

Supreme Court of India

Karnataka Power ... vs Ashok Iron Works Pvt. Ltd on 9 February, 2009

Bench: Markandey Katju, R.M. Lodha

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Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO 1879 OF 2003

Karnataka Power Transmission Corpn. & Anr. ... Appellants

Versus

Ashok Iron Works Pvt. Ltd. ... Respondents

CIVIL APPEAL NO 7784 OF 2002

H.V. Balachandra Rao ... Appellant

Versus

Karnataka Power Transmission Corpn. & Anr. ... Respondents

JUDGEMENT

R.M. Lodha, J.

These two appeals by special leave, involving common questions, were heard together and are being disposed of by this judgment.

2. As the principal arguments have been advanced in Civil Appeal No. 1879/2003, we take up the facts of that appeal which are thus, briefly put. M/s Ashok Iron Works Private Limited (for short, 'the company') is a Private Limited Company and engaged in the activity of manufacture of iron products. The company applied for the supply of electrical energy (2500 KVA) to the Karnataka Electricity Board (now Karnataka Power Transmission Corporation and hereinafter referred to as 'KPTC'). The application made by the Company was cleared by the Single Window agency and supply of electric energy 1500 KVA was sanctioned. The company is said to have deposited an amount of Rs. 8,40,000/- on 1st February, 1991 as per demand. KPTC did not commence supply of

electricity as agreed upon and that necessitated the company to approach Karnataka High Court for a direction to KPTC to supply the sanctioned energy. On 16th April, 1992, the High Court directed KPTC to supply electrical energy as per sanction forthwith and subsequently, time for supply of electricity was extended by the High Court upto 21st July, 1992. KPTC raised an additional demand of Rs. 8,38,000/- from the company and further demand in the sum of Rs, 1,34,000/-. The company is said to have deposited the said amount. However, the actual supply of the power commenced in the month of November, 1992. The company accordingly filed a complaint under the Consumer Protection Act, 1986 (for short, 'the Act, 1986') before the Consumer Disputes Redressal Forum, Belgaum claiming damages in the sum of Rs. 99,900/- for delay in supply of electricity. The complaint was contested by KPTC, and, inter alia, preliminary objection was raised that complaint was not maintainable as the complainant was engaged in commercial activity and electricity being goods; sale of goods to a commercial consumer for a commercial purpose was outside the scope of the Act, 1986.

3. As there were several complaints wherein identical objection pertaining to the maintainability of such complaints was involved, all these complaints were taken up and disposed of together by the District Forum by a common order dated 10th September, 1993. The District Forum was persuaded by the objection raised by the KPTC and it held that the complaints were not maintainable.

4. The company challenged the order of the District Forum in appeal before Karnataka State Consumer Disputes Redressal Commission (for short, 'State Commission'). Few other appeals from the common judgment dated 10th September, 1993 also came to be filed before the State Commission. The State Commission vide its order dated June 15, 1995 set aside the order of the District Forum and held that complaints were maintainable being covered by the definition of "Consumer" under the provisions of the Act, 1986.

5. KPTC challenged the order of the State Commission by filing a revision petition before the National Consumer Disputes Redressal Commission (for short, "National Commission"). It appears that initially revision petition was dismissed in default but later on, on the application of restoration made by KPTC, the revision petition was restored but it was dismissed in view of its decision dated 23rd November, 2001, in the case of M/s Welmelt Steel Cast Pvt. Ltd. v. Karnataka State Electricity Board. It is from this order that appeal 1879/2003 by special leave arises.

6. Mr. S.K. Kulkarni, learned counsel for KPTC made the following submissions before us:

(i) The complaint by the company before the Consumer Forum against KPTC was incompetent and not maintainable because the complainant is not a 'person' under Section 2(1)(m) of the Act, 1986 and as such the complainant is not the 'consumer' within the opening limb of the definition of that expression in Section 2(1)

(d).

(ii) The complainant is not a 'consumer' within the definition of Section 2(1)(d)(i) of the Act, 1986 since it purchased electrical energy from the KPTC for commercial

production.

(iii) The complainant's case does not fall within the scope of Section 2(1)(d)(ii) of the Act, 1986. The expression "service" in Section 2(1)(o) cannot be read in a wider sense as it is circumscribed by the word "facilities", thereby limiting the service only to the consumers of facilities in connection with supply of electrical energy. In other words, the dispute relating to sale and supply of electricity does not come within the ambit of "service" under Section 2(1)(o) of the Act, 1986. If for the arguments' sake, it is treated "service", since it is for commercial purpose, it is excluded from the purview of sub-clause (1)(d)(ii).

7. At this stage, it would be appropriate to refer to some of the provisions of the Act, 1986 as were existing at the relevant time in the year 1992 which are relevant for the consideration of the submissions of the learned counsel for KPTC.

8. Section 2(1)(d) defines "consumer" as follows:-

"Consumer" means any person who, -

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtain such goods for resale or for any commercial purpose; or

(ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

9. According to Section 2(1)(m), "person" includes :-

- "(i) a firm whether registered or not;
- (ii) a Hindu undivided family;
- (iii) a co-operative society;
- (iv) every other association of persons whether registered

under the societies Registration Act, 1860 (21 of 1860) or not."

10. Section 2(1)(o) defines "service" thus:

"Service' means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing,

insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service."

re : contention -(i)

11. The question that falls for our determination is: is a private limited company a 'person' as contemplated under Section 2(1)(d). The contention of the learned counsel for the KPTC is that persons specified and enumerated in Section 2(1)(m) are the only categories of persons covered by that clause and a company incorporated under the Companies Act is not covered thereunder. The learned counsel would submit that a company is excluded from the definition of 'person' since the object of the Act, 1986 is to provide an affordable remedy to individuals or four categories of collectivities or associations of individuals which may constitute legal entities for suing or being sued. According to learned counsel, the companies incorporated were never intended to be covered by Act, 1986 as they could always pursue the ordinary remedy provided in law. The learned counsel also submitted that the word "includes" must be read as "means". In this regard, the learned counsel placed reliance upon two decisions of this Court namely; (1) The South Gujarat Roofing Tiles Manufacturers Association and Anr. v. The State of Gujarat and Anr. [(1976) 4 SCC 601] (2) Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors. [(1987) 1 SCC 424]

12. Lord Watson in *Dilworth v. Commissioner of Stamps* (1899) AC 99 made the following classic statement:

"The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. But the word "include" is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to "mean and include", and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions."

13. *Dilworth* (supra) and few other decisions came up for consideration in *Peerless General Finance and Investment Co.Ltd.* and this Court summarized the legal position that inclusive definition by the Legislature is used; (one) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it; (two) to include meaning about which there might be some dispute; (three) to bring under one nomenclature all transactions possessing certain similar features but going under different names.

14. It goes without saying that interpretation of a word or expression must depend on the text and the context. The resort of the word 'includes' by the Legislature often shows the intention of the Legislature that it wanted to give extensive and enlarged meaning to such expression. Sometimes,

however, the context may suggest that word 'includes' may have been designed to mean "means". The setting, context and object of an enactment may provide sufficient guidance for interpretation of word 'includes' for the purposes of such enactment.

15. Section 2(1)(m) which enumerates four categories namely,

(i) a firm whether registered or not; (ii) a Hindu undivided family; (iii) a co-operative society; and (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not while defining 'person' cannot be held to be restrictive and confined to these four categories as it is not said in terms that 'person' shall mean one or other of the things which are enumerated, but that it shall 'include' them.

16. The General Clauses Act, 1897 in Section 3(42) defines 'person':

"Person shall include any company or association or body of individuals whether incorporated or not."

17. Section 3 of the Act, 1986 upon which reliance is placed by learned counsel for KPTC provides that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force. This provision instead of helping the contention of KPTC would rather suggest that the access to the remedy provided to the Act of 1986 is an addition to the provisions of any other law for the time being in force. It does not in any way give any clue to restrict the definition of the 'person'.

18. Section 2(1)(m), is beyond all questions, an interpretation clause, and must have been intended by the Legislature to be taken into account in construing the expression 'person' as it occurs in Section 2(1)(d). While defining 'person' in Section 2(1)(m), the Legislature never intended to exclude a juristic person like company. As a matter of fact, the four categories by way of enumeration mentioned therein is indicative, categories (i), (ii) & (iv) being unincorporate and category (iii) corporate, of its intention to include body corporate as well as body un-incorporate. The definition of 'person' in Section 2(1)(m) is inclusive and not exhaustive. It does not appear to us to admit of any doubt that company is a person within the meaning of Section 2(1)(d) read with Section 2(1)(m) and we hold accordingly.

re: contention - (ii) and (iii)

19. In *CST v. M.P. Electricity Board, Jabalpur*; case 1969 (2) SCR 939, this Court held that electricity is 'goods'. In the case of *State of Andhra Pradesh v. National Thermal Power Corporation*; (2002) 5 SCC 203, the Constitution Bench approved the observations made in *M.P. Electricity Board* to the extent that electrical energy can be transmitted, transferred, delivered, possessed, etc., but did not agree with the observation that electrical energy can be stored. The Constitution Bench held that significant characteristic of electrical energy is that its generation or production coincides almost instantaneously with its consumption. In the case of *Indian Aluminium Co. v. State of Kerala*; (1996) 7 SCC 637, the characteristics of electrical energy were noticed by this Court thus, ".....continuity of

supply and consumption starts from the moment the electrical energy passes through the meters and sale simultaneously takes place as soon as meter reading is recorded. All the three steps or phases (i.e. sale, supply and consumption) take place without any hiatus. It is true that from the place of generating electricity, the electricity is supplied to the sub-station installed at the units of the consumers through electrical high-tension transformers and from there electricity is supplied to the meter...."

20. Recently, this Court in the case of Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO and Others ; (2007) 5 SCC 447, made following pertinent observations:

"149. It may be that electricity has been considered to be "goods" but the same has to be considered having regard to the definition of "goods" contained in clause (12) of the Article 366 of the Constitution of India. When this Court held electricity to be "goods" for the purpose of application of sales tax laws and other tax laws, in our opinion, the same would have nothing to do with the construction of Entry 53 of List II of the Seventh Schedule of the Constitution of India."

21. Section 49 of The Electricity (Supply) Act, 1948 makes the following provision:

[49. Provision for the sale of electricity by the Board to persons other than licensees. -

(1) Subject to the provisions of this Act and of regulations, if any made in this behalf, the Board may supply electricity to any person not being a licensee upon such terms and conditions as the Board thinks fit and may for the purposes of such supply frame uniform tariffs.

(2) In fixing the uniform tariffs, the Board shall have regard to all or any of the following factors, namely:-

(a) the nature of the supply and the purposes for which it is required;

(b) the co-ordinated development of the supply and distribution of electricity within the State in the most efficient and economical manner, with particular reference to such development in areas not for the time being served or adequately served by the licensee;

(c) the simplification and standardization of methods and rates of charges for such supplies;

(d) the extension and cheapening of supplies of electricity to sparsely developed areas.

(3) Nothing in the foregoing provisions of this section shall derogate from the power of the Board, if it considers it necessary or expedient to fix different tariffs for the supply of electricity to any person not being a licensee, having regard to the

geographical position of any area, the nature of the supply and purpose for which supply is required and any other relevant factors.

(4) In fixing the tariff and terms and conditions for the supply of electricity, the Board shall not show undue preference to any person.]

22. Whether the supply of electricity by KPTC to a consumer is sale and purchase of goods within the meaning of Section 2(1)(d)

(i) of the Act, 1986? We do not think so. Although title of Section or marginal note speaks of "the sale of electricity by the Board to persons other than licensees" but the marginal note or title of the Section cannot afford any legitimate aid to the construction of Section. Section 49 speaks of supply of electricity to any person not being a licensee upon said terms and conditions as a Board thinks fit and for the purpose of such supply free uniform tariffs.

This Court has already held in *Southern Petrochemical Industries (supra)* that supply does not mean sale. As a matter of fact, the company has brought its case to be covered by Section 2(1)(d)(ii) and not 2(1)(d)(i) as the dispute raised by the company is with regard to non-performance of the services for consideration within time frame. For the purposes of the maintainability of the complaint, therefore, what is important to be seen is whether there is deficiency in service within the meaning of Section 2(1)(d)(ii). Under Section 2(1)(o) of the Act, 1986, 'service' means service of any description which is made available to potential users and includes the provision of facilities in connection with supply of electrical or other energy. "Deficiency" under Section 2(1)(g) means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. As indicated in the definition of 'service', the provision of facilities in connection with supply of electrical energy is a service. Supply of electricity by the Board or for that matter KPTC to a consumer would be covered under Section 2(1)(o) being 'service' and if the supply of electrical energy to a consumer is not provided in time as is agreed upon, then under Section (2)(1)(g), there may be a case for deficiency in service.

23. Learned counsel for KPTC relied upon an order of this Court in the case of *SDO, Electricity and Anr. v. B.S. Lobana*; (2005) 6 SCC 280 in support of his contention that in the matter such as present one, the Consumer Forum is not an appropriate forum. We are afraid no such absolute proposition as canvassed by the learned counsel is discernible from the said order. The said order is confined to its own facts which is clear from paragraph 3 that reads thus:

" The respondent has filed written submissions. We have perused the same. In the facts and circumstances of the case, we are of the view that instead of moving the District Forum, the respondent should have moved an application under section 26(6) of the Electricity Act, 1910 (for short " the Act") for referring the matter to the Electrical Inspector."

24. Learned counsel urged that the definition 'service' is of limited nature and is limited to the providing facilities in connection with electricity. According to him, the facility is an expression which facilitates the supply of electricity to an installation and the definition of service does not cover supply of electricity. This contention of the learned counsel is founded on erroneous assumption that supply of electricity is a sale of electricity and the use of expression 'supply' is synonym for 'sale'. We have already noticed above, which we need not repeat, that supply of electricity to a consumer by KPTC is not sale of electricity. The expression 'supply' is not synonym for 'sale'. We reiterate what has been stated by this Court in Southern Petrochemical Industries Co. Ltd. (supra) that supply does not mean sale. The expression 'but does not include a person who avails of such services for any commercial purpose' inserted in Section 2(1)(d)(ii) by the Act 62 of 2002 is not applicable in the facts and circumstances of the present case since the controversy relates to the period prior to amendment.

25. In what we have discussed above, the complaint made by the company before the District Forum cannot be said to be not maintainable and we hold, as we must, that complaint is maintainable.

26. In so far as Civil Appeal No. 7784/2002 is concerned, the complainant (appellant herein) is a sole proprietor of Techno Batteries which is a battery charging unit. According to the complainant, for the power supplied by Karnataka Electricity Board (now 'KPTC') charges payable are under "Power-Tariff, L.T.-5" but in the Bill dated 6th March, 1990, a sum of Rs. 22,628.40 was demanded as "Audit Short Claim" on the ground that the charges payable for the consumption of electricity by the complainant are under Tariff-Schedule L.T.-3 and not L.T. -5. The complainant moved the District Forum at Bangalore challenging the demand. The District Forum allowed the complaint vide its order dated 22nd February, 1994. KPTC preferred an appeal before the State Commission. The State Commission by its Order dated 19th June, 1997 allowed the appeal on the ground that the complainant was not a consumer within the meaning of Section 2(1)(d) of the Act, 1986 and consequently, it set aside the order of the District Forum. Aggrieved by the order of the State Commission, the complainant preferred Revision before the National Commission. The Revision Application came to be dismissed as the complainant was not present and also because the National Commission was satisfied with the order passed by the State Commission. This appeal arises from the Order dated 1st December, 2000, passed by the National Commission.

27. In view of the discussion already made by us above while dealing with contentions (ii) and (iii) in Civil Appeal No. 1879/2003, it has to be held that the complaint by H.V. Balchandra Rao is covered under Section 2(1)(d)(i)(ii) of the Act, 1986.

28. For the foregoing reasons:

(1) Civil Appeal No. 1879/2003 is dismissed; the order dated 7th October, 2002 passed by National Consumer Disputes Redressal Commission and the Order of Karnataka State Consumer Redressal Commission passed on 15th June, 1995 are affirmed and, accordingly, the complaint stands remitted to District Forum for its disposal in accordance with law.



- (2) Civil Appeal No. 7748/2002 is allowed and the  
Order dated 1st December, 2000 passed by  
National Consumer Disputes Redressal

Commission and the Order dated 19th June, 1997 passed by Karnataka State Consumer Disputes Redressal Commission are set aside. Appeal No. 168/1994 is restored to the file of Karnataka State Consumer Disputes Redressal Commission for its disposal in accordance with law.

- (3) The parties shall bear their own costs.

.....J.  
(MARKANDEY KATJU)

.....J.  
(R.M. LODHA)

New Delhi  
February 9, 2009