injury not only to the Respondent but also to the innumerable consumer who stored their seasonal products of potatoes at the pick up season.

In essence, the order passed by the District Forum, Midnapore is not bad but due to technical defects as stated above it could not be sustained. But for the humanitarian cause, the appellant should not have disconnected the supply line of the respondent when the impugned bill is under subjudice and more than 50% of the impugned bill had already been deposited by the Respondents at the instance of the Forum. We condemn the actions of the appellant as the same are most inhumanitarian.

4. However considering the facts and circumstances of the case we direct the appellant to restore the supply line to the Respondent's cold storage at once forthwith and matter is remanded to the District Forum, Midnapore for fresh trial upon constitution of the proper bench at least consisting of the two members out of three.

The appeal is disposed of accordingly without any order as to the cost.

Appeal disposed of accordingly.

STATE CONSUMER DISPUTES REDRES-SAL COMMISSION, PUNJAB: CHANDIGARH

S.S. Dewan President; Ram Lal Gupta, Member

M/s. Master Mould Works - Appellant

versus

S.D.O. Sub Division P.S.E.B. - Respondent

First Appeal No. 106/93

Decided on 12.1.1994

Consumer Protection Act, 1986 - Section 15 proviso - Order pronounced by District Forum in presence of Counsel from both sides - Period of limitation for appeal would start from that very date and would not stop merely because aggrieved party was not present - Appeal filed bel - und limitation is liable to be dismissed.

(Para 2)

Result: Appeal dismissed as time barred.

Counsel for the parties:

For the Appellant: Kewal Kumar Garg, Advocate.

IMPORTANT POINT

When the order is pronounced by District Forum in presence of Counsel for both parties; limitation for filing appeal starts from that date and would not stop merely because party itself was not present.

ORDER

S.S. Dewan, President - This appeal has been filed against the order of the District Forum, Bathinda dated October 15, 1993 in complaint case No. 277/1992. The appellant-complainant has also filed an application under the proviso to Section 15 of the Consumer Protection Act, 1986 (for short 'the Act') for condonation of delay in filing the appeal inter alia on the grounds that the impugned order was passed on 15.10.1993 and the certified copy of the same was applied on 16.10.1993 and the copy of the order was delivered to the appellant's counsel, Mr Tarsem Lal Goyal on 29.10.1993. Mr. Manohar Lal Bansal, Advocate for the appellant has filed an affidavit avowing therein that the appellant was informed that the copy of the impugned order was obtained on 29.10.1993 and that the appellant came to the deponent on 6.12.1993 to enquire about the copy of the order and thereafter the appeal was filed in the office of the Commission on 7.12.1993.
2. Mr. Kewal Kumar Garg, the learned counsel for the appellant has submitted that the period of limitation would not run from the date when the impugned order was passed but from the date on which the order was known to the aggrieved party and since in the instant case, the appellant learnt about the passing of the order only on 6.12.1993, the limitation would run from that date. It is not possible to accept this submission of Mr. Garg. The proceedings of the District Forum clearly show that 15.10.1993, the day on which the impugned order was pronounced by the District Forum, the parties counsel were present in the court. In the circumstances, the running of the period of limitation could not be stopped merely because the aggrieved party was not vigilant.

3. In the circumstances, we find that the appellant was not justified in computing the period of limitation from 6.12.1993 and not from 23.10.1993 when the copy of the order was ready for delivery to the appellant. There is no explanation for the delay between 29.10.1993 to 6.12.1993. In the circumstances, the application under the proviso to Section 15 of the Act is dismissed. The appeal being barred by limitation is also dismissed.

Appeal dismissed as time barred.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HARYANA: CHANDIGARH

S.S. Sandhawalia, President & S.Kulwant Singh, Member

Imperial Malts P. Ltd. - Appellant versus

Haryana State Electricity Board Ltd. & Ors. - Respondents

F.A. No. 437 of 1993
Decided on 10.12.1993

Consumer Protection Act, 1986 - Sections 2 & 14 - Complainant/Appellant applied for enhancement of their load from 300 kv to 500 kv - Claim was to be considered by the Board on its merits by discretion & not by way of obligation - Board showing that electric system at the point was unable to bear further enhancement - Board cannot be held liable for any deficiency in service. (Paras 4 & 6)

Result: Appeal dismissed.

Counsel for the parties:
For the Appellant - Sachin Mittal, Advocate.
For the Respondents - None.

IMPORTANT POINT
A consumer has no inherent right to enhancement of existing electricity load & its refusal by Board on merits cannot be termed a deficiency in service.

ORDER
S.S. Sandhawalia, President - The unsuccessful complainant appeals against the order of the District Forum, Gurgaon dismissing the complaint.

2. Since we are firmly inclined to uphold the order under appeal it is wasteful to delve too deeply into the facts and merits in this judgment of affirmance. It suffices to mention that the complainant M/s. Imperial Malts Pvt. Ltd. were the holders of a power connection of 300 KV at their premises. On their own showing the appellants applied on the 24th of September, 1987 for the enhancement of their load from 300 KV to 500 KV but the respondent-Board did not sanction the same. The curious case set up was that there was no just ground for not enhancing the load at all and further the allegations of the respondent-Board that the appellants were defaulters were not fully tenable. Though other reliefs were claimed, the only one ultimately pressed was that the respondent-Board be directed to enhance the load from 300 KV to 500 KV.

3. In firmly contesting the complaint the respondent-Board took the stand that the appellants were defaulters of electricity charges to the tune of Rs. 8 lacs. Other things apart they had no right to have any enhancement of the load for this reason alone. However, the firm plea was that no consumer was entitled as a right to a higher load than the sanctioned one and on merits it was the plea that on the ground the installed electricity system was not capable of bearing any further...
enhancement of load, which indeed would result in disaster consequences. The firm plea was that the application for enhanced load can not be sanctioned.

4. The parties put in their respective affidavits in support of their cases and the District Forum on the basis of the material before it held that there was no expert testimony at all to show that the system could bear the enhanced load sought by the appellants. It was rightly held that the appellant-consumer had not inherent right of any enhancement and the refusal thereof could not be even remotely termed as a deficiency in the supply of electric energy. The other reliefs were secured by the appellants in the civil suit filed by them and the complaint was thus dismissed without any order as to costs.

5. Mr. Sachin Mittal the learned Counsel for the appellants with great persistence and vehemence has taken the tall stand that the appellants were entitled as of right to secure an electric load of 500 KV. A number of adjournments were sought to cite regulations or instructions which entitled him to an extended electricity load. However, ultimately not a single statutory provision or even a guideline on this issue could be brought to our notice despite the issue having been repeatedly pinpointed to the learned Counsel for the appellants.

6. In the absence of any mandatory provision it is somewhat elementary that the claim of the appellants for enhanced load has to be considered by the Board on its merit and the grant thereto is discretionary and in no way obligatory. Herein the respondent-Board has not only shown that the refusal of the application was justifiable but has gone on to show that the electric system at the point was unable to bear any further enhancement. That being so one cannot even remotely hold that there was any deficiency in service on the part of the respondent-Board which they had undertaken to render to the appellants-consumer. In fact in this context no cause of action arises in favour of the appellants.

7. For the foregoing reasons this appeal must fail, and is hereby dismissed, without any costs. Appeal dismissed.

SAL COMMISSION : DELHI
R.N. Mittal, President & Dr. A.N. Saxena, Member
Rajpal Singh - Appellant
versus
Delhi Electricity Supply Undertaking - Respondent
Case No. A-44/93
Decided on 1.6.1994

Consumer Protection Act, 1986 - Sections 2 & 14 - Electricity supply is a service - Rejection of a consumer's application for increase or reduction of load without reason would be a deficiency in service - Complainant applied for reduction of his existing load of 5.50 KV to 3 KV - Order of District Forum that DESU was to act on such application only in administrative capacity is wrong - Respondent directed to take decision on application within two months.

Result: Appeal allowed.
Counsel for the parties:
For the Appellant - Vivek Srivastava, Advocate.
For the Respondent - S.L. Trisal, Advocate.

IMPORTANT POINT
If Electricity Board rejects an application of a consumer of electricity for increase or reduction in load without reasons, it will be a deficiency in service.

ORDER (ORAL)
R.N. Mittal, President - This appeal has been filed by the complainant against the order of the District Forum dated 8/2/1993 by which the complaint of the complainant has been dismissed.

2. Briefly, the facts are that the complainant got a load of 5.58 KV at his residence. He, later on requested the DF to reduce the load from 5.58 KV to 3 KV. No decision was communicated to the complainant regarding his request. Consequently he filed a complaint before the District Forum.

3. It held that the power sought to be enforced by the DESU was an administrative power and
therefore, it cannot be said to be deficiency in service. Consequently it dismissed the complaint. The complainant has come up in appeal against the said order to the Commission.

4. It is contended by the learned counsel for the appellant that the finding of the D.F. that to get the load reduced is an administrative matter and therefore, no complaint is maintainable in this regard, is erroneous. We have duly considered the argument and find force in it. The word 'service' has been defined in the Consumer Protection Act. According to the definition the provision of facility regarding supply of electrical energy is 'service'. Therefore, if the DESU without assigning any reason or without adequate reasons rejects the application of a consumer of electricity for increase or reduction in load will tantamount to deficiency in service.

5. The complainant filed an application for reducing the load with the DESU but no order has been passed thereof till date. Mr. Trisal, the learned counsel for the DESU has argued that in the comments furnished by the department, it has been stated that no application has been received by them from the complainant. The complainant has shown a photocopy of the application which is alleged to have been moved before the DESU. The complainant should show the acknowledgement of the official on it to the department. In case the application is not traceable by them the complainant shall furnish a fresh copy of the application and complete all the formalities as desired by the department. After the formalities are completed by the complainant the OP shall decide the matter within a period of two months, thereafter.

6. Consequently, we accept the appeal, set-aside the finding of the District Forum and direct OP to decide the matter taking into consideration the observation made in the order within a period of two months after the complainant has completed the formalities. In view of the circumstances of the case we make no order as to costs.

Counsel for the parties:
For the Complainant - None.

ORDER

R.N. Mittal, President - Briefly the facts are that the complainant was given commercial electric connection of 10 HP in the premises in dispute for running a small atta chakki on 7.10.1990. The electric meter installed there was burnt on 13.10.1991 which was replaced by the respondent at the request of the complainant. It is alleged that a bill was prepared on 7.11.1991 for an amount of Rs. 38,525.77. The said amount was paid by the complainant in two instalments. After the payment of the said bill, a new meter was fixed, but it was also found defective. It was again changed by the respondent at the instance of the complainant.

2. Later on 15.3.1992 she received a bill of Rs. 1,25,886.18 dated 3.2.1992 which was not paid by her. Consequently her electric connection was dis-connected on 30.3.1992. In Nov. '92 she received a bill of Rs. 1,29,016/- which was payable up to 26.11.1992. It is alleged that the bill is illegal, arbitrary and unjustifiable. Consequently she filed a complaint praying that the respondent be directed to restore the electric connection and render account of the amount of Rs. 38,525.75 already deposited; and withdraw the bill of Rs. 1,29,016/-.

3. The complaint has been contested by the respondent. They have inter alia pleaded that the Assistant Engineer (Zone) inspected the site on 12.11.1991 and prepared a report. A total connected load of 52 HP against industrial power connection and 34 HP against industrial light connection was found at the spot on the basis of which a supplementary bill for Rs. 1,25,886.18

Consumer Protection Act, 1986 - Sections 2 & 14 - Disconnection of commercial electric connection on non-payment of bill - Complaint alleging bill for Rs. 1,29,016 as illegal, arbitrary and unjust - Bill issued on the basis of inspection report wherein a total connected load of 52 HP, found as against sanctioned load of 10 HP. - Report itself showing that load of 20 HP was lying disconnected - Normally whole of the machinery is not run simultaneously - Load reduced to 26 HP and consequently bill also reduced to Rs. 64.508/- - On complainant depositing this bill, fresh test report and re-inspection charges, matter to be reconsidered regarding reconnection.

Result: Complaint allowed partly.
was prepared. It is further pleaded that the bill was correct and the disconnection was legal.

4. The last date fixed in the case was 22.9.1993 on which date it was adjourned for 11.3.1994 for arguments. 14.3.1994 was declared as a holiday on account of Id. Consequently this case has been taken up today i.e. the following day. It is now 4 p.m. In spite of waiting for the complainant up to 4 p.m., we found him absent consequently we have heard Mr. A.K. Arya, Advocate for the respondent. It is mentioned in the W.S. that the following Firms with the loads mentioned against each were working in the factory.

<table>
<thead>
<tr>
<th>No.</th>
<th>Firm Name</th>
<th>Load</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>FTN Mill</td>
<td>10 H.P.</td>
</tr>
<tr>
<td></td>
<td>Load of K/C</td>
<td>+ Cotton Cord Model</td>
</tr>
<tr>
<td></td>
<td>lying outside</td>
<td>+ 2 H.P. Total</td>
</tr>
<tr>
<td>2</td>
<td>M/s. Som Bhutani</td>
<td>Lathe machines = 2 H.P. + Drill machine, Grinder + Adda = 2 H.P. Total = 4 H.P.</td>
</tr>
<tr>
<td>3</td>
<td>M/s. Malik Plastic</td>
<td>Adda etc Total Load = 8/6 H.P. + 1.5 KW (21/2H.P.</td>
</tr>
<tr>
<td>4</td>
<td>M/s. Gandhi Engg.  Works</td>
<td>Adda (Lathe Type) = 4 H.P. + Hydr. Press 1 H.P. + Grinder 1/4 H.P. Total = 5.5 H.P.</td>
</tr>
<tr>
<td>5</td>
<td>Disconnected lying</td>
<td>(M/s. Krishna Oil Mill) = load 15 KW (20 H.P.)</td>
</tr>
<tr>
<td></td>
<td>Total</td>
<td>: 12 + 4 + 5 + 10.5 + 20 H.P. = 52 H.P. against I.P. connection.</td>
</tr>
</tbody>
</table>

Thus the machinery of 52 H.P. is alleged to have been installed in the factory. The bill has been prepared not on the basis of the actual consumption but on the basis of the minimum load charge of 52 H.P. In the aforesaid details it is shown at S. No. 5 that the machinery having load of 20 H.P. was lying disconnected. It is relevant to highlight that only 10 HP load was given to the complainant. We are of the view that the wiring of 10 HP cannot take the load of 52 H.P. It is also evident from the report itself that the machinery of the load of 20 HP was lying disconnected. Even assuming that the other machinery had been connected with the electric connection, normally whole of the machinery is not run simultaneously.

5. After taking into consideration the facts and circumstances of this case we reduce the load from 52 HPs to 26 HPs. Consequently we reduce the amount of bill from Rs. 1,29,016/- to Rs. 64,508/- say Rs. 64,500/-. In case the complainant deposits the said amount and furnishes fresh test report and re-inspection charges, the matter regarding re-connection be considered afresh by the respondent taking into consideration the observations made above.

6. For the aforesaid reasons we partly accept the complaint and order accordingly. No order as to costs.

Complaint allowed partly.

NAKIONAL CONSUMER DISPUTES REDRESSAL COMMISSION : NEW DELHI

V. Balakrishna Erady, President; Y. Krishan & B.S. Yadav, Members

The Punjab State Electricity Board - Petitioner versus

Mohinder Singh - Respondent

Revision Petition No. 4358 of 1993

Decided on 26.7.1994

Consumer Protection Act, 1986 - Sections 14 & 21 - Whether the power supplied to tube well be billed on A.P. Tariff or S.P. Tariff falls in domain of Consumer Forums? (Yes) (Para 8)

- Complainant supplied power at A.P. Tariff - Later asked to pay S.P. Tariff - State Commission by Majority disallowed this - Revision against - Whether order of majority needs any interference? (No) (Para 9)

Result: Revision dismissed.

Counsel for the parties:

For the Petitioner - Devender Verma and Naresh Bakshi, Advocates.

For the Respondent - In person.

IMPORPA POINT

Illegal insistence on payment at the higher tariff would result in denial of service on the terms that are applicable.

ORDER

Y. Krishan, Member - This Revision Petition is against the majority order of the State Commission of Punjab at Chandigarh passed on the 27th of May, 1993 in First Appeal No. 12 of 1991.

2. By the majority order, the order of the District Forum dismissing the complaint was set aside and the appeal was accepted. The opposite party Board was directed to charge the complainant revision petitioner for the electricity supplied to the tube well for agricultural purposes at the A.P. (Agricultural Power) rates and not S.P. (Special Power) rates in excess of the A.P. Rates with interest at 18%. It also awarded compensation amounting to Rs. 5,000 to the complainant.
3. The facts of the case briefly are that the complainant had applied for agricultural power supply connection under general category in 1982 and made the requisite deposit with the Electricity Board. The electric supply connection was sanctioned in May, 1990 when the necessary demand notice for making deposit and security was issued. The connection for the tubewell was actually given in July, 1990 and he was billed for at the S.P. rate subsequently. The precise date of the bill is not available in the paper book (but it was paid on 17th January, 1991).

4. The dispute before the Consumer Forums is whether the Opposite Party Board can legitimately charge the S.P. rate for supply of power though the power is actually used for agricultural purposes and was sanctioned as such.

5. The plea of the Opposite Party Electricity Board is that the complainant was given power from the urban feeder which was nearby to the tubewell for irrigating the agricultural lands. Supply from the rural feeder on the other hand, would have been required installation of 1.635 KMs. of 11 K.V. line. This would have necessitated the consumer having to bear the cost of 0.635 KMs. of supply line. This would have cost approximately Rs. 30,000 to 35,000 for about one K.M. if he wanted supply from the rural feeder at the A.P. rate. It, however, wanted to get power from the nearby urban feeder, he would have to pay for the power consumption at the S.P. tariff rate. The S.D.O. appears to have communicated this condition to the complainant orally. More importantly, no affidavit was filed by the S.D.O. before the District Forum in support of his averment.

6. The President of the State Commission in his minority judgment observed that the relief sought for by the complainant is regarding the liability to pay power charges at the A.P. tariff rate. According to the minority order such a relief cannot be granted under Section 14(1) of the Consumer Protection Act; dispute regarding appropriate tariff is not a dispute relating to deficiency in service in respect of which alone the relief can be sought for and granted under the Act by a Redressal Forum.

7. The majority view, however, was in favour of the complainant on the following grounds:

i) The S.D.O. of the State Electricity Board claim that he had informed the complainant applicant that he would have to bear the cost of the line of Rs. 30,000 to 35,000 for about one K.M. if he wanted supply from the rural feeder at the A.P. rate. It, however, wanted to get power from the nearby urban feeder, he would have to pay for the power consumption at the S.P. tariff rate. The S.D.O. appears to have communicated this condition to the complainant orally. More importantly, no affidavit was filed by the S.D.O. before the District Forum in support of his averment.

ii) Other agriculturalists had also been given electric connection for tubewell purposes from the same urban feeder but they are being charged at the A.P. tariff and not at the S.P. tariff.

iii) The Opposite Party Board by its commercial circular No. 14/93 has now laid down that prospective consumers whose agricultural land is located in urban area and supply from the rural feeder is not possible might be given connection from the urban feeder on metered supply basis under A.P. tariff. In other words, the claim of the complainant that he be charged at the A.P. tariff only is also covered by the latest policy decision of the Opposite Party Electricity Board.

iv) The tubewell connection was given to the complainant for agricultural purposes in July, 1990. It was only on 21st August, 1990 that a circular No. 44/90 was issued by the Electricity Board prescribing levy of the charges for supply of electricity at the S.P. rate where the supply is from the urban feeder. According to the majority view of the State Commission such executive instructions regarding tariff applicable are only prospective in nature; it could not be applied retrospectively. As the power connection has been given to the complainant prior to 21st of August, 1990, the billing could not be at the S.P. tariff in respect of the complainant keeping in view the fact that other agricultural consumers were also been
The Opposite Party Electricity Board in its revision petition has not challenged these observations and findings in the majority view of the State Commission. The primary ground of attack on this majority view is that the policy of the Opposite Party Board is that old connection holders who want to continue the electric connection for agricultural purposes from the urban feeder and had been paying as per S.P. tariff would have to pay at the rate of Rs. 30,000 to 35,000 for supply of power from the rural feeder. The more substantial point, however, is contained in the minority view of the President of the State Commission whether the power supplied should be billed at the A.P. tariff or S.P. tariff can be the subject of a consumer complaint. The President has also ruled on the orders of this Commission that the Consumer Forums can grant only such reliefs as allowed under Section 14 of the Consumer Protection Act. He has further held that the question whether A.P. tariff or S.P. tariff is to be levied does not relate to any deficiency in service in respect of which a relief can be sought. We have duly considered these aspects. In our opinion the decision of this Commission relied on by the learned President are distinguishable on facts.

9. However, it will be evident from the majority view that there is merit in the contention of the complainant and that he is legally liable to pay only at the A.P. tariff and that there will be discrimination in the matter of billing and that the Board’s decision of August, 1990 to charge such consumers at S.P. tariff cannot be justly applied retrospectively. Illegal insistence on payment at the higher tariff would result in denial of service on the terms that are applicable. In view of this, we feel that it will not be in the interest of justice if we are to interfere with the impugned order of the State Commission in the exercise of our revision power. The Revision Petition is dismissed. No costs.

Revision dismissed.

CASE REFERRED:


Counsel for the parties:

For the Appellant - Mr. N.K. Jain, Advocate.
For the Respondent - M/s. Harinder Pal Singh for Mr. Arun Walia, Advocates.

IMPORTANT POINT

If the complainant had suppressed the material facts from the Consumer Forum, the complaint is liable to be dismissed.

ORDER

S.S. Sandhawalia, President - The unsuccessful complainant appeals against the order of the District Forum, Hisar dismissing the complaint inter alia on the ground of the suppression of material facts.
2. It was averred in the complaint that Electricity account No. A4/1034 for his H.No. 613/12, had been obtained by the complainant. He had received a bill for electricity charges of Rs. 844.94 paise which was duly paid on the 20th of November, 1992, but to his anguish his energy connection was disconnected on the 24th of November, 1992, without notice and without assigning any reason. Serious allegations were levelled against Shri R.S. Chugh, the Sub Divisional Officer of the respondent Board for the said action and it was suggested that this was done simply to harass the consumer and a grievance was raised that the house was lying in darkness since the date of disconnection to the discomfiture of the complainant who was claimed to be a serious heart patient. An irreparable loss and damage due to the action of the respondent department was alleged and heavy compensation sought.

3. In resolutely defending the complaint, the respondent Board first took up the threshold plea that the complaint was not maintainable because of the patent concealment of material facts. It was pointed out that the residential house of the consumer had been provided with two separate connections bearing No. A-4/1034 connected with the Nagori Gate feeder and another account bearing No. A-4/1040, connected with Jahanpul feeder. It was the firm allegation that the appellant had clandestinely provided a change-over switch for the two points of electric supply in direct contravention of the rules. Not only that such contravention can be patently dangerous and even fatal to the Linesmen of the Board who service the electricity lines after switching off a particular electricity line. It was firmly the case that on the 24th of November the premises of the appellant were, duly checked by a responsible officer of the Board in discharge of the duty on the 24th of November, 1992 and a detailed report with regard thereto was rendered. Mr. Chugh had supported his report with a detailed affidavit on the record. The said evidence was not even sought to be challenged by way of cross-examination nor the authenticity of the report was questioned. In that event, the same provides conclusive evidence against the appellant being a layman was merely vociferous but unable to pose any challenge worth the name to the order under appeal. It was argued that even though the appellants had joined or connected the two district feeders of electric supply in their house, the same was not unauthorised.

4. The District Forum apparently noticed a patent suppression of facts on behalf of the complainant. Consequently, it issued a notice to their counsel but instead of filing any replication or clarifying the factual situation, the complainant moved an application seeking the prosecution of Shri R.S. Chugh.

5. The District Forum placing reliance on Sushil Kumar v. The Oriental Insurance Company, held that apart from merits, the appellant had not come to the Redressal Agency with clean hands and *inter alia* on this ground, dismissed the complaint.

6. Mr. N.K. Jain, the authorised representative of the appellant being a layman was merely vociferous but unable to pose any challenge worth the name to the order under appeal. It was argued that even though the appellants had joined or connected the two district feeders of electric supply in their house, the same was not unauthorised.

7. We are wholly unable to find any merit in the submission of Mr. N.K. Jain despite his persistence. It deserves highlighting that it was conceded before us that there were in fact two distinct electricity connections served from two different feeders in the same residential house of the appellant. Rather curiously it was argued that because of the large family, there was some partitioning of accommodation and in the event of the failure of the electricity from one source, the same was joined with a loose wire from the other. This being so, this concession gives the lie direct to the appellant's case. The District Forum was right in its conclusion that the material facts of their being two separate electric connections and a change over switch or in any case a connection of the two sources of supply had been patently suppressed in the complaint. On behalf of the respondent, it has been rightly highlighted that the premises of the appellant were duly checked by a responsible officer of the Board in discharge of the duty on the 24th of November, 1992 and a detailed report with regard thereto was rendered. Mr. Chugh had supported his report with a detailed affidavit on the record. The said evidence was not even sought to be challenged by way of cross-examination nor the authenticity of the report was questioned. In that event, the same provides conclusive evidence against the appellant and on the basis of the admission made by the authorised representative before us, a cast iron case against the appellant is raised. It was again not in serious dispute that a notice dated the 2nd of November, 1992 was issued to the appellants on the basis of the report of Mr. Chugh and apparently as a counter-blast thereto, the present complaint was lodged shortly thereafter.
8. On behalf of the respondent, firm reliance was placed on condition No. 8 of the terms of supply duly executed betwixt the consumer and the Board. This condition obviously prohibits any tinkering with the electricity equipment and Mr. Jain could not remotely draw our attention to any thing which can authorise the installation of a change-over switch or what is in his own words was a connection of the two feeders with a loose wire. It has been rightly pointed out on behalf of the respondent that not only was the conduct of the appellant contrary to the rules and the terms and conditions but extremely dangerous. It is evident that by such a connection the electric current would pass from one feeder to the other when one of them has been switched off by the Board for repairs or maintenance. The Linemen working on such a line on the assumption that the same was disconnected would thus face the hazard by a sudden charging of the electric line which could even proof fatal. The grievance made on behalf of the respondent is thus more than patent and estab­lished on the present record.

9. For the foregoing reasons, this appeal is dismissed. We would have burdened the appellant with costs but taking a somewhat charitable view, we refrain from doing so against a consumer. Appeal dismissed.

STATE CONSUMER DISPUTES REDRES­SAL COMMISSION, HARYANA : CHANDIGARH
S.S. Sandhwalia, President ; S. Kulwant Singh, Member

Deen Dayal - Appellant

versus

Haryana State Electricity Board & Anr.
- Respondents

First Appeal No. 76 of 1993
Decided on 6.4.1993

Consumer Protection Act, 1986 - Sections 2 and 14 - Complaint regarding electricity bills from Nov. 1990 to March 1992 as unreasonable - Corruption charges against Asst. Foreman - Appellant had earlier instituted complaint which stood disposed of - Substantial part of present complaint stood already concluded by earlier order - Allegations of corruption were not levelled in previous complaint hence Distt Forum was right to hold that it were an after­thought - Bills in question found duty explained - Appeal is without merit. (Paras 8 & 9)

Result: Appeal dismissed.

Counsel for the parties:
For the Appellant: In person.
For the Respondents: Vijay Dutt U.D.C., for No. 1 and No. 2 in person.

ORDER
S.S. Sandhwalia, President.- This appeal is directed against the order of the District Forum, Bhiwani, filing the appellant's complaint with the observation that the disputed bills for electricity charges had been duly explained and no further relief could be allowed.

2. In view of the fact that Deen Dayal, appellant despite his persistence could not meaningfully press the appeal, it suffices to notice the facts and merits with relative brevity. In his somewhat rambling complaint, it was alleged that previously as well he had lodged a complaint against the respondent-Board on the 29th of Octo­ber, 1991 which was decided on the 1st of Febru­ary, 1992 in his favour by the grant of marginal relief. Therein the respondents were castigated for wrongfully disconnecting the electricity. The present grievance was that he had received bills for electricity charges of November 1990 to March 1992, the details whereof were given in para No. 2 of the complaint which according to him were not quite understandable. It was alleged that certain irregularities had been committed in the bills without precisely specifying their nature. Allegations of corruption were levelled against respondent No. 2 Hari Singh, Assistant-Foreman and it was the case that he had received a bribe of Rs. 300/- for changing the service line way back on the 10th of October, 1990. The further allega­tion was that the old service line which was also earlier supplied by him was taken away and the new service line which was replaced in lieu thereof was also coercively supplied by the com­plainant. Consequently, the relief sought was that the unauthorised excess amount received him be refunded and the changed service line which had been taken away by respondent No. 2 Hari Ram be
3. It would appear that even during the pendency of the said complaint preferred on 8.2.1992, two more complaints were added thereto with the allegations that his connection had been disconnected on the 13th of August, 1992, but was restored within three days on the 16th of August, 1992. Further that on the 7th of November, 1992 employees of the Board in order to remove the evidence had come and taken away the wire from which his connection was disconnected.

4. The respondent-Board in resolutely defending the complaint first took up the plea that the grievances relating to the defects in the bill etc. stood fully settled by the order of the District Forum passed on the 1st of February, 1992 in the earlier complaint which was up-held in appeal. Consequently, the appellant had no right to re-agitate the same matter and seek further relief, therefore. The allegations that the connection of the complainant was disconnected on the 13th of August, 1992 and restored soon thereafter were firmly countered. The alleged removal of the naked wire from the service line on the 7th of November, 1992 was equally denied. The counter-allegation seriously levelled was that the complainant was committing pilferage of electric power by connecting to the naked wires on the electricity pole etc. The plea was that Hari Ram, respondent No. 7 was not at all authorised to change the service line under the rules.

5. Hari Ram, respondent in his reply also controverted all the allegations in the complaint and took up the plea that in fact he visited the house of the complainant in October 1991 in pursuance of the orders of his superiors and made a report that the meter was defective which was changed later on.

6. The District Forum on the basis of materials before it came to the conclusion that the allegations of bribery against Hari Ram did not at all find mention in the earlier complaint and thus appeared to be false. It opined that the documentary evidence on the record supported the version of the respondent which appeared to be true and accepted the stand that Hari Ram was not authorised to change the service line. It was also held that the complainant was as much guilty in offering a bride as the receiver thereof even if the version of the complainant was given credence. Lastly the view taken was that the electricity bills were clearly understandable and in any case were got fully explained to the complainant and, therefore, no further relief was possible.

7. As has already been observed, the appellant Shri Deen Dayal (being a lay man) who projected his appeal was somewhat off the mark in assailing the considered order of the District Forum. The primal submission was that the photographs of the electricity pole and of the electrical equipment had not been given full credence. Further the curious stand was that the District Forum should have inspected the spot itself for correctly determining the matter. A grievance was also made that the affidavit evidence of the somewhat interested neighbours of the appellant had been ruled out of consideration.

8. We are unable to find any modicum of merit in the somewhat vehement submission made by the appellant. What first deserves pointed notice is the fact that earlier the appellant had instituted a complaint way back on the 14th of November, 1991 before the District Forum, Bhiwani which was disposed of by its order dated the 1st of February, 1992 and the respondent-Board was directed to pay Rs. 375/- in all to the appellant. This order was challenged by way of First Appeals No. 32 and 35 of 1992 before this Commission by both the appellant and the respondent-Board respectively. Both these appeals were disposed of by the order of this Commission dated the 22nd of April, 1992 dismissing both the appeals and affirming the order of the District Forum. It is thus manifest that a substantial part of the grievance being re-agitated by the appellant stands already concluded by the orders in the earlier complaint and the subsequent two appeals. Plainly enough it is not open to the appellant to resurrect the same issues again as was sought to be done. The learned District Forum was equally right in taking an adverse inference against the complainant on the ground that the allegations of corruption and bribery now specifically levelled
9. On the appellant's persistence, we have closely examined the photographs placed on the record before the District Forum. Even the keenest examination thereof does not indicate how they aid or advance the case of the appellant. At best they show a wiring system in a somewhat disorderly state which unfortunately is not very unusual. Even when pin-pointed and asked to explain as to how these photographs (even if assumed at face value) would prove his case. Shri Dcen Dayal, appellant could not in the least indicate any rationale, therefor.

10. The somewhat curious grievance of the appellant that the District Forum did not proceed to the spot and decide the matter on the basis of its own inspection has only to be noticed and rejected. It was not even the case that the appellant had in any way seriously pressed for a procedure of this kind nor could the appellant cite chapter or verse for his somewhat tall proposition that District Forums are either empowered or duty bound to make spot inspection for the adjudication of consumer disputes.

11. Lastly the challenge to the non-acceptance of the affidavit evidence of the neighbours of the appellant may be noticed. It is self-evident that such testimony would be interested and not capable of implicit acceptance. However, even a perusal of the said affidavits in our view does not advance the case of the appellant and the view taken by the District Forum with regard thereto merits affirmation.

12. For the fore-going reasons, we are constrained to dismiss this appeal. However, we decline to burden the consumer-appellant with any costs.
was that the cable wires of the transformer were
naked and apparently loose and on contact used to
spark persistently. The respondent, therefore,
lodged a complaint with the concerned official on
the 12th of May, 1992. But the same went un­
heded and the defect pointed out was not re­
moved.

3. On the night of the 18th of May, 1992 the
aforementioned naked wires of the transformer
sparked sharply and these fell on the sugarcane
crop standing in the field of the respondent, which
in the result caught fire and the whole standing
sugar-cane crop in one and half acre or more had
been completely destroyed. On these allegations
patent deficiency in the supply of electric services
was laid at the door of the respondent and com­
ensation to the tune of Rs. 12,000/- alongwith
interest was claimed.

4. In the written statement filed by the Board,
it was admitted that electric energy was being
supplied to the appellant, but it was sought to be
denied that the cable wires and the transformer
were naked or loose. It was speciously averred that
the First Information Report had not been lodged,
but on the application of the complainant an
enquiry was made which revealed that a fuse of
the transformer was not working and the same
was set right.

5. The parties led evidence in support of their
respective cases by way of affidavits and docu­
ments. The primal stand taken on behalf of the
appellant by their learned counsel below however,
was on the basis of the maintainability of the
complaint on the ground of the clear cut ratio, laid
down incategoric terms of Davinder Bir Singh v.
S.D.O. H.S.E.B. (supra).

6. The District Forum distinguished the au­
thority relied upon on the ground that the trans­
former was installed on the land of one Harpal
Singh, even though it was admittedly adjacent to
and adjoining the land of the respondent. It was
consequently concluded that as the source of the
fire and damage was the sparking of the cable wire
of the transformer located in another person’s
land, there was no deficiency of service despite the
fact that the respondent had a strong case for
damages and compensation under the law of tort
against the Board.

7. Mr. K.D. Sehgal, the learned counsel for
the appellant has forcefully assailed the aforesaid
distinguishing of the case from the ratio of Davin­
der Bir Singh v. S.D.O. H.S.E.B. (supra) as wholly
specious. It was contended that a somewhat overly
hyper-technical view has been taken only on the
ground that the transformer was not on the land of
the appellant, but just on the boundary of the
adjoining field. It was submitted that the location
of the transformer a few feet this side or the other
of an agricultural field is not the least reason from
holding against the appellant when otherwise the
deficiency in service stands well-established.

8. There is a patent merit in the aforesaid
submission. A reading of the order in Davinder
Bir Singh’s case would make it manifest that the
principle on which it turned was not the mere
finical location of the equipment by a few feet on
one side of the field boundary or the other. But on
the sounder foundation of the following observa­
tion:

"Consequently, he would be a consumer
having hired the service of the supply of
electrical energy under the statute. It
bears repetition that herein the mainline
wires were also fixed and running on the
land of the complainant for providing
electric current to the transformer (again
installed on the land of the complainant
himself) which further distributed the
supply to the other tubewells. The whole
lay-out of the lines including the main
line on the land of the complainant was
thus a part and parcel of one single
integrated system for the supply of elec­
tric energy ultimately to the tubewells for
lifting water therefrom. Any distinction
drawn between the same electrical wire
system from the transformer to the tu­
bewell as against those supplying the
said transformer from the main line
running on the complainant’s land itself
would be somewhat finical."
9. It would be plain from the above that the acid test in such cases is as to what forms part and parcel of one single integrated system for the supply of electric energy. Herein, there is no dispute that the tubewell of the appellant derives its supply from the very transformer which lay adjacent to the appellants field and where from the sparking took place because of the defective cables and caused a fire and the damage to the appellants sugarcane fields. It cannot, therefore, possibly be said that the transformer was not part and parcel of the single integrated system for energising the tubewell of the appellant.

10. Equally, we would wish to reiterate what we have said earlier that even if two well matched constructions are possible, the balance must now be tilted in favour of the complainant within the consumer jurisdiction. It is well settled by now that the Act is a beneficial statute for the purpose of protecting the consumer interest. The sound canons of construction with regard to such a statute is that it must be construed liberally and not in a constricted manner. As is not unusual, somewhat well matched interpretations or closely balanced views in construing the act may well be possible. In such a situation, the golden rule of interpretation in the present act would be that the issue has to be tilted in favour of the consumer, rather than be stretched against him.

11. In view of the above, the stringent technical view taken by the District Forum cannot be sustained. It bears repetition that it has held repeatedly that the complainant would have a strong case against the Board under the law of torts far as damages to his crops is concerned. If that be so, it appears to us that the deficiency in service is somewhat wider than the concept of negligence in tort. If the appellant has a good case in tort, he has a doubly better one on the score of a deficiency in service in the consumer jurisdiction.

12. This appeal has consequently to be allowed and we are constrained to set aside the order of the District Forum and hold that the appellant is a consumer and the complaint is maintainable. However, as the District Forum has not adverted to the merits, we remand the case back to it for its trial in accordance with law. The appellant is also entitled to the costs which are assessed at a Sum of Rs. 500/- only.

Appeal allowed. Matter remanded to be decided on merits.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB: CHANDIGARH

S.S. Dewan, President; Ram Lai Gupta & Mrs. Gurkanwal Kaur, Members

Smt. Kulwant Kaur & Ors. - Complainants

versus

Punjab State Electric Board & Anr. - Respondents

Original Complaint No. 22/1991

Decided on 30/8/1993

(i) Consumer Protection Act, 1986 - Sections 12 & 17 - Husband of complainant came in contact with loose tension wires lying in his field and was electrocuted - Claim for compensation of Rs. 8 lakhs - Earlier to it a complaint on identical grounds under Workmen's Compensation Act was also filed which was pending disposal - A person should not be allowed to move two forums simultaneously - Fact of earlier complaint pending would be a ground for refusal of relief in consumer forum. (Para 7)

(ii) Consumer Protection Act, 1986 - Sections 12 & 17 - Husband of complainant electrocuted due to loose tension wire lying in his field - Claim for compensation - Complaint silent about another earlier complainant on identical ground filed before State Govt. - In earlier complaint age of two children given as 21 and 18 years whereas in complaint before Commission these children stated to be minor - Complainant has not approached Commission with clean hands and has abused the process - Complaint is liable to be dismissed. (Para 8)

Result: Complaint dismissed.

Case referred:

Counsel for the parties:
For the Complainants: Harnek Singh, Advocate.
For the Respondents: JPS Sandhu, Advocate.

IMPORTANT POINT

A person should not be allowed to move two Forums simultaneously for same relief hence when a complaint filed under Workmen's Compensation Act is subjudice the Redressal Forum cannot entertain complaint for same relief.
JUDGMENT

S.S. Dewan, President • This is a complaint under section 17 read with section 12 of the Consumer Protection Act, 1986 (for short 'the Act')

After hearing the learned counsel for the parties, we have come to the conclusion that this complaint is not maintainable. It is not necessary to state the facts in detail. Suffice it to mention that Smt. Kulwant Kaur, complainant-1, is the widow while complainants-2 to 6 are the minor children of Bawa Singh. The late Bawa Singh, husband of Smt. Kulwant Kaur was the landowner of village Chhina, District Gurdaspur. He had electric connection in his fields, bearing No. N-2-646. It is alleged that for installing the said electric connection, the Opposite-party Punjab State Electricity Board, Sub division covering village Naushchra Majha Singh, Division Dhariwal, Circle Gurdaspur had laid tension wires through the fields of Bawa Singh and some of the high tension wires were broken in the month of July 1991 and the same were lying in the fields of Bawa Singh. This matter was reported to the SDO of the said Sub Division who had assured Bawa Singh that the broken wires would be mended in due course of time and on this assurance, the latter resumed working in his fields. The case of the complainant is that on 25.7.1991 while Bawa Singh was cutting fodder from his field, he came in contact with the loose wire lying in his fields, he was electrocuted and died. Smt. Kulwant Kaur complainant, being the guardian and next friend of her minor children, has filed the complaint, praying that she may be awarded Rs. 8 lakhs as compensation on account of the death of her husband Bawa Singh, due to the negligence of the respondent-Board.

2. On notice being issued, the respondent Board raised a preliminary objection that the complaint is not maintainable. It is not necessary to state the facts in detail. Suffice it to mention that Smt. Kulwant Kaur, complainant-1 is the widow while complainants-2 to 6 are the minor children of Bawa Singh. The late Bawa Singh, husband of Smt. Kulwant Kaur was the landowner of village Chhina, District Gurdaspur. He had electric connection in his fields, bearing No. N-2-646. It is alleged that for installing the said electric connection, the Opposite-party Punjab State Electricity Board, Sub division covering village Naushchra Majha Singh, Division Dhariwal, Circle Gurdaspur had laid tension wires through the fields of Bawa Singh and some of the high tension wires were broken in the month of July 1991 and the same were lying in the fields of Bawa Singh. This matter was reported to the SDO of the said Sub Division who had assured Bawa Singh that the broken wires would be mended in due course of time and on this assurance, the latter resumed working in his fields. The case of the complainant is that on 25.7.1991 while Bawa Singh was cutting fodder from his field, he came in contact with the loose wire lying in his fields, he was electrocuted and died. Smt. Kulwant Kaur complainant, being the guardian and next friend of her minor children, has filed the complaint, praying that she may be awarded Rs. 8 lakhs as compensation on account of the death of her husband Bawa Singh, due to the negligence of the respondent-Board.

3. In support of their claim the respondent-1 rested her content with the documents annexures A1 to A16 to the complaint. The learned counsel for the complainants stated at the bar that these documents may be treated as evidence to be adduced on behalf of the complainant-1. The respondent Board put on record documents annexure R1 to R10 and also filed the affidavits of Sh. Harjit Singh Neg. Executive Engineer, Dhariwal in support of its case. On the request of the learned counsel for the parties, their evidence was closed by this Commissioner.

4. The question that arises for determination is, whether the State Commission constituted under the Act has got the jurisdiction to decide the present complaint.

5. At the very outset, we must necessarily notice the pointed and vehement stand of Sh. JPS Sandhu, the learned counsel for the respondent-Board that on 5.8.1991 complainant-1 had filed a complaint (Annexure R9) for compensation before the Chairman/Secretary, Punjab State Electricity Board, Patiala which is now sub judice before the Commissioner, Workman Compensation and Labour-cum-Conciliation Officer, Gurdaspur. The submission of Sh. Sandhu is that the matter being sub judice before a competent authority, this complaint is not maintainable. In support of his submission, a case M/s Oswal Fine Arts v. M/s. IIIFT, Madras, has been referred to.

6. Sh. Hamek Singh, Advocate appearing for the complainants has strenuously urged that the complaint is maintainable, because the powers under the Act can be exercised by this Commission, as according to section 3 of the Act, these are in addition to and not in derogation of the provisions of any other law for the time being in force. He has, therefore, submitted that even if the similar matter is pending disposal before the Commissioner, Workman Compensation and Labour-cum-Conciliation Officer, Gurdaspur, still the complainants can pursue their remedy by filing the complaint before the authority established under the Act. We do not find any modicum of merit in this submission.
7. The complainant - 1 had approached the State Government by filing a complaint on identical grounds purporting to be under the Workmen's Compensation Act, 1923 which is still pending disposal. A person should not be allowed to move two forums simultaneously for the same relief. Such a complaint having been filed earlier, where effective remedy would be available to them, the same would be a ground for a refusal of any relief even if the same would have been available. In view of the identical matter being, thus, pending disposal before the Commissioner-cum-Conciliation Officer, we are not inclined to enter upon adjudication of this matter by this Commission. Section 3 of the Act cannot be availed of by the complainants in this case.

8. Further scrutiny of the complaint indicates that the complainant - 1 has not mentioned therein anything about her having filed a complaint on identical grounds before the State Government. Further the complainant - 1 in the complaint Annexure R9 under the Workmen's Compensation Act, 1923 has given the ages of her two minor children as 21 and 18 years. Whereas in her complaint before this Commission, she has not mentioned their age and shown them as minors. These facts have not been denied by the learned counsel for the complainants. In these circumstances, it is clear that complainant - 1 had abused the process of the Forum for unjust gain by suppressing the material facts in the complaint before the Commission and she has, thus, not come with clean hands before us.

For the aforesaid reasons, we hold that this complaint is not maintainable before this commission and the same is dismissed on these grounds. There would be no order as to costs.

Complaint dismissed.

STATE CONSUMER DISPUTES
REDRESSAL COMMISSION; PUNJAB : CHANDIGARH

S.S. Dewan, President & Ram Lal Gupta, Member

Karamjit Kaur & Ors. Complaintants

versus

Directorate Personnel, Punjab State Electricity Board & Ors. Respondents

Original Complaint No. 78/1992

Decided on 26.8.1993
same day, on the advise of the doctor, the complainant took her husband back to his native village Ganga Singh Wala where he died on 13.11.1990. The post mortem examination on the dead body of Sucha Singh was conducted. Smt. Karamjit Kaur, his widow filed a complaint for compensation in the office of the Punjab State Electricity Board along with the relevant documents. The Electricity Board forwarded those papers along with claim application to the Insurance Company. The Insurance Company repudiated the claim of the claimants vide its letter dated 8.1.1992 on the ground that because the fatal injury sustained by the deceased was the direct consequence of intake of liquor, it was not liable to pay any compensation to the claimants. Consequently exasperated by the delay, deficiency and negligence on the part of the Insurance Company, Smt. Karamjit Kaur, widow of Sucha Singh, de ceased filed the present complaint on 9.12.1992 claiming payment of Rs. 1 lac as the insurance amount plus Rs. 10,000/- as damages on account of mental agony and harassment suffered by her.

2. On notices being issued in the complainant, the respondents-1 to 3 filed their written statement and in substance they supported the stand of the claimants by alleging that Sucha Singh, deceased died due to head injury. So far as the factum of insurance of the deceased under the Insurance Policy and his death was concerned, the same was however, admitted. The respondent No. 4 (the Insurance Company) strenuously contested the complaint in its written statement. A preliminary objection was raised that the deceased had consumed liquor and the fatal injury which ultimately led to his death was the consequence of intake of liquor and that because of the aforesaid reason, the claim of the claimants having been repudiated, the latter were not entitled to any compensation. On merits, the allegations of the complainants were however, stoutly controverted.

3. In support of the complainant's case, Smt. Karamjit Kaur has placed on record her own affidavit along with the documents Annexures P-1 to P-6. The authenticity of these documents has not been challenged by the Insurance Company. In defence, the Insurance Company has placed on record five documents Annexures R-1 to R-5. The primal reliance is placed on Annex. R-1, copy of the Group personal Accident Policy and the repudiation order Annex. R-3. No oral evidence is let in on either side.

4. Before adverting to the rival stands of the learned counsel for the parties, it is not only apt, but indeed necessary to notice the true import and the salient feature of the Group Personal Accident Policy (admittedly issued by the Insurance Company). As is manifest from the very name and the heading thereof, a policy of this kind is not intended to apply to any particular individual, but to a large group of persons or employees which may well run in thousands. In consideration of the payment of the premium, the Insurance Company covered the risk of bodily injuries and death caused to any of the insured person as a result of an accident. The detailed clause of paragraph-1 of the Insurance Policy fixes the percentage of the capital sum insured which is to be paid to the bodily injuries specified therein. Clause (g) thereof specifically covers the case of death resulting from such accidental bodily injuries. The policy then provides for death except to which the Insurance Company shall not be liable to provide compensation either total or partial. Lastly, the conditions which govern the payment of the claim etc. have been provided with meticulous details.

5. It is manifest from the copy of the insurance policy (Annex. R-1) that the policy covered as many as 83826 employees of the Punjab State Electricity Board. Once the Insurance Company accepts the risk on the payment of premium on the satisfaction of other conditions, then the employees contained in the schedule become insured persons, irrespective of the individual condition of health of each one of them at the time of taking of the policy or during the subsequent period of time for which the policy is taken out or refused. It is plain that the Insurance Policy is intended to provide the insurance cover against bodily injury or death resulting from an accident to a group of persons as a collective whole. The crux of the matter is that the bodily injury or death must be the proximate result of an accident. Herein, there is no factual dispute that Sucha Singh, deceased had sustained head injured which proved fatal as it is manifest from the record. There is thus no dispute
that the insurance policy was fully covered and was attracted in the case of Sucha Singh, deceased. The solitary question is as to what was the ultimate result of the fatal injury whether the same was within the ambit of the insurance policy.

6. Coming to the factual controversy, the main sheet-anchor of the defence projected by Mr. Raj Kumar, learned counsel for the Insurance Company is that the deceased had consumed liquor and the head injury sustained by him which ultimately led to his death was the direct cause of intake of liquor. This argument of Mr. Raj Kumar has only to be noticed and rejected. It is nowhere mentioned in the documents produced by the Insurance Company that liquor was found in the body of the deceased. On 18.10.1990, the deceased fell down from the stairs and sustained head injury and he died as a result of the said injury on 13.11.1990. It is thus manifest that the head injury was the direct cause of the death of Sucha Singh and not the intake of liquor as alleged by the Insurance Company.

7. The totality of the circumstances when viewed as a whole leads to an inescapable conclusion that the head injury sustained by the deceased was the direct result of his death. His case comes squarely within the ambit of the insurance cover provided by the Insurance Company. So an attempt to wriggle out from the liability by the Insurance Company is, therefore, unwarranted. The deceased had hired the services by securing the insurance cover issued by the Insurance Company. There is manifest on this record a glaring deficiency in the service extended out by the Insurance Company. Indeed an incalcitrant attitude adopted by the Insurance Company in not settling the claim with promptitude and the total repudiation thereafter, border clearly on negligence in law and in callousness as a matter of fact in the context of deceased’s wife and her orphan children. The claimants have established their claim to the contractual reliefs provided by the Insurance Policy, as also for compensation for loss and injury occasioned by the negligence of the Insurance Company.

8. The complainants have made a claim of Rs. 1 lac. The far reaching consequence of non-payment of legitimate dues to a destitute lady with four minor children can be well imagined. Therefore, we are inclined to direct that the respondent No. 4 shall pay an amount of Rs. 1 lac with interest @ 18% p.a. from 8.1.1992, the date of repudiation of the claim till the date of payment. We further direct that damages of Rs. 5,000/- are to be paid to the complainants for withholding their dues for about three years. She is also entitled to costs of Rs. 1,000/-. 

9. The Insurance Company is directed to comply with the aforesaid order within two months from today failing which it would render itself liable to penalty under Section 27 of the Act.

In the result, the complaint is allowed to the extent indicated above.

Complaint allowed.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION; M.P.; BHOPAL
V.S. Kokje, President, M.L. Tiwari, Member
M.P. Electricity Board - Appellant
versus
Ram Avtar Sharma - Respondent
Appeal No. 231 of 1992
Decided on 23.1.1993

Consumer Protection Act, 1986 - Sections 2 & 14 - Electricity supply of shop of complainant disconnected for 8 days - Connection was in the name of uncle of complainant - Complainant is beneficiary of service with approval of his uncle and hence a consumer - No reasonable cause show as to why Complainant’s shop alone suffered disruption of supply - Order of Dist Forum granting compensation of Rs. 50 per day is just and legal. (Para 4)

Result: Appeal dismissed.

Counsel for the parties:
For the appellant: A.V. Tripathi, Advocate.
For the Respondent: None.

IMPORTANT POINT
Disruption of electricity supply to the shop of a consumer without just cause for 8 days amounts to deficiency for which complainant is entitled to be compensated.

ORDER
V.S. Kokje, President - The following order of the Commission was delivered by Hon’ble Justice Shri V.S. Kokje, President.
This is an appeal by the M.P. Electricity Board against the grant of relief to the complainant by District Forum, Morena. The District Forum found that the electric supply of the shop of the complainant was disrupted for a period from 18.12.1991 to 26.12.1991. The District Forum has held the M.P. Electricity Board (MPEB) for short guilty of deficiency in service and directed it to pay compensation of Rs. 50/- per day for the aforesaid period of 8 days.

2. Shri A.V. Tripathi, counsel for the appellant contended that the electric connection was not in the name of the complainant and therefore, the District Forum erred in granting compensation for disconnection of electric supply.

3. We have perused the record. The case was closed for orders by the Forum on 21.7.1992 and 4.8.1992 was fixed for judgment. The order was passed on 4.8.1992 but noted on 11.8.1992 by the counsel for the M.P.E.B. This appeal was filed on 3.9.1992. Thus, the appeal is filed within limitation and the application under section 5 of the Limitation Act filed by the appellant is redundant.

4. On merits it has come on record that the electric connection concerned was in the name of Chchitarlal the uncle of the complainant. The complainant is clearly a beneficiary of the service with the approval of said Shri Chchitarlal. He has been using the electric connection in the shop and running the shop. He is therefore consumer so far as the services of electric supply is concerned. The deficiency in service in nonsupply of electricity for the period between 18.12.91 to 26.12.91 has been proved. No reasonable cause has been shown as to why the complainant's shop alone had to suffer disruption of electric supply. The Forum has therefore rightly held that there was deficiency in service of supply of electricity to the complainant. The compensation of Rs. 50/- per day for the period of 8 days cannot be said to be exorbitant in the circumstances of the case looking to the evidence which has been brought on record.

In our opinion, the appeal has therefore no force and the decision of the forum has to be sustained. The appeal is therefore dismissed. There shall however be no order as to costs.

Appeal dismissed.

STATE CONSUMER DISPUTES
REDRESSAL COMMISSION, PUNJAB,
CHANDIGARH
S.S. Dewan, President and
Ram Lai Gupta, Member
M/S. Gupta Steel Rolling Mills — Appellant
versus
Punjab State Electricity Board & Ors. — Respondents
First Appeal No. 101 of 1993
Decided on 6-1-1994

Consumer Protection Act, 1986—Section 15—Complaint seeking direction to respondent to issue electric connection—District Forum dismissed the complaint holding that complainant, being defaulter was not entitled to have new electric connection in same premises in same name without clearing its dues—Dispute regarding dues pending in civil court in appeal—Matter being sub judice in civil court, appellant is not entitled to relief from the Forum. (Para 5)

Result: Appeal dismissed.

Counsel for the parties:
For the Appellant: Nemo.

ORDER
S.S. Dewan, President—Aggrieved by the order dated October 20, 1993 passed by the District Forum, Patiala in complaint case No. 91 of 1992, the complainant before it has filed an appeal before the Commission under Section 15 of the Consumer Protection Act, 1986. By the impugned order, the District Forum has dismissed the complaint.

2. Since we are inclined to affirm the order under appeal, it is sufficient to notice the relevant facts of the case. On 10.4.1991, the complainant applied for electric connection of 46.619 K.W. Load for its Steel Rolling Mill and submitted the documents alongwith the security amount of Rs. 45,788/-. It is alleged that the respondents vide letter No.1986 dated 11.4.1991 acknowledged the application and informed the complainant about the requirement of power of attorney and 'No Objection Certificate' from the Municipal Committee. It is further alleged that the complainant completed those formalities and deposited a sum of Rs. 13,276/- as additional security but inspite of that the respondents did not give the electric connection to it. With these allegations, the complainant sought direction from the Forum that the respondents be directed to issue the demand notice to the complainant and the electric connection and to pay it Rs. 1 lacs by way of compensation for not issuing the electric connection.

3. On notices being issued, the opposite parties while controverting the allegations of the complainant had pleaded that a sum of Rs. 2,68,728.52 was to be paid by the complainant to the Electricity Board and as per rules of the Board until and unless this amount was cleared, no new connection could be released to the complainant in the same premises and in the same firm. It was also averred that the complainant had also filed
civil suits in the civil court and challenged the legality of the amount claimed by the Electricity Board and that those suits were dismissed and the appeals were pending.

4. The District Forum after full appraisal of the evidence on record and discussing the pros and cons of the case in depth, came to the conclusion that the complainant being defaulter, it was not entitled to have a new electric connection in the same premises in the same name without clearing its earlier dues. It was also held that the question whether the Board was authorised to disconnect the electric connection or not, was the subject matter of civil litigation, and as such the complaint was not maintainable before the Forum. Inevitably the complaint was dismissed.

5. At the time of hearing of the appeal, neither the appellant nor its representative appeared before us despite service. We have heard the learned counsel for the opposite-parties and perused the record with requisite care. The prima facie submission of the appellant in the grounds of appeal is that the appellant was not a defaulter and it had filed separate suits challenging the legality of the amount claimed by the Electricity Board and that the suits having been dismissed by the civil court, the appeals against those orders were pending. It is contended that since the appeals were pending, there was no bar in regard to the maintainability of the complaint before the District Forum. We are unable to find any modicum of merit in this contention. These aspects have been dealt with by the District Forum so succinctly in its order that it looks wasteful to traverse the same ground again. It more than suffices to say that we uphold the finding therein as impeccable and worthy of total affirmation. The matter being still sub judice in the appellate court, the appellant-firm is not entitled to the grant of any relief from the Forum. The appellant is, however, at liberty to seek its relief in the proceedings that are still pending before the appellate court or in any other independent proceedings may be open to it in law. With these observations, we regret our inability to find any merit in this appeal, which is hereby dismissed. However, we refrain from burdening the appellant with any costs.

STATE CONSUMER DISPUTES REDRES SAL COMMISSION, ORISSA: CUTTACK
S.C. Mohapatra, President and Mrs. J. Panaik, Member
Krushna Ch. Ghadei & Anr. - Complainants
versus
The Chairman, Orissa State Electricity Board & Ors. - Opposite Parties
C. D. No. 89 of 1990
Decided on 21.9.1991

Consumer Protection Act, 1986 - Sections 2 & 14 - Complaint for deficiency in service in supply of electricity - Subsequent developments - Injustice would be done if the complaint is decided on the basis of the subsequent developments - Dismissal of complaint in limine may also result in injustice to the complainants - In the facts and circumstances, complainants are permitted to file a fresh consolidated complaint incorporating all subsequent developments of facts and circumstances within one month.

Result: Ordered accordingly.

Counsel for the parties:
For the Complainants: K. K. Jena
For the Opposite Parties: B. K. Nayak.

JUDGMENT
S.C. Mohapatra, President. - Heard Mr. K.K. Jena, learned counsel for the complainants and Mr. B.K. Nayak, learned counsel for the opposite parties.

2. This is a complaint for deficiency in service by the opposite parties in supply of electricity. There are many development of facts subsequent to the filing of the complaint in respect of which some documents have been filed which may be material for considering the complaint. Assertions now made by the complainants could not be effectively replied by the opposite parties. Injustice would be done if we decide the complaint on the basis of the subsequent developments. Equally dismissal of the complaint in limine may also result in injustice to the complainants. Accordingly, we give liberty to the complainants to file a fresh consolidated complaint incorporating all subsequent developments of facts and circumstances within one month serving a copy of the same on Mr. B.K. Nayak, Advocate who appears for the opposite parties. Service on Mr. B. K. Nayak in the circumstances would be sufficient notice to the opp. parties. From the date of receipt of the fresh consolidated complaint, opposite parties shall state their case within 30 days. Thereafter, the complaint if filed shall be heard.

3. In the result, complaint is disposed of with the aforesaid direction.

Ordered accordingly.