

RESERVED

State Consumer Disputes Redressal Commission
U.P., Lucknow.

Appeal No.242 of 2007

U. P. Power Corporation Ltd., through
its Dy. General Manager, EUDD-I,
Town Hall, Muzaffar Nagar.

..... Appellant.

Versus

S.K. Tyagi,
S/o Sri Ishwar Chand Tyagi,
R/o Aadarsh Colony,
Muzaffar Nagar.

.....Respondent.

Present:-

- 1- Hon'ble Sri A.K. Bose, Presiding Member.
- 2- Hon'ble Sri Jugul Kishore, Member

Sri Isar Husain, Ld. counsel for the appellant.
None for the Respondent.

Date 10.12.2013

Per Hon'ble Sri A.K. Bose, Presiding Member.

JUDGMENT

Aggrieved by the judgment and order dated 15.12.2006 passed by the Ld. District Consumer Disputes Redressal Forum, Muzaffar Nagar in Complaint Case No.299 of 2005, the appellant has preferred this appeal under Section 15 of the Consumer Protection Act, 1986 (Act 68 of 1986) on the ground that the learned Forum below has erred in law and fact in deciding the complaint which has resulted in miscarriage of justice. It has also been alleged that the said judgment and order is illegal, arbitrary and against the provision of law and is based on




15/12/2013



(2)

surmises and conjunctures and no cogent reason has been assigned by the Forum for passing the aforesaid order. The Forum did not consider the facts and evidence available on record and passed the aforesaid order without applying its judicial mind and, therefore, it has been prayed that the same be set aside in the interest of justice.

Admittedly, the matter relates to theft of electricity by the respondent. The checking report is on record bearing running page No.24. The premises of the respondent was checked by a raiding party on 20.11.2004 and it was found that the respondent had tampered with the electricity meter. Accordingly, an assessment was made and the respondent deposited a part of the compounding fees. Therefore, the matter relates to theft and assessment of electricity and the Forum below had no jurisdiction to deal with the matter. The Hon'ble Apex Court has held in Civil Appeal No.5466 of 2012 U.P. Power Corporation Ltd. Vs. Anis Ahmad that "by virtue of Section 3 of the Consumer Protection Act, 1986 or Sections 173, 174 and 175 of the Electricity Act, 2003, the Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made under Section 126 or offence under Sections 135 to 140 of the Electricity Act, as the acts of indulging in "unauthorized use of electricity" as defined under Section 126 or committing offence under Sections 135 to 140 do not fall within the meaning of 'complaint' as defined under Section 2(1)(c) of the Consumer Protection Act, 1986. In view of the ruling laid down by the Hon'ble Apex Court, we are of the


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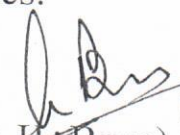
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considered view that the Forum below erred in law in partially allowing the complaint No.299 of 2005. The impugned judgment and order being against the provisions of law cannot be allowed to sustain. Accordingly, the appeal succeeds.

ORDER

The appeal is allowed and the impugned order dated 15.12.2006 passed in complaint case No.299 of 2005 by the Ld. DCDRF, Muzaffar Nagar is set aside.

No order as to costs. Copy of the judgment be provided to the parties in accordance with the rules.


(A.K. Bose)
Presiding Member


(Jugul Kishore)
Member

Jafri
ST G-1
Court No.3