

UNIT 17

TORTS AND CONSUMER COMPENSATION

17.1 Background

The appropriate Commission is empowered to specify the Standards of performance of licensee¹ If a licensee fails to meet the standards specified he shall be liable to pay such compensation to the person affected as may be determined by the IRC. However before determination of compensation, the concerned licensee shall be given a reasonable opportunity of being heard. It is also provided that the concerned licensee within ninety days of such determination. This is forward looking provision and would help in ensuring electricity supply of right quality to the consumer.

However besides this there are various other remedies which are available to the consumer, which we will discuss in brief in this chapter.

17.2 Lok Adalats

17.2.1 Concept

Article 39A of the Constitution provides that the state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that the opportunities for securing justice are not denied in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

To achieve the abovementioned objective and to provide free legal aid it was considered desirable to have an institution for the disposal of cases expeditiously and without much cost. The Legal Services Authorities Act, 1987 was enacted to fulfill the desirable.

¹ Section 57 of the Electricity Act 2003

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The Legal Services Authorities Act, 1987 besides other institution provides for creation of lok Adalats for quick disposal of Cases including Electricity related disputes.

17.2.1 Powers of Lok Adalat

Lok Adalats are vested with the power of civil Court under the Code of Civil Procedure. It is empowered to summon and enforce the attendance of any witness, to discover and produce any document, to receive evidence on affidavits, to requisite any public record or document or copy of such record or document or copy of such record or document from any court of law and or office.

17.2.2 Permanent Lok adalat for Electricity disputes

By virtue of section 22B of the Legal services Authorities Act 1987, permanent lok adalats for exercising jurisdiction in respect of public utility services including supply of power and light can be established. For example in Delhi single judge, two permanent lok adalats have been established.

However permanent Lok Adalat will not have jurisdiction where the value of the dispute is more then rupee ten lakh. The peoples court are guided by the principles of natural justice, objectivity, fair play, equity, and other principles of justice, and are not bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act 1872. It is also provided that when the parties fail to reach at an agreement , the permanent lok adalat shall decide the case. However the dispute must not relater to any offence.

17.2.3 Conclusion

For Consumers the permanent Lok adalat is a good institution for quick disposal of cases. However by virtue of section 174 the electricity Act 2003 shall have over riding effect in case of a inconsistency between the electricity Act 2003 and The Legal services authorities Act 1987.

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17.3 Consumer Courts

The Consumer Protection Act 1986 tries to help a consumer when the power supplied is subject to deficiency. Its main objective is better protection of the interest of consumer and as far as possible quick disposal of the cases.

Under The Consumer Protection Act 1986 three Consumer dispute redressal agencies have been established. The agencies set up are-

- Consumer Dispute redressal forum(District Forum)
- Consumer dispute redressal Commission(State Forum)
- National Consumer Dispute Redressal Commission(National Commission)

Pecuniary jurisdiction of the District forum is rupee five lakhs. In case of the state Commission it extends from five lakhs to twenty lakhs and any claim which exceeds rupee twenty lakhs shall fall under the jurisdiction of the National Commission.

The consumer within the Consumer Protection act means any person who either –

- Buys any goods for consideration , or
- Hires or avails of any services for a consideration.

Definition of service² includes supply of electricity or other energy. This does not include any service free of charge or under a contract of personal service. Deficiency³ means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under the 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.

The Electricity agencies have in many cases held that the supply of electricity was deficient. Some of the common complaints include-

- Voltage fluctuation⁴
- Installation of totally stopped meter⁵
- Defective meter⁶

² Section 2(1)O of the Consumer Protection Act 1986

³ Section 2(1)G of the Consumer Protection Act 1986

⁴ Travencore Oxygen limited vs Kerala state Electricity Board I(1997)C.P.J. 17 (N.C.)

⁵ Rajasthan State electricity Board vs Mohammad Usuf III(1995)C.P.J. 433(Raj.SCDRC)

⁶ Gita Rani Chakroborty vs West Bengal Electricity Board I (1997)CPJ 450(WB S.C.D.R.C)

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- Illegal disconnection⁷
- Wrongful disruption⁸

The forum has held the above complaints to fall within the definition of deficiency of service. They have also been effective in many cases to provide appropriate commission to the aggrieved party.

17.4 National Human Rights Commission

Recently a Man Stepped on Live Wire and Got Electrocuted in Bihar, The National Human Rights Commission ordered interim compensation for the widow⁹.The judgment reads as follows - Satyabrat Narain Singh was electrocuted and died when he came into contact with a live electric wire lying on the ground in Patna. The widow of the deceased approached the Bihar State Electricity Board (BSEB) for compensation, but the Board denied her relief, despite the fact that the Apex Court had awarded compensation in a similar case. The BSEB attributed the electrocution and death of Shri Singh to a 'natural calamity' and an 'act of God', as they claimed that the wire had been broken during a recent storm. The widow then appealed to the National Human Rights Commission as she and her minor sons were on the verge of starvation.

The Commission asked for reports from the Secretary of the BSEB and from the Home (Police) Department, Government of Bihar. The reports confirmed the facts of the case and restated that the BSEB could not be held liable for the death.

The Commission found that the BSEB defense was based on flimsy and untenable grounds. The obligation to take 'due care' and the consequences of 'negligence' have been detailed in a number of cases, such as *Manohar Lal Sobha Ram Gupta vs. M.P. Electricity Board (1975 ACJ 494)*. The principle of strict and absolute liability had also been laid down by the Supreme Court of India, in the *Sriram Gas Case*, regarding the operation of all inherently dangerous activity. The Commission also criticized the 'act of God' defense, stating that there is no indication that the storm caused the wire to break, nor material to show that the storm was of such unprecedented intensity that it's

⁷ Haryana state Electricity Board vs Naresh Kumar II (1996)C.P.J 306 (N.C.)

⁸ Haryana State electricity Board vs T.R. Poltry farmsII(1996) C.P.J.15(N.C)

⁹ www.Nhrc.nic

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hazards to safety could not have been foreseen. Electric lines, due to their hazardous nature, are expected to be installed in such a way as to withstand the vagaries of nature. If all precautionary measures fail, it still remains the duty of the Board to protect the public, either by switching off the power or by removing the wire.

The Commission has therefore asked the Government of Bihar to pay Rs. 2 lakhs to the widow of the deceased as immediate interim relief. It has also asked the BSEB to conduct an inquiry into the incident and take appropriate measures against concerned officials. The Commission has also asked the BSEB to frame regulations and guidelines to prevent such incidents from recurring.

17.5 Conclusion

The Lok Adalts, Consumer forum, and National Human Rights Commission have played an enabling role by providing remedy to the aggrieved person but the amount of compensation it is thought by some legal expert is very low if we compare the same with other democratic countries. This kind of nominal compensation only gives some consolation to the victim but does not provide any deterrent to the Power utility.

However recently strong action by the Delhi High court in the Uphar Cinema case, Where the Court provided that the DVB is also liable for proper maintenance of the distribution system and the same had to pay over Rs 3 crore paid as compensation. This may set a precedent at the national level for more rational and exemplary compensation for the aggrieved.

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