



C A No. Applied For
Complaint No. 361/2023

In the matter of:

Suman & OthersComplainant

VERSUS

BSES Yamuna Power LimitedRespondent

Quorum:

1. Mr. P.K. Singh, Chairman
2. Mr. Nishat Ahmed Alvi, Member (CRM)
3. Mr. P.K. Agrawal, Member (Legal)
4. Mr. S.R. Khan, Member (Technical)

Appearance:

1. Mr. Imran Ul Haq Siddiqi, Counsel of the complainant
2. Ms. Ritu Gupta & Mr. Akshat Aggarwal, On behalf of BYPL

ORDER

Date of Hearing: 09th April, 2024
Date of Order: 12th April, 2024

Order Pronounced By:- Mr. Nishat A Alvi, Member (CRM)

1. Present complaint is against transfer of dues of disconnected connection, interalia, on the live connections of the present consumers/complainant's, on pro-rata basis. As per complainants OP is not legally entitled to transfer the same at this stage, since it did not raise issue of pending dues at the time of release of respective new connections, under consideration. OP pleads that the said connections were got released on premises no. 49/2-D/3, which was previously numbered as 507. Consumers by playing fraud of concealing old

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CGRF (BYPL)

numbers got the said connections released on new number. It is the only reason that OP could not identify the premises of disconnected connection and raise the demand. This fact of changed number came to light only when OP's official found a name plate, of one Suman in the said premises, showing old address as 507. Immediately the pending dues of disconnected connection were transferred on all connections energized in the subject premises, on pro-rata basis. Hence OP is legally entitled to claim the same.

The matter was fixed for arguments. At this stage OP apprised this Forum that one of the affected consumers namely Shakuntala Devi has filed a suit for declaration, which is pending adjudication before Civil Court vide suit no. 1149/23. OP claims that since a suit on the same subject matter is pending before another court, this Forum is barred to entertain the present complaints. Hence, the same be dismissed as not maintainable. In the facts and circumstances decision on this preliminary issue of maintainability of present complaint is must prior to going into the merits of the complainant. In support of its contention OP has referred Regulation 13 of DERC (Forum for Redressal of Grievances of the Consumers and Ombudsman) REGULATIONS, 2018, which says

13. Limitation of Jurisdiction of the Forum


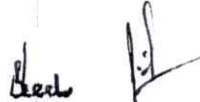
(1) The Forum shall not entertain a grievance if it pertains to the same subject matter for which any proceedings before any court, authority or any other Forum is pending or a decree, award or a final order has already been passed by any competent court, authority or forum.

On the basis of above Regulation OP claims that since same subject matter is pending in another court this Forum is barred to entertain the present complaint.

On the other hand complainant argues that this bar of pendency of case relate only at the time of filing/admitting of complaint. While the suit before Civil Court is filed much later than this complaint. Hence the bar under Regulation 13 does not apply in the present case.

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OP also states that there is no such bar on Civil Court to entertain present suit in the presence of present complaint and if the complaint is allowed to be continued, there shall be problem of enforceability of its order as Civil Court shall also pass its order on the same subject matter.


Heard both the parties on this preliminary issue and perused the record as well as Regulation 13.

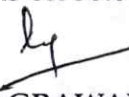
For determination of this controversy timing to entertain the complaint is to be understood. In this respect we have also gone through the complaint Performa. This Performa is given at the time of filing of complaint which seeks an undertaking from the complainant that no other case or same subject matter is pending before or decided by, any other Court. This fact supports the contentions that this bar relates to the timing of filing of complaint in this Forum and not later on. To our understanding the legislature has put this bar to avoid multiplicity of cases as OP is also afraid of. But OP is misinterpreting the word entertain which means admitting the complaint and not continue the complaint after admission.


Further if the timing of entertaining a complaint before Forum is interpreted during entire proceedings of the Forum, there shall be a chos and entire functioning of the Forum can come to a standstill any time of proceedings the very moment if another case on the same subject matter is filed in another Court during the proceedings of this Forum also. This shall certainly be against the principles of natural justice.

Accordingly, we don't find any merit in the plea of OP that present complaint is barred in the event of Suit filed in another Court subsequently. Hence, Regulation 13 aforesaid is not applicable in the present case. The preliminary issue of maintainability of complaint is decided in favour of the complainant and against the OP.

Put up for arguments on 30.04.2024.


(NISHAT A ALVI)
MEMBER (CRM)


(P.K. AGRAWAL)
MEMBER (LEGAL)


(S.R. KHAN)
MEMBER (TECH.)


(P.K. SINGH)
CHAIRMAN

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