

CASE LAWS ON ELECTRICITY

SAPNA CHADAH

Assistant Professor

Indian Institute of Public Administration

New Delhi



**INDIAN INSTITUTE OF PUBLIC ADMINISTRATION
NEW DELHI**

Consumer Case Laws Series –2

Series Editors :

S.S. Singh

Rakesh Gupta

Sapna Chadah

© Indian Institute of Public Administration, New Delhi
2005

Price Rs. 100/-



Published under aegis of consultancy assignment. Promoting Involvement of Research Institutions/Universities/Colleges, etc., in Consumer Protection and Consumer Welfare

Sponsored by : The Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, Government of India.

Published by Indian Institute of Public Administration, New Delhi and Printed at New United Process, A-26, Naraina Industrial Area, Ph-II, New Delhi, Ph. 25709125

PREFACE

Electricity is an essential requirement in all facets of our life. It has become a basic need. Continuous, reliable and quality supply to all consumers whether it is general public, big industrial unit or a rural agriculturist is must for the socio-economic upliftment of the nation and to maintain quality of life. This service sector has made significant contribution in the growth of our economy, industrialization and betterment in the life style. Availability of quality and sustained supply of electricity is crucial for sustained growth. Reform in the power sector is no doubt challenging but it is one of the priorities of the present government.

The State Electricity Board (SEBs) and Electricity Departments are responsible for generation, transmission, supply and distribution of electric power. They are in the service of consumers from around five decades. SEBs have established a monopoly over this service sector leading to corruption, inefficiency and exploitation of consumers. What the consumer expects from the public utility service provider is quality, efficient and hassle free service. There must be simple and transparent procedure for allotting connection, good quality power supply, rectification of fault/breakdown at the earliest, efficient prompt billing system, proper and transparent method of tariff fixation and speedy redressal of disputes.

The Consumer Protection Act, 1986 has provided an efficient and effective tool in the hands of the consumers to fight for their rights. It not only covers matters relating to goods but also applies to deficiencies in services. 'Electricity' being one of the services covered under the CPA, the consumer has power to file complaint against any kind of deficiency in service on the part of Electricity Board. The District Forums, State Commissions and National Commission - the three tier redressal mechanism under CPA has in a number of cases rescued the harassed electricity consumers. They have provided quick and cost effective justice to the consumers in case of undue delay in release of connection, excessive billing, defective meters, illegal disconnection, voltage fluctuation, tariff related grievances etc.

The present work is a brief compilation of the judgments delivered by the Supreme Court and the National Commission on various grievances of the consumers of electricity. This brings a summary of leading consumer cases relating to various kinds of deficiencies in the electricity sector in the period between 1995-2005. It is hoped that this series of case law compilation on Electricity will prove to be useful for Bench, Bar, Consumer Related Organisations, Researchers, Students and general public at large.

I am indeed grateful to the Department of Consumer Affairs, Government of India particularly Shri L. Mansingh, Secretary, for his trust and confidence in the Institute and

Mrs. Alka Sirohi, Additional Secretary, for her guidance and encouragement. I am also thankful to Mrs. Rinchen Tempo, Joint Secretary for her active support, help and advice. My thanks are also due to other officials of the Department especially Shri G.N. Sreekumaran, Director, (CWF) and other members of the Evaluation Committee and Monitoring Committee respectively.

I express my heartfelt thanks to the management of IIPA especially His Excellency Shri T.N. Chaturvedi, Governor of Karnataka and Chairman, Executive Council, Dr. K. Malaisamy, Chairman Standing Committee and Shri B.C. Mathur, Honorary Treasurer, IIPA, for their keen interest, encouragement and constructive suggestions. Dr. P.L. Sanjeev Reddy, Director, IIPA has always been supportive and helping. I am indeed thankful to him. I am also thankful to Shri Sunil Dutt, Publication Officer, for his keen interest in the publication of the series.

Before concluding I want to express my sincere gratitude to Prof. Dr. S.S. Singh, Project Director and Shri Rakesh Gupta, Associate Project Director, without their interest, guidance and continuous support this edition would not have come in this form. I am also thankful to Shri Manohar Chauhan, IIPA Library, Shri Abhinav Walia, Shri Nitesh Arora and other secretariat staff working in the project for their willing support and help.

Sapna Chadah

LIST OF CASES (Subjectwise)

	PAGE
Preface	iii
1. Delay in allotment /release of power connection	
Alacrity Foundations (Pvt.) Ltd. v. The Chairman, Tamil Nadu Electricity Board I (1995) CPJ 237 (NC)	172
Assistant Engineer, Jaipur Vidyut Vitran Nigam & Ors v. Bodan Ram IV (2003) CPJ 101 (NC)	38
Genetic Industrial Gases (P) Ltd. v. The U.P. State Electricity Board & Ors.II (1995) CPJ 176	164
Haryana State Electricity Board v. Bachan Singh III (1996) CPJ 79 (NC)	126
Jaipur Vidyut Vitran Nigam Ltd. v. Lila Ram IV (2005) CPJ 1 (NC)	8
Maharashtra State Electricity Board v. K.L. Ramani 1995(1) CPR 334(NC)	182
P.J. Thomas v. Kerala State Electricity Board II (1995) CPJ 56 (NC)	168
Panchayati Akhara Nirmla v. Punjab State Electricity Board &Ors. I (2003) CPJ 77 (NC)	69
Punjab Electricity Board v. Pritpal Singh & Ors. II (2003) CPJ 14 (NC)	57
Punjab State Electricity Board & Ors v. Tek Bahadur Singh I (2004) CPJ 125 (NC)	25
Punjab State Electricity Board Ltd. v. Zora Singh & Ors. III (2005) CPJ 35 (SC)	10
Punjab State Electricity Board & Ors. v. Zora Singh & 70 Ors. III (2003) CPJ 169 (NC)	47
U.P. State Electricity Board & Ors. v. Mona Confectionery Industries I (1996) CPJ 98 (NC)	155
2. Reduction / addition in Load	
Ashok Kumar v. SDO, Haryana Vidyut Parasaran Nigam Ltd & Anr. IV (2003) CPJ 57 (NC)	42

	PAGE
Executive Engineer, O & M, Tamil Nadu Electricity Board & Ors. v. K.R. Mani III (1995) CPJ 46 (NC)	159
Malee Horticulture Pvt. Ltd. v. Chairman, M.S.E.B. & Ors. III (2003) CPJ 81 (NC)	51
Rasi Engineering Works v. Commissioner, Coimbatore Corporation III (1995) CPJ 15 (NC)	161
3. Loss due to voltage fluctuations / power cuts/ interrupted / inadequate power supply	
Jaya Shree Insulators v. West Bengal State Electricity Board III (2002) CPJ 67 (NC)	83
Kanchenjunga Chemicals Ltd. v. U.P. State Electricity Board & Ors. I (1995) CPJ 138 (NC)	176
Kerala State Electricity Board v. Raveendran IV (2003) CPJ 105 (NC)	36
M/s Kailash Chand Jain, Managing Director, M/s. Saraogi Oxygen Ltd. v. Bihar State Electricity Board & Ors. 2002(3) CPR 284(NC)	87
Raghuwar Cold Storage (P) Ltd. v. U.P. Power Corporation Ltd. & Others IV (2004) CPJ 78 (NC)	18
Sagar Rolling and Forgings and Ors. v. Maharashtra State Electricity Board I (2003) CPJ 156 (NC)	61
Travancore Oxygen Limited v. Kerala State Electricity Board I (1997) CPJ 17 (NC)	120
4. Problems relating to billing	
Gwalior Ice Factory v. M.P. Electricity Board III (2002) CPJ 262 (NC)	80
Jaipur Vidyut Vitaran Nigam Ltd v. Smt. Sharda Devi IV (2003) CPJ 7 (NC)	43
K.D. Sebastian v. The Electrical Inspector, Kerala State Electricity Board & Ors. II (2002) CPJ 2 (NC)	92
Karnataka Electricity Board now known as Karnataka Power Transmission Corporation v. Dr. M. S. Shankar Bhat III (2002) CPJ 312 (NC)	75
Maharashtra State Electricity Board v. M/s. Swastik Industries III (1996) CPJ 71 (NC)	128

Ram Niwas Parashar v. Rajasthan State Electricity Board, Jaipur 2003 (1) CPR 193 (NC)	71
S.D.O, Haryana State Electricity Board v. Amrit Singh I (2002) CPJ 16 (NC)	94
Sadhan Mukerjee v. CESC Ltd. II (2003) CPJ 23 (NC)	55
Secretary, Kerala State Electricity Board & Anr. v. Hotel Maria I (2003) CPJ 101 (NC)	67
5. Damage due to electrocution / sparking /short circuit	
Assistant Executive Engineer, Sub Division No. 11, Karnataka State Electricity Board & Ors. v. Neelakanta Gouda Siddana Gouda Patil III (2002) CPJ 312 (NC)	74
Haryana State Electricity Board & Anr. v. Anand Medicos & Anr. III (2003) CPJ 175 (NC)	45
Haryana State Electricity Board v. Rattan Lal III (2002) CPJ 138 (NC)	82
Haryana State Electricity Board v. Smt. Ganga Devi 1997 (1) CPR 20(NC)	125
Karnataka State Electricity Board v. Smt. Sharavva & Ors. III (2002) CPJ 269 (NC)	78
6. Disruption of electricity for long durations	
Kamla Prasad Tiwari v. Junior Engineer IV (2003) CPJ 108 (NC)	34
Municipal Corporation of Delhi (DESU) v. Capt. V.K. Ramchandani 1995 (1) CPR 677 (NC)	184
Shree Kumar Textiles Pvt. Ltd. v. Tamil Nadu Electricity Board & Ors III (2004) C P J 23 (NC)	22
7. Meters related grievances	
Bombay Electric Supply & Transport Undertaking v. Laffans (I) Pvt.Ltd & Anr. II(2005) CPJ 6(SC)	13
Haryana State Electricity Board v. Tanuj Rashi Poultry Farm II (1996) CPJ 15 (NC)	144
Kailash Narain Khanna & Anr. v. The U.P. State Electricity Board & Ors.1996(3) CPR 47(NC)	133
Kamlesh Gaur & Ors. v. D.E.S.U. III (1996) CPJ 9 (NC)	131

	PAGE
M.P. Electricity Board v. Baboo Lal II (1995) CPJ 132 (NC)	166
NeelKamal Industries v. M.P. Electricity Board III (2002) CPJ 278 (NC)	76
P.S.E.B. Mohali v. Guriqbal Singh Batra 2002(3) CPR 173(NC)	89
Ruby Mushroom & Canning Pvt. Ltd. v. Punjab State Electricity Board IV (2005) CPJ 252 (NC)	3
8. Restoration of Connection	
P. Jagadeesan v. Tamil Nadu Electricity Board I (1998) CPJ 1 (NC)	109
Uttaranchal Power Corporation Ltd. v. Heera Ballabh Pant III (2004) CPJ 73 (NC)	20
9. Complaints regarding refunds	
Faquir Chand v. S.D.O. (OP) Sub Division, HVPN I (2003) CPJ 260 (NC)	59
Girish Kumar Balubhai Choksi v. State of Gujarat through Chief Secretary II (1999) CPJ 52 (NC)	99
Haryana State Electricity Board v. Bhagwat Prasad I (2005) CPJ 104 (NC)	16
Jaipur Vidyut Viteran Nigam Ltd. & Anr. v. Ashok Oil Industries 2001 (3) CPR 102(NC)	97
The Assistant Executive Engineer (O&M), Chennai v. A.G. Swaminathan 2002 (3) CPR 224 (NC)	88
10. Reasonableness of service line charges	
Maharashtra State Electricity Board v. Sheshrao Ajabrao Sherkar 1995 (2) CPR 106 (NC)	170
Maharashtra State Electricity Board v. Sheshrao I (1998) CPJ 94 (NC)	107
11. Illegal disconnection	
Haryana State Electricity Board v. Naresh Kumar I (1996) CPJ 306 (NC)	148
Rajasthan State Electricity Board & anr. v. Ramrikh Vyas II (1996) CPJ 245 (NC)	138
12. Theft/ unauthorized load / unauthorized connection	
C.E.S.C Ltd v. Smt. Sumita Pal III (1997) CPJ 116 (NC)	113

Guru Nanak Plastic Industries v. Chairman, Rajasthan State Electricity Board IV (2003) CPJ 89 (NC)	40
Haryana State Electricity Board v. Laxman Singh I (1995) CPJ 234 (NC)	174
Ram Chander v. Sub-Divisional Officer (OP) DHBVNL Rewari II (2003) CPJ 120 (NC)	53
13. Complaints regarding substitution of name	
Asstt. Accounts Officer, GT/M.E.D.C./ Central & Anr v. M.R. Murali I (1995) CPJ 39 (NC)	180
Swapan Kumar Babu & Anr. v. Suniti Chattaraj & Anr. 1997(1) CPR 96(NC)	123
14. Complaints with respect to shifting/ clubbing of connections	
Ajmer Vidhyut Vitaran Nigam Ltd & Ors. v. Indraj IV (2003) CPJ 110 (NC)	32
Haryana State Electricity Board v. Jai Forging & Stampings (P) Ltd., Yamuna Nagar II (1996) CPJ 148 (NC)	141
15. Complaints relating to concessional tariffs/ rebate benefits	
M/s Evershine Marbles Pvt. Ltd. v. Rajasthan State Electricity Board & Ors. II (1999) CPJ 6 (NC)	102
Real Food Products Ltd. & Ors. v. A.P. State Electricity Board & Ors. II (1996) CPJ 21 (SC)	135
16. Arrears due from earlier consumer / benami connection	
Amit Products (India) Ltd. v. Chief Engineer (O & M) Circle & Anr. IV (2005) CPJ 30 (SC)	1
Haryana State Electricity Board v. Dev Raj Vinayak I (1995) CPJ 124 (NC)	178
Rajasthan State Electricity Board v. MEC Shotblasting Equipment Pvt. Ltd. II (1997) CPJ 62 (NC)	116
17. Others	
Complaint for shifting of H.T. Line	
Chairman Tamil Nadu Electricity Board & Ors. v. M. Abdul Hameed I (1996) CPJ 312 (NC)	146

	PAGE
Intentional malicious act	
R.R. Gopal @ R. Rajagopal v. The Chairman, Tamil Nadu Electricity Board I (1996) CPJ 143 (NC)	151
Disconnection due to non payment of bills	
Radharani Chemicals Pvt. Ltd. v. Chairman, Grid Corporation of Orissa & Anr. I (2003) CPJ 140 (NC)	63
Change of Tariff plan	
S. Kulandairajan v. Junior Engineer, Rural/North, Tamil Nadu Electricity Board & Anr. III (2002) CPJ 51 (NC)	85
Complaint regarding payment of Bay Charges	
Sandila Metal Wires (P) Ltd. v. Chairman, U.P. State Electricity Board & Ors. II (1998) CPJ 27 (NC)	105
Complaint regarding payment o Minimum Charges	
Santokh Singh v. Punjab State Electricity Board IV (2003) CPJ 146 (NC)	28
Outstanding Dues	
Shankar Sah v. Electrical Executive Engineer IV (2005) CPJ 178 (NC)	6
Misuse of Connection	
Vivek Thakur v. Karam Singh Banyal & Ors.III (2003) CPJ 168 (NC)	50
Miscellaneous	
Guru Charan Dass v. AEE, Electricity Department & Ors. IV (2003) CPJ 138 (NC)	30
Jai Kumar & Anr. v. U.P.S.C.D.R.C. & Ors.2001 (3) CPR 187 (NC)	98
Jaidev Agarwal v. Haryana State Electricity Board & Anr. II (1997) CPJ 117 (NC)	111
M/s. Doneria Iron & Steel v. The Chairman, UPSEB Power Corporation & Ors.2002 (3) CPR 156 (NC)	91
NEPA Ltd. v. Madhya Pradesh Electricity Board I (2003) CPJ 138 (NC)	65
Punjab State Electricity Board, Patiala & Anr. v. M/s New Pal Textiles 2002 (1) CPR 56 (NC)	95
S.A. Raja v. Tamil Nadu Electricity Board & Ors. III (2002) CPJ 322 (NC)	72

LIST OF CASES

(Alphabetical order)

	PAGE
Judgments of Supreme Court	
Amit Products (India) Ltd. v. Chief Engineer (O & M) Circle & Anr. IV (2005) CPJ 30 (SC)	1
Bombay Electric Supply & Transport Undertaking v. Laffans (I) Pvt.Ltd & Anr. II(2005) CPJ 6(SC)	13
Punjab State Electricity Board Ltd. v. Zora Singh & Ors. III (2005) CPJ 35 (SC)	10
Real Food Products Ltd. & Ors. v. A.P. State Electricity Board & Ors. II (1996) CPJ 21 (SC)	135
Judgments of National Commission	
Ajmer Vidhyut Vitaran Nigam Ltd & Ors. v. Indraj IV (2003) CPJ 110 (NC)	32
Alacrity Foundations (Pvt.) Ltd. v. The Chairman, Tamil Nadu Electricity Board I (1995) CPJ 237 (NC)	172
Ashok Kumar v. SDO, Haryana Vidyut Parasaran Nigam Ltd & Anr. IV (2003) CPJ 57 (NC)	42
Assistant Engineer, Jaipur Vidyut Vitran Nigam & Ors v. Bodan Ram IV (2003) CPJ 101 (NC)	38
Assistant Executive Engineer, Sub Division No. 11, Karnataka State Electricity Board & Ors. v. Neelakanta Gouda Siddana Gouda Patil III (2002) CPJ 312 (NC)	74
Asstt. Accounts Officer, GT/M.E.D.C./ Central & Anr v. M.R. Murali I (1995) CPJ 39 (NC)	180
C.E.S.C Ltd v. Smt. Sumita Pal III (1997) CPJ 116 (NC)	113
Chairman Tamil Nadu Electricity Board & Ors. v. M. Abdul Hameed I (1996) CPJ 312 (NC)	146
Executive Engineer, O & M, Tamil Nadu Electricity Board & Ors. v. K.R. Mani III (1995) CPJ 46 (NC)	159
Faquir Chand v. S.D.O. (OP) Sub Division, HVPN I (2003) CPJ 260 (NC)	59

	PAGE
Genetic Industrial Gases (P) Ltd. v. The U.P. State Electricity Board & Ors. II (1995) CPJ 176 (NC)	164
Girish Kumar Balubhai Choksi v. State of Gujarat through Chief Secretary II (1999) CPJ 52 (NC)	99
Guru Charan Dass v. AEE, Electricity Department & Ors.IV (2003) CPJ 138 (NC)	30
Guru Nanak Plastic Industries v. Chairman, Rajasthan State Electricity Board IV (2003) CPJ 89 (NC)	40
Gwalior Ice Factory v. M.P. Electricity Board III (2002) CPJ 262 (NC)	80
Haryana State Electricity Board & Anr. v. Anand Medicos & Anr. III (2003) CPJ 175 (NC)	45
Haryana State Electricity Board v. Bachan Singh III (1996) CPJ 79 (NC)	126
Haryana State Electricity Board v. Bhagwat Prasad I (2005) CPJ 104 (NC)	16
Haryana State Electricity Board v. Dev Raj Vinayak I (1995) CPJ 124 (NC)	178
Haryana State Electricity Board v. Jai Forging & Stampings (P) Ltd., Yamuna Nagar II (1996) CPJ 148 (NC)	141
Haryana State Electricity Board v. Naresh Kumar I (1996) CPJ 306 (NC)	148
Haryana State Electricity Board v. Rattan Lal III (2002) CPJ 138 (NC)	82
Haryana State Electricity Board v. Smt. Ganga Devi 1997 (1) CPR 20(NC)	125
Haryana State Electricity Board v. Tanuj Rashi Poultry Farm II (1996) CPJ 15 (NC)	144
Haryana State Electricity Board v. Laxman Singh I (1995) CPJ 234 (NC)	174
Jai Kumar & Anr. v. U.P.S.C.D.R.C. & Ors.2001 (3) CPR 187 (NC)	98
Jaidev Agarwal v. Haryana State Electricity Board & Anr. II (1997) CPJ 117 (NC)	111
Jaipur Vidyut Vitaran Nigam Ltd v. Smt. Sharda Devi IV (2003) CPJ 7 (NC)	43
Jaipur Vidyut Viteran Nigam Ltd. & Anr. v. Ashok Oil Industries 2001 (3) CPR 102(NC)	97
Jaipur Vidyut Vitran Nigam Ltd. v. Lila Ram IV (2005) CPJ 1 (NC)	8
Jaya Shree Insulators v. West Bengal State Electricity Board III (2002) CPJ 67 (NC)	83

K.D. Sebastian v. The Electrical Inspector, Kerala State Electricity Board & Ors. II (2002) CPJ 2 (NC)	92
Kailash Narain Khanna & Anr. v. The U.P. State Electricity Board & Ors.1996(3) CPR 47(NC)	133
Kamla Prasad Tiwari v. Junior EngineerIV (2003) CPJ 108 (NC)	34
Kamlesh Gaur & Ors. v. D.E.S.U. III (1996) CPJ 9 (NC)	131
Kanchenjunga Chemicals Ltd. v. U.P. State Electricity Board & Ors. I (1995) CPJ 138 (NC)	176
Karnataka Electricity Board now known as Karnataka Power Transmission Corporation v. Dr. M. S. Shankar Bhat III (2002) CPJ 312 (NC)	75
Karnataka State Electricity Board v. Smt. Sharavva & Ors. III (2002) CPJ 269 (NC)	78
Kerala State Electricity Board v. Raveendran IV (2003) CPJ 105 (NC)	36
M.P. Electricity Board v. Baboo Lal II (1995) CPJ 132 (NC)	166
M/s Evershine Marbles Pvt. Ltd. v. Rajasthan State Electricity Board & Ors. II (1999) CPJ 6 (NC)	102
M/s Kailash Chand Jain, Managing Director, M/s. Saraogi Oxygen Ltd. v. Bihar State Electricity Board & Ors.2002(3) CPR 284(NC)	87
M/s. Doneria Iron & Steel v. The Chairman, UPSEB Power Corporation & Ors.2002 (3) CPR 156 (NC)	91
Maharashtra State Electricity Board v. M/s. Swastik Industries III (1996) CPJ 71 (NC)	128
Maharashtra State Electricity Board v. K.L. Ramani 1995(1) CPR 334(NC)	182
Maharashtra State Electricity Board v. Sheshrao Ajabrao Sherkar 1995 (2) CPR 106 (NC)	170
Maharashtra State Electricity Board v. Sheshrao I (1998) CPJ 94 (NC)	107
Malee Horticulture Pvt. Ltd. v. Chairman, M.S.E.B. & Ors. III (2003) CPJ 81 (NC)	51
Municipal Corporation of Delhi (DESU) v. Capt. V.K. Ramchandani 1995 (1) CPR 677 (NC)	184

	PAGE
NeelKamal Industries v. M.P. Electricity Board III (2002) CPJ 278 (NC)	76
NEPA Ltd. v. Madhya Pradesh Electricity Board I (2003) CPJ 138 (NC)	65
P. Jagadeesan v. Tamil Nadu Electricity Board I (1998) CPJ 1 (NC)	109
P.J. Thomas v. Kerala State Electricity Board II (1995) CPJ 56 (NC)	168
P.S.E.B. Mohali v. Guriqbal Singh Batra 2002(3) CPR 173(NC)	89
Panchayati Akhara Nirmla v. Punjab State Electricity Board &Ors. I (2003) CPJ 77 (NC)	69
Punjab Electricity Board v. Pritpal Singh & Ors. II (2003) CPJ 14 (NC)	57
Punjab State Electricity Board & Ors v. Tek Bahadur Singh I (2004) CPJ 125 (NC)	25
Punjab State Electricity Board & Ors. v. Zora Singh & 70 Ors. III (2003) CPJ 169 (NC)	47
Punjab State Electricity Board, Patiala & Anr. v. M/s New Pal Textiles 2002 (1) CPR 56 (NC)	95
R.R. Gopal @ R. Rajagopal v. The Chairman, Tamil Nadu Electricity Board I (1996) CPJ 143 (NC)	151
Radharani Chemicals Pvt. Ltd. v. Chairman, Grid Corporation of Orissa & Anr. I (2003) CPJ 140 (NC)	63
Raghuwar Cold Storage (P) Ltd. v. U.P. Power Corporation Ltd. & Others IV (2004) CPJ 78 (NC)	18
Rajasthan State Electricity Board & anr. v. Ramrikh Vyas II (1996) CPJ 245 (NC)	138
Rajasthan State Electricity Board v. MEC Shotblasting Equipment Pvt. Ltd. II (1997) CPJ 62 (NC)	116
Ram Chander v. Sub-Divisional Officer (OP) DHBVNL Rewari II (2003) CPJ 120 (NC)	53
Ram Niwas Parashar v. Rajasthan State Electricity Board, Jaipur 2003 (1) CPR 193 (NC)	71
Rasi Engineering Works v. Commissioner, Coimbatore Corporation III (1995) CPJ 15 (NC)	161

Ruby Mushroom & Canning Pvt. Ltd. v. Punjab State Electricity Board IV (2005) CPJ 252 (NC)	3
S. Kulandairajan v. Junior Engineer, Rural/North, Tamil Nadu Electricity Board & Anr. III (2002) CPJ 51 (NC)	85
S.A. Raja v. Tamil Nadu Electricity Board & Ors. III (2002) CPJ 322 (NC)	72
S.D.O, Haryana State Electricity Board v. Amrit Singh I (2002) CPJ 16 (NC)	94
Sadhan Mukerjee v. CESC Ltd. II (2003) CPJ 23 (NC)	55
Sagar Rolling and Forgings and Ors. v. Maharashtra State Electricity Board I (2003) CPJ 156 (NC)	61
Sandila Metal Wires (P) Ltd. v. Chairman, U.P. State Electricity Board & Ors. II (1998) CPJ 27 (NC)	105
Santokh Singh v. Punjab State Electricity Board IV (2003) CPJ 146 (NC)	28
Secretary, Kerala State Electricity Board & Anr. v. Hotel Maria I (2003) CPJ 101 (NC)	67
Shankar Sah v. Electrical Executive Engineer IV (2005) CPJ 178 (NC)	6
Shree Kumar Textiles Pvt. Ltd. v. Tamil Nadu Electricity Board & Ors III (2004) CPJ 23 (NC)	22
Swapan Kumar Babu & Anr. v. Suniti Chattaraj & Anr. 1997(1) CPR 96(NC)	123
The Assistant Executive Engineer (O&M), Chennai v. A.G. Swaminathan 2002 (3) CPR 224 (NC)	88
Travancore Oxygen Limited v. Kerala State Electricity Board I (1997) CPJ 17 (NC)	120
U.P. State Electricity Board & Ors. v. Mona Confectionery Industries I (1996) CPJ 98 (NC)	155
Uttaranchal Power Corporation Ltd. v. Heera Ballabh Pant III (2004) CPJ 73 (NC)	20
Vivek Thakur v. Karam Singh Banyal & Ors.III (2003) CPJ 168 (NC)	50

**Amit Products (India) Ltd. v. Chief Engineer (O & M)
Circle & Anr.**

IV (2005) CPJ 30 (SC)

Facts

The appellant/complainant, Amit Products (India) Ltd. was a company incorporated in India and registered under the provisions of the Companies Act, 1956. It obtained Provisional Registration Certificate as a small-scale industry from the Director of Companies of Government of Maharashtra. The Director of the appellant company Shri Shridhar Nalekar filed an application for getting electricity connection, which was rejected by the respondent Maharashtra State Electricity Board (MSEB). MSEB insisted on clearance of all arrears of electricity charges payable by M/s Amar Amit Jalna Alloys Pvt. Ltd, which was the previous consumer. The appellant company contended that they were not liable to pay the electricity charges payable by M/s Amar Amit Jalna Alloys Pvt. Ltd. as the company was a distinct and separate entity, which had nothing to do with M/s Amar Amit Jalna Alloys Pvt. Ltd. However, MSEB rejected the contention and did not provide electricity to the appellant company.

Aggrieved with that the appellant company filed a writ petition before the Bombay High Court requesting for power supply to its factory contending that it is a separate company situated at a separate portion of the property and the insistence of the MSEB to pay the arrears of electricity charges to be payable by M/s Amar Amit Jalna Alloys Pvt. Ltd. and the refusal to give supply was arbitrary and violative of Articles 14 and 19 (1) (g) of the Constitution.

The matter was elaborately considered by the High Court of Bombay and it was held that the appellant company was seeking connection in respect of the same premises, by the same consumer, under the guise of separate corporate body and it was found that the appellant company was the very same corporate entity which committed default in paying the electricity charges earlier. Thus it was held by the Bombay High Court that the appellant company was not an independent entity having no concern with the previous defaulter.

Aggrieved, appellant company filed an appeal before the Supreme Court. The company contended that the directors and the shareholders of the company were different from that of the M/s Amar Amit Jalna Alloys Pvt. Ltd., they had nothing to do with the present company, the whole corporate entity has been changed and

the respondent MSEB was bound to give connection without insisting for the payment of electricity charges to be paid by M/s Amar Amit Jalna Alloys Pvt. Ltd.

Issue

The main issue involved in the case was whether the appellant company was the same corporate entity as M/s Amar Amit Jalna Alloys Pvt. Ltd. and liable to pay the previous electricity charges or was it a separate and distinct corporate entity having no previous liability?

Decision

The Supreme Court held that they were unable to accept the contention of the appellant company that by changing the members of the Board of Directors of the company or by changing the shareholding pattern, the company had undergone any change. The same company wanted the electricity connection without making any payment towards the electricity charges payable by the previous consumer. The matter was dealt in detail by the High Court and it was held that the appellant company was none other than the sister concern of M/s Amar Amit Jalna Alloys Pvt. Ltd. and was representing the same consumer who had committed the default and that Condition 23 (b) of the Conditions of Miscellaneous Charges for supply of electricity energy would apply to the appellant company. By change of directors or by change of pattern of the shareholding, the appellant company was not really a different entity from M/s Amar Amit Jalna Alloys Pvt. (India) Ltd. The reasons given in the previous judgment would apply with all force against the present appellant company and the High Court had rightly dismissed the writ petition filed by the appellant company.

The Supreme Court did not find any reason to interfere with the impugned judgment and the appeal was dismissed.

Appeal dismissed.

Ruby Mushroom & Canning Pvt. Ltd. v. Punjab State Electricity Board

IV (2005) CPJ 252 (NC)

Facts

The complainant/petitioner, Ruby Mushroom & Canning Pvt. Ltd, an agro based industry was involved in a project for growing of mushrooms and its canning. The project was financed by PFC, Chandigarh by giving a loan of Rs. 82.40 lakh which was later on increased to 109 lakh with half yearly interest @ 20%, 4% penal interest in case of default and $\frac{3}{4}$ % surcharge. The complainant firm applied for electric connection of 80 KW on 8.1.1993 along with deposit of Rs. 2,47,044/- towards service line charges, to the opposite party, PSEB. The connection was not released though it was mandatory on the part of the board to release it within two months from the date of deposit of money as per Sales Manual Instruction No. 26. Aggrieved by that, the complainant approached the Hon'ble High Court in Civil Writ Petition. Thereafter the opposite parties released the connection on 1.2.1995, i.e. virtually after two years of submitting the application.

The complainant alleged that due to grudge, the board installed a defective meter. The complainant brought the matter to the notice of the opposite parties in the middle of the year 1996 but without any result. The PSEB functionaries flouted even the mandatory instruction (Sales Manual Instruction No. 161), which made it obligatory to check at least once in every 6 months, all the industrial/bulk supply connections with more than 20 KW load. Finally, the complainant made a formal request on 14.2.1997 for meter testing along with required deposit of Rs. 250/- as Meter Challenge Fee, but no result emerged despite repeated personal visits by the complainant to the PSEB Office and issuance of reminders.

The complainant then filed a civil suit for getting the meter tested on 27.9.1997. Resultantly, a casual testing of the meter was done by a senior Executive Engineer (Enforcement Staff) of PSEB, Mohali on 30.9.1997 and the said checking was done only with regard to the 'rating capacity' of the meter. Despite the protest of the complainant, the testing of the meter by installing a parallel meter to check the alleged fast running of the meter was intentionally not done. Therefore, the complainant insisted before the trial court to get the meter checked from Meter Mobile Testing Squad against which the board contested that the same could be provided only at the cost of Rs. 3,650. The complainant deposited the said amount but alleged that the same was against the circular of the board and insisted for the

refund of the same. On 19.12.97, the Mobile Meter Testing Squad, Mohali undertook the testing of the meter through parallel meter methodology. As per the report the disputed meter was running fast by 161.84%. The complainant challenged that even this report was wrong as the relevant report gave the five 'test-readings', which should give an average of 163.36% instead of lower average of 161.84%.

The complainant further alleged that inspite of the detection of the error of fast running of the meter, the PSEB, failed to provide the necessary rebate/relief by prompt overhauling of his account from the date of installation of the defective meter till its testing despite repeated reminders. The meter of the complainant was changed twice but the new meters installed started creeping, thus, the old meter was again installed.

Since the rebate was not given to the complainant by overhauling his account, he did not make payment of the disputed bills. Then the PSEB, disconnected several times the electric connection of the complainant without issuance of mandatory 7 days' prior notice followed by a total disconnection on 5.1.99 resulting in stoppage of the factory and total ruin of the complainant's business, with a staggering liability of almost 140 lakh. Thus, alleging deficiency in rendering service, the complainant approached the District Forum for relief.

Before the District Forum the PSEB denied whatever the complainant stated. The main contention, which was raised by the PSEB, was with regard to maintainability of the complaint before the District Forum. The District Forum held PSEB deficient in rendering service and allowed the complaint. Against the order passed by the District Forum, both the parties appealed before the State Commission.

The State Commission observed that the Board was deficient and negligent and did not leave any step to harass the complainant. The complainant was compelled by the PSEB authorities to run after them, instead of the managing the affairs of the industry and the complainant had suffered a lot on account of inefficiency and callousness on the part of the Board. The State Commission held that the complainant could not be burdened with the liability of the Monthly Minimum Charges for the period of the disconnection of the electricity. The State Commission modified the order of the District Forum on this point only. The State Commission, therefore, directed the Electricity Board not to charge any Monthly Minimum Charges for the period 3.12.1998 (the date of temporary disconnection) till actual re-connection. Against that order of the State Commission, the petitioner filed revision petition before the National Commission.

Issue

The main issue involved in the case was whether there was deficiency in service on the part of the Electricity Board in not supplying electricity to the complainant in time and deliberately installing faulty meter in the premises and whether the decision of the State Commission was as per the law.

Decision

The National Commission held that it was a case in which the law laid down by the Apex Court was required to be applied with full vigour and in true spirit. Citizens of a Socialist Democratic Republic should not feel helplessness against undesirable functioning in the Government or semi-government officers. The National Commission referred to the judgment of the Apex court in *Lucknow Development Authority v. M.K. Gupta*, III (1993) CPJ 7 (SC) wherein it was held that because of such harassment, crime and corruption thrive and prosper in the society, due to lack of public resistance, or, putting in other words, succumb to the pressure of undesirable functioning of the officers instead of standing against this.

Before the National Commission the petitioner submitted that considering the dispute involved he may be permitted to implead PFC as party respondent so that appropriate justice could be done to him. His contention was that the PFC had calculated the amount payable by him with compound interest at 25% on quarterly rest basis. The loan amount was mounting and if this was permitted the petitioner would become insolvent. Considering the facts the petitioner was permitted to implead the PFC as party respondent. In view of the matter, Registry was directed to issue notice to the Managing Director, Punjab Financial Corporation. The National Commission further directed PSEB to comply for the time being with the directions issued by the State Commission. With regard to the other reliefs appropriate directions were to be issued later.

Ordered accordingly

Shankar Sah v. Electrical Executive Engineer

IV (2005) CPJ 178 (NC)

Facts

The Appellant/Complainant Shankar Sah was the consumer of the electricity supplied by Bihar State Electricity Board, having connection for running his hotel 'Annapurna'. The complainant was irregular in payment of electricity bills and there were outstanding dues against him for which the Electricity Board disconnected electricity supply on more than one occasion. But the connection was restored on making partial payments of outstanding dues. On 23.7.2002 the connection was again disconnected as outstanding amount increased to Rs.33, 601.75/-. On complaint being filed before District Forum, it quashed the bill of Rs.33, 601.75/- together with previous bill of Rs.27, 536.18/- and directed the respondent Electricity Board to raise revised bills excluding delayed payment surcharge, etc. Aggrieved by the order of the District Forum, Electricity Board made an appeal to the State Commission, which was allowed. Against the order of the State Commission the complainant made a Revision Petition before the National Commission. The counsel of the complainant contended before the National Commission that as the demands raised by the Board were being disputed no liability on account of delayed payment surcharge could be levied on the petitioner and the State Commission erred in setting aside the order of the District Forum. According to the petitioner only an amount of Rs.1, 049.91/- was payable to the Electricity Board.

Issue

The main issue raised by the complainant before the National Commission was whether there was deficiency on the part of the Electricity Board in disconnecting his electricity supply and sending him alleged bills and whether the State Commission erred in setting aside the order of the District Forum and in allowing delayed payment surcharge.

Decision

Upholding the order of the State Commission and rejecting the contentions of the petitioner, the National Commission held that from the calculations filed and also from the response of the respondent Board, it may be seen that the petitioner was irregular in making payments of the bills and electricity connection was restored on more than one occasion on making partial payments of the outstanding

dues. Petitioner, thus, cannot escape liability for payment of delayed payment surcharge on the outstanding amount as calculated by the respondent Board. The National Commission further held that there was no illegality or jurisdictional error in the order passed by State Commission warranting interference in revisional jurisdiction under Section 21 (b) of Consumer Protection Act, 1986.

Accordingly, revision petition was dismissed. No order as to cost.

Revision Petition dismissed.

Jaipur Vidyut Vitran Nigam Ltd. v. Lila Ram

IV (2005) CPJ 1 (NC)

Facts

The Respondent/Complainant, Lila Ram had applied for an electric connection for agriculture purposes on 12.7.1993 under general category for which he deposited a sum of Rs. 1,000/- to take benefit of a scheme of the petitioner Board. Yet, the connection was not given even after lapse of almost 3 years. In these circumstances, a complaint was filed before the District Forum, which allowed the complaint and directed the petitioner to sanction the connection to the complainant.

Against the order of the District Forum, petitioner filed an appeal before the State Commission. The State Commission modified the order of the District Forum and held that the appellant should give the benefit of notification dated 5.1.1996 to the respondent also, at par with those in whose cases demand was raised at the relevant time and benefit of this notification was given. The case of the present respondent would be treated at par with the cases of those persons but the case should not be treated as a precedent in such matters. The appellant would raise the demand accordingly and would deliver such demand to the respondent within a period of one month from today failing which this appeal would be deemed to have been dismissed.

Not satisfied with the order of the State Commission, the petitioner filed revision petition before the National Commission. The petitioner relied upon a department's notification dated 5.1.1996 contending that since no demand was raised on the ground of non-feasibility, they could not be directed to give the connection now, treating the complainant at par with others who had been given the connection earlier.

Issue

The main issue raised before the National Commission was whether there was deficiency in service by the Vidyut Vitaran Nigam in not giving connection to the complainant even after a lapse of almost three years and whether the order of the District Forum as modified by the State Commission was as per the law.

Decision

The National Commission held that the notification referred to have been

issued much after the application for getting connection under the then prevalent scheme. The fact that some undeclared/invisible target had been achieved under the scheme could not be made a ground for not giving the connection to the complainant. The complainant had applied in 1993 and it was now year 2005 and it was a pity that system like the Electricity Board floats scheme, accepts money and yet does not render service. Such systems need to introspect as to what harm they are doing to their image.

The Commission further held that there was no infirmity in the order passed by the State Commission, which had sufficiently protected the interest of the petitioner by observing that the case could not be treated as precedent in such other matters.

The Commission was of the view that there was no merit in this revision petition, hence dismissed.

No order as to costs.

Revision dismissed.

Punjab State Electricity Board Ltd. v. Zora Singh & Ors.

III (2005) CPJ 35 (SC)

Facts

The Respondents/Complainants were agriculturists who filed applications to obtain supply of electricity energy. The Board asked them to deposit the security amount. Despite deposit of security amount and compliance with other formalities, electrical energy was not supplied to the respondents/complainants. The respondents had also spent a huge amount on construction of Kotha and making other arrangements for obtaining supply of electrical energy. Aggrieved, complainants filed complaints before the District Forums alleging deficiency in service on the part of the Board. The District Forums found the Board guilty of deficiency in service and directed the Board to give the connections to the complainants within the period specified therein and also awarded compensation. The Board preferred appeals on the ground that it was obligated to supply electrical energy to the applicants maintaining the order of seniority, in view of Regulation 24 of the Sales Manual. The said appeals were dismissed. Aggrieved by and dissatisfied therewith Revision Petitions were filed by the Electricity Board. The National Commission while upholding the claim of the Board that the order of seniority should be maintained in the matter of supply of electrical energy directed it to release connections to all applicants by 31.3.2004. It also directed payment of interest at the rate of 12 per cent per annum on the amounts deposited by the complainants and awarded compensation of Rs. 10,000/- each to them. Cost of Rs. 2,000/- was also directed to be paid. Feeling aggrieved, the Board filed civil appeals before the Supreme Court.

The learned Senior Counsel appearing on behalf of the Board contended that the National Commission acted illegally and without jurisdiction in passing the orders without taking into consideration that the Board at the relevant time did not act only in terms of the circulars issued by the State but also acted under the regulations framed under Section 79 (j) of the said Act in terms whereof no interest was payable.

Issue

The main issue involved in the case was whether there was deficiency on the part of the Electricity Board and whether the directions of the National Commission were as per the law laid under Consumer Protection Act.

Decision

The Supreme Court held that the Board, a statutory authority, was a 'State'

within the meaning of Article 12 of the Constitution of India. As a State, the Board was expected to discharge its statutory functions within a reasonable time having regard to the fact that it undertook an important public utility service. Its actions besides being governed by the Electricity (Supply) Act and the regulations framed thereunder, must also fulfill the test of reasonableness as envisioned under Article 14 of the Constitution of India.

What would be a reasonable period for supply of electrical energy to different categories of consumers has been specified in the administrative circulars issued as well as the regulations made by the Board itself. The persons had applied for grant of electrical connection as far back in 1986 and the Board had asked them to deposit the security amount only sometimes in the year 1999. Despite expiry of the prescribed period, no electrical connection was given. If the Board was serious to implement its own circular, it was obligatory on its part to draw a blueprint so as to enable it to make supply of electrical energy to the consumers in order of seniority of application upon procuring the requisite materials therefore. It failed and/or neglected to do so. It was also under an obligation to notify the persons concerned stating the reasons why such supply could not be made during the period specified in the administrative circular and/or regulations. The Board did not say that the said requirements were complied with.

It was also idle to contend that the Board was cash-starved owing to any faulty decision on the part of the State. If it suffered losses owing to any direction issued by the State pursuant to any policy decision adopted by it, the same being an internal matter between the State and the Board, the prospective consumers could not suffer therefore.

Furthermore, it was evident from the orders passed by the District Forum, State Commission and the National Commission that no reason was assigned by the Board as to why it could not comply with its administrative circulars/regulations.

Section 24 of the Indian Electricity Act, 1910 mandates a licensee to grant electrical connection to an applicant. Although the said provision was not applicable so far as the Board was concerned, it was bound to supply electrical energy. The provisions contained therein also envisaged supply of electrical energy within a reasonable time. The Board being a deemed licensee under the Indian Electricity Act having been constituted in terms of Section 5 of the Act ordinarily could not be heard to say that it was not in a position to supply electricity to a class of consumers, having invited applications from them.

In this case, apparently, the Board was not in a position to supply electrical energy to the consumers within a reasonable time from the date of issuance of the

demand notice. It not only failed to supply electrical energy to the 71 complainants who were before the National Commission but even failed to supply electrical energy to those who had applied much prior thereto. Before the State Commission and the National Commission, the prime contention of the Board was that the claimants-respondents could not have been given a march over others who had filed applications prior to them. The National Commission rightly did not find fault with such contention but secured the presence of the Chief Engineer of the Board only for the purpose of ascertaining as to how soon supply of electrical energy could be ensured to all concerned including the claimants/ respondents. Before the National Commission, the Chief Engineer gave an undertaking that all such connections would be given by 31st March 2004. From the aforementioned conduct of the authorities of the Board, there was no doubt that had the claimants/ respondents not knocked the doors of the Forum under the Consumer Protection Act, they might not have even obtained electrical connection for years to come.

The Commission had rightly found that the Board having not made itself ready to supply electrical energy to the agriculturists unjustly enriched itself with the money deposited by the complainants without rendering any service in return. It was evident that the Board wanted to fill its coffer with the amount of the security deposits and other deposits made by the prospective buyers of electricity. Further relying on or on the basis of the representations made by the Board in terms of its circular letters and/or regulations, the prospective consumers also spent a huge amount on construction of Kotha and making themselves ready for getting the electrical connection. A 'State' within Article 12 of the Constitution of India must act fairly and bona fide. It cannot act for a purpose which is wholly unauthorized and not germane for achieving the object it professes whether under a statute or otherwise.

Therefore, Supreme Court did not find any fault in the orders of the National Commission. The Supreme Court was of the opinion that the interest of justice would be sub-served if the directions issued by the National Commission were modified to the extent that instead and in place of interest at the rate of 12% per annum, the appellants were directed to pay interest at the rate of 9% per annum and instead of compensation at the rate of Rs. 10,000/- in each, compensation of Rs. 5,000/- in each was directed to be awarded.

The appeals were dismissed subject to the aforementioned modifications.

No costs.

Appeals dismissed.

**Bombay Electric Supply & Transport Undertaking v. Laffan
(I) Pvt. Ltd. & Anr.**

II (2005) CPJ 6(SC)

Facts

The Complainant Laffan (I) Pvt. Ltd had a showroom for carrying out retail trade in textiles. The electricity was being supplied by Bombay Electric Supply and Transport Undertaking through two meters installed at premises one for light, fans and another for air conditioning unit. Initial meter was burnt and new meter was installed on 2.5.1988. In routine checking the said meter was found to be running slow and respondent was informed on 14.6.1989 that the meter would be replaced and revised bills would be issued. Thereafter, a new meter was installed on 30.6.1989. This meter was also found to be running slow and respondent was informed on 25.9.1989 that the meter would be replaced and revised bill would be issued. On 18.12.1989 a new meter was installed. This also got burnt and was replaced on 30.12.1989. The appellant then taking the preceding one year's period i.e. from 2.2.1987 to 1.2.1988 as base period and pattern of consumption recorded therein revised the bill and sent a demand notice dated 5.9.1990 for Rs. 2,19,602.73/- for the period 1.2.1988 to 30.12.1988 as the respondent had undercharged by 1,13,212 unit. As the respondent did not pay the amount, a notice of disconnection was sent on 25.10.1990 calling upon to pay the amount within a week failing which the electricity supply would be disconnected.

The respondent challenged the notice of demand and disconnection before Bombay High Court by filing a writ petition. The learned single Judge dismissed the writ and held that the consumer should have raised the dispute before the Electrical Inspector under Section 26 (6) of the Indian Electricity Act, 1910 in case he challenged or disputed the assertion that the meter was running slow. As no such dispute was raised, the appellant was entitled to replace the meter if it was defective and raise a demand on the basis of average consumption for the past period. The respondent filed an appeal before the Division bench, which allowed it. The demand notice was quashed. The Division Bench held that if the Undertaking disputed the correctness of the meter, it should have referred the dispute to the Electrical Inspector provided in Section 26(6) of the Act and it was for the Electrical Inspector to estimate the amount of energy supplied to the consumer. As the undertaking had not referred the dispute to the Electrical Inspector and consequently no estimate of the energy supplied to the respondent had been prepared, it was not open to the appellant to

raise a bill on the basis of the average of the last one year's consumption. Further the demand notice was for a period exceeding six months immediately preceding the date thereof, therefore it was illegal. Against the order of the Division Bench, the undertaking filed a civil appeal before the Supreme Court.

Issue

The main issue raised before the Supreme Court was whether sending a revised bill based on the average consumption of preceding year by B.E.S.T.U. was correct.

Decision

The Supreme Court held that the main question was whether Subsection (6) of Section 26 of Indian Electricity Act, 1910 was applicable to the facts and circumstances of the present case and if so, to what extent. The Supreme Court held that the applicability of Section 26(6) is attracted only when the meter is not correct. Section 26(6) will have no applicability, (i) if the consumer is found to have committed a fraud with the licensee and thereby illegally extracted the supply of energy preventing or avoiding its record; or (ii) has resorted to a trick or device whereby also the electricity is consumed by the consumer without being recorded by the meter.

As to what would be a correct meter, sufficient indication has been provided in the Act and Indian Electricity Rules, 1956 in the Explanation given at the end of Subsection (7) of Section 26 of the Act and Sub-Rule (1) and (2) of Rule 57. What is contemplated in Section 26(6) is a running meter but which on account of some technical defect register the amount of the energy supplied or electrical quantity contained in the supply beyond the prescribed limits of error. It contemplates a meter, which is either running slow or fast with the result that it does not register the correct amount of energy supplied. Section 26(6) confers power upon Electrical Inspector to estimate the amount of energy supplied to the consumer during such time not exceeding six month, as the meter in the opinion of the Inspector has not been correct.

The Supreme Court held that in the present case the demand raised by the appellant could be divided into two parts (i) for the period during which the meter was burnt and (ii) for the period for which the meter was not correct. For the period for which the reading could not be recorded as the meter was burnt the licensee could raise demand based on the average consumption for the similar period during the previous year. For the period for which the meter was not correct none of the parties had referred the dispute to the Electrical Inspector. The readings had been regularly recorded for the incorrect meter, bills raised and also paid by the consumer.

According to Section 26(6), the reading would bind both the appellant and respondent. Further according to proviso to Subsection (4) of Section 26, the licensee cannot take of or remove any such meter until the meter has been determined by the Electrical Inspector. The purpose is to preserve the evidence. The dispute shall be expeditiously disposed of by the Electrical Inspector by applying scientific method of investigation to find, if the meter was incorrect and if so then what was the extent of error. Admittedly, no dispute has been referred to Electrical Inspector and the most material evidence, the meter, has been lost by the act of appellant. The appellant could not be allowed to take advantage of its own act and omission, the act of removing the meter and the omission, to make reference to the Electrical Inspector.

On the basis of material on record the impugned demand could not be bifurcated into two on the criterion discussed. The appellant should be left free to examine its records and revise its demand. The Supreme Court clarified that the demand raised by the appellant based on the average consumption during the similar period in the last year was justified for the period for which the reading was lost on account of the meter been found burnt. Accordingly, the calculation based on the record of consumption for the corresponding period from the previous year would hold good and respondent would be bound to pay a demand raised. So far as the period for which the meter was said to be incorrect, the appellant had not made reference to the Electrical Inspector under Section 26(6) of the Act. Thus, the revised readings based on the findings of the Electrical Inspector were not available. The Supreme Court held thus that the appellant could not be allowed to raise an additional demand over and above the demand raised through the bills, which were issued for that period and paid by the respondent. The right to raise additional bills stood lost by the appellant for its failure to proceed in accordance with Section 26(6) of the Electricity Act, 1910.

Accordingly the Supreme Court disposed of the appeal.

No order as to costs.

Appeal disposed of.

Haryana State Electricity Board v. Bhagwat Prasad

I (2005) CPJ 104 (NC)

Facts

The Respondent/Complainant Bhagwat Prasad was a consumer of Haryana State Electricity Board (H.S.E.B). He filed a complaint before the District Forum alleging deficiency in service on the part of HSEB and alleged that the Board has wrongfully collected Rs. 62, 874/- from him. But the Electricity Board contended that the complainant was involved in theft of electricity and the amount recovered from him was justified to that extent. On the question of no theft of electricity, President and Members of the District Forum were unanimous, but there was difference as to what should be done with the amount recovered wrongfully. The President ordered that the amount recovered wrongfully be adjusted in future bills apart from the direction that the entire account of the consumer be overhauled. But the other two Members of the District Forum did not agree with the Electricity Board retaining the amount for future adjustment and held that this amount should be refunded with interest at the rate at which Electricity Board charged surcharge on unpaid amount of electricity charges.

The HSEB filed an appeal before the State Commission, which affirmed the majority judgment passed by the District Forum except for deleting the amount of compensation. Again, the HSEB made a revision petition before the National Commission against the order of the State Commission.

Issue

Is there any ground for the National Commission to interfere with the majority view of the District Forum as affirmed by the State Commission on refund of the amount with interest?

Decision

The National Commission after going through the case in detail upheld the majority decision of the District Forum as affirmed by the State Commission and dismissed the Revision Petition. The National Commission held that the District Forum in its majority decision has rightly ordered that the amount should be refunded with interest at the rate at which the Electricity Board charged surcharge on unpaid amount. Thus, upholding the orders, the National Commission further held that there was absolutely no ground for them to

interfere with the concurrent findings of the fora below under Section 21 (b) of the Consumer Protection Act, 1986.

Revision Petition dismissed.

**Raghuwar Cold Storage (P) Ltd. v.
U.P. Power Corporation Ltd. & Ors.**

IV (2004) CPJ 78 (NC)

Facts

Complainant was the owner of cold storage company having electricity connection from the Respondent U.P. Power Corporation. He filed complaint before the District Forum alleging deficiency in service on the part of the Corporation for damage of potatoes in their cold storage because of non-supply of electricity continuously for 18 hours in a day as per the agreement between them. A sum of Rs. 1,13,99,780/- with 24% interest per annum was claimed as damages from the date of issuance of legal notice dated 12.9.1996. The Corporation contended that since the generation of electricity power was less, hence supply, could not be made for more than 8 to 10 hours and generation of electricity depends upon various factors and its demand.

Issue

The question involved in this complaint was whether UP State Electricity Board was deficient in services and liable to pay damages due to its inability to supply electricity to the company for 18 hours in a day as per the agreement.

Decision

The National Commission after going through different clauses of the agreement between parties and their contentions held that the basis of filing the complaint was the clause of the agreement executed between the Electricity Board and the complainant for supply of electricity for 18 hours. Therefore, decision depended upon interpretation of the aforesaid condition. As per the said condition the Electricity Board was required to supply electricity power continuously for 18 hours each day. However, exceptions were carved out to the effect that supplier shall not be responsible for damages or otherwise -

(a) on account of accidental interruption or stoppage or curtailment or diminution in the supply of energy as a result of any order or direction issued by the Government of UP;

(b) or resulting from fire, flood, stoppage or any accident or from any strike or lock out;

(c) or from any other cause beyond the control of the supplier.

The Commission further held that it was also provided that supplier shall make every effort to restore the supply as soon as possible. On behalf of the Electricity Board, it was pointed out that since the generation of electricity power was less, hence supply, could not be made for more than 8 to 10 hours. Generation of electricity depended upon various factors and its demand. Therefore, in the present case, it was apparent that supplier would not be responsible for damage on account of stoppage or curtailment or diminution in supply of energy as the cause of non-supply of electricity was beyond its control. The main reason for non-supply was less generation of electricity.

Further terms and conditions of the memorandum for grant of power specifically provided that power would be made available as per the scheme adopted by the Government from time to time. This condition would make it abundantly clear that if Government would direct the respondent to supply the electricity in rural area, complainant could not raise any objection and claim damages. Under such circumstances as per office memorandum, complainant was advised to install its own diesel generating set of suitable capacity. If complainant failed to install such diesel set it was not the fault of the Electricity Board.

Thus, the National Commission held that there was no substance in the complaint. They, therefore, would not deal with any other contention including the contention that complainant was not a consumer as hiring of the services and supply of electricity was for commercial purpose.

In the result, petition was dismissed. No order as to costs.

Petition dismissed.

**Uttaranchal Power Corporation Ltd. v.
Heera Ballabh Pant**

III (2004) CPJ 73 (NC)

Facts

The petitioner had an electric connection of 0.500 KW for light and fan in his shop, which he got disconnected in the year 1993. In the year 1995 he applied for restoration of the said connection. He deposited Rs. 2,821/- with the Department on 27.7.1995 for a connection of 3 HP for running the spice factory, 1 HP for light and the fan and thus, 4 HP in all and the balance amount was deposited on 4.8.1995. The complainant took a loan of Rs. 25,000/- from the State Bank of India for installation of machine, purchased machine but, the appellant did not restore the connection of 4 HP. As a result he suffered a loss for over rupees one lakh. Aggrieved the complainant filed a complaint before the District Forum. The District Forum passed an *ex-parte* order in favour of the complainant. An appeal was filed against this order before the State Commission, Uttaranchal. The appeal was barred by limitation. Though the State Commission did not find any justifiable ground to condone the delay but still considered the matter on merits and dismissed the appeal. But the order for payment of Rs. 12,000/- towards interest of justice was set aside. Rest of the order of payment of Rs. 84,080/- with 12 per cent interest was upheld. Feeling aggrieved by the above order, revision petition was filed by the Power Corporation before the National Commission.

Issue

The issue involved in the case was whether there was deficiency in service on the part of the Power Corporation in not restoring the electricity connection and whether the decision of the State Commission was in accordance with the law.

Decision

The National Commission held that the appeal itself was barred by time. The petitioner corporation disputed the disconnection but there was no answer to the demand of reconnection charges from the complainant in December 1993. There could not be any reason to submit the demand bill of 4 HP when the technical objections were not spelled out. On seeing the circumstances, both the District Forum and the State Commission were of the view that complainant had suffered mental harassment and loss in business and awarded damages to the tune of

Rs. 84, 080/- with 12 per cent interest. The National Commission held that from the aforementioned circumstances it appears that Uttaranchal Power Corporation Ltd. was deficient in rendering services. The amount of compensation awarded could not be said to be unjust. The Commission further held that it was expected that the petitioner would not continue to commit the same kind of deficiency in service in giving connections to the general public. The National Commission did not find it a fit case to exercise jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act. Hence, revision petition was dismissed.

Revision Petition dismissed.

Shree Kumar Textiles Pvt. Ltd v. Tamil Nadu Electricity Board & Ors.

III (2004) C P J 23 (NC)

Facts

Shree Kumar Textiles Pvt. Ltd., the complainant had a 500 KVA, three-phase electricity supply connection from Tamil Nadu Electricity Board (TNEB) to run the unit. There was a power break down on 3rd July 1995; power was restored on the next day but only in two phases, which was not adequate to run the unit. The complainant on 5th July 1995 requested the Electricity Board to restore third phase. The Board restored three-phase connection on 27th July. But due to recurrence of some fault, the third phase again tripped of making the unit inoperative. Thereafter, complainant repeatedly met and requested the Board to restore the third phase, but no action was taken. Aggrieved by that, the complainant filed three separate writs before the High Court and accordingly with the direction of the High Court connection was restored on 24th August 1995.

Thereafter the complainant filed a complaint before the National Commission alleging deficiency in service on the part of T.N.E.B. claiming Rs. 44, 51,750/- along with interest @ 20% p.a. The complainant contended that his unit suffered a huge loss due to continuous non-supply of electricity in the third phase for 52 days, which was a clear case of deficiency in service. Due to the non-supply of electricity in the third phase, he had to close the unit and suffered loss of production, loss of face in the market, as they could not honour their commitment and loss of money paid to the labourers during the closure period, etc. The complainant also said that he was paying the minimum charges of electricity on demand by the Board. Thus alleging deficiency, the complainant claimed an amount of Rs. 44,51,750/- along with interest @ 20% for the loss suffered.

Issue

The main issues were:

- (i) Whether the National Commission has jurisdiction to adjudicate upon the matter.
- (ii) As complainant has failed to claim any relief for damages in earlier proceedings, whether he can claim any relief by way of separate proceedings.
- (iii) Whether non-supply of electricity to the third phase for 52 days amounts to deficiency in service.

Decision

The National Commission rejecting the preliminary objection relating to the jurisdiction to adjudicate held that jurisdiction to adjudicate is determined by Section 2((1)(d) (i) & (ii) and Section 2(1) (o). There was no dispute that opposite party was rendering service to the complainant and there was allegation of deficiency by way of not supplying electricity as per terms of the agreement. The supply of power was under an agreement and admittedly the complainant was without proper supply of power. Deficiency is writ large on the face of it, which brought it within the jurisdiction of a Consumer Court. On the question that the complainant could not claim any relief for the damage before the National Commission as they failed to claim the same in his earlier proceeding, the National Commission held that there was a clear misreading of the record before the High Court. Even though not specifically mentioned by the opposite party, relief sought by the petitioner was to grant interim direction directing the respondents to restore the three-phase power supply where as before the National Commission relief sought was for deficiency in rendering service. In no way the two clashed stopping the complainant to seek relief before a Consumer Forum.

As far as deficiency in service was concerned National Commission held that the communication was made by complainant on 8.7.1995, which was received by opposite party on 10.7.1995 as admitted in the counter affidavit before the High Court of Madras, but the three-phase supply was restored only on 21.7.1995. It was difficult to appreciate what prevented the opposite party to react immediately on the possible fault line indicated by the complainant. The reason espoused by the opposite party was on account of “undetectable and invisible technical difficulty” in the transmission line from the pole to the complainant Mill. The National Commission held that even after very carefully going through the whole materials on records no hint has been thrown as what was done to restore the ‘third phase’ after detecting the so called ‘undetectable, and invisible technical difficulties. Nothing has been shown or brought on record by the opposite party to make the Commission wise as to how the undetectable became detectable and invisible visible, after getting a rap on their knuckles from the High Court. Either it was case of high inefficiency-deliberate or otherwise or it was a case of keeping complainant in a semi-satisfied condition by way of supplying electricity only in two phases. On the recommendation of the opposite party to the complainant to use generator, the National Commission stated that they were also unable to appreciate the plea of the opposite party that they showed their bonafides by granting licence/ permission to operate the generator. The Commission observed that opposite party was running

an electricity board charged with the responsibility of supplying electricity and not granting licence to run generator. Generator can best be perceived as 'back up' and not as main source of supply of electricity.

For the deficiency on the part of the Electricity Board the National Commission granted Rs.1, 75,000/- for the loss on account of wages paid to the workers for 15 days for which factory had to stop, Rs. 84,000/- for the amount collected by TNEB despite non supply of three phase power, rupees two lakh as compensation for the loss of production and resultant loss during the 52 days, Rs.12, 500/- being the difference in cost of power during which the unit could not run properly due to use of generator. As a result complaint was allowed and opposite party was directed to pay in all Rs. 4, 71,500/- along with interest @ 10% from the date of filing of the complaint along with Rs. 20, 000/- as cost of litigation. The Commission directed that all the amounts shall be paid within six weeks of the passing of the order failing which rate of interest would go up to 12% p.a.

Complaint allowed.

Punjab State Electricity Board & Ors v. Tek Bahadur Singh

I (2004) CPJ 125 (NC)

Facts

The Respondent/ Complainant, Tek Bahadur Singh was a farmer who had applied for an electricity connection to be installed on tube-well in his agricultural field on 30.6.1996 after paying registration fee. A demand notice was issued by the Punjab State Electricity Board (P.S.E.B.), on 9th July 1998 asking the complainant to pay Rs.15, 000/-, which the complainant paid on 8th October 1998. The Electricity Board did not supply electricity to him even after years inspite of regular requests. At the relevant time, PSEB regulations for supply of energy to the consumer included Regulation 26 under which an electric connection was required to be given within two months. Aggrieved by that the complainant lodged a complaint before the District Forum on 6th November 2001, alleging deficiency on the part of Electricity Board. He contended that he installed the tube-well and electric motor in October 1998, spending Rs.30, 000/-but that investment was lying idle due to non-supply of electricity. In his complaint he also claimed the compensation for inefficiency on part of the PSEB. Explanation given by the PSEB was that certain requirements of the demand notice have not been complied with and complainant's turn has not come according to the separate seniority list maintained by PSEB.

The District Forum allowed the complaint and directed the concerned officers of P.S.E.B. for providing the electric connection. The District Forum also directed the P.S.E.B. to send in writing to the complainants within one month's time as to what exactly are the specific requirements of the demand notice that have not been complied with, complainant shall thereafter comply with those requirements within two months and the Board shall release the electric connection to the complainant. Aggrieved by that order of the District Forum, the P.S.E.B. went in appeal before the State Commission. Besides this appeal, the P.S.E.B also made appeals in two related cases. Hearing the appeals, the State Commission confirmed the order of the District Forum. On the matter of separate seniority list, the State Commission held that the question of separate seniority list should have been considered before issuing demand notice. After the issuance of demand notice any seniority list maintained by PSEB was not of any relevance. Thus, in all the three cases the State Commission dismissed the appeals. The Electricity Board filed revision petition before the National Commission against the order of the

State Commission.

Issue

The main issues involved in this case were

- (i) Whether there was deficiency in services on the part of Electricity Board in not supplying electricity to the complainants for years together even after the payment of registration fee.
- (ii) Whether the Board was liable to pay the compensation thereof.

Decision

After going through the contentions of both the parties in detail, the National Commission allowed the revision petitions. On the contention of the Electricity Board that certain requirements were not met by the respondents, (requiring bills for purchase of electric motors, make and model etc.) the National Commission held that requirement of bills of purchase of electric motors, make and model etc. were minor requirements which could have easily got complied with especially after the orders of State Commission which confirmed the order of the District Forum. Raising this appears to be more in the nature of defending themselves for not giving the connection as the connection has not been given till that day.

In similar matter decided earlier on 4.8.2003, the Chief Engineer (Commercial) was unable to explain the current position but gave assurance that connection would be given as per seniority list of PSEB as on 31.3.2004. The amount, which has been taken from the respondents, has been kept for unduly long time, it amounts to undue enrichment. So the petitioner Electricity Board was directed to grant interest @ 12% on the deposited amount from the date of deposit up to the date of the energization of the connection. The Commission further held that final figures of credit/debit should be worked out by the petitioner at the time of energization of the connection and communicated to the complainant(s) within four weeks of energization giving full details. The Respondent / Complainant would be entitled to a compensation of Rs.10, 000 /- in each case for harassment; loss to the complainant and to cover some interest payment on the premature investment made by them in pump house(s), purchase of equipments etc. Respondents/complainants would also be entitled to cost, which was fixed at Rs. 2000/- in each case. These two payments were to be made within six weeks of the order. If any discrepancies were still left in the context of demand notice, petitioner should point that out within four weeks and help the complainants to remove that at the earliest. Further if the

respondents/complainants did not get the electric connection within the time limit indicated by the Chief Engineer Commercial of the petitioner, petitioner should then have to pay very heavy cost for such a failure in each case.

Revision Petition dismissed.

Santokh Singh v. Punjab State Electricity Board

IV (2003) CPJ 146 (NC)

Facts

The appellant/complainant Santokh Singh had a seasonal factory for which he had seasonal electricity connection. The season of the said factory was from September 15 of every year to May 31st of the next year. He operated the factory during the season September 1996 to May 1997. But he did not run the factory for the next seasonal period i.e. September 1997 to May 1998. For the seasonal connection, the Electricity Board was treating the working period as minimum of four and half months for the purpose of billing. Accordingly, the Punjab State Electricity Board (PSEB) issued a bill for Rs. 42, 356/- as minimum charges for the period 15.9.1997 to 31.5.1998, which the complainant deposited. His plea was that he was not liable to pay the minimum charges for the season 1997-1998 as he did not operate the factory and gave proper information to the Electricity Board about the same. He, therefore, sought refund of this amount along with interest. Subsequently, the Electricity Board gave another bill for Rs. 23,475/-. The complainant approached the District Forum seeking refund of the amount of Rs. 42, 356/-, wrongly paid and for issuance of direction to PSEB for cancellation of bill for Rs. 23, 475/-. The District Forum held in favour of the complainant.

Against the order of the District Forum the PSEB filed an appeal before the State Commission. The State Commission examined the provisions of the Punjab State Electricity Board's Sales Manual, according to which certain minimum charges were required to be paid by the consumers irrespective of whether power was consumed or not, since these minimum charges were to cover fixed charges incurred by the Board for providing supply lines etc. and to take care of such matters as establishment costs, depreciation of fixed assets etc. The State Commission allowed the appeal setting aside the order of the District Forum. Against the order of the State Commission, revision Petition was filed in the National Commission by the complainant.

Issue

The main issue involved in the case was whether the Punjab State Electricity Board was right in sending those bills as minimum electricity charges for the period in which the complainant did not use electricity at all and whether there was any deficiency on their part in sending those bills.

Decision

The National Commission agreed with the State Commission that provisions for supply and sale of electricity energy to consumers in the condition 27 of the Punjab State Electricity Board, Sales Manual were absolutely clear. In fact the Manual goes to the extent of saying that the minimum charges will be payable even if the electricity is not consumed because supply has been disconnected by the Board due to non-payment of electricity charges, pilferage, malpractices etc. However, after permanent disconnection, liability of payment of the minimum charges will cease. The National Commission held that as brought out by the State Commission it was not the case of the petitioner that his connection was permanently disconnected nor that he made any request for permanent disconnection. In these circumstances, revision petition stood dismissed and the order of State Commission confirmed.

Revision Petition dismissed.

Guru Charan Dass v. AEE, Electricity Department & Ors.**IV (2003) CPJ 138 (NC)****Facts**

The complainant made payment of electricity bills of Rs. 2,605/- in draft form on 26.7.1999. It was sent through registered letter to the Electricity Department and was received on 27.7.1999. The draft was sent back on 30.7.1999 alleging that the payment was made on 27.7.1999 where as it was due on 26.7.1999. As it was received after due date the amount payable would be Rs. 2,731/-, which would include surcharge for the late payment. The petitioner complained to the postmaster regarding delay and he informed that registered letter was delivered on 27.7.1999. Punjab and Sind Bank admitted issuance of the draft of Rs. 2,605/- dated 26.7.1999 and the amount was still lying in their books, as the draft has not been encashed. Petitioner filed complaint against all three respondents in the District Forum alleging deficiency in service and claimed interest on Rs. 2,605/-. The District Forum directed respondent No.3 Punjab & Sind Bank to refund the amount of Rs. 2,605/- within 15 days of receipt of copy of order failing which the said amount would carry an interest @ of 10% p.a. from the date of order till payment. The petitioner filed an appeal in the State Commission against the order of the District Forum. The State Commission dismissed the appeal and directed the petitioner to file execution proceedings with the District Forum as he was asking for the execution of the order of the District Forum. While disposing the execution petition, the District Forum directed the complainant to collect the said amount as per its order. The District Forum stated in the order that respondent No. 3 need not pay any interest on the said amount of Rs. 2,605/- since it had complied with the order. The petitioner filed revision in the National Commission against the order of the District Forum praying for expenses of his complaint, which included draft charges, registry charges, advocate's fee, charges for preparation of court papers, interest on Rs.2,605/- and transport charges.

Issue

The main issue was whether the complainant was entitled to these expenses.

Decision

The National Commission held that the petition was not maintainable as it was arising out of the order of the execution of petition filed in the District Forum.

Further the contention of the petitioner was that the costs and expenses were not awarded by the District Forum. The District Forum had gone into all these facts and found that there was no ground for awarding the same. The main order and the execution order of the District Forum were held to be well reasoned based on merits of the case. No deficiency of service was proved against any of the three respondents.

The revision petition was not maintainable as it was devoid of merit and also since the petitioner had come in revision against the order of execution petition of the District Forum. Revision Petition was the dismissed.

Revision Petition dismissed.

Ajmer Vidhyut Vitran Nigam Ltd. & Ors. v. Indraj

IV (2003) CPJ 110 (NC)

Facts

The Respondent/ Complainant, Indraj was a farmer having an electricity connection to his old well, which dried and he dug a new well at another place, which he had purchased on 15th February 2000. Thereafter he requested the Electricity Board to shift the electricity connection from the old well to the new one. Tehsildar of the area also testified that the old well had dried up and the Assistant Engineer (Electricity) posted at that time and the Deputy Chief Engineer (Electricity) recommended shifting of the electric connection to the new well. In spite of recommendations of higher authorities, both the petitioners sat over the recommendations and did not shift the electric connection. Petitioners took up the stand that because of a circular of the Electricity Board new connection could be provided only if the person was the owner of the land for over five years.

The complainant, Mr. Indraj filed a complaint before the District Forum alleging deficiency on the part of the Vidyut Nigam. The complainant contended that for the negligent act of the Ajmer Vidhyut Vitran Nigam, he could not raise his 'kharif' crops and suffered damages. He also claimed compensation for the loss suffered. The complainant also informed the District Forum that the Vidyut Nigam had also allegedly concocted a false story of theft of electricity against him and levied a penalty of Rs. 15,000/- that he paid under protest.

The District Forum directed the Vidyut Nigam to give electricity connection within 15 days and to pay Rs. 50,000/- as compensation to the complainant. Besides, for allegedly concocting a false story of theft and levying Rs. 15,000/- as penalty on complainant, the District Forum took a serious view in proceeding under Section(s) 25/27 of the Act. The District Forum required the presence of the petitioners and against that order petitioners filed appeal before the State Commission. The State Commission took serious view of the non-compliance of the order of the District Forum by the petitioners and affirmed the order of the District Forum. It was against this order that a revision petition was filed in the National Commission by the Vidyut Nigam.

Issue

The main issues involved in the case were whether there was deficiency in service on the part of Vidyut Nigam in non-supply of electricity to the new well of

the complainant inspite of his request and even after the recommendations of the Tehsildar of the area and whether the order of the District Forum as duly affirmed by the State Commission directing the Vidyut Nigam to pay compensation was right as per the provision of the CPA.

Decision

The National Commission while reviewing the order of the State Commission stated that the District Forum was quite justified in quantifying the loss of 'Kharif' crop and the mental agony caused to the complainant because of deliberate inaction on the part of the petitioners. It was also found that had the electric connection been shifted to new well at least the complainant could have been able to raise 'Rabi' crop. The State Commission also did not find any ground for the petitioner's inability in appearing before the District Forum and the order of the District Forum was affirmed by the State Commission and appeal dismissed.

In view of the aforesaid, the National Commission could hardly find any reason to interfere in exercise of their jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act. Thus the revisions were dismissed.

When the petitions were filed an amount of Rs. 50,000/- had been deposited in the District Forum. The National Commission had put a restraint on the District Forum not to release the amount. Since the revisions were dismissed, the National Commission also lifted bar on the District Forum to release the amount to the complainant.

Revision Petition dismissed.

Kamla Prasad Tiwari v. Junior Engineer

IV (2003) CPJ 108 (NC)

Facts

The complainant Shri Kamla Prasad took an electric connection for his agriculture fields from the opposite party in June 1976. On 1.2.1990 the power supply was interrupted as one of the electrical poles fell down which was brought to the notice of the Electricity Authorities. Since the opposite party, did not take any action from 1.2.1990 till 11.8.1990 inspite of repeated complaints to various authorities, the complainant approached the District Forum. Before the District Forum opposite parties contested that all the 48 poles supplying electricity fell down simultaneously due to hailstorm and that 30 out of 48 wooden poles were installed in the lake waters.

The District Forum while relying upon the investigation report of SDOI, various correspondences that took place between the complainant and the Department held that once the electricity connection has been provided the responsibility for maintenance and repairs of the line was on the department. The contention of the opposite parties was that if the power supply was interrupted due to any accident then the department could not be held responsible, was not appreciated by the District Forum. The District Forum held that electric line was damaged due to the negligence of the Department and not due to any accident. The complainant was granted compensation of Rs. 2,000/-.

Aggrieved by the order of the District Forum both the parties went in appeal i.e., the complainant for enhancement of the compensation and the opposite party for setting aside the order of the District Forum. The State Commission upheld the order of the District Forum and keeping in view the deficiency in service rendered by the opposite party and harassment undergone by the complainant, enhanced the compensation to Rs. 25, 000/- with interest @ 6% p.a. The State Commission also awarded the cost of Rs. 4, 000/-. The complainant filed revision petition in the National Commission for further enhancement of compensation.

Issue

The main issue was whether inaction on the part of the opposite party constituted deficiency in service.

Decision

The National Commission did not find any illegality or jurisdictional error in the order of the State Commission. Moreover both the fora below dealt with the merits of the case and came to the correct conclusion. There was no justifiable reason given for the further enhancement that was prayed in the revision petition. In view of the above the National Commission dismissed the revision petition.

Revision Petition dismissed.

Kerala State Electricity Board v. Raveendran

IV (2003) CPJ 105 (NC)

Facts

The Respondent/Complainant, Raveendran was running plastic factory availing electricity from the Kerala State Electricity Board (KSEB). He had also taken a loan from Kerala Financial Corporation (KFC). On account of fall in the voltage in the electricity supply by the appellant the machines were damaged and production suffered. Thus alleging deficiency in service on the part of KSEB, he filed a complaint before the State Commission claiming compensation of Rs. 3,19,693/- comprising; (i) Rs. 1,29,693/- towards interest paid to the Kerala Financial Corporation (KFC); (ii) Rs. 26,000/- towards the interest to be paid to Canara Bank; (iii) Rs. 42,000/- towards the interest on capital investment by him; (iv) Rs. 72,000/- towards the business loss; and (v) Rs. 50,000/- towards mental agony. The State Commission allowed the complaint and directed the Electricity Board to provide uninterrupted supply of sufficient quantity of electrical energy to the consumer for the functioning of the factory and to pay the complainant Rs. 25,000/- towards compensation for the business loss suffered, Rs. 5,000/- towards mental agony and Rs. 2,000/- towards cost. Aggrieved by the order of the State Commission, the Electricity Board filed an appeal before the National Commission.

Issue

The issue involved in the case was of fluctuation of voltage in supplying electricity by the Electricity Board, which damaged the machines of the complainant and compensation claimed thereby. The main issue to be considered by the National Commission was whether there was deficiency in service on the part of the KSEB and whether the order of the State Commission directing the KSEB was as per the provision of Consumer Protection Act.

Decision

As per the National Commission, the directions issued by the State Commission for providing uninterrupted supply of electrical energy could not be sustained keeping in view the terms of supply of electricity to the complainant. The National Commission further held that no evidence was given for alleged business loss suffered by the complainant. Therefore, modifying the order of the State Commission, the National Commission awarded the complainant Rs. 10,000/- as compensation

towards mental agony and suffering and Rs. 2,000/- as cost as awarded by the State Commission. The National Commission further awarded Rs. 2,000/- as cost to the respondent/complainant for the appeal made before it. Thus, modifying the order, the National Commission awarded Rs. 14,000/- in all to the complainant.

With modification, appeal was disposed of.

Appeal disposed of.

**Assistant Engineer, Jaipur Vidyut Vitran Nigam & Ors. v.
Bodan Ram**

IV (2003) CPJ 101 (NC)

Facts

The Respondent/Complainant, Bodan Ram was a farmer who had applied to Jaipur Vidyut Vitran Nigam in the year 1987 for electricity connection for his agricultural land. Accordingly, the Vidyut Nigam on 12.2.2002 placed his name at No. 44 in the seniority list prepared by the Nigam and he was asked to pay Rs. 59,470/- for providing electric connection, which was on representation reduced to Rs. 12,470/-. He deposited this amount on 1.6.2002 and became entitled to get electricity connection.

Three other persons at serial Nos. 46, 47 and 56 who had deposited Rs. 36,000/- each also became entitled to electricity connection. On knowing about the concession given to Bodan Ram, they made a complaint before the Nigam. Their complaint was that the line from which electric connection was provided to Bodan Ram was the one for which they had paid for grant of electric connection to their fields and Bodan Ram should also bear the proportion of that expense for the electric line. Thus, Vidyut Nigam contended that it could not provide electric connection to Bodan Ram due to this controversy.

Bodan Ram filed a complaint before the District Forum alleging deficiency in service on the part of the Nigam. The District Forum allowed the complaint and directed the Vidyut Nigam to take immediate steps to release the electric connection to the complainant within 60 days of the decision. In case there was failure in compliance of the order, opposite parties should pay jointly and severally by way of compensation Rs.100/- per day to the complainant and awarded cost of Rs.500/-. Aggrieved by the order of the District Forum, the Vidyut Nigam made an appeal before the State Commission, which dismissed the appeal but granted one month's more time to the Vidyut Nigam to release the electric connection, if not already released. The State Commission further stated that if it was not done, the complainant would be entitled to compensation as ordered by the District Forum. Against the order of the State Commission, the Vidyut Nigam filed a revision petition before the National Commission.

Issue

The issue involved in this case was whether there was deficiency in service on the part of the Vidyut Nigam in not providing electricity connection to Bodan Ram.

Decision

The National Commission held that the plea was certainly height of impropriety on the part of the petitioners in as much as petitioners had received amounts not only from Bodan Ram but also from other three persons at Serial Nos. 46, 47 and 56. Electric connection could have been granted to all of them and the dispute could have been resolved at any later stage. It appears that the officers of the petitioners at lower rank otherwise must see some opportunity to harass the consumer, may be for ulterior purposes.

The National Commission held that the circumstances narrated show how the petitioner was grossly deficient in providing electric connection to the complainant. The petition was thus dismissed.

Revision Petition dismissed.

**Guru Nanak Plastic Industries v. Chairman,
Rajasthan State Electricity Board**

IV (2003) CPJ 89 (NC)

Facts

Complainant had 25 H.P. electricity connection in his factory premises. He wanted to install a new machinery of the value of Rs. 2, 63,000/- that required additional load of electricity. For this purpose complainant approached the Electricity Department and deposited the requisite amount. Before the load could be released an inspection of the factory premises of the complainant was done. During the inspection it was found that the premises was having unauthorised load of 53 H.P. Complainant was asked to deposit an additional amount of Rs. 5,565/-, which the complainant resisted and filed complaint for compensation of Rs. 8,99,540/- on the ground that his new machinery remained idle. The case of the Electricity Board was that the complainant was making unauthorised use of 53 H.P., was given notice to deposit the additional amount and it was also brought to its notice that in case of failure, a bill will be raised for the extra load of electricity being utilized by it. Complainant went to the Civil Court, sought an injunction restraining Electricity Board from recovering any extra amount.

The State Commission was of the view that since the issues involved in the complaint before it were same as in the plaint pending before the Civil Court, it should not adjudicate on the same dispute. Thus, the State Commission dismissed complaint for compensation of Rs. 8,99,540/-. Against the order of the State Commission the complainant went in appeal before the National Commission.

Issue

The main issue was whether the National Commission could adjudicate on the matter.

Decision

The National Commission was of the view that the State Commission was right. There was possibility of conflicting findings as the issues before the State Commission and the Civil Court were same. Moreover, claimed compensation of Rs. 8,99,540/- was remote claim and could not be claimed on the plea that the new

machinery remained idle. Even otherwise, such a claim could not have been decided in the summary jurisdiction of the Consumer Forum.

Therefore, finding no merit in the appeal National Commission dismissed it.

Appeal dismissed.

**Ashok Kumar v. SDO, Haryana Vidyut
Parasaran Nigam Ltd. & Anr.**

IV (2003) CPJ 57 (NC)

Facts

The complainant, Ashok Kumar had purchased an agricultural land along with a tube-well therein from the original owner, Shanti Devi. The sanctioned load of the electricity was 15 H.P. however the motor installed there was 7.5 H.P. The complainant requested the Vidyut Parasaran Nigam to reduce the load but the Vidyut Nigam did not heed to his request. Feeling aggrieved with the inaction on the part of the Vidyut Nigam, the complainant filed a complaint before District Forum alleging deficiency in service. The District Forum allowed the complaint and ordered in favour of the complainant. Against that order, the Vidyut Nigam filed an appeal before the State Commission, which set aside the order of the District Forum. Aggrieved by the dismissal, the complainant filed a revision petition before the National Commission.

Issue

The main issue in this case before the National Commission was whether there was deficiency in service by the Vidyut Nigam in not reducing the load of electricity supply.

Decision

The National Commission held that there was a delay of 450 days in filing the appeal for which no sufficient cause was forthcoming. Even on merits the petitioner had no case. The Commission held that undisputed facts of the case were that the electric connection was still in the name of the old landholder. Thus, it was evident that there was contract between the parties (Vidyut Nigam & Shanti Devi). Application of reduction of the load was made by Ashok Kumar who had no locus, as the electric connection did not stand in his name. In the absence of any agreement between the parties (Vidyut Nigam & Ashok Kumar), the complainant could not be called as a consumer.

Thus, upholding the order of the State Commission, the National Commission held that the order of the State Commission was as per law, which called for no interference in exercise of power conferred on them under Section 21 (b) of the Consumer Protection Act. No cost was awarded.

Revision Petition dismissed.

Jaipur Vidyut Vitaran Nigam Ltd v. Smt. Sharda Devi

IV (2003) CPJ 7 (NC)

Facts

The Respondent/Complainant Smt. Sharda Devi had deposited Rs. 1,950/- on 12-4-1990 before Rajasthan State Electricity Board (RSEB) for agricultural electricity connection. The Electricity Board without giving any electricity connection sent her a bill for Rs. 4,262/- on 22-2-1992 on a flat rate. Aggrieved with alleged bill, Smt. Sarda Devi filed a complaint on 11-11-1992 before the District Forum alleging deficiency on the part of the Board. She complained that a lot of overhead electrical lines were laid over her agricultural land for supply of electricity to people further down. Those jumbles of wires could cause damage and injury to her and other people. Therefore, her husband had protested against lying of such wires. The Electricity Board got annoyed with that protest and raised on her a false bill without even giving her direct electric connection.

The District Forum appointed an Advocate as Local Commissioner who made inspection and reported that there was no sign of any electric line, meter or board or any sign of electricity connection having been given earlier. But, the Electricity Board took the plea that the electricity connection was in fact given and that the complainant deliberately removed all traces of connection and the equipment to make false case of non-release of electricity connection. The District Forum relied on the version of the Electricity Board official and dismissed the complaint.

The respondent/complainant filed an appeal before the State Commission, against the order of the District Forum. The Electricity Board produced certain documents at a very late stage and State Commission held them as not reliable. The State Commission came to the conclusion that the case put forth by the respondent was a bundle of lies and the documents produced by them were quite false, forged and subsequently prepared only to defeat the genuine prayers of an agriculturist lady. Thus, the State Commission reversed the order of District Forum and directed the Electricity Board to refund Rs.1, 950/- with interest @ nine per cent and a cost of Rs. 5,000/-. The Electricity Board filed a revision petition before the National Commission, against the order of State Commission.

Issue

The main issue involved in the case was whether there was any deficiency on the part of Electricity Board in not supplying electricity connection to the

complainant though she had deposited the amount and in sending her an alleged bill by claiming to have provided electricity connection to her earlier.

Decision

The matter before National Commission was on appreciation of facts. The National Commission held that State Commission had passed a well-reasoned order after going through the evidence carefully. The order of the State Commission stated that it permitted the respondent to explain various facts, which cast a doubt on the authenticity of the documents. Yet the respondent simply filed a vague reply. The State Commission observed that the Local Commissioner's report was prepared in the presence of both the parties and either party has taken no objections to the report. The Commissioner stated that not only there were no cables or electrical fittings or electrical equipments but also there were no signs or marks of electric supply line to the complainant's well. At the same time Commissioner's report said that only 10 feet away from the complainant's well, there was an electric pole and three phases of live wire passed just over the roof of complainant's room and above the well. These were the electric lines, which were laid over the complainant's field to provide electric supply to other further down.

The State Commission doubted the version that any L-Forms was submitted by the complainant. It entertained serious doubts about the separate service line having been laid on 21.12.1990. It further mentioned that no details like the contractor's name or address who allegedly signed L-form was furnished by the Electricity Board officials. However, the National Commission accepted that before them those details had been furnished but held, it was too late for the revision petitioners to do so.

In light of the well-reasoned order of the State Commission, the revision petition was dismissed by the National Commission, upholding the order of the State Commission.

Revision Petition dismissed.

**Haryana State Electricity Board & Anr. v.
Anand Medicos & Another**

III (2003) CPJ 175 (NC)

Facts

The Respondent/Complainant, Anand Medicos, a chemist shop was availing electricity from the Haryana State Electricity Board (HSEB). One night fire broke out in the shop due to short circuit and everything inside the shop was destroyed. Aggrieved by that, the complainants filed a complaint before the District Forum alleging deficiency in service on the part of HSEB contending that in the supply of electricity to the shop premises of the complainant, there was huge fluctuation in the electric current with the result short circuit was caused resulting in high voltage and fire, destroying everything in the shop. They alleged that, they suffered a loss of Rs. 3,08,000/-, which they claimed in their complaint. They also sought Rs. 50,000/- as compensation for harassment.

The Electricity Board denied that the complainants were consumers as they were having single-phase non-domestic connection for their shop premises. The Electricity Board also contended that the complaint involved complicated questions regarding ownership and the articles allegedly burnt and other like matters, therefore, the complaint should be referred to Civil Court.

The District Forum dismissed the complaint and directed the complainants to seek the remedy in Civil Court. Against the order of the District Forum, the complainants filed an appeal before the State Commission. The State Commission examined the whole aspect of the matter in detail and held that there was hardly any reason for the District Forum to relegate the complainants to Civil Court. The State Commission held that there was short circuit of electric current in the shop premises of the complainants, which was the result of negligence in service on the part of Electricity Board. Accordingly, the State Commission setting aside the order of District Forum, awarded the amount assessed by the Surveyor Rs. 2, 19,316.76/- to the complainant with interest @ 12% from the date of fire. Aggrieved with that, the HSEB filed revision petition before the National Commission.

Issue

The issue before the National Commission was whether opportunity should have been granted to the parties to lead evidence or the parties should have been relegated to Civil Court.

Decision

Upholding the decision of the State Commission, the National Commission held that the State Commission has adopted a correct approach. Remand would have caused undue harassment and expenses to the parties. Rejecting the contentions of the Electricity Board, the National Commission held that it was not the case of the petitioner that opportunity to lead evidence was denied by the District Forum as all the evidence had been led before the District Forum. The National Commission however felt that interest should not have been awarded from the date of the fire itself. Sometime was required to be given to the Electricity Board to find out where the fault was and what loss if any, was suffered by the complainant. Thus, modifying the order of the State Commission, the National Commission held that the interest would be payable from 1st July 1996 instead of 1st January 1996 as ordered by the State Commission. Thus, the National Commission dismissed the Revision Petition with the above modifications. There was no order as to costs.

Revision Petition dismissed

Punjab State Electricity Board & Ors. v. Zora Singh & 70 Ors.**III (2003) CPJ 169 (NC)****Facts**

The Respondent/Complainant, Zora Singh, and 70 other farmers had applied for electricity connections for agriculture purposes and in response the Punjab State Electricity Board (PSEB) issued notices. Complainants deposited certain amount as demanded by the Board. Hoping to get the connection, they spent money on bore well, towards purchasing electric pumps/motors and on construction of kothis / pump houses. But, even after expiry of three to five years, no electricity connection was given. The aggrieved farmers filed complaints before the District Forum against the Board and claimed compensation. The District Forum, after hearing, directed the Board to give the electricity connection within 2 to 6 months. Compensation varying from Rs. 1,000/- to 5,000/- was also awarded to the farmers for the deficiency in service on the part of the Board. In cases where the petitioner had alleged non-compliance of certain provisions of demand notice, petitioner was allowed one month's time to inform the complainant of the discrepancy and upon receipt of reply to give connection within two months thereafter.

Against the order of the District Forum Electricity Board filed an appeal before the State Commission contending that the Board maintained a seniority list which could not be violated as it would result to the detriment of people who had also registered for getting connection and were ahead in the seniority list than the complainants. Rejecting the contention of the Board, the State Commission dismissed all the appeals being barred by limitation as filed with a delay of 9 days. Against the order of the State Commission the Electricity Board filed Revision Petition in the National Commission.

Issue

In all these 71 cases, the main issue involved was whether the non-supply of electricity connection to the farmers even after 3 to 7 years of applying and depositing fees as demanded by the Board was deficiency in services and whether the compensation awarded by the District Forum to the farmers was sufficient looking to the extent of loss and harassment.

Decision

The National Commission after going through contention of the appellant in

detail allowed the revision but held in favour of the farmers. The National Commission observed that instruction No.26 of the Sales Manual of the Board envisages provision of connection of electricity within two months after issue of demand note. The farmers deposited certain amount and also invested money for construction of Pump Houses/purchase of equipment etc. But electricity was not supplied without giving any good reason.

The National Commission held that the orders of the District Forum were equitable to those who came before them, yet it would be unjust and inequitable if complainants alone are allowed to jump the queue, i.e. the seniority list maintained by the petitioner. It was not the case of the complainants that anybody below them has been given the connection. Thus, keeping in view the facts and circumstances of the cases and in the interest of equity, the National Commission sought in the presence of the Chief Engineer (commercial), who gave an assurance and undertaking on behalf of the Electricity Board that while maintaining the seniority list, petitioner shall be able to give electricity connection to all the respondents/complainants by 31.3.2004.

Considering the deposit made by the respondents/complainants, the National Commission held that petitioner, could not be permitted to get undue enrichment from this money without giving any service in return and directed the Electricity Board to grant interest @ 12% p.a. on the deposited amount from the date of deposit up to date of the energization of electric connection. Thus, final figure of credit/debit should be worked out by the petitioner at the time of energization of the connection and communicated to the complainants within four weeks of energization giving full details.

The National Commission awarded compensation of Rs. 10,000/- in each case for harassment, loss to complainants and to cover some interest payment on the premature investment made by them in pump houses, purchase of equipments etc. The National Commission also awarded Rs. 2000/- as cost in each case. These two payments were directed to be made within six week of the order. If there are any discrepancies still left, which were raised in the context of demand notice, petitioner should point that out within four week and help the complainant to remove that at the earliest.

All the revision petitions were allowed with above terms and orders of District Forum as affirmed by State Commission, were set aside.

The National Commission held that in case, the respondents/complainants do not get the electric connection within the time limit indicated by the Chief Engineer

Commercial of the petitioner, the petitioner should then have to pay very heavy cost for such a failure in each case.

Revision Petition dismissed.

Vivek Thakur v. Karam Singh Banyal & Ors.**III (2003) CPJ 168 (NC)****Facts**

The complainant, Vivek Thakur had a domestic power connection. He was running wheat thrasher on domestic power. For this his connection was disconnected. He filed a complaint before the District Forum alleging deficiency in service in disconnecting the supply. The District Forum dismissed the complaint on the ground that the disconnection of the electric supply was justified on the ground that he was running wheat thrasher on domestic power and it was misuse of electric connection. Hence, the District Forum did not find any deficiency in service and dismissed the complaint. In the appeal to the State Commission, the order of the District Forum was upheld. Against the order of the State Commission the complainant filed revision petition before the National Commission.

Issue

Was there any deficiency in service in disconnecting the electricity supply?

Decision

The National Commission dismissed the Revision Petition holding that it was not a fit case for them to exercise their jurisdiction under Consumer Protection Act, 1986.

Revision Petition dismissed.

Malee Horticulture Pvt. Ltd. v. Chairman, M.S.E.B. & Ors.**III (2003) CPJ 81 (NC)****Facts**

With a view to develop strawberry plantation complainant acquired over 40 acres of land. For irrigation and other purposes complainant got two electricity connections in October 1995 with a sanctioned load of 40 HP. Two years after getting the above load, complainant realised that load of 40 HP was not required and requested the opposite party in January 1997 to reduce the load to 15 H.P. This was not done. Again the matter was taken up with the opposite party. As no response was forthcoming, complainant stopped paying bill in respect of one connection. As a result of which the other electric connection of the complainant was also cut off for non-payment of bill. The case of the complainant was that for want of irrigation, which required electricity, there was loss to the strawberry crop. In these circumstances complaint was filed before the National Commission in 1999 claiming damages of rupees two crore.

Issue

The main issues involved in the case were

- (i) Whether the complainant could request the Electricity Board to reduce the sanctioned load of 40 HP to 15 HP; and
- (ii) Whether there was deficiency in service on the part of Electricity Board in disconnecting electricity supply to the complainant for non-payment of bill.

Decision

The National Commission held that disconnection was on account of non-payment of electricity bills by the complainant. It is settled law that user cannot as a matter of right ask for reduction in load and expect the State Electricity Board to obey his command. While sanctioning the connection whole question of economics of line laying, transformer and other costs incurred are looked into by the Electricity Board. Only after satisfying about the economic viability, connection is sanctioned. The National Commission held that user cannot unilaterally demand reduction in load and on refusal by the opposite party stop paying the bill. 'No payment- No connection' is the nature of the game. The National Commission did not find any deficiency in service. Complainant had no right to stop paying bills of minimum

charges raised by the opposite party. There was also no material on record about the loss of rupees two crore claimed especially relating to loss of income amounting to almost Rs. 1.50 crore. If there was loss, it was on account of complainant's own doing. If the stakes were so high, it would have been better for the complainant to keep paying the bills and approach appropriate Forum for any relief relating to non-reduction of load. That was not done. Thus the claim, on account of above mentioned reasons, was dismissed. No order as to cost.

Complaint dismissed.

Ram Chander v. Sub-Divisional Officer (OP) DHBVNL Rewari**II (2003) CPJ 120 (NC)****Facts**

The petitioner approached the Electricity Board for release of electric connection for tubewell under 'Tatkal Scheme'. However, the respondent declined to accept deposit of Rs. 20,000 and to release the electric connection. Aggrieved complainant filed a complaint before the District Forum seeking a direction to the respondent to release electric connection for the tubewell under the said Scheme and also claimed compensation. Respondent contested the complaint on the ground that during the course of checking by SDO on 1.2.2000, the petitioner was found indulging in theft of energy through direct supply to the tubewell from the transformer. Thus, a penalty of Rs. 30,000/- was imposed on the petitioner in addition to lodging FIR and a notice was issued on 2.2.2000. The said amount of penalty still remained to be realized from the petitioner. Observing that theft of energy and imposition of penalty are distinct aspects, the District Forum directed the respondent to provide electric connection after 15 days of the deposit of Rs. 20,000/- and the amount should not to be adjusted towards the amount of penalty imposed. Aggrieved by the order of District Forum, the Electricity Board filed an appeal in the State Commission. The State Commission reversed the order of District Forum holding that electric connection could not be released to the petitioner in the same premises as he was found committing theft of energy and he also could not be regarded as a consumer of the respondent. Against that order, the complainant filed a revision petition before the National Commission. Before the National Commission the Counsel for petitioner submitted that on the basis of mere lodging of FIR, it could not be said that theft of energy was actually committed by the petitioner and the State Commission, thus, ought not to have reversed the order of District Forum.

Issue

The main issue involved in the case was whether the complainant was eligible to get electricity supply having being involved in a theft of electricity.

Decision

Hearing the Revision Petition, the National Commission upheld the order of the State Commission. The National Commission held that allegedly stealing of

energy by the petitioner was taken note of only as a factor *prima facie*, disentitling him to the release of electricity for tubewell under the said Scheme and the guilt of petitioner in that behalf has to be gone into by a Magistrate on charge sheet being filed against him. In the opinion of the National Commission, impugned order did not suffer from any illegality or jurisdictional error, which may call for interference in exercise of revisional jurisdiction under Section 21(b) of the Consumer Protection Act, 1986.

Revision Petition was, therefore, dismissed.

Revision Petition dismissed.

Sadhan Mukerjee v. CESC Ltd.**II (2003) CPJ 23 (NC)****Facts**

Petitioner had an electric connection from C.E.S.C. Ltd. Accumulated bill for a period of 4 months from December 1995 to March 1996 was sent to him, which excluded him from availing slab benefits. C.E.S.C. Ltd. vide a letter dated November 8, 1996 admitted mistake on its part and gave marginal relief. They expressed regrets for the inconvenience and requested the petitioner to settle the account. Not satisfied by the reply, petitioner moved the District Forum, which directed the petitioner to deposit 50% of the bill amount and instructed the respondents not to disconnect the electric connection. It referred the bill for the disputed period from March-August, 1996 to Chief Electricity Inspector (C.E.I) directing him to submit the report within two months of the order and held that the report shall be binding upon both the parties. C.E.I. looked into bills and ordered C.E.S.C. Ltd. to correct the consolidated bill up to September 1998 amounting to Rs. 3,295.33/-. Not satisfied the petitioner filed an appeal before the State Commission, which dismissed it on the ground that the decision of the C.E.I. was binding on the parties and in case of any grievance against the order of C.E.I., the petitioner should seek remedy before proper Forum. Against the order of the State Commission, the petitioner filed revision petition before the National Commission.

Issue

Was the order of C.E.I., as held by the State Commission, binding on the parties or could be challenged in National Commission?

Decision

The National Commission held that there was no fault in the order of the District Forum, which had observed that the decision of the C.E.I. on the disputed bill should be binding on both the parties. Though the petitioner filed the appeal but no relief was sought against the direction of the District Forum, in that sense it became final. What was being sought was compensation for harassment and loss of reputation. As the petitioner had submitted to the jurisdiction of the District Forum and before the C.E.I. regarding the bill amount their order became binding. If the petitioner was not satisfied with the order of C.E.I. then the remedy was available under Section 36(2) of Indian Electricity Act, wherein the appeal could have been

filed before the appropriate Government authority or before an Advisor of Board constituted under the Act. Before the State Commission or the National Commission there was no prayer to refer the matter to the Electricity Inspector. The National Commission did not find any ground to interfere with the order of the State Commission. It held that if there was any contravention of the order of the District Forum by the respondent, petitioner could approach the District Forum.

The revision petition was thus dismissed. The deficiency on the part of CESC Ltd. was admitted by them *vide* letter dated 8.11.1996 and C.E.I. had also commented adversely on the respondent which forced the petitioner to engage in litigation, for this the National Commission awarded Rs. 5,000/- as costs to be paid by respondent within a period of eight weeks of the order.

Revision Petition dismissed

Punjab Electricity Board v Pritpal Singh & Ors.

II (2003) CPJ 14 (NC)

Facts

The Complainants Pritpal Singh and others, residents of village Mansingh Wala of district Muktsar had applied for electricity connection for their tubewells. A scheme was launched by the Government of Punjab for grant of tubewell connection on priority basis in the areas of Muktsar District having waterlogging problem. A circular was issued in 1997 by the Electricity Board in which waterlogged villages were identified. As per this circular village Mansingh Wala was at serial No.78 of the seniority list. Thus, as per the direction of the Electricity Board, they deposited the necessary amount for the connection in December 1997. However, in the year 1999, more villages of other two districts were declared as waterlogged and the residents of those villages were also entered in the earlier list, as a result, the seniority of the complainants was disturbed. No reasons were given and perhaps it was due to some external influences. The respondents/complainants filed complaints before the District Forum. They contended that the Electricity Board had not provided them electricity as per the seniority list and it amounted to deficiency on the part of Electricity Board. The District Forum issued necessary directions to the Electricity Board. Aggrieved, the Electricity Board appealed before the State Commission. The Commission dismissed the appeals upholding the decision of the lower fora. Again, the Electricity Board filed revision petitions before the National Commission. However, during the proceeding before the National Commission, the counsel for the Electricity Board informed the Commission that the demand note has been issued to all the complainants and on their making payments thereof electric connection to their tubewells shall be energized.

Issue

The issue raised in the case was that of deficiency in service on the part of PSEB in bypassing the seniority list of the complainants and not supplying electric connection to their tubewells ever after depositing the required money.

Decision

The National Commission held that when the matter was taken up it was submitted by the learned Counsel for the petitioner that he has received instructions to inform this Commission that the demand note has been issued to all the

complainants and on their making payments thereof electric connection to their tubewells shall be energized. The National Commission appreciated that good sense has prevailed on the petitioner and necessary action would be taken to energise the tubewells of the complainants/respondents.

The National Commission held that the revision petitions have no merit; rather they should not have been filed. The National Commission did not find any question of law arising in these petitions for it to exercise its jurisdiction under clause (b) of Section 21 of the Consumer Protection Act, 1956. The revision petitions were thus dismissed.

Revision Petition dismissed.

Faquir Chand v.S.D.O. (OP) Sub Division, HVPN**I (2003) CPJ 260 (NC)****Facts**

The petitioner had a three-phase electricity connection from the respondent for over two decades for running a flourmill and a sawmill. The meter installed for the purpose got burst which was not replaced inspite of repeated requests. On the contrary against an average of Rs. 1,000 or so per meter, he was issued a bill of Rs. 26,302 in July 1996 which was further enhanced to Rs. 29,804 in the bill issued in August, 1996. Further the respondent was being charged Rs. 53/- p.m. as line charges from the last 23 years, which it couldn't do, so these charges were required to be refunded. Aggrieved complainant filed a complaint before the District Forum. The District Forum after hearing both the parties directed refund of "Service Line Charges" from the date when the transformer No.2 in village Gari was installed along with interest @ 12% p.a. Against the order of the District Forum, appeals were filed by both the parties before the State Commission. The State Commission through a common order modified the order of the District Forum and directed refund of line charges for the period of three years as per the instructions on the subject issued by the respondent. The appeal filed by the petitioner for grant of compensation of Rs. 5,000/- was dismissed. Both the parties filed revision petitions in the National Commission against the order of the State Commission. Before the National Commission, the learned Counsel for the petitioner contended that the order of the District Forum was correct as it was based on facts/material on record and he should be compensated for harassment caused to him. On the other hand it was argued by the learned Counsel for the respondent that the State Commission's order was as per law and needs to be maintained.

Issue

The main issue before the National Commission was regarding adjudication of line charges.

Decision

The National Commission held that three reliefs were sought by the petitioner before the District Forum. Two issues, one that of bill amount and second about installation of new meter had been resolved, only point left for adjudication related to line charges. Nothing had been shown by the petitioner that service charges

could be refunded beyond three years. What the State Commission had done was to act within the instructions on the subject. The State Commission could not be expected to go beyond the Rule/Regulation/Instructions on the subject. The National Commission did not find any material to interfere with the order of the State Commission, which was in conformity with the instructions on the subject. No jurisdictional error was shown calling for interference with the order of the State Commission. The order of the State Commission was thus upheld and both the revision petitions were dismissed as being devoid of merits. No orders as to costs.

Revision Petitions dismissed.

Sagar Rolling and Forgings and Ors. v. Maharashtra State Electricity Board

I (2003) CPJ 156 (NC)

Facts

The complainant Sagar Rolling and Forgings was the consumer of Maharashtra State Electricity Board for running their machines and industries. They filed a complaint on 13th September 1996 before the National Commission alleging deficiency in service on the part of the Maharashtra State Electricity Board (MSEB). They contended that due to interrupted supply of electricity to their industry, there was excess consumption of fuel oil and they suffered a huge loss from the year 1986-87 to 1993-94. They requested the National Commission to direct the Electricity Board to give compensation of Rs. 60,00,000/- quantified under different heads, to award interest on the compensation claimed till the date of payment and to pass such further orders as the Commission may deem fit and proper in the facts and circumstances of the case. The MSEB denied all allegations and submitted before the National Commission that the Electricity Board had filed two civil suits against the complainants towards the collection of arrear electricity charges.

Issue

The main issue raised before the National Commission was whether there was deficiency in service on the part of the Electricity Board and it was liable to pay the claimed compensation for the loss caused due to interrupted supply of electricity to the complainant's industry.

Decision

The National Commission held that the alleged loss of profit was right from the year 1986-87 to 1993-94 most of which was barred by limitation as the complaint was filed on 13.9.1996. Also evidence would be required to prove the loss on account of excess consumption of fuel oil due to interrupted electricity supply. All this would require a great deal of evidence apart from interpretation of the terms of the agreement on which the power was agreed to be supplied to the complainants by the opposite party. On 19.12.2001 the Commission required the complainants to file evidence by means of affidavit within four weeks from that date. That was not done. Even on the date of decision amended complaint was not filed. The National Commission was of the view that such type of cases could be best tried in the civil court.

The National Commission therefore, dismissed the complaint. But held that, this would not come in the way of the complainant to approach the civil court or any other forum for the reliefs claimed and referred to the decision of the Supreme Court in the case of *Laxmi Engineering Works v. PSG Industrial Institute*, II (1995) CPJ 1 (SC) wherein Supreme Court held that for exclusion of the time spent in these proceedings provisions of Section 14 of Limitation Act can be invoked.

Complaint dismissed.

**Radharani Chemicals Pvt. Ltd. v. Chairman, Grid
Corporation of Orissa & Anr.**

I (2003) CPJ 140 (NC)

Facts

The complainant started an industrial undertaking in 1984 and applied for electric connection. However, there was delay in supply of electricity to the industrial undertaking as the power connection was granted only in the year 1993. Thereafter the supply was erratic and on two occasions it was disconnected and again restored. Since the bills were not paid, the electric connection was disconnected on 3.12.97 and remained disconnected. Thereafter complaint was filed on 21.9.1998 when complainant owed a sum of Rs. 6,85,683.10/- towards the bill for electricity charges due to the opposite parties. Complainant in his complaint before the National Commission alleged that initially there was delay in supplying the regular power connection to his factory and thereafter disconnection of the same “under the guise of lifting the exemption of minimum charges”. This caused undue and severe hardship and the factory came to standstill. The complainant claimed a compensation of Rs. 75 lakh for negligence on the part of the opposite parties. The opposite parties contended that the complaint was barred by limitation in as much as the cause of action arose in 1984. It was also stated that complicated questions of facts and law arose and that since a great deal of evidence would have to be led, so it was better that complainant be relegated to Civil Court. While denying the allegations of the complainant, it was stated that total outstanding amount from the complainant towards electric charges was Rs. 24,35,474.25/-. It was also added that (i) the Government of Orissa had given the benefit of exemption from payment of minimum charges to all the industries covered under pre-92 IPR benefits but up to 31.7.1997 only. As such the petitioner was liable to pay minimum charges from 8/97 onwards which has been notified by erstwhile OSEB; and (ii) the petitioner had filed a case in the Hon’ble High Court of Orissa for exemption of minimum charges wherein the Hon’ble High Court has directed the petitioner to make adhoc payment of rupees two lakh within one month for restoration of power supply. The petitioner has not complied with the orders of the Hon’ble High Court till date and to avoid such payment the present proceedings had been initiated by the petitioner. However, before the National Commission, the complainant admitted filing of writ petition by him in the High Court of Orissa but according to him those proceedings involved different issue altogether. Complainant further informed that against the order of

the High Court directing him to deposit rupees two lakh as interim measures, Special Leave Petition has been filed in the Hon'ble Supreme Court where it was pending.

Issue

The important issues before the National Commission were whether there was deficiency in service on the part of Corporation in disconnecting electricity supply to the factory of the complainant due to non-payment of bills and whether the complaint was time barred.

Decision

The National Commission held that after having gone to the High Court in the writ petition challenging the levy of minimum charges, the complainant chose to file this complaint claiming huge sum of Rs. 75 lakh. It was so because no court-fee was payable in a Consumer Forum. There was nothing on record to show as to how this amount of Rs. 75 lakh has been arrived at. With the complaint certain documents were filed but they were not found sufficient to prove the damages as claimed by the complainant. Because of the above reasons the National Commission dismissed the complaint. However, held that if the complainant chose to file a civil suit, this dismissal would not come in its way and complainant may seek exclusion of time under Section 14 of the Limitation Act. In this connection reference was made to the judgment of the Supreme Court in the case of *Laxmi Engineering Works v. PSG Industrial Institute*, II (1995) CPJ 1 (SC).

Complaint dismissed.

NEPA Ltd. v Madhya Pradesh Electricity Board

I (2003) CPJ 138 (NC)

Facts

The complainant, NEPA Ltd, a public undertaking was the consumer of the Madhya Pradesh Electricity Board (MPEB). The Undertaking filed a complaint on 12th July 2000 before the National Commission alleging deficiency in service on the part of Electricity Board. In its complaint, the complainant claimed a sum of Rs. 54, 75,03,540/- in total along with the interest @ 18 % p.a. on the claimed amount from 13th February 1999 till the date of payment. The claim made by undertaking included claim of Rs. 2,09,75,378.00/- due to excess charges recovered from the complainant, Rs. 6,00,43,217.00/- as interest on the said amount @ 30% up to May, 1998, Rs. 4, 05,31,783.00/- towards refund of illegal recovery of the Tariff Minimum charges and Rs. 42,59,53,162.00/- towards consequential production losses as a result of power failure, load shedding, disconnection etc, which included excess consumption of high cost material like pulp and furnace oil, loss due to damage to plant machineries and loss of sales due to loss of production. The M.P.E.B denied all allegations and requested the National Commission to dismiss the complaint.

Issue

The main issue raised before the National Commission by the complainant was whether the M.P.E.B was liable to pay the compensation claimed, as it did not provide sufficient electricity as per the agreement.

Decision

The National Commission held that a great deal of evidence both oral and documentary would be required for the complainant to prove its case as complicated question of facts and law arose which were not possible for the National Commission to decide in its summary jurisdiction. The Supreme Court in the case of *Synco Industries v. State Bank of Bikaner and Jaipur & Ors*, I (2002) CPJ 16 (SC) held that such type of cases can not be decided in summary jurisdiction of Consumer Forum. In civil court parties will have full opportunities to lead evidence. Consumer Forum is not meant to try the cases like the present one. In another case *Dr. J. J. Merchant & Ors v. Shrinath Chaturvedi III* (2002) CPJ 8 (SC) the Supreme Court has held that there is no difficulty for the National Commission to decide such cases involving complicated questions of law and facts. But then it is left to the wisdom of the National Commission to take up a particular matter or not.

So the National Commission held that the case like the present one should be left to be decided by the civil court. The Commission, therefore, rejected the complaint and left the complainant to go to Civil Court for the reliefs claimed or even to seek arbitration if permitted in law. However, it was held that the complainant may seek exclusion of time under Section 14 of the Limitation Act while matter was pending in this Commission, in view of the judgment of the Supreme Court in the case of *Laxmi Engineering Works v PSG Industrial Institute, II* (1995) CPJ 1 (SC).

Complaint dismissed.

**Secretary, Kerala State Electricity Board & ors. v.
Hotel Maria**

I (2003) CPJ 101 (NC)

Facts

The Respondent/ Complainant, Hotel Maria, was the consumer of electricity supplied by the Kerala State Electricity Board (KSEB). He informed the Electricity Board on 24th September 1995 about the defective meter and requested to change it. However, the Electricity Board replaced defective meter only in the first week of May 1996 after repeated requests. Thereafter the Board on 5th June 1996 issued an additional bill for Rs. 49, 761.60/- payable by 11th July 1996, which the complainant received on 13th July, 1996. The bill was for the period of 26 months allegedly for excess power consumed by the complainant. Aggrieved complainant filed a complaint before the District Forum. He contended before the Forum that the bill was arbitrary and excessive and the arrear could not be claimed for such a long period. On the other hand, the Electricity Board submitted before the Forum that during inspection of the premises of the complainant on 7th July 1996 it was found that there were certain irregularities in the installations of the complainant. It was also submitted by the Board that if there was a dispute regarding the correctness of the meter reading, it has to be decided under Section 26(6) of Indian Electricity Act and pleaded to dismiss the complaint.

The District Forum held that there was no evidence to show that the complaint was about the non-functioning of the meter. Also there was nothing on the record to show that the complainant had made any theft of electricity. The District Forum also took note of the fact that there was no criminal prosecution lodged against the complainant by the Electricity Board in case there was theft of electricity. The District Forum held that the impugned bill was rather excessive and directed the Board to make afresh calculation taking six months average reading of the new meter from the date of its installation and then accordingly to calculate the previous charges. Aggrieved with this order, the Electricity Board went in appeal before the State Commission. The State Commission upheld the decision of the District Forum. However, the State Commission was of the view that proper direction should be made to take the average of energy consumption of the three months succeeding the change of meter and then to determine the consumption of energy for the six months prior to issue of the bill. Thus the State Commission modified the order of the District Forum and dismissed the appeal. Against the decision of the State

Commission, the Electricity Board filed a revision petition before the National Commission.

Issue

The issue raised before the National Commission was whether there was deficiency in service on the part of the Board in sending the arrear bill of Rs. 49, 761.60/- to the complainant and the direction of the District Forum as confirmed and upheld by the State Commission was in accordance with the law.

Decision

Hearing the revision petition, the National Commission upheld the decision of the District Forum as duly modified by the State Commission and dismissed the revision petition. The National Commission was of the opinion that it was not a fit case for the Commission to exercise its jurisdiction under Clause (b) of the Section 21 of the Consumer Protection Act, 1986.

Revision Petition dismissed

**Panchayati Akhara Nirmla v.
Punjab State Electricity Board & Ors**

I (2003) CPJ 77 (NC)

Facts

The Complainant before the District Forum and the Respondent No.3 before the State Commission and the National Commission was tenant of the petitioner. He applied for the grant of electric motor connection to his tube-well in his agricultural field. He deposited the requisite fee before the Punjab State Electricity Board (P.S.E.B.), but the Board did not provide him electric connection even after considerable period. Aggrieved by that, the tenant filed a complaint before the District Forum against the P.S.E.B. and Sub-Divisional officer of the Board alleging deficiency in service on their part. The District Forum allowed the complaint on 27.11.2001 and directed the respondents to release electric connection to the complainant within a period of one month from the date of receipt of the copy of the order, if he fulfills all other requirements. The District Forum also granted Rs. 250/- as cost to the complainant.

Aggrieved by the order of the District Forum, Panchayati Akhara Nirmla, owner and landlord filed an appeal before the State Commission alleging that the order of the District Forum was not correct in the absence of owner of the land being party to the complaint. Along with the appeal, the landlord filed applications (i) for grant of leave to file appeal; (ii) for extension of period of limitation and (iii) for staying the release of connection to the alleged tube-well of the tenant/complainant before the District Forum. The State Commission hearing the appeal dismissed it and held that the appellant being not a party before the District Forum was not competent to file appeal. Other two applications were also dismissed.

Aggrieved, Panchayati Akhara Nirmla, filed a revision petition before the National Commission alleging that his appeal and applications should have been accepted by the State Commission as he was the real owner of the land. He further contended that supply of electricity to the tube-well was an improvement under Section 65 of Punjab Tenancy Act and for that assent of the landlord was imperative. The Counsel of the appellant also informed the National Commission that civil suit has also been filed in this regard.

Issue

The important issue involved in the case was whether the petitioner not being

party before the District Forum could appeal before the State Commission and whether the order of the District Forum was in accordance with the law under Consumer Protection Act.

Decision

The National Commission after going through the Instruction No. 23 of the Sales Manual of the Board and Sections 64,65 and Section 4 (19) of the Punjab Tenancy Act in detail dismissed the appeal upholding the decision of the District Forum. Rejecting the contentions of the Counsel for the petitioner, the National Commission held that the Counsel for the petitioner was not right in his submission. Moreover the complaint has to be seen from angle of the Consumer Protection Act, 1986. There cannot be any dispute that complainant before the District Forum was a consumer if he deposited necessary charges for release of electric connection. There was certainly deficiency in service when the P.S.E.B. and the sub-divisional officer did not release the electric connection. They were bound by Instruction No.23 and the District Forum rightly held that refusal to release the electric connection was clearly deficiency in service on their part.

Rejecting the submission of the Counsel for the petitioner that Instruction No.23 was contrary to Punjab Tenancy Law, the National Commission held that they did not find any contradiction and if the petitioner landlord has a right under the Punjab Tenancy Act, they could well approach the Civil Court. Petitioner was stranger in the proceeding before the District Forum in view of the instruction, which required the Electricity Board to give electric connection to the tenants. Commenting on the civil suit filed by the petitioner, the National Commission held that the plaint of that suit was not before them and they did not know what were the reliefs claimed by the petitioner therein against the respondents. Accordingly the Revision Petition was dismissed.

Revision Petition dismissed.

**Ram Niwas Parashar v. Rajasthan State Electricity Board,
Jaipur**

2003 (1) CPR 193 (NC)

Facts

The complainant, an agriculturist was having an electric connection through a meter. Excess bill was sent to him on the basis that the meter had stopped due to defect. The complainant filed a complaint in the District Forum alleging deficiency in service on the part of the Electricity Board. The District Forum held that in the circumstance, the board could recover charges @ Rs.28/- per month, which were the minimum charges. The Board filed an appeal against the order of the District Forum in the State Commission. The State Commission modified the order of the District Forum. It held that as it was a connection for agricultural purposes, the complainant had to be charged flat rate @ Rs. 96/- per month under condition No. 19(d)(vii)(ii) of General Conditions of Supply of Electricity and had to pay Rs.4.50/- as meter rent. Against the order of the State Commission the complainant filed revision in the National Commission.

Issue

Did the order of the State Commission required interference by the National Commission or it was according to law?

Decision

The National Commission dismissed the revision petition holding that there was no jurisdictional error in the order of the State Commission.

Revision dismissed.

S.A. Raja v. Tamil Nadu Electricity Board & Ors.**III (2002) CPJ 322 (NC)****Facts**

Under a certain policy of the state of Tamil Nadu, it agreed, to purchase electricity from H.T. Consumers who were also having captive generating plant as it was hoped that there would be excess generation of electricity in those plants not required for use. There was also arrangement that a bank would be established under which electricity generated by H.T. Consumers would come in the lines of the Electricity Board of the State Government from where captive consumers could also draw the electricity and State Government would charge commission @ 2% of the energy generated by the captive consumer. It was also proposed that in case the energy generated was more than the requirement of the captive consumers that could be adjusted in the following months and if energy drawn from the lines of the Electricity Board was more than that generated by the consumers they would be billed for that. The complainant S. Raja purchased two wind Mills of NEPC that were earlier having arrangement with the Tamil Nadu Electricity Board (TNEB). The complainant filed a complaint before the State Commission alleging deficiency on the part of the Electricity Board and its different officials and claiming compensation on different grounds. Meanwhile, the complaint was withdrawn by the complainant resulting in its dismissal by the State Commission.

Thereafter, a fresh complaint was filed before the National Commission requesting the Commission to direct the Electricity Board to give the complainant separate service connection to the said two wind Mills, to pay Rs. 80,00,000/- being the compensation towards the loss caused to the complainant till date, to pay Rs. 2,20,000/- per month from the date of complaint before the National Commission to the date of service connection, towards future loss and to pay Rs. 10,000/- towards the costs of the proceeding.

Issue

The main issues involved in the case before the National Commission were, whether the complainant was a consumer, was there any deficiency in service on the part of the Electricity Board and whether the complaint was maintainable under the Consumer Protection Act.

Decision

The National Commission held that apart from the fact that complex question of both law and facts arise in the case for which the National Commission was not the right Tribunal to adjudicate upon, the petitioner was not a consumer to invoke the jurisdiction of the National Commission. The National Commission noted that earlier the complaint was filed in the State Commission, which was dismissed as withdrawn, for this the complainant could not provide any satisfactory justification. Once having invoked the jurisdiction of the State Commission and withdrawing the complaint without any apparent reason, a complainant cannot again invoke the jurisdiction of the National Commission. On enquiring from the counsel for the complainant as to under what circumstances the complaint was withdrawn from the State Commission, the answer was that in the complaint amount claimed was Rs. 20 lakh and during the pendency of the complaint further damages accrued every month which made the complainant withdraw the complaint. The National Commission found the statement to be very strange. After going through the provision under Clause (d) of Section 2 (i), the National Commission further held that the complainant was not a consumer as the complainant was not buying any goods and was also not hiring or availing any services from the opposite parties for consideration. Thus, the National Commission dismissed the complaint leaving the complainant to seek its remedy elsewhere.

Complaint dismissed.

**Assistant Executive Engineer, Sub Division No. 11, Karnataka
State Electricity Board & Ors. v.
Neelakanta Gouda Siddana Gouda Patil**

III (2002) CPJ 312 (NC)

Facts

Complainant had an electric connection for the pump set meant for irrigation purposes. The distance between the poles was too much and the wires were hanging loose due to distance. Complainant informed the authorities of the Board to rectify the defect but no action was taken. On the night of 10.3.1996, due to wind, the electric wires between the poles touched each other. As a result there was sparking resulting in fire on the sugarcane crops of the complainant. Due to fire the sugarcane crops, coconut trees and chikku trees were burnt. Complainant filed a complaint in the District Forum claiming a loss of Rs. 4,15,825/-. The District Forum allowed the complaint holding that there was deficiency in service on the part of Board in not providing safe electricity through the wires passing over the field of the complainant. The District Forum awarded compensation of Rs. 1,50,000/- to be paid within one month, else it was to carry interest @ 18% per annum. The Electricity Board filed appeal before the State Commission against the order of the District Forum. Complainant also filed appeal seeking enhancement of compensation. Both the appeals were dismissed. Aggrieved by the order of the State Commission, the Board filed revision petition before the National Commission.

Issue

The main issue was whether the damage caused to the crops of complainant due to fire caused by sparking in the wire constituted deficiency in service on the part of Board.

Decision

The National Commission did not find any error in the order of the District Forum as affirmed by the State Commission to exercise their jurisdiction under Consumer Protection Act, 1986. Thus the petition was dismissed.

Revision Petition dismissed

Karnataka Electricity Board now known as Karnataka Power Transmission Corporation v. Dr. M. S. Shankar Bhat

III (2002) CPJ 312 (NC)

Facts

The Respondent/Complainant Dr. M.S. Shankar Bhat was a medical practitioner having an electricity connection from Karnataka Power Transmission Corporation Ltd. He filed a complaint before the District Forum alleging deficiency in service on the part of the Electricity Board. He alleged that the Electricity Board has charged excessive electricity bills as the rate applicable to him was LT3 (b) but he was wrongly charged LT3 (a) rates. The District Forum on the material on record allowed the complaint and directed the Electricity Board to refund the excess amount of electricity bill quantified at Rs. 21, 225.70/- with interest at the rate of 12% p.a. The Forum also awarded Rs. 1000/- compensation and cost of Rs. 500/- to the complainant. Aggrieved by that order of the District Forum, the Electricity Board filed an appeal before the State Commission with a prayer to dismiss the complaint as it was barred by limitation. However, the State Commission did not accept the request and dismissed the appeal. Against the order of the State Commission, Electricity Board filed revision petition before the National Commission contending the complaint as barred by limitation.

Issue

The main issue was whether there is deficiency in service on the part of the Electricity Board or the complaint was barred by limitation.

Decision

The National Commission after going through the case and decisions of both the District Forum and the State Commission held that there was no ground to interfere with the orders of the lower fora and Commission did not find it a fit case to exercise their jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act, 1986. Thus revision petition was dismissed.

Revision Petition dismissed.

NeelKamal Industries v. M.P. Electricity Board

III (2002) CPJ 278 (NC)

Facts

The complainant, NeelKamal Industries was a small-scale industry having an electricity connection in its premises for running a 70 HP machine. When the officers of the M.P. Electricity Board visited the premises, they found that the meter was faulty and one phase was not giving reading on the meter. Thereafter, they sent two bills amounting Rs. 11,080/- and Rs. 6,628/- to the Industry for payment. The complainant filed a complaint before the District Forum alleging deficiency on the part of the Electricity Board. The Electricity Board contended that the bills were correct and since one phase was not recording any reading on the meter the additional charges were calculated in respect of the said phase on the basis of the bill for the two phases already charged in regular bill. Thus, plea of the Electricity Board was that they had not over charged or charged anything extra.

The District Forum dismissed the complaint with cost. Against it the complainant filed an appeal before the State Commission. The State Commission upheld the order of the District Forum. Against this order, the complainant filed a revision petition before the National Commission. The complainant pleaded, before the Commission that if the meter was faulty the Electricity Board could not raise a supplementary bill without referring the matter to the Electrical Inspector, which was not done in the present case.

Issue

The issues raised before the National Commission were whether the Electricity Board was right in sending arrear bills of the faulty meter without referring the matter to the Electrical Inspector and whether the order of the District Forum affirmed by the State Commission was in accordance with the provisions of CPA.

Decision

The National Commission accepted the revision petition and set aside the impugned order of the lower fora. Accepting the contentions of the appellant, the National Commission directed the respondent, Electricity Board to proceed in accordance with the provisions of Section 26(6) of Electricity Act, 1910. The

Commission further held that the supplementary bill could be raised by them only after obtaining report from the Electrical Inspector if that happened to be adverse to the petitioner and if the amount has already been recovered it should be adjusted in the future bills. Thus, the National Commission allowed the revision petition.

Revision Petition allowed.

Karnataka State Electricity Board v. Smt. Sharavva & Ors.

III (2002) CPJ 269 (NC)

Facts

The Respondent/Complainant Smt. Sharavva and others were the legal representatives of Kuber who died of electrocution on 8th July 1996. The deceased came in contact with a live wire, which had snapped from the electric pole supplying electricity to feed his pump set, fitted to bore well for irrigation. They filed a complaint before the District Forum alleging deficiency in service on the part of K.S.E.B. in not supplying electricity properly and safely, resulting in death of their bread earner. They contended before the District Forum that the power line was loose and hung very low and it was precariously connected to the poles on either side. It was also alleged that power line was broken at various places and mended shoddily and no step was taken by the Electricity Board inspite of many complaints made by the deceased and his neighbours to the officers of Electricity Board. The District Forum held in favour of complainant and directed the Electricity Board to pay Rs. 1,70,000/- plus Rs. 5,000/- as compensation with interest @ 12% p.a. from the date of complaint and further direction was given as to how the amount was to be shared among the legal representatives of Kuber.

The Electricity Board appealed before the State Commission who dismissed the appeal but modified the order of the District Forum. The State Commission after examining various provisions of the Indian Electricity Rules, 1956 as to the responsibility and care to be exercised by the Electricity Board for safe supply of electricity to the consumers dismissed the appeal. Modifying the compensation amount, the State Commission directed the Electricity Board to pay Rs. 1,50,000/- with interest @ 12% p.a. from the date of the complaint. The Commission also awarded Rs. 10,000/- to complainant No.1 for loss of consortium. A direction as to how the amount was to be kept was given since some of the legal representatives were minor. Aggrieved, the Electricity Board then filed revision petition before the National Commission against the order of the State Commission.

Issue

The main issue involved in the case was whether there was any deficiency on the part of the Electricity Board in not supplying safe and proper electricity to the consumer and what shall be the quantum of compensation in case of deficiency in service.

Decision

The National Commission after examining the matter in detail held that it was not a case for the State Commission to reduce the amount of compensation as awarded by the District Forum. The National Commission further held that the deceased was a consumer and there was deficiency in service on the part of the petitioner Electricity Board for which it was liable to pay compensation. Thus finding no merit in Revision Petition, the Commission dismissed it.

Revision Petition dismissed.

Gwalior Ice Factory v. M.P. Electricity Board

III (2002) CPJ 262 (NC)

Facts

The appellant/complainant was the owner of the Gwalior Ice Factory, availing electricity under an agreement with the respondent, M.P. Electricity Board. He complained about excessive bills of electricity to the concerned authority of the Board. The matter went to the Electricity Board for adjudication of the disputed bill under Sub-clause (a) of Clause 26 of the agreement. Under the provision in 26(a) “in the event of any dispute or difference as to the correctness of any bill or bills prescribed under the terms thereof, the consumer shall nevertheless pay such bill or bills within the aforesaid period of twenty one days. Any adjustment necessary due to incorrectness of such bill or bills shall be made by the Board in the next ensuing bill after the settlement of the said dispute of difference.” Dispute was settled in favour of the petitioner, however, he still complained that he should have been paid interest on that amount of the electricity bill which was found excessive.

Aggrieved by that, the complainant filed a complaint before the District Forum alleging deficiency in service on the part of the Board. The District Forum dismissed the complaint and held that there could not be any deficiency in service as alleged by the complainant. Against the order of the District Forum, the complainant filed an appeal before the State Commission. The State Commission dismissed the appeal and upheld the order of the District Forum. Again feeling aggrieved by the order of the State Commission, the complainant filed a Revision Petition before the National Commission.

Issue

The issue raised before the National Commission by the complainant/appellant was whether there was deficiency on the part of Electricity Board in not giving interest on the paid amount towards excessive bills.

Decision

The National Commission held that when the agreement itself provided for settlement of the dispute and the petitioner had availed of the remedy, it was difficult to see as to how he could then come to the Forum under the Consumer Protection Act complaining deficiency in service. The District Forum was not Appellate

Authority over the respondent Electricity Board. The National Commission held the complaint was not a fit case to exercise its jurisdiction under Clause (b) of Section 21 of the Consumer Protection Act, 1986. The revision petition was thus dismissed.

Revision Petition dismissed.

Haryana State Electricity Board v. Rattan Lal

III (2002) CPJ 138 (NC)

Facts

The Respondent/Complainant, Rattan Lal filed a complaint before the District Forum alleging deficiency on the part of Haryana State Electricity Board. In his complaint he claimed Rs. 10,000/- as compensation on account of his house having caught fire and injury suffered by his cattle due to spark by a live wire passing over his hut. He alleged that the fire caused burn injuries to his two buffaloes, one cow and two calves and damaged the household goods. Holding deficiency in service District Forum allowed the complaint and awarded the compensation of Rs. 10,000/- as claimed by the complainant. Aggrieved, Electricity Board appealed before the State Commission, which dismissed the appeal upholding the order of the District Forum. Feeling aggrieved, the H.S.E.B. filed revision petition before the National Commission against the decision of the State Commission.

Issue

The important issues involved in the case were whether the complainant was a consumer and whether there was deficiency on the part of Electricity Board when spark from the live wire passing over the complainant's hut resulted in fire causing injury and loss to the complainant.

Decision

The National Commission, allowed the revision petition filed by the H.S.E.B. The National Commission setting aside the orders of lower foras held that approach of both the District Forum and the State Commission was not correct and in fact, against the law. It may be that the spark from live electricity wire caused damage to the complainant but there was no question of deficiency in service on the part of Electricity Board as it was not the case of either of the parties that electricity was being supplied by the Board to the hut of the complainant. It would appear that it was the complainant who constructed his hut when live electricity wires were already passing to that area. Board may be guilty of any tortuous act but it certainly could not be complained of any deficiency in service. Complainant could not be said to be a consumer. Dismissing the complaint the National Commission allowed revision petition with no order as to cost and set aside the impugned orders of the District Forum and the State Commission.

Revision Petition allowed.

Jaya Shree Insulators v. West Bengal State Electricity Board

III (2002) CPJ 67 (NC)

Facts

The complainant, Jaya Shree Insulators was the consumer of electricity supplied by the West Bengal State Electricity Board (W.B.S.E.B). It filed a complaint before the National Commission alleging deficiency in service on the part of the Electricity Board. It alleged that due to interrupted power supply and fluctuation in voltage unit could not run properly and as a result the company suffered a huge loss and damages. In the complaint, the National Commission was requested to direct the Electricity Board to pay the compensation of Rs. 44,76,60,000/- with interest at the rate of 24% and costs, etc. It was contended that the claim was to compensate the amount spent i.e., Rs. 25 lakh towards providing dedicated 33 KV line and 33 KV S/S exclusively, Rs. 18,60,500/- towards a bank guarantee and Rs. 22,38,30,000/- towards loss of production.

Issue

The issue to be considered by the National Commission was whether interrupted power and alleged fluctuation of voltage, which caused huge damage and loss of production to the complainant company constituted deficiency in service on the part of the Electricity Board and whether the claimed amount of over Rs. 44 crore by the complainant was as per the provisions of Consumer Protection Act.

Decision

The National Commission held that the complaint and different claims thereby show that a great deal of evidence would be required both oral and documentary to prove such a huge loss. Referring to the Supreme Court's judgment in the case of *Synco Industries v State Bank of Bikaner, Jaipur and Others*, I (2002) CPJ 16 (SC), the Commission held that it was not a case, which could be decided in summary jurisdiction and directed the complainant to seek relief in Civil Court or any other Forum. However, the National Commission referring to the Supreme Court's decision in the case of *Laxmi Engineering Works v PSG Industrial Institute*, II (1995) CPJ 1 SC, held that if the appellant chose to file a suit for the relief claimed in

those proceedings he can do so according to law and can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, while computing the period of limitation prescribed for such a suit.

Complaint dismissed.

**S. Kulandairajan v. Junior Engineer, Rural/North,
Tamil Nadu Electricity Board & Anr.**

III (2002) CPJ 51 (NC)

Facts

The complainant, S. Kulandairajan was having electricity connection at his house for domestic purposes. He rented out his premises to a tenant who wanted electricity for commercial purposes. Accordingly, the complainant requested the Electricity Board to change his Tariff system from Tariff-I to Tariff IX. For conversion of Tariff I to IX Rs. 750/- was to be paid by way of deposit and Rs. 500/- per KW towards development charges. Since the complainant availed 7 KW power, he was required to pay Rs. 3,500/- towards development charges. The Electricity Board changed the Tariff I to Tariff IX but inadvertently missed to claim the development charges.

After the tenant left the premises intimation was sent to the respondents that petitioner wanted to change the connection back from Tariff-IX to Tariff-I. At this point of time respondents pointed out those earlier charges of Rs. 3,500/- had not been paid by the petitioner. In the absence of payment of difference in development charges of Rs. 2,500 i.e. Rs. 3,500-1,000, electric connection was not changed from Tariff-IX on Tariff-I. Complaining deficiency in service for being charged at the commercial rate, petitioner went to the District Forum. Allowing the complaint, District Forum directed that service connection to be changed to Tariff-I from Tariff-IX, Rs. 2,500/- required to be paid by the complainant towards developmental charges be waived and to pay the complainant the excess electrical current consumption charges quantified at Rs. 1,200/-. Further direction was to refund to the petitioner Rs. 450/- being the amount of charges already deposited. Complainant was awarded Rs. 500/- as costs.

Against this order of the District Forum, Electricity Board filed an appeal before the State Commission. The State Commission while allowing the appeal held that there was no deficiency in service on the part of the Electricity Board. Aggrieved by the order of the State Commission, the complainant filed a Revision Petition before the National Commission.

Issue

The main issue raised by the complainant before the National Commission was whether there was any deficiency on the part of Electricity Board in not

changing the Tariff and claiming the development charges and whether the State Commission was right in dismissing the appeal.

Decision

The National Commission held that no doubt the amount of Rs. 2,500/- being difference in development charges for conversion from Tariff I to IX was payable by the petitioner to the Electricity Board but that was no ground for not converting on his request the Tariff from IX to I and to bill him all this period at the commercial rate. The State Commission was however right that there was no justification for the District Forum to direct waiver of Rs. 2,500/- which were payable by the complainant. Thus, the National Commission directed the petitioner/complainant to pay Rs. 2,500/- as difference in development charges to Electricity Board. It also directed the Electricity Board to calculate the difference in commercial and domestic rates of electricity from 1.12.95 till the time of conversion from Tariff IX to I. If in the calculation any amount was found to be paid by the petitioner, the petitioner shall pay the same along-with the next electricity bill and if any amount was found to be paid by the Electricity Board, the amount shall be adjusted in future bills payable by the petitioner. Directions given by the District Forum for payment of Rs. 1,200/- as the excess amount of electricity charges and the amount of Rs. 450/- as deposit charges were set aside. With above modifications, the Petition was allowed. No order as to the cost.

Revision Petition allowed.

**M/s Kailash Chand Jain, Managing Director, M/s. Saraogi
Oxygen Ltd. v. Bihar State Electricity Board & Ors.**

2002(3) CPR 284(NC)

Facts

The complainant was the Managing Director of M/s. Saraogi Oxygen Ltd. The unit was having an electricity connection from the Bihar State Electricity Board since 1988. The unit was never supplied continuous and adequate power. The complainant had also filed a writ petition in 1995 in Patna High Court for a direction to allow proportionate reduction in demand charges. Patna High Court issued a direction to the Electricity Board to consider the grievance of the petitioner to allow a proportionate reduction in demand charges and dispose of the same. The complainant, later in 2002 filed a complaint in the National Commission claiming a sum of Rs. 4,65,53,626/- for the loss suffered from September 1988 till January 1996 on account of the deficiency in service on the part of opposite party. Out of total amount Rs.10 lakh was claimed on account of mental torture, agony and harassment.

Issue

The main issue was whether discontinuous and inadequate power supply constituted deficiency on part of the Electricity Board.

Decision

The National Commission held that the complaint raised complex issues which could not be decided in summary jurisdiction. A great deal of evidence both documentary and oral would be required to prove the case. Referring to the Supreme Court decision in the case of *Synco Industries v. State Bank of Bikaner and Jaipur & Ors.*, (2002) 2 SCC 1, the National Commission dismissed the complaint but held that it would not be an impediment for the complainant in approaching the Civil Court or any other appropriate forum. Further in view of the decision of the Supreme Court in *Laxmi Engineering Work is v. PSG Industrial Institute (1995) 3 SCC 583* the National Commission held that complainant can claim the benefit of Section 14 of the Limitation Act to exclude the period spent in prosecuting the proceedings under the Consumer Protection Act, 1986 while computing the period of limitation prescribed in such a suit.

Complaint dismissed.

**The Assistant Executive Engineer (O&M), Chennai v. A.G.
Swaminathan**

2002 (3) CPR 224 (NC)

Facts

Complainant wanted to start a small industry. For that he made an application for a 3 phase (2 K.V.) electric connection. He in fact wanted two separate connections of 1HP and the other of 2HP. For that he paid a sum of Rs. 3,200/- as demanded by the petitioner. In spite of that he was not given electric connection and had to close his unit. He therefore, sought refund of the amount deposited, which was denied by the electricity department. The complainant filed complaint in the District Forum alleging deficiency in service on the part of petitioner. The claim was resisted on the plea that connection was sanctioned but the complainant did not come forward despite seven days notice to take it and it was cancelled. Thus no refund could be made. The complaint was dismissed by the District Forum. However, the appeal filed by the complainant was allowed by the State Commission. The State Commission was of the view that the action of the petitioner in sending notice of seven days was not in accordance with the provisions of Electricity Supply Act, 1994 and the petitioner had no right to forfeit earnest money and development charges. It directed the petitioner to refund the amount of Rs. 3,200/- and also awarded Rs.10,000/- for mental agony and torture. Against the order of the State Commission the revision petition was filed before the National Commission by the petitioner.

Issue

The main issue was whether cancellation of the connection and non-refund of charges constitute deficiency in service on the part of the petitioner.

Decision

The National Commission directed to recover the amount of Rs.10,000/- from the Assistant. Executive Engineer, petitioner. However, the Electricity Department should recover the amount after notice to the petitioner and after hearing him.

The revision petition was dismissed with costs of Rs.2,000/-.

Revision dismissed.

P.S.E.B. Mohali v. Guriqbal Singh Batra**2002(3) CPR 173(NC)****Facts**

The Complainant, Guriqbal Singh Batra was tenant of Mr. Tarlochan Singh. The owner of the premises had an electric connection for medium industrial supply with a sanctioned load of 75 KW. The complainant was running a manufacturing unit – Delta Rubber Mills in the premises. The Electricity Board had installed a power meter and a light meter. These two meters were destroyed as a result of scuffle between two employees of the complainant. A report was lodged with the Board to change the meters and replace the seals on 3.2.1997. The meters were replaced with new ones on 20.2.1997. However, the old meters were not removed in contravention of the instruction No.109 of the Sales Manual. On 2.1.1998 in the absence of the complainant some officials of the Board checked the old meters and reported that the glass and the seals of the meters were broken. On the basis of that a demand of Rs. 2,08,720/- was raised and electric supply was disconnected in violation of Instruction Nos.109 and 201 of the Sales Manual. Efforts of the complainant to get the electric connections restored went in vain. He filed a civil suit for an interim injunction, which was not granted. Thereafter, the complainant filed a complaint before the State Commission for a direction to the Electricity Board to restore the electricity connection, to quash the demand raised on 2.1.1998 and claimed a compensation of Rs. 6,20,000/-. The State Commission found the Board guilty of deficiency in service and allowed the complaint. It directed the opposite party to restore the electricity connection and quashed the demand of Rs. 2,08,720/- raised by Electricity Board. The complainant was also awarded compensation of Rs. 1,00,000/- and costs of Rs. 5,000/-. Against the order of the State Commission first appeal was filed in the National Commission by the Board.

Issue

The main issue was whether the non-removal of old meters and disconnection of the electric connection by the opposite party constituted deficiency in service on the part of Board.

Decision

The main point raised by the appellant was that the Board was empowered to disconnect a connection without prior notice of seven days and the seven days

notice was not mandatory. The National Commission held that in certain cases of the power theft etc. notice may not be necessary yet in the context of present case such disconnection was arbitrary, high handed and unwarranted. Because the meters, which were found faulty, had earlier been disconnected on the request of consumer himself, new meters had no flaw and the charges as per new meters were being regularly paid. It was in fact failure on part of the Board in not removing old meters after installing new meters. They could not be allowed to take the existence of old meters as the basis of launching any action when it was not conclusively proved that any electricity was being drawn through the old meters, which have already been replaced.

Finding no merit in the appeal, the National Commission dismissed the appeal and upheld the order of the State Commission. However, it modified the order of the State Commission by deleting the award of compensation of rupees one lakh. No order as to costs was made.

Appeal disposed of.

M/s. Doneria Iron & Steel v. The Chairman, UPSEB Power Corporation & Ors.

2002 (3) CPR 156 (NC)

Facts

The complainant filed a complaint in the National Commission claiming a sum of Rs. 1,72,32,822.00/- as compensation against UPSEB Power Corporation. The complainant alleged negligence and deficiency in service on the part of opposite parties. There were also allegations of forgery and forging of records. The amount of compensation included compensation for defamation on account of loss of reputation, loss of income etc. Certain other directions were also sought.

Issue

The main issue was whether it was possible to decide such complicated matter in the summary jurisdiction of the National Commission.

Decision

The National Commission observed that there were 600 documents filed by the complainant and in reply the written statement and other documents run into 258 pages. The case required a great deal of evidence both oral and documentary. It was not possible to decide such a matter in summary jurisdiction. Referring to the Supreme Court judgment in *Synco Industries v. State Bank of Bikaner and Jaipur & Ors.* I (2002) CPJ 16 (SC) the National Commission held that it would not like to deal with the matter and left the complainant to knock the doors of civil court or any other appropriate forum for relief claimed. Further, it was held that the complainant would be entitled to seek condonation of delay under Section 14 of the Limitation Act in case it files a suit as held by the Supreme Court in *Laxmi Engineering Works v. PSG Industrial Institute* (1995) 3 SCC 583.

Thus the complaint was dismissed.

Complaint disposed of.

**K.D. Sebastian v. The Electrical Inspector,
Kerala State Electricity Board & Ors.**

II (2002) CPJ 2 (NC)

Facts

The appellant/complainant, K.D. Sebastian was the consumer of K.S.E.B. for running his small Oil Mill since 1974. His electricity bill varied between Rs. 278/- and Rs. 337/- for the period August 1986 to December 1986. The problem of excessive billing started in January 1987, when he was served a bill for Rs. 920.65/-. He approached the Electricity Board to correct it. When he did not receive any satisfactory reply from electricity board he approached the High Court for relief. The High Court directed the Electricity Board to issue a revised bill on the basis of average consumption of electricity by the appellant. Meanwhile, the Electricity Board disconnected the electricity supply to him on 31.1.1987 for non-payment of the bills. With regard to this the High Court ordered that in case the appellant paid a sum of Rs. 500/- plus reconnection charges to the Electricity Board, then the Electricity Board should restore the connection. However, the appellant alleged that when he wanted to deposit the said amount the Electricity Board refused to accept it.

The Electricity Board again served a notice to the appellant to pay the entire arrear by 4.5.1988. On non- payment of the bills the Electricity Board dismantled the service main and metering equipment on 20.6.1988. Against this, the appellant again moved the High Court. The High Court ordered the Electricity Board to prepare fresh bill from January 1987 onwards within two weeks and the appellant to file his objections within two weeks of receipt of the bill. The High Court also directed the Electricity Board to dispose of these objections expeditiously. Accordingly, the Electricity Board sent the appellant a fresh bill amounting to Rs. 7828.40/- for the period of August 1986 to May 1988 and the appellant also filed objections, which were overruled by the Electricity Board. Aggrieved by that, the appellant again approached the High Court. The High Court disposed of the matter in February 1992 and directed the appellant to seek the remedy under Clause 48 of the Regulations relating to Conditions of Supply of Electricity Energy, 1990. However, appeal filed as per the direction of the High Court was rejected.

Aggrieved by that the appellant/complainant filed a complaint before the State Commission claiming a compensation of Rs. 2,74,041.4 with interest at the rate of 18% from the date of filing of complaint for the loss he suffered due to closing of mill and interest to be paid to the Bank from which he obtained the loan. The State Commission

dismissed the complaint on two grounds holding the complaint as barred by time and finding no deficiency on the part of Electricity Board. Aggrieved by that order, the appellant/complainant filed an appeal before the National Commission.

Issue

The important issues raised before the National commission were,

- (i) whether the decision of the State Commission dismissing the complaint as time barred was as per the provisions of Consumer Protection Act, 1986 and
- (ii) whether there was any deficiency in service on the part of the Electricity Board in sending the complainant an excessive bill and disconnection of electricity supply to his mill.

Decision

The National Commission held that cause of action i.e. disconnection of electric connection arose on 31.1.1987 and the complaint was filed in 1992 i.e. after five years of cause of action. So it was clearly barred by limitation. The National Commission did not accept the contentions that since there was a continued cause of action hence period of limitation should commence from February 1992, when in the third petition filed before the High Court it passed order. The facts were correct on the face of it but CPA had its time limit defined. For any request for condoning the delay/justifying the delay, an application was required to be filed explaining the reasons/causes in support of the delay so that the competent court could take a view. In the instance case no such action was taken, in the absence of which the National Commission could not but agree with the decision of the State Commission holding the complaint time barred.

On the question of deficiency on the part of Electricity Board, the National Commission held that the High Court had ordered reconnection to be given to the appellant on depositing of Rs. 500/- plus reconnection charges, there was no material on record to support any follow up of the order of the High Court. In fact, the State Commission has held that till the passing of order by it, the appellant had not applied for reconnection after completing the necessary formalities. The National Commission further held that had the appellant done so, his Mill would have been running enabling him to pay the outstanding amount to the K.S.E.B.

Thus, the National Commission dismissed the appeal holding that there was no ground to interfere with the order of the State Commission. No costs were awarded.

Appeal dismissed.

S.D.O, Haryana State Electricity Board v Amrit Singh**I (2002) CPJ 16 (NC)****Facts**

The complainant, Amrit Singh had a 0.5 KW electricity connection from the Haryana State Electricity Board (HSEB) and there were only four live points in his house. He made a complaint before the District Forum alleging deficiency in service on the part of the Electricity Board for serving excessive electricity bills. He alleged that some officers of the Department gave wrong information to the Board on the basis of which wrong bills were sent to him. The District Forum allowed the complaint and directed the Board to correct the bills on the basis of the average consumption for the last one-year without charging any surcharge or interest. Complainant was also awarded Rs. 500/- as costs. Dissatisfied with decision of the District Forum, the Electricity Board made an appeal before the State Commission. It was contended by the Board that there was no deficiency in service and allegations made by complainant were not correct. The State Commission upheld the decision of the District Forum. Again, feeling aggrieved with the dismissal of appeal, the Electricity Board filed revision petition before the National Commission.

Issue

The main issue involved in the case was whether there was any deficiency in service on the part of the HSEB in sending bills, which were alleged by the complainant to be excessive and wrong and whether the decision of the District Forum upheld by the State Commission was in accordance with the law under Consumer Protection Act.

Decision

The National Commission after hearing the revision petition dismissed it and upheld the order of the District Forum as affirmed by the State Commission. The National Commission held that there were no grounds for them to take a different view in exercise of its jurisdiction under clause (b) of Section 21 of the Act. Revision Petition was thus dismissed.

Revision Petition dismissed.

**Punjab State Electricity Board, Patiala & Anr. v.
M/s New Pal Textiles**

2002 (1) CPR 56 (NC)

Facts

The complainant was tenant of one Mr. Kuldip Singh. He was using the premises as showroom. The sanctioned load to the premises was 3.7 KW. Petitioner in a surprise inspection on 7.5.1996 found that complainant was having load more than 10 KWs, an excessive load of 6.62 KWs. The consumer refused to sign the report regarding the excess load and charges on it. A notice was issued to Kuldip Singh on 24.5.1996 for disconnection of the electric connection, as the bill for excessive load amounting to Rs. 8,400/- had not been paid. The connection was disconnected. The amount was paid on 27.7.1996. But the connection was not restored as the disconnection was permanent and till the reconnection charges of Rs. 1,200/- were not paid the electric connection could not be restored. A suit for eviction filed by Kuldip Singh against the complainant was also pending since 1994 in the Civil Court. The Board was not party to the suit. However, complainant on 1.8.1996 filed an application in that suit seeking restoration of electricity. No notice of the application was given to Board. The Civil Judge observed that such an application was not maintainable. Yet he held that in the interest of justice the connection be restored on condition that complainant would not use load more than the sanctioned and if in future the complainant was found using excessive load, the Board would be at liberty to disconnect the connection. The reconnection charges were deposited on 6.8.1996 and connection was restored on 7.8.1996.

After the electricity connection was restored the complainant filed a complaint in District Forum alleging deficiency in service, as his electric connection remained disconnected for about eight days. He also alleged that the owner colluded with the officers of the Board in getting disconnection of the electricity when there were no arrears. The District Forum allowed the complaint. It awarded Rs. 20,000/- as composite compensation and Rs. 1,500/- by way of costs. Further it directed that the Chairman of the Board should hold an enquiry and take suitable action against erring officers by making deductions from their monthly salary. Both the petitioner and complainant-respondent filed appeals before the State Commission. The State Commission dismissed the appeal of petitioner but allowed that of complainant. It made a further direction that Rs. 9,600/- (Rs. 8,400 + Rs.1,000) be refunded to the complainant along with 18% interest for the period from the date of deposit till

realization. A further sum of Rs. 1,000/- was awarded by way of costs. Against the order of the State Commission the Board filed a revision petition.

Issue

Was there any deficiency in service on the part of the Board as the electricity connection of the complainant remained disconnected for about eight days?

Decision

The National Commission was of the view that the case had not been examined in the proper perspective. There had to be clear finding as to the deficiency in service on the part of the Electricity Board. There was report of surprise inspection giving particular of excessive load and amount to be charged for that, refusal to sign the report, notice to Kuldip Singh- the owner, reply by tenant-complainant, order of the Civil Court to restore the connection, payment of bill amount and payment of reconnection charges. The Court could not proceed on presumption that it is always officers of the department who are at fault. The National Commission was of the view that the matter should be examined afresh by the District Forum after giving opportunity to the parties to lead further evidence if any and then to arrive at a decision in accordance with law. Accordingly the orders of the State Commission and the District Forum were set aside and the matter was remanded back to the District Forum. No order as to costs.

Revision allowed.

Matter remanded to District Forum.

**Jaipur Vidyut Viteran Nigam Ltd. & Anr. v.
Ashok Oil Industries**

2001 (3) CPR 102(NC)

Facts

The complainant was having a power connection of 60 H.P. for running oil mill. It had deposited Rs.900/- as security in 1974 and Rs. 10,000/- as security later in 1989. On 10.3.1989 respondent deposited Rs.75/- for testing its electric meter but it was not tested. Later it made an application for disconnection of the electricity supply, which was disconnected on 13.11.1990. Therefore, respondent claimed refund of Rs. 10,900/-. The amount was not refunded rather petitioner raised a bill for Rs. 4,644.88/- plus Rs.121.20/- for the month of January 1990. Respondent filed a complaint before the District Forum, which was dismissed. Respondent made an appeal to the State Commission, which was also dismissed but the State Commission recorded the statement of the counsel for the petitioner that as the connection had been disconnected the security amount together with interest would be refunded to the complainant after adjusting the outstanding dues of the opposite party. However, this was not done. The respondent again filed a complaint before the District Forum raising a demand of Rs. 25,800.71/- and after adjusting the security amount for a sum of Rs. 14,900.71/-. The District Forum allowed the complaint but quashed the demand. Petitioner went in appeal before the State Commission. The State Commission strongly disapproved the conduct of the petitioner of harassing the respondent and dismissed the appeal with costs of Rs.5000/-. Against the order of the State Commission the petitioner filed a revision petition before the National Commission.

Issue

Was there any deficiency in service on the part of the petitioner in not refunding the security amount after adjusting the dues?

Decision

The National Commission upheld the order of the State Commission and held that there was no ground to interfere with the order of the State Commission. Thus, the revision petition was dismissed.

Revision dismissed.

Jai Kumar & Anr. v. U.P.S.C.D.R.C. & Ors.**2001 (3) CPR 187 (NC)****Facts**

The complainants had taken two separate electric connections for irrigation of their fields. The connections were disconnected, on the ground that the land did not belong to them as it was allotted to the Gram Panchayat and the complainants were unauthorized occupants of the land. Further the connection had been disconnected under the order of the District Magistrate. Two separate complaints were filed in District Forum alleging deficiency in service. The District Forum directed the opposite party to restore the electric connection and also awarded compensation. Opposite party filed an appeal in the State Commission, which in an interim order, modified the order of the District Forum and directed that there need not be reconnection. Complainants filed revision petitions before the National Commission.

Issue

The main issue was whether there was deficiency in service on the part of the board in disconnecting the connection.

Decision

The National Commission rejected the revision petitions on two grounds. Firstly, there was only interim order of the State Commission and secondly both the petitioners had already approached the Allahabad High Court in a writ petition. In the writ petition the complainant had prayed that the disconnection was wrong and the land could not be allotted to the Gram Panchayat. Therefore, the order of disconnection should be set aside and transfer of land be stayed. The National Commission held that the Petitioner's counsel had been unable to show their right and title to the land. Therefore, the National Commission did not find it proper to interfere in the interim order of the State Commission and dismissed the revision petitions.

Revisions dismissed.

Girish Kumar Balubhai Choksi v State of Gujarat through Chief Secretary

II (1999) CPJ 52 (NC)

Facts

The complainant was having an industrial connection for running a Power Loom Factory at Surat from the Gujarat Electricity Board for which he was regularly paying the bills. He discovered that the bill raised for the period November 1993 to January 1994 for a sum of Rs. 3,555.36/- was excessive. On making enquiries he came to know that the Board was collecting from him duty @ 60% which was payable by domestic consumers. He was running an industrial concern and was liable to pay duty only @ 10%. Before lodging the complaint, the complainant approached the Board to correct the bills. The Board directed him to approach the Collector of Electricity Duty. The Collector corrected the bills for six months and refunded the excess amount of duty collected by the Board but refused to correct the bills for the period November 1993 to January 1994 as time barred. Aggrieved the complainant lodged a complaint with the District Forum that the Board had recovered illegally electricity duty from him from April 1990. According to the complainant, he had to pay an excess amount of Rs. 2,471.31 by way of electricity duty. The District Forum decided in favour of the complainant but the State Commission set aside that order of the District Forum in appeal. After analyzing the rules, the State Commission came to the conclusion that the Board could not in any way give any refund under the Statutory Scheme. It was merely acting as a collecting agent for and on behalf of the State Government. The remedy available to the complainant for excess billing was to approach the Collector as laid down in Rule 12. The refund, which was admissible under Rule 12 of the Act, was given to the complainant. The complainant was not given any refund for the period beyond six months. In view of the statutory rules, the State Commission overruled the decision of the District Forum. Aggrieved by that, the complainant filed revision petition before the National Commission.

Before the National Commission the Board contended that it was a statutory body discharging statutory functions strictly in accordance with law. It collects duties from the consumer and pays it to the State Government. It was merely a collecting agent. The Board also contended that the complainant should have produced a certificate to the effect that he was using electricity for industrial purpose for availing of lower rate of duty, which he had failed to do. Even if the connection was given for industrial purpose but the electricity was being used for

some other purpose, the complainant could not have availed lower rate of duty.

Issue

The main issue raised was whether there was deficiency in service on the part of the Electricity Board in refusing to correct the bills for the period November 1993 to January 1994 as time barred and whether the decision of the State Commission dismissing the appeal was as per the law.

Decision

The National Commission said that the question to be decided was, what was the remedy for the excess collection of duty by the Board? Rule 12 of the Bombay Electricity Duty (Gujarat) Rules, 1986 lays down the procedure and also a period of limitation for refund of excess collection of duty. It provides that no consumer shall be entitled to a refund of electricity duty charged by the licensee in excess of the duty leviable under Act unless an application for refund supported by original energy bill and receipt of payments was made to the Collector of electricity within six months from the date of payment of such excess duty. It was clear from the rule that the refund has to be claimed from the Collector and not the licensee and that the claim for refund of excess duty paid must be made within the period of six months from the date of payment.

Taking up the argument that the Commission was acting under the Consumer Protection Act and if there was deficiency in service, the Commission was free to redress any wrong committed to the consumer unfettered by any other Act or Rule. The Commission held that it was unable to uphold that argument. The Commission had to act in accordance with law. There was a statutory bar to recover any refund beyond a period of 6 months. That bar could not be sidetracked by directing refund of excess amount of duty beyond the statutory period of 6 months. This would make mockery of the statutory provision. The deficiency of service complained of in this case was excess billing. The statutory rules had specifically provided the remedy for excess billing and had laid down the manner and the period of time within which the remedy was to be availed of. The complainant had already availed of the statutory remedy and had got a refund for the period of 6 months. The complainant now could not be allowed to override the statutory bar by raising a consumer dispute. Every statute that imposes a duty or tax contains machinery for recovery of tax as well as machinery for refund of excess collection of tax and also the period of limitation for that purpose. These provisions could not be bypassed by proceeding under the Consumer Protection Act or some other Act. The National

Commission referred to the case of *Mafatlal Industries Limited v. Union of India*, (1997) 5 SCC 536, wherein it was held that refund claim on account of excess payment of duty will have to be recovered in accordance with the statutory rules. It was further held that a suit or writ for recovery of excess payment would not lie where the statute provides a complete mechanism for refund.

The National Commission further held that the price of the goods manufactured and sold by the manufacturer normally includes all costs including electricity charges and duties. The duty paid by the petitioner would have been included in the price charged for the goods manufactured and sold by him. The burden of the duty had already been passed on to the consumers. Refund of duty to the manufacturer under these circumstances would amount to unjust enrichment of the complainant. According to the majority view in the *Mafatlal Industries case (supra)*, in such a situation no refund of duty could be allowed unless the manufacturer could prove that he had not passed on the burden of the duty to his customers. There was no averment in the complaint that the manufacturer had borne the burden of excess payment of duty and had not passed it on to his customers. Therefore, he was not entitled to get any refund.

In view of all this, the National Commission upheld the order passed by the State Commission and the revision was dismissed. No order as to costs.

Revision Petition dismissed

**M/s Evershine Marbles Pvt. Ltd. v. Rajasthan State
Electricity Board & Ors.**

II (1999) CPJ 6 (NC)

Facts

M/s Evershine Marbles (Pvt.) Ltd filed a complaint before Rajasthan State Commission alleging deficiency in service on the part of Rajasthan State Electricity Board for not providing the rebate in electricity tariff allowed by the Government of Rajasthan to new industries as well as for substantial expansion of the existing industry with reference to electric energy consumption. Hearing the complaint the State Commission decided partly in favour of the complainant directing the Electricity Board to refund the excess amount charged from him from 10.9.1987 till the date of filing the complaint and further held that the claim of the complainant with respect to the period from 14.7.1984 to 9.9.1987 was clearly barred by limitation and highly belated. Aggrieved, the Board filed an appeal against the order of the State Commission before the National Commission. The complainant M/s Evershine Marbles (Pvt.) Ltd also filed an appeal against the decision of the State Commission relating to the period of limitation. The main contention of the Board was that the rebate was to be allowed in accordance with a directive issued by Government of Rajasthan in August 1979. The Counsel for the Board pointed out that in accordance with Clause (4), this rebate could be allowed only to those industrial units, which could start production or substantially expand their industry within two years of receipt of the letter of intent/industrial licence from the Government of India. The period of two years could be relaxed only if the reasons for delay were explained reasonably and were beyond the control of the party. Since the respondent/complainant did not produce any letter of intent/industrial licence from the Government of India, they were not covered by the provisions of the said notification and therefore, they were not entitled to any rebate.

Issue

The main issue involved in the case was whether the complainant M/s Evershine Marbles (Pvt.) Ltd was entitled to rebate in electricity tariff allowed by the Government of Rajasthan to new industries as well as for substantial expansion of the existing industry with reference to electric energy consumption.

Decision

The National Commission held that the Rajasthan State Commission has taken a view that the respondent/complainant was a registered industrial unit with the District Industries Centre, Makrana (Nagaur) as a small scale unit from 9.4.1984 and, therefore, the condition of obtaining a letter of intent/industrial licence from the Government of India did not apply in the case as it was not mandatory for a small scale industrial unit to obtain such a letter of intent/industrial licence. That's why the State Commission was of the view that the respondent could not be denied the benefit of rebate as per the directive of the State Government.

The National Commission observed that para 4 of the directive by the State Government was clear on one point that this rebate shall be allowed only to such industrial units which have either started or substantially expanded after 1.4.1979 and further that their production or expansion should be within two years of the receipt of the letter of intent/industrial licence from the Government of India. As far as the starting date of 1.4.1979 was concerned, the respondent/complainant did fulfill this condition as their unit was registered as a small-scale industrial unit with the District Industries Officer, Nagaur on 9.4.1984. However, they did not fulfill the other condition of producing a letter of intent/industrial licence from the Government of India. The view of the State Commission was that the condition requiring the letter of intent/industrial licence from the Government of India would not apply to the respondent/complainant and they would be eligible for the rebate without such letter of intent/industrial licence. The basis for this view of the State Commission was that, the intent and purpose of giving rebate was to promote the industrial development of Rajasthan in a swift and quick manner. The National Commission did not agree with this interpretation of Clause (4) of the directive of the State Commission. The National Commission held that the provision of Clause (4) substantially related to industrial units, which obtained a letter of intent/industrial licence from the Government of India. According to the Commission the intention behind that provision was to promote such industries, which required an industrial licence from the Government of India because such industries would be in the nature of medium and major industries. The said directive of the State Government did not make a blanket provision for all industrial units. It restricted the concession of rebate to the units requiring letter of intent/industrial licence from the Government of India because such units have an option to start industry anywhere in the country and not necessarily in Rajasthan. The intention of the directive was basically to attract these units to Rajasthan by giving them a comparative advantage. Therefore, the National Commission was of the view that

order of the State Commission had gone beyond the provision of Clause (4) of the directive of the State Government. Hence, the National Commission allowed the appeal and the order of the State Commission was quashed. There was no order as to costs.

The order also disposed of cross appeal filed by M/s Evershine Marbles (Pvt.) Ltd., against the decision of the Rajasthan State Commission relating to the period of limitation.

Appeal allowed.

**Sandila Metal Wires (P) Ltd. v. Chairman,
U.P. State Electricity Board & Ors.**

II (1998) CPJ 27 (NC)

Facts

The complainant had established an industrial unit in Sandila Industrial Area, Hardoi with an induction furnace for production of special alloy steel castings. To run the induction furnace, the complainant applied for the electric connection of 2350 K.V. upon 33 k.V.A. independent feeder. The electricity load was sanctioned by the U.P. State Electricity Board (UPSEB) on 15.2.1991. Thereafter, an estimate report was prepared amounting to Rs. 7,57,019/- comprising of transmission and metering costs for construction of 33 K.V. line (independent feeder) from 132/133/11 K.V. Industrial Area, S/S Sandila, Hardoi to the premises of the complainant. Based on this estimate, a demand for service connection charges (transmission) of Rs.5, 37,871/- besides security of Rs. 4, 70,000/- in all Rs. 10, 07,871/- was raised by opposite party on 20th August 1991. This amount was deposited by the complainant on 5.9.1991. In the meanwhile, opposite party in its letter dated 4.9.1991 called upon the complainant to arrange Rs.10.61 as this additional amount was required to be deposited for construction of 33 K.V. Bay at 132 K.V. S/S Sandila (Hardoi). The complainant protested against this demand and immediately wrote letter-dated 6.9.1991. The third opposite party examined once again and found that Rs. 1,61,012/- has already been charged from the complainant in the estimate prepared earlier for 33 K.V. M.O.C.B. along with cartage, erection and other charges. The complainant was called upon in the letter-dated 6.9.1991 to deposit the rest of the amount for 33 K.V. Bay charges amounting to Rs. 8,99,588/-. (Bay is a part of installation of the independent feeder line.) The complainant felt that his production activity would suffer if the electricity was not supplied so he deposited the further demand of Rs.8, 99,588/- on 11.9.1991 under protest. The complainant entered into an agreement for supply of energy on 11.9.1991 and the electric connection was energized on 3.12.1991. The complainant then filed a complaint before the National Commission alleging that due to the act and conduct of the opposite parties, he suffered great irreparable loss and injury as he was forced to deposit a huge amount of Rs. 8, 99,588/- under the threat that unless the said amount was deposited no electric connection would be provided and he was compelled to borrow huge amount from other sources as a result of which he was under the financial constraints and hardship and still unable to recover from liability.

Issue

The pivotal issue in this case was whether the opposite parties were legally authorized to charge from the complainant the cost of installation of “Bay” known as Bay Charges.

Decision

The National Commission held that Section 26 of the Electricity Supply Act, 1948 Clause VI of Schedule of the Indian Electricity Act, 1910 was attracted in the case. Under Clause VI, Sub-clause 3 of the Schedule to the Indian Electricity Act, 1910, it is specifically provided that when any dispute arises as to the cost of any service line, the same shall be referred to an Electricity Inspector appointed by the State Government and the same shall be decided by him.

The National Commission held that the dispute between the parties, therefore, requires interpretation of Electricity Laws as well as the order passed by the Board in exercise of the power conferred under the Electricity Laws and also the jurisdiction conferred on the Electricity Inspector appointed by the State Government to decide this question. The questions could not be fairly and effectively decided in the summary proceedings before this Commission.

The Commission, therefore, dismissed the complaint on this short ground without expressing any opinion on the merits of the controversy and left the complainant to pursue its remedy either before the Electrical Inspector appointed by State Government or any other appropriate Forum. The parties were directed to bear their own costs.

Complaint dismissed.

Maharashtra State Electricity Board v. Sheshrao

I(1998) CPJ 94 (NC)

Facts

The complainant, Shri Sheshrao was a consumer of electricity supplied by the Maharashtra State Electricity Board (MSEB). He filed a complaint before the District Forum alleging that the service charge of Rs. 5000/- received from him for providing an electricity connection for domestic purposes was in contravention of rules and provisions of the Indian Electricity Act and should, therefore, be refunded to him with interest. The District Forum allowed the complaint on the ground that the MSEB could not have fixed these service charges in contravention of Clause 6 of the Schedule of the Indian Electricity Act, 1910. In appeal by the MSEB, the State Commission, Maharashtra, upheld the order of the District Forum dismissing the appeal. Aggrieved, the Electricity Board filed a revision petition in the National Commission against this order of the State Commission. The contention of the MSEB was that the Board was empowered to prescribe terms and conditions, as it may deem fit, for supply of electricity to any person other than the licensee in accordance with Section 49 read with Section 79 of the Electricity Supply Act, 1948. Accordingly, the amount of service line charges was notified in a circular dated 22.12.1986 issued by the Board to its various offices for providing guidelines for recovery of capital cost contribution (non refundable) from the new consumers in such areas as had no service line or infrastructure adequate enough to meet the need of the prospective consumers of electricity within a reasonable period. The Board contended that these service charges were prescribed in a manner so as to be equitable and fair to all the prospective consumers in an area rather than burdening the first consumer only for the amount spent on providing basic infrastructure.

Issue

The basic issue involved in this case was whether the service charges levied by the Electricity Board on the complainant for providing him with an electric connection for domestic purpose was valid and reasonable or not.

Decision

The National Commission on the basis of its decision in *Maharashtra State Electricity Board v. Sheshrao Ajabrao Sherkar*, Revision Petition No. 573 of 1994, decided on 15.5.1995 (NC), held that the reasonableness or otherwise of the cost or price

charged for rendering a service is not a matter falling within the purview of adjudication under the Consumer Protection Act, 1986 and all that the forums are concerned with is whether there has been any deficiency in the matter of rendering the service that has been contracted for. This view of the Commission was based on the judgment of the Supreme Court in *Green Rubber Industries v. State of Bihar*, (1990) 1 SCC 731 wherein it was ruled that the consumer has either to take electricity supply on the conditions on which it is offered or to go without it. Hence, this Revision Petition was allowed, the order of the State Commission as well as the District Forum were set aside and the complaint was dismissed. The parties were directed to bear their own costs throughout.

However, the National Commission observed that in case where the pricing and costing of a service involves an element of monopoly or restrictive trade practice, the same could be brought before the appropriate Forum for a decision in accordance with the relevant law and rules.

Revision allowed.

P. Jagadeesan v. Tamil Nadu Electricity Board

I(1998)CPJ1(NC)

Facts

The Revision Petitioner/ Complainant was having a small shop in the premises adjoining the Dindigul Trichy Road in Dindigul town having electricity connection for over ten years. In September 1994 the service line providing electric energy to the petitioner's shop was disconnected by the staff of the Electricity Board on the ground that it was drawn across the road through which a procession of the Chief Minister was to pass and it constituted an obstruction to the free movement of the Chief Minister's convoy as one of the vehicle in the procession of the Chief Minister would not be able to pass along the road in case the line was allowed to remain in its existing state. However, no steps were taken by the Electricity Board to reconnect the line and restore the electric supply to the petitioner's shop even after the procession was over. On a representation, the complainant was informed that there was an objection from the Highway Authority against the grant of the reconnection. Aggrieved, the complainant filed a complaint before the District Forum seeking a direction for the Board to reconnect the electricity supply to the premises and also claimed compensation for the period during which the line had remained disconnected. The District Forum allowed the complaint and directed the Electricity Board to restore forthwith the electric supply to the petitioner's premises and also to pay a compensation of Rs. 2,000/- to the complainant, in addition to cost of Rs. 500/-. On appeal by the Electricity Board the State Commission set aside the order of the District Forum merely by stating that since the Assistant Engineer, Highways, Dingul raised objection, the District Forum was not right in directing reconnection of the electric supply. Aggrieved, the complainant filed a revision petition before the National Commission.

Issue

The main issue raised was whether there was deficiency in service on the part of the Tamil Nadu Electricity Board in not restoring the electricity connection after its disconnection and whether the decision of the State Commission dismissing the complaint was as per the law.

Decision

The National Commission held that the reasoning of the State Commission

was absolutely untenable. The electric supply line to the petitioner's premises had been in existence for well over ten years prior to the date of disconnection without any objection from any quarter. The disconnection had been made only for meeting the temporary need of enabling the Chief Minister's convoy to pass along the road without any obstruction by the said line. The Electricity Board was, therefore, required to restore the supply of electricity to the complainant immediately after the temporary need was served. The failure on the part of the Electricity Board to reconnect the electricity supply clearly constituted deficiency in service. If the department of Highways has any objection to the grant of electricity supply to the premises, such objection should be raised before the appropriate authority in accordance with the law. The order of the State Commission was, therefore, set aside and the District Forum's order was restored.

Thus the revision petition was allowed without any cost.

Revision Petition allowed.

Jaidev Agarwal v. Haryana State Electricity Board & Anr.**II(1997)CPJ117(NC)****Facts**

The complainant was the consumer of electricity, supplied for domestic purpose by the respondent, Haryana State Electricity Board. He filed a complaint before the District Forum contending that he has been making payment of the bills regularly but despite this, the respondent issued two bills for Rs. 11, 207/- and Rs. 737/- pertaining to the meters installed at the premises, which were incorrect and highly exaggerated and despite repeated requests no heed was paid to cancel the bills. The respondent Board contested the complaint on the ground that the premises of the complainant was checked by the Vigilance Cell of the respondent on 14.5.1993 and it was found that the meter was moving in the reverse direction and its T.C. seal was found missing while M & T seals were found painted. As regards the other meter both TC seals and M & T seals were found painted. Thus it was a case of theft of energy, so penalty of Rs. 11, 207/- and Rs. 737/- was imposed upon the complainant. It was also pleaded that the complainant had filed a civil suit claiming a decree for permanent injunction restraining the respondent from disconnecting the electricity and the civil suit was pending in the Court of Sub-Judge 1st Class, Gurgaon. The District Forum dismissed the complaint on the ground that the petitioner had instituted a civil suit at Gurgaon contending therein that he was a consumer of the electricity and the bills amounting to Rs. 15, 246/-, Rs. 2, 593/- and Rs. 1, 817/- were incorrectly prepared. As the dispute regarding imposition of penalty was already under adjudication in the Civil Court the complaint was not maintainable. Thereafter, the complainant approached the State Commission, Chandigarh by way of an appeal but without success. The State Commission agreed with the finding of the District Forum and held that in view of the pendency of the civil suit in the Civil Court on identical matter the complaint was not maintainable. Aggrieved, the complainant filed a revision petition before the National Commission. The only point canvassed by the petitioner before the National Commission was that the subject matter of the suit and the subject matter of the complaint were not identical.

Issue

The issue involved in the case was whether there was deficiency on the part of the Electricity Board in disconnecting the electricity supply to the complainant

and whether the observations of the District Forum and the State Commission in dismissing the complaint were in accordance with law.

Decision

After pursuing the contents of the complaint as well as the plaint filed before the civil court the National Commission held that in para 5 of the plaint, the grievance of the petitioner was that he had already paid the up to date bill dated 10th April 1993 amounting to Rs. 767/- but despite that the respondent was bent upon disconnecting the electricity and as such the respondent may be restrained from doing so. Therein the petitioner had not challenged the correctness of the bills amounting to Rs. 15,546/-, Rs. 2,593/- and Rs. 1,817/- as observed by the District Forum and the State Commission. Even there was no reference to any bill in the plaint. Thus in the opinion of the National Commission the subject matter of the plaint and the complaint was not identical. The District Forum and the State Commission misread and misinterpreted the evidence and returned the finding under misapprehension of facts that the subject matter of the suit and subject matter of the complaint was identical. The order passed by the District Forum as well as the State Commission suffered from legal infirmity and could not be sustained in law. The National Commission held that the complaint filed before the District Forum was maintainable and it should have been decided on merit. As a result, the Revision Petition was allowed. Order of the State Commission as well as the District Forum was set aside and the case was remanded to the District Forum for deciding the complaint of the petitioner on merit. However, Commission did not make any order as to cost.

Revision Petition allowed.

C.E.S.C Ltd. v. Smt. Sumita Pal**III(1997)CPJ116(NC)****Facts**

The Respondent/Complainant was a consumer of the electricity supplied by the Calcutta Electric Supply Co. Ltd. (C.E.S.C. Ltd.) in the commercial premises of M/s Apsara (Beauty Parlour) located at 4-H, Panchanantala Road, (1st Floor), Calcutta. The electricity supply at the said premises was disconnected by C.E.S.C. Ltd., on 9th May 1995. The complainant filed a complaint under Section 12 of the Consumer Protection Act, 1986, against the disconnection of electricity. The C.E.S.C. Ltd. stated that acting upon a credible information received in the Central Office of the C.E.S.C. Ltd. the officers from the Loss Control Cell undertook a surprise visit to the consumer's premises and upon inspection found that the consumer was drawing electricity directly from the service cutouts thereby bypassing the meter. The Electricity Board contended that this was in gross violation of the statutory provisions and conditions of supply under which the complainant was being supplied electricity by C.E.S.C Ltd. and that the officers of C.E.S.C. Ltd. acting in terms of the power conferred under, *inter-alia*, the 2nd proviso of Paragraph VI of the Schedule to the Indian Electricity Act, 1910, disconnected the electric supply at the said premises. The C.E.S.C. Ltd. lodged a complaint with the officer-in-charge, Lake Police Station, Calcutta against the complainant for tampering with the meter, and thereby committing an offence under the said Act. The complainant was also informed by a notice dated 9th May 1995 about the reasons, which compelled the C.E.S.C Ltd. to disconnect the electric supply to the said premises. She was informed by letter dated 12-5-95 that the unmetered consumption charges worked out by the C.E.S.C Ltd. were Rs. 57,405/- which she would have to pay along with reconnection charges of Rs. 30/- and to comply with other statutory formalities for obtaining restoration of electric supply.

The District Forum by the order held that it is well-settled that consumer fora cannot entertain any matter for theft investigation and adjudication and it can only be decided in a separate proceeding and that disconnection of electricity on the ground of theft was not deficiency in service by the licensee. However, the District Forum ordered that the complainant cannot be asked to wait for a long time for the decision of the Criminal Court and ordered C.E.S.C. Ltd. to restore the supply of electricity to the complainant within 3 days on her payment on ad-hoc basis of 30% of unmetered consumption with reconnection fee. Being aggrieved by the said order the Respondent/Complainant preferred an appeal before the State

Commission. The State Commission allowed the appeal and set aside the order passed by the District Forum and directed the C.E.S.C. Ltd. to restore the electricity within 7 days from the date of the communication of the order. Aggrieved, the C.E.S.C. Ltd. filed a Revision Petition before the National Commission.

Issue

The main issues raised before the National Commission were whether there was deficiency in service on the part of the C.E.S.C in disconnecting the electricity supply to the complainant after finding his involvement in theft case and whether the order of the State Commission directing the Corporation to restore the supply was as per the law.

Decision

The National Commission held that power is conferred upon the C.E.S.C. Ltd. under the provisions of the said Act, particularly Paragraph V of the Schedule thereto to disconnect the electric supply and it does not provide for any notice to be given to the consumer where during an inspection it was found that the metering equipment had been tampered with and the meter was being by-passed in consumption of electricity by artificial means. These within the meaning of Section 39 of the said Act are *prima facie* evidence of theft. The Commission referred to an earlier judgment in *M.P. Electricity Board v. Babu Lal*, II (1997) CPJ 132, where the Commission has held that where there is tampering with the metering connection by the consumer it cannot be said that there was any deficiency in service on the part of the Electricity Board so as to warrant the grant of any relief to the consumer in proceedings under the Consumer Protection Act, 1986. In *M.P. Electricity Board case (supra)* JT 1996 (5) SC 443, the Supreme Court considered the provisions of Section 24 of the said Act. It was held that when the Board detects that any consumer had committed any malpractice with reference to his use of electric energy including unauthorized alterations, installations, unauthorized extension and use of devices to commit theft of electric energy, the Board may without prejudice to other rights, disconnect the supply of electricity forthwith and may call upon the consumer to make payment for compensation for the unauthorized use of the electricity. In this case, a *prima facie* conclusion has been reached that the meters were tampered with by artificial means, and thus the electric supply could be disconnected without notice. The exercise of the power of disconnection was in accordance with the statutory powers and could not be construed as any deficiency in service.

The National Commission thus allowed the revision petition. The impugned

orders of the District Forum and the State Commission were set aside and the complaint was dismissed leaving the parties to bear their own costs. However, the National Commission held that it would be open to the complainant to approach the C.E.S.C. Ltd., to comply with the orders making additional demands of the electricity consumed, to pay reconnection charges and obtain reconnection. No order as to costs was made.

Revision Petition allowed.

**Rajasthan State Electricity Board v. MEC.
Shotblasting Equipment Pvt. Ltd.**

II (1997) CPJ 62 (NC)

Facts

M/s. Venus Rubber Industries, Marudhar Industrial Area, Basni, Jodhpur had an electric connection at its premises by the petitioner Rajasthan State Electricity Board (RSEB). Subsequently the said industrial unit became sick and it was taken over by the Rajasthan Financial Corporation. At the time of closure and take-over an amount of Rs. 57, 293.35/- was outstanding as unpaid arrears of electricity charges. The Rajasthan Financial Corporation auctioned the sick industrial unit and it was purchased by the complainant company at an auction held in March 1990. At the time of the purchase the electric supply connection of the said undertaking stood disconnected due to default committed by M/s Venus Rubber Industries. The agreement executed by the complainant with the Rajasthan Financial Corporation at the time of purchase of the undertaking contained a specific clause under which the complainant had undertaken to pay to the Electricity Board all the outstanding dues of electricity charges in respect of the old connection at premises. In addition, at the time of applying to the Electricity Board for grant of reconnection of electricity to the industrial undertaking, the respondent/complainant company, through its Director, had given a letter of undertaking to pay the arrears, if any, due to Board in respect of energy consumption by the earlier consumer. Accordingly, the Board issued to the complainant a demand for payment of Rs. 57, 293.35/- being the amount due to it on account of the arrears of electricity charges left unpaid by M/s Venus Rubber Industries. On receipt of said demand note, the complainant voluntarily remitted the aforesaid amount. In view of the said payment, the Board immediately restored the electrical connection to the factory premises of the complainant.

After obtaining reconnection of the electricity, the complainant approached the State Commission, Rajasthan with a complaint seeking to recover a sum of Rs. 6,29,251.34/- from the Board. It was alleged that there was delay and deficiency in service on the part of the Board contending that the action of the Board in realizing from the complainant the amount of arrears left unpaid by the previous occupant of the premises was illegal and wrongful. By delaying the grant of reconnection of electricity until payment of the outstanding arrears of electricity the Board had illegally caused enormous loss to the complainant as the factory remained closed for a considerable period due to non-supply of electricity. When electricity was supplied, the

complainant was given only 55 H.P. connection which was totally inadequate for its requirement despite having clearly indicated to the Board that its requirement was for power supply of 100 H.P. The complainant alleged that there was discrimination against him by the Board by insisting that an application should be made by the complainant for a new connection instead of merely restoring the connection that had previously existed. On the basis of all these averments the complainant claimed total compensation of Rs. 6,29,251.34/-, which included the sum of Rs. 57,293.35/- paid by the complainant-company to clear the arrears left outstanding and unpaid.

As to the legality of the demand made by Electricity Board, it relied on Condition No.20 (f) of the General Conditions of Supply and Scale of Miscellaneous Charges relating to the supply of electricity which stipulated that “no new connection shall be given in the premises unless all arrears and dues in respect of the old connection in the premises have been cleared and paid by the intending consumer”. Further, the demand had been voluntarily complied with by the complainant without any demur.

The State Commission took the view that Condition No. 20 (f) on its true interpretation could apply only in cases “where the same owner applies for a new connection in the premises in whose name the old connection stood”. The Commission further stated that the said condition could not be interpreted to mean that when a person purchased the premises from the old owner or otherwise, he could not get a new electricity connection from the Board unless the new owner cleared all the arrears and dues against the old owner in whose favour old electricity connection stood or disconnected. The State Commission observed that the new owner was not consumer of the RESB with respect to the old connection. The new owner under the general law was not under any obligation to discharge the dues. On this the State Commission held that the amount of Rs. 57, 293.35/- was illegally realised by the opposite party from the complainant, therefore, the complainant was entitled to get a refund of the said amount with interest at the rate of 12 per cent with effect from 7th February, 1992. All the remaining reliefs claimed by the complainant were disallowed by the State Commission. Being aggrieved by the order passed by the State Commission, the Board filed a Revision Petition before the National Commission.

Issue

The main issue involved in the case was whether there was deficiency in service on the part of the Electricity Board in realizing from the complainant the amount of arrears left unpaid by the previous occupant of the premises.

Decision

The National Commission held that at the outset it was relevant to take note of the fact that the said amount was paid wholly voluntarily by the complainant company on the basis of the written undertaking which the complainant had given to the Electricity Board expressing its willingness to clear the outstanding left unpaid by M/s Venus Rubber Industries. In such circumstances where a party voluntarily undertook to make such payment for getting the electricity connection and obtained the benefit of the connection after voluntarily making the payment it was not thereafter open to such party to institute a complaint before the Consumer Forum alleging deficiency on the part of the Electricity Board. Further the National Commission considered whether the action of the Board in receiving the said amount from the complainant could be considered to be illegal or unwarranted.

The National Commission held that what condition No.20 (f) stipulated was that no person is entitled to get a new electric connection in a premises where connection did previously exist and in respect of which arrears of electricity charges remain outstanding unless such arrears are cleared and paid by intending consumer who had applied for the reconnection. Such being the effect of condition No.20 (f), the Board was acting perfectly within its rights in insisting on the payment by the complainant-company of the arrears left unpaid by M/s Venus Rubber Industries as a condition precedent for the grant of a new electricity connection to the complainant –company.

Further the Commission was of opinion that the State Commission had acted wholly without jurisdiction in adjudicating and pronouncing upon the legality and constitutional validity of Condition No.20 (f), which, was statutory in origin. The Consumer Forums are not vested with the power to adjudicate upon the validity of statutory provisions enacted by the legislature or by a subordinate body empowered by the legislature to make rules, regulations or statutory orders. Such powers vest only in the regular courts of the land and the function of the Consumer Forums is only to decide cases coming up before them by giving effect to the laws (including rules, regulations, orders etc, which are statutory) as they stand. Accordingly, the National Commission held that the State Commission had acted illegally and without jurisdiction in holding that Condition No. 20 (f) as illegal unless it was read down as meaning only that no new connection in favour of the same consumer shall be given in the premises unless all arrears in respect of the old connection have been cleared. It was therefore, held that the Electricity Board had not committed any illegality, there was no deficiency in service in

realizing from the petitioner the amount of Rs. 57,293.35 /- and the direction issued by the State Commission for refund of the said amount to the complainant was illegal and without jurisdiction.

The Revision Petition was, therefore, allowed. The order of the State Commission was set aside.

Revision Petition allowed.

Travancore Oxygen Limited v. Kerala State Electricity Board

I(1997)CPJ17(NC)

Facts

The complainant, a corporate body engaged in the manufacture of oxygen and allied gases was having electricity supply by the Kerala State Electricity Board (KSEB). The complainant filed a complaint before the National Commission alleging deficiency in service on the part of the Board. For the past several years there had been irregularity in the supply and fluctuation in the voltage of electricity given to the petitioner by the opposite party-Board. Due to the low voltage of electricity supply during the peak load hours the plant had to be switched off to avoid damage to equipment and products. This frequent stoppage of plant every day for 3 to 4 hours resulted in production loss. The petitioner communicated with officials at various levels in the Board requesting them for rectification of the defects. The opposite party in their reply in March, 1991 to the complainant's communications of November, 1990 stated that the low voltage in the petitioner's factory was the result of drop in EHT Voltage due to system constraints which was the *force majeure* condition throughout the State and requested the petitioner to install capacitors in its installations for maintaining its power factor at or above 0.85 so that KSEB can correctly assess the works to be done from outside. The Board also mentioned that steps were being taken by improving the system parameters. The complainant informed the opposite party in October 1991 that it had already installed the required capacitors, but the problem persisted even after that. The complainant alleged that there was deficiency in service on the part of the opposite party-Board since the fluctuation in voltage went beyond the range of 12.5 per cent specified in the agreement. It was further contended that while it continued to incur losses on account of low voltage in the supply of electricity, the Board did not make any reduction in the levy and collection of electricity charge, which amounted to unfair trade practice. The complainant worked out that it was entitled to receive Rs. 30 lakh from the opposite party, Board as compensation on the date of filing the complaint i.e. 4.3.93 and also claimed compensation for future loss being suffered by it. The petitioner also prayed for cost and expenses and requested for direction to the opposite party to ensure flawless voltage, fluctuation-free supply of electricity to the plant. In their version, the KSEB, *inter alia*, referred to Clause 1 (b) of the aforesaid agreement between the parties according to which "the frequency and pressure of

electric energy at the point of delivery of power to the consumer shall be subject to the fluctuation that are ordinary, usual and incidental to the generation and transmission of electrical energy, but such fluctuation shall not except, owing to extraordinary reasons beyond the control of the Board, be more than plus or minus three per cent on the frequency and plus or minus twelve and a half per cent on the pressure". Based on this clause, the opposite party Board worked out the permissible range of fluctuation in voltage at 467 and 363 volts and even according to the complainant's data there were only three occasions when the voltage went below the lower limit of 363 volts and also that the 11 KV voltage recorded at the sub-station. The Board further contended that the petitioner's plant could operate even at that voltage.

The Board pointed out that they catered to the needs of more than 30 lakh consumers in the State and that there was no need for them to indulge in 'unfair trade practice' to extract money or to cause any loss or damage to the petitioner. The Board stated that although they were making every endeavour to maintain the required voltage level, low voltage was being experienced in some areas due to reasons beyond control and that this phenomenon was not confined to the petitioner alone but was experienced in different parts of the state. The Board pleaded that they had not shown any willful negligence in not providing satisfactory voltage to the petitioner. In its reply to the version of the opposite party, the petitioner's main contentions were that the range of permissible voltage fluctuation as per agreement is between 379 and 487 volts. It was also pointed out by the petitioner/complainant that as per the manufacturer's direction the plant could not be operated efficiently below 379 volts.

Issue

The main issue raised in the case was whether the fluctuation in voltage in electricity supply to the complainant beyond the range of 12.5 per cent specified in the agreement was deficiency in service on the part of Electricity Board.

Decision

The National Commission held that the main dispute between the parties revolved round the permissible range of fluctuations. Clause 1 (b) of the agreement specified the permissible range of fluctuations only in terms of percentage and not in absolute terms. It was the agreement, which was binding on both the parties, and hence the entire dispute about the absolute values of the permissible range of fluctuation i.e., whether it should be around 433 volts or 415 volts did not flow from

the agreement. Further Clause 2 (a) has referred to the *force majeure* condition under which the opposite party could not be held responsible for any defective supply of electricity. There was nothing in the complaint, which pointed that there was any wilful action on the part of the opposite party-Board resulting in the alleged voltage fluctuation to the petitioner. It was also not established by the petitioner that the alleged losses in production were solely due to power constraints.

The National Commission held that in the facts and circumstances of the case they were unable to deduce any deficiency in the service of the opposite party Board. The complaint was, therefore, dismissed with the liberty to the petitioner to seek redressal by way of civil suit. No costs.

Complaint dismissed.

Swapan Kumar Babu & Anr. v. Suniti Chattaraj & Anr.**1997(1) CPR96(NC)****Facts**

Shri Lakshmi Kant Basu had an electric connection in the domestic category at his flat at the ground floor of the premises No.18F Shahnagar Road, Calcutta part of Lakshmi Apartments. He died intestate. Shri Swapan Kumar Babu, brother of the deceased and Smt. Sulekha Dutta, sister of the deceased claiming to be only legal heirs of the deceased made an application to Calcutta Electric Supply Co. Ltd. (C.E.S.C) for change of the electricity connection in the name of Smt. Sulekha Dutta. While the application was pending Suniti Chattaraj filed a complaint before the District Forum. It was alleged that late Lakshmi Kant Basu was previous Chairman of National Labour Co-ordination Council and as he was the present Chairman, so the electric connection be changed in his name. There was no allegation regarding any application been made earlier to C.E.S.C Ltd or if any deficiency in service on the part of CESC. The District Forum in an interim order dated 24.10.1994 directed the opposite party. CESC to change the connection in the name of the complainant, Shri Suniti Chattaraj, Chairman, NLCC within a fortnight and to report compliance on the fixed date. Shri Suniti Chattaraj made only CESC as a party to the consumer dispute but did not include petitioners as a party respondent. The petitioners made an application before the District Forum to add them as a party to the consumer dispute and the prayer was allowed. As the petitioners did not proceed, the case was dropped. In pursuance of the interim order of District Forum dated 24.10.994 CESC substituted the name of complainant in place of the name of the deceased. The petitioners, aggrieved by the orders of the District Forum filed an appeal before the State Commission to set aside those orders dated 24.10.1994 & 23.11.94 and to revoke the substitution made by CESC in pursuance of interim order dated 24.10.94. The President allowed the appeal, set aside the order dated 24.10.1994 of the District Forum and directed the CESC to process the application filed by the legal heirs of the deceased consumer in accordance with law. However, the lady member questioned how an appeal could be filed against an interim order of the District Forum dated 24.10.1994 by excluding the subsequent order allowing the complainant to withdraw his case and dismissed the appeal with costs. Thus, the President and the lady member differed in their views. The petitioners filed revision petition in the National Commission for quashing the order of District Forum dated 24.10.1994 and order of the State Commission.

Issue

The main issue was whether the District Forum had the jurisdiction to pass the interim order.

Decision

The National Commission held that the order of the District Forum dated 24-10-1994 suffered from defects of jurisdiction and illegality. As per decision of the Supreme Court in *Morgan Stanley Mutual Fund v. Kartic Dass II* (1994) CPJ 7 the consumer fora has no power or jurisdiction to grant interim relief, it can grant only final relief. Thus the direction to change the consumer number in the name of the complainant was without jurisdiction. The District Forum while dropping the case on 23.11.1994 should have vacated the interim *ex-parte* order passed on 24.10.1994 as that order was not final and could not determine the rights of the parties finally. The District Forum acted against the law and the principles of natural justice in passing the order dated 24.10.1994, which it had no jurisdiction to pass.

Thus the revision petition was allowed. The order of District Forum dated 24.10.1994 was set aside. The order of the State Commission being *non-est* was held to be null and void. The CESC was directed to cancel transfer in the name of the complainant and maintain *status quo* as on 23.10.1994. Further, the CESC was directed to consider the pending application for change of electric connection in accordance with rules. If any application was made by Shri Suniti Chattaraj the same should also be taken into consideration. The parties were directed to bear their own costs.

Revision allowed.

Haryana State Electricity Board v. Smt. Ganga Devi

1997(1)CPR20(NC)

Facts

A cow belonging to the complainant died of electrocution on coming in contact with the electric post maintained by the Haryana State Electricity Board (HSEB). The complainant filed a complaint in the District Forum that the loss caused to her by the death of the cow should be made good by HSEB, which was responsible for supply of electricity in the area. The District Forum allowed the complaint. Appeal before the State Commission was dismissed on the ground of delay. Against the order of the State Commission, revision was filed in the National Commission.

Issue

The main question to be considered was whether the Board, which was supplying electricity and maintaining the electric supply lines could be held responsible under CPA for the loss caused to the complainant.

Decision

As regards the delay of four days in filing appeal before the State Commission, the National Commission held that the State Commission ought to have condoned the delay having regard to the facts and circumstances of the case and the appeal should not have been dismissed on the ground of delay. Therefore, the dismissal of appeal on the ground of delay was set aside.

However, the National Commission held that the grievance put forward by the complainant did not constitute a consumer dispute as defined under the Act because it was not a case of deficiency in service on the part of the Board in relation to performance of any service to a consumer of electricity. The District Forum was clearly in error in allowing the complaint and awarding compensation to the complainant. The order of the District Forum was set aside and revision petition was dismissed on the ground that the dispute raised by the complainant was not one to be adjudicated by the Consumer Forum. The parties were directed to bear their own costs.

Revision Petition dismissed.

Haryana State Electricity Board v. Bachan Singh

III (1996) CPJ 79 (NC)

Facts

The Respondent/complainant Bachan Singh, a landowner in Village Balti, Naraingarh applied for an electric connection for his tube-well under the priority scheme and deposited the required amount for this purpose. After a visit of the site and the scrutiny of the application by the officials of the Haryana State Electricity Board (H.S.E.B) viability report was prepared for the release of connection on the priority basis and in compliance the respondent deposited Rs. 3, 500/- on the 6th May 1992. Subsequently, demand notice dated 2nd June 1992 was issued to the respondent advising him to submit a test report after installing the necessary equipment for supply of electricity. Accordingly, the respondent completed all the requisite requirements in this regard involving a sizeable financial investment. Thereafter, the H.S.E.B. issued the supply sanction in his favour and also erected three poles between the transformer and the site of his tube-well. However, on the 5th December 1992 a Sub-Divisional Officer of the H.S.E.B. informed the respondent that his aforesaid connection couldn't be released as per the latest instructions from the higher authorities. Aggrieved, the respondent/complainant filed a complaint before the State Commission contending that the communication of 5th December 1992 amounts to deficiency in service as it deprived him of electricity connection, which had been duly sanctioned and for obtaining the same he had invested a sizeable amount. The State Commission, Haryana, after recording the evidence of the respondent as well as of the Executive Engineer of the Board and after a careful perusal of the relevant documents came to the conclusion that there was a patent deficiency on the part of the Board in the matter of supply of electric energy extended out to the respondent. Therefore, he was entitled to the removal of the said deficiency and compensation for patent negligence. It was against this order that the H.S.E.B. filed an appeal before the National Commission. There were two grounds on which the appeal was preferred -one related to the instructions issued by the Chief Engineer to his subordinate Superintending Engineers in regard to such connections and the second related to the protest by the villagers against giving electricity connection to a tube-well from the same transformer which fed their domestic light system. The operative part of the instructions on the basis of which the respondent was denied electricity even after sanction of connection was as follows:

“It is further desired that so far as practicably possible, village distribution

transformer should be meant exclusively for village load and future tube-well connections should not be fed from these transformers. Steps may be taken in phases to provide additional separate transformers for feeding tube-wells, wherever village transformers are presently feeding mixed load”.

Issue

The main issue raised was whether there was any deficiency on the part of the Electricity Board in not providing sanctioned electricity connection to the respondent/complainant and whether the order of the State Commission was in accordance with the law.

Decision

The National Commission held that the instructions were of 1987 whereas the service connection was sanctioned to the respondent in August 1992 – 5 years after the said instructions. Moreover, those instructions were advisory in nature rather than statutory directions. These were not issued by the Board but by one of its Chief Engineers to his Subordinate Superintending Engineers by way of abundant caution to avoid overloading of such transformers, which fed the domestic light system of the village. The State Commission had rightly pointed out that initially the H.S.E.B. could not prove or establish that the sanction of the connection to the respondent would have amounted to overloading of this transformer. Rather it was brought on record in paragraph 8 of the written statement of the H.S.E.B. before the State Commission that there was a commercial connection of 5 H.P. for tube-well emanating there from and another commercial connection for an Attachakki from the same transformer. Therefore, the argument that it was the discretion of the Board to give or not to give a connection under the priority scheme, in view of these instructions, was not a valid ground and could not be accepted as a justified reason for withdrawing a sanction issued after a period of 5 years from the date of the instructions.

The alleged letter of protest by the villagers was dated 21.9.92 and the date of receipt of the instruction to cancel the connections was 27.10.93. It was, therefore, obvious that the so-called protest did not merit much consideration and was not a justified ground for canceling the connection sanctioned to the respondent.

For the above reasons, the National Commission did not find any justifiable ground to differ from the findings of the State Commission or to interfere with the order of the State Commission. Therefore, the appeal was dismissed with no order as to costs.

Appeal dismissed.

**Maharashtra State Electricity Board v.
M/s. Swastik Industries**

III(1996)CPJ71(NC)

Facts

The Respondent/Complainant was the consumer of electricity supplied by the Maharashtra State Electricity Board (MSEB). On an inspection of electric meter in January, 1985 it was found that K.W. and K.V.A.M.D. were faulty and K.W.H unit recording was also faulty. The Electricity Board, therefore, decided that the assessment of units consumed should be made on “average basis” for the period August 1984 to December 1984. However, till 5.2.1993 the appellant did not take any action on the inspection report of January 1985. It was on 5.2.1993 that the Board informed the respondent about this low recording of electricity consumption on his meter and enclosed a supplementary bill for Rs. 3,17,659/- for the period August 1984 to December 1984. The respondent requested for the payment of the supplementary bill in instalments, which was allowed, and they accordingly paid the amount due from them in 6 instalments of Rs. 52, 906/- each. However, the respondent/complainant filed a complaint before the State Commission, Maharashtra, stating that they were made to make payment on the threat of disconnection of power supply to their factory, which, they could not afford. Thus the payment made by them was, in a way, under coercion. Further recovery of a dues after a long period of 9 years was time barred and that the Board could not take recourse to Section 24 of the Indian Electricity Act, 1910 and that too, in such a case as there was no negligence on the part of the respondent to pay the due charges in time. The State Commission came to the conclusion that the appellant by giving a notice under Section 24 of the Indian Electricity Act and by threatening the customer could not make its claim alive after such a long period and therefore, the recovery made by the appellant from the respondents was illegal. They accordingly directed the MSEB to pay back the amount of Rs. 3,17,659/- to the respondent within a period of four weeks from the date of the order with interest @ 18% per annum along with the costs of Rs. 5,000/-. Aggrieved by that order of the State Commission, the Electricity Board filed an appeal before the National Commission.

Issue

Main issue before the National Commission was whether there was deficiency in service on the part of Electricity Board in serving supplementary bills after a gap

of eight years much beyond the period of limitation under the law of limitation and what is the ambit of Section 24(1) of Indian Electricity Act, 1910.

Decision

Section 24(1) of the Indian Electricity Act, 1910 deals with the discontinuance of power supply to a consumer neglecting to pay charges due from him and matters relating thereto. The National Commission referred to the order in the case of *M/s. Bharat Barrel & Drum Manufacturing Co. Pvt. Ltd. v. The Municipal Corporation of Greater Bombay & Anr.*, AIR 1978 Bom.369 wherein the question before the learned Judges of the Bombay High Court was whether the word “due” used in Section 24 of the Indian Electricity Act, 1910 is to be interpreted in narrower sense *viz.* as only restricted to the amounts within the period of limitation which could be successfully claimed in the suit or given a wider meaning for recovering even such amounts as may have become time barred. The learned Judges held that the provision in Section 24 of the Act has to be properly appreciated in the context of the obligations cast and the restrictions placed on the licensee (Electricity Board) under Sections 22,22-A, 22-B, 23 and 24 itself. In the light of these statutory provisions, they held, that there is no warrant to read the word “due” in the narrower sense *viz.* as only restricted to amounts within the period of limitation or which could be successfully claimed by a suit. In other words, there is no logical basis shown for preferring the narrower construction to the ordinary construction i.e. wider construction. The wider meaning would be more in accordance with the scheme of the statutory provisions as also with commercial honesty. Further the right to discontinue the supply of electricity is without prejudice to the licensee’s right to file a suit to recover the amounts, since by reason of disconnection of the supply the licensee will not necessarily obtain the amounts due from the consumer. It became necessary, therefore, to protect the licensee’s (read the appellants) right to recover such amounts by ordinary civil action and merely because in such an action the defendant to the suit i.e., the consumer may have the defence of limitation open to any portion of the claim would not warrant such considerations being applied to the licensee’s right of discontinuance of supply for non-payment of the amounts owed to the licence. The provision contained in Section 24 (1) enables the licensee to discontinue electricity supply to a particular consumer is mainly by way of relieving the licensee of the obligation on him to be found contained in Section 22 *viz.*, to make supply of electricity on application to all consumers within the area of supply.

The National Commission held that the question of limitation raised by the respondents has been very cogently and comprehensively dealt with in the judgment

of the Bombay High Court and they were fully in accord with the interpretation of Section 24 and the meaning of the word “due” given by the learned Judges of the Bombay High Court in that case. The facts that the meter of the respondent was checked in January 1985 and the report made at that time were on record showing lower consumption than the average in respect of the factory of the respondents. The Commission held that no doubt the appellant woke up after a period of 9 years to discover this report and made their claim accordingly. That, indeed, did not speak very well of the efficiency with which the appellants were functioning. However, the inefficiency of the functionaries of the appellants could not and should not be made a ground to cause a loss to a public utility concern. In any case, raising of a bill for the electricity consumed, howsoever belated, could not be termed as a deficiency in service. The National Commission was, therefore, of the view that the State Commission, had erred in not considering the legal aspects of the case particularly when the judgment of the Bombay High Court was brought to their notice and in allowing the complaint of the respondents only on the ground that such an old claim cannot be made alive by giving a notice or by threatening the consumer of disconnection of power supply. The appeal was thus accepted and the order of the State Commission set aside. As the appellants had paid back the money to the respondents in accordance with the direction of the State Commission along with interest and costs so the respondents were directed to return all the money paid to them by the appellants in this regard, within a period of 6 weeks from the date of receipt of this order. There was no order as to costs.

Appeal accepted.

Kamlesh Gaur & Ors. v. D.E.S.U.**III (1996) CPJ 9 (NC)****Facts**

The Citizen Protection Forum represented by Mrs. Kamlesh Gaur and others filed a complaint against DESU in the National Commission. The complaint was that the consumers were being billed at Rs. 2.40 per unit for industrial light whereas they should have been billed at Rs. 2.00 per unit for loads up to 20 HP and Rs. 2.20 per unit for loads over 20 HP. The complainant No.1 was corresponding with the opposite party, D.E.S.U for amalgamating light and power energy meters, but it did not take any action, therefore, complainant served a notice on the opposite party. Subsequently, the complainant's light meter was removed and light and power consumption was metered through one meter and billed at Rs. 2.00 per unit. In view of this, complainant No.1 worked out the excess amount charged from 6.10.93 to 26.3.94 as Rs. 756/- and claimed refund. However, the other two consumers named in the complaint did not get their light meter removed and hence paid excess amount. Same was the plight of over 60,000 consumers similarly placed. The complainant contended that the non-amalgamation of the two meters was an unfair trade practice and prayed for discontinuation of the same and for appropriate compensation to the consumers who were affected by the deficiencies pointed out in the complaint. The opposite party contended that the complaint was vague as only three complainants were named and rest were unnamed and even the number of 60,000 complainants was not certain.

Issue

The main issue raised was whether there was deficiency in service on the part of D.E.S.U in not amalgamating two meters even after considerable period and whether relief can be given to 60,000 consumers as asserted in the complaint.

Decision

The National Commission held that there was deficiency in service on the part of DESU in the specific case of complainant No.1 whose meter was not amalgamated for sufficiently long period even after her representation. The opposite party further assured that in future they would immediately amalgamate the meters as and when any body approaches DESU for such amalgamation and would charge at a flat rate of Rs. 2.00 per unit. As far as the complainant No.1 was concerned, the

opposite party admitted that she had been charged excess of Rs.756/-, which was required to be refunded. As for complainants No. 2 & 3 the Counsel for the opposite party argued that the submission was vague as it was not clear whether these two complainants had at all represented for amalgamation of the meters and whether they were at all interested in such an amalgamation. These two complainants had not filed even the agreement with the opposite party so as to ascertain their category. However, the opposite party undertook before the Commission that if these two consumers also represent for amalgamation the opposite party would ensure the amalgamation and charge at the appropriate tariff rate. It was further pointed out that though the opposite party had brought out office order for amalgamation of meters way back in 1984 for domestic purpose, there were still a number of consumers who did not want any amalgamation and want to retain both the meters. Thus, the opposite party had settled the matter in respect of the complainant No.1 where the complaint was specific and assured that they will take necessary action in respect of the other two named complainants as and when they approach the opposite party. The complaint did not specify the details of the remaining so-called similarly placed over 60,000 consumers. In the facts and circumstances of the case the complaint was dismissed. No costs.

Complaint dismissed.

**Kailash Narain Khanna & Anr. v.
The U.P. State Electricity Board & Ors.**

1996(3) CPR47(NC)

Facts

Shri Kailash Narain Khanna was sole proprietor of M/s. Deepak Electroplaters carrying on business of Electroplating. For that purpose he had obtained electric connection from the U.P. State Electricity Board. On 22.3.1988, the meter installed in the premises of the complainant was replaced by another meter. But the Board failed to inspect and test the newly installed meter at the time of installation or thereafter as required by the Regulation 21(iii)(e) of the Regulations. After installation of meter, the complainant was sent bills, which were wholly, arbitrary, whimsical and highly inflated. Opposite party on the basis of the defective readings of the installed meter and in total disregard of complainant's representation raised a demand of Rs. 67,449.09/-. The complainant filed a writ petition before Allahabad High Court. The High Court granted an interim stay on the recovery and directed Electrical Inspector to adjudicate upon the dispute under Section 26(6) of the Indian Electricity Act, 1910. The complainant gave permission in writing to the Electrical Inspector to remove and check the meter. However, the opposite party continued to raise inflated bills on the basis of the defective meter readings. The meter got burnt on 7.5.1992. On 6.9.1992 the Board disconnected the electric supply for non-payment of the arrears of the bills but without serving statutory notice of disconnection. The complainant filed another petition before the High Court. The High Court directed the opposite party to decide the representation filed by the complainant within one month from the date of the receipt of the certified copy of the order and also granted stay conditionally on complainant's depositing rupee one lakh. The complainant did not deposit the sum and the representation was not decided. The complainant then filed the complaint in the National Commission alleging deficiency in service on part of Board and claiming a compensation of Rs. 64.06 lakh together with interest and for direction to opposite party to cancel the defective bills sent and issue fresh bills calculated on the basis of the average meter reading prior to the change of the meter.

Issue

The main issue was whether the failure on the part of the board to inspect and test the meter at the time of installation or thereafter and to send the complainant

bills which were excessive constitute deficiency on the part of the board.

Decision

The National Commission held that the meter was not tested at the time of its installation or there after, therefore, it was reasonable to presume in favour of the complainant that the meter was defective especially because it latter got burnt. There was clear deficiency in service on the part of the opposite party in not testing the meter at the time of the installation or thereafter despite representation made by the complainant. The dispute was not settled by Electrical Inspector inspite of the directions of the High Court for no fault of the complainant. Therefore the Commission directed the Board to cancel the bills sent to complainant from w.e.f. 22.3.1988 to 6.9.1992 and issue fresh bills on the basis of the average meter readings prior to the change of the meter. Further the complainant was directed to pay the bill within one month of the receipt.

However, on the claim of compensation of Rs. 64.06 lakh the National Commission held that no proof had been placed on the record in support of the alleged loss suffered by the complainant. The question of loss was required to be proved by oral and/or documentary evidence, which had not been tendered and therefore the claim was rejected. Besides the cancellation of the previous bills and issue of fresh bills, the opposite party was also directed to reconnect the electric supply within two weeks of the payment of the revised bills. No order as to cost was made.

Ordered accordingly.

**Real Food Products Ltd. & Ors. v.
A.P. State Electricity Board & Ors.**

II(1996) CPJ21 (SC)

Facts

In this case dispute arose by virtue of a direction given by the State Government of Andhra Pradesh to the A. P. State Electricity Board (APSEB) under Section 78A of the Act to introduce a flat rate tariff system for agricultural pump-sets. This direction was first given in 1982 and later revised w.e.f. 1.11.90, 1.1.92 and 1.12.92. The reasons together with the direction contained in the letter dated 15.12.82 of the State Government to the Board were that most of the small and marginal farmers depend on ground water based irrigation and have to incur relatively higher expenditure in lifting water besides being vulnerable to recurring drought resulting in lowering of water table in the wells. Moreover in rural areas maintenance of meters and billing to individual farmer based on meter reading involved administrative problems leading to loss of revenue, hardship to farmers and high collection costs. In view of this, the government felt that the power tariff for agricultural pumps required rationalization and a flat rate system based on horsepower of each pump set would be more appropriate. Therefore the government directed APSEB to revise the electricity tariff for irrigation wells to Rs.50/- per H.P. per annum and that rate shall take effect from 1.11.82.

Thus the APSEB was requested to take immediate necessary action accordingly. Later on variations were made in the flat rate of Rs. 50/- per H.P. per annum from time to time. The High Tension (Industrial Consumers) filed writ petitions in the Andhra Pradesh High Court challenging the revision of tariffs effective from 10.6.87 and 15.4.89. These writ petitions assailing the upward revision of the Tariffs by the Board were dismissed by the Division Bench of the High Court. Aggrieved by that order, the petitioners filed civil appeals before the Supreme Court under Article 136 of the Constitution of India. The petitioners contended that while their class of consumers accounted for consumption of 35% of the electrical energy, the class of agricultural consumers also consumed a like percentage, the former was called upon to pay 106 paise per unit (plus FCA) while the agricultural consumers were required to pay a fixed 5.04 paise per unit. The agricultural sector which was paying 12 paise per unit in the year 1971, 23.4 paise per unit in 1976 and were now paying only 5.04 paise per unit while the petitioners who were paying 16.1 paise per unit in the year 1971 were asked to pay 106 paise per unit (plus FCA). The cost of production

being 71 paise per unit the whole burden on account of the subsidized supply to agricultural sector was cast on the High Tension consumers. It was urged that this discrimination was arbitrary and irrational and was clearly violative of the constitutional pledge of equality under Article 14.

Issue

The important issues raised were:

- 1 What was the nature and effect of the direction given by the State Government under Section 78A of the Electricity (Supply) Act, 1948?
- 2 Was the preferential treatment to the agricultural consumers violative of Article 14?

Decision

The Supreme Court held that H.T. consumers formed a distinct class separate from the L. T. Consumers and the concessional tariffs to the agriculturists did not violate Article 14 of the Constitution of India. Therefore the claim of the H.T. Consumers to be classified along with agriculturists was held to be untenable. The Supreme Court referred to an earlier decision in the case of *Hindustan Zinc Ltd. etc. v. Andhra Pradesh State Electricity Board and Other*, (1991) 3 S.C.C. 299 wherein this question has already been considered and concluded.

In *Hindustan Zinc Ltd. etc. (supra)*, a similar challenge on the ground of discrimination between H.T. consumers, including the power intensive consumers, and other consumers like L.T. consumers and agriculturists was repelled. It was held that the H.T. consumers form a distinct class separate from the L.T. consumers and that concessional tariffs to the agriculturists does not violate Article 14 of the Constitution of India.

On the question of the nature and effect of the direction given by the State Government under Section 78A of the Act the Supreme Court held that the same has to be examined in the context of the facts of the present case in regard to the charging of a flat rate per H.P. for agricultural pump sets. Section 78A uses the expression “the Board shall be guided by such directions on questions of policy as may be given to it by the State Government.” The Supreme Court held that the view expressed by the State Government on a question of policy was in the nature of a direction to be followed by the Board in the area of the policy to which it related. In the context of the function of the Board of fixing the tariffs in accordance with Section 49 read with Section 59 and other provisions of the Act, the Board was to be guided by any such direction of the State Government. Where the direction of the

State Government was to fix a concessional tariff for agricultural pump sets at a flat rate per H.P., it did relate to a question of policy, which the Board must follow. However, in indicating the specific rate in a given case, the action of the State Government may be in excess of the power of giving a direction on the question of policy, which the Board, if its conclusion was different, may not be obliged to be bound. But where the Board considered even the rate suggested by the State Government and found it to be acceptable in the discharge of its function of fixing the tariffs, the ultimate decision of the Board would not be vitiated merely because it has accepted the opinion of the State Government even about the specific rate. In such a case the Board accepted the suggested rate because that appeared to be appropriate in its own view. If the view expressed by the State Government in its direction exceeds the area of policy, the Board may not be bound by it unless it takes the same view on merits itself.

In the present case, the flat rate per H.P. for the agricultural pump sets indicated by the State Government appeared to have been found acceptable by the Board as appropriate particularly because it related to the policy of concessional tariff for the agriculturists as a part of the economic programme. The Supreme Court held that there was no material in the case to indicate that the flat rate indicated by the State Government for the agricultural pump sets was so unreasonable that it could not have been considered appropriate by the Board.

Consequently, the appeals were dismissed.

Appeals dismissed.

Rajasthan State Electricity Board & anr. v. Ramrikh Vyas**II (1996) CPJ 245 (NC)****Facts**

The Respondent/Complainant Ramrikh Vyas had a connection of electricity at his residence in Jodhpur. The Board sent an electricity consumption bill dated 15th December 1990 to the complainant for an amount of Rs. 164.68/-. However, an amount of Rs. 2,364.05/- was further shown in the bill as outstanding arrears for the past electricity consumption. The complainant requested the office of the Board to furnish the details and reasons for charging the said amount. However, the opposite party did not furnish any information and on 20th December 1990 disconnected his electricity connection. Feeling aggrieved by that, the respondent/complainant filed a complaint before the District Forum alleging deficiency on the part of the Electricity Board. According to the complainant, the electricity meter of this electricity connection had never remained stopped and even if it had stopped, the responsibility to change the meter was on the opposite party, but they remained negligent in the discharge of their duty. The complainant, therefore prayed that the electricity consumption bill with respect to the amount of Rs. 2,364.05/- be quashed and electricity connection to be restored. The complainant further claimed compensation to the tune of Rs. 5,000.

The Electricity Board stated that the meter in question was out of order, its glass had been broken and electricity current was not passing into the meter. It had sent an electricity consumption bill on the basis of past average under condition 19 of the General Conditions of Supply in respect of the period during which the electricity current did not pass into the meter. As the complainant did not deposit the amount of the bill the electricity connection was disconnected.

The District Forum held that the bill had been sent in accordance with the Condition 19 (d) of the General Conditions of Supply and therefore, it was correct and accordingly it dismissed the complaint. Aggrieved, the complainant filed an appeal before the State Commission. Hearing the appeal, the State Commission held that Item 1 under Condition No. 19 (d) (vii) of the General Conditions of Supply issued by the Board was repugnant to Section 26 (6) of the Indian Electricity Act, and therefore *ultra vires*. Further that the electricity supply line could not be discontinued or disconnected in relation to a consumer if he neglected to pay any charge for energy without giving him a notice of not less than seven clear days as per the wording of Section 24 of the said Act. The State Commission further held that though it was

printed on the bill that in case amount is not paid within a week of the last date of payment electric connection will be disconnected but such notice was not sufficient. About the bill, it was held that the maximum period of six months was permissible under Section 26 (6) of the Act for which electric bill on the average basis could be sent, thus the bill for 29 months could not be sent. Accordingly, the State Commission held that the bill for Rs. 2,346.05/- could not be sent to the complainant and his connection could not be disconnected for non-payment of the said amount. For the loss suffered by the complainant on account of disconnection of electricity, the State Commission held that he should be compensated for the same and the compensation was assessed at Rs.4000/-. Accordingly the State Commission allowed the appeal and set aside the order of the District Forum. The Board filed a revision petition before the National Commission.

Issue

The main issues involved in this case were whether there was deficiency in service on the part of the Electricity Board and whether the order of the State Commission directing the Board for restoration of electricity supply and to pay compensation to the complainant was right and in accordance with the law.

Decision

The National Commission modified the decision of the State Commission. The Commission held that the contention of the Board was that the glass of the meter of the consumer i.e., the complainant had been broken and electricity current was not passing through the meter. Thus, the dispute in the present case did not fall under Sub-section (6) of Section 26 of the Act and therefore, it could not be referred to the Electrical Inspector. Condition 19 (d) (vii) read with Item No.1 appended thereto deals only with those meters which are burnt/ stopped or ceased to function for any reason. Hence it was not repugnant to Section 26 (6) of the Act which only deals with the percentage of defect i.e. whether the meter is correct or not, in other words whether the meter is correctly recording the electricity consumed.

Condition No. 19 (d) (vii) provides that in the event of the meter being out of order i.e. burnt/stopped or ceased to function (except for percentage of defect) for any reason during any month/months shall be assessed by the billing authority or by the Vigilance Checking Officer as the case may be, in the manner that the quantity of electricity supplied during the period in which the meter stopped/burnt or cease to function, shall be determined by taking average of the consumption recorded during the three months or 12 months, whichever ever is higher immediately preceding the months when the said meter stopped/burnt or cease to function.

Thus Item No. 1 appended to condition No. 19 (d) (vii) provided for determination of consumption on average basis during the period the meter was out of order. The District Forum had reproduced the details as given by the opposite parties while arriving at the amount outstanding and payable by the complainant. The complainant / respondent had not pointed out that the details of Rs. 2,346.05/- as shown outstanding against him in the bill dated 15th December, 1990 were not correct.

It was argued by the complainant /respondent that the bills for arrears could not be for a period exceeding six months. The National Commission held that the argument has no force. The period of six months has been provided only under section 26 (6) of the Act when any difference or dispute arises as to whether any meter referred to under sub section (1) of the section is correct or not and the meter has been referred to an Electrical Inspector for decision. The National Commission held that there was no limitation for sending a bill for electricity consumed. The only restriction was under section 26 (6) of the Act, which was not applicable to the present case. Hence the bill for arrears sent by the Electricity Board was not liable to be quashed on any ground.

Third submission of the learned counsel for the petitioner was that in the electricity bill which had been sent to the complainant by the Board, it was printed in the bill that in case the payment of the amount is not made within a week of the last date of the payment, electricity connection will be disconnected, and, therefore, there was no necessity of sending a seven day's notice as required by section 24 of the Act.

The National Commission observed that the bill was sent to the complainant on 15th December 1990 and on 20th December 1990 the disconnection of the electricity connection was made, i.e. within less than seven days of the issue of the bill. It was of course, not clear that what was the last date of payment of the bill. In any case, the Board was not entitled to disconnect the electric connection of the complainant on 20th December 1990. Thus, the Board was clearly guilty of deficiency in service. The complainant has definitely suffered discomfort on account of the disconnection of the electricity. The National Commission therefore, upheld the award of Rs. 4000/- to the complainant by the State Commission on account of wrongful disconnection of the electricity supply.

The National Commission partly accepted the Revision Petition and held that the bill for the amount of Rs. 2,364.05/- was payable by the complainant consumer and the revision petitioner Board was directed to pay Rs. 4,000/- as compensation to the complainant for wrongful disconnection of supply of electricity. The order of the State Commission was modified to the extent indicated above. However, the parties were left to bear their own costs.

Petition partly accepted.

Haryana State Electricity Board v Jai Forging & Stampings (P) Ltd., Yamuna Nagar

II (1996) CPJ 148 (NC)

Facts

The Respondent /Complainant, was an industrial concern at Yamuna Nagar, receiving electric supply from the Board under three connections - one connection A/c No. Y-32 was in lower tension category and other two A/c Nos. A-400 & A-415 were in high-tension category. In September 1991 the meter for low-tension connection went out of order. The matter was reported to the Board for replacing the same. But the board did not take any action for replacing the said meter. Thereafter, the complainant diverted the electric supply through the meter having A/c No. A-400 to supply electricity connected with A/c No. Y-32. Consequently the total energy being consumed was recorded through A/c No. A-400. On 2nd April 1992 the Vigilance Staff of the Board inspected the premises of the complainant and noticing the aforesaid arrangement booked a case of resale of electricity. It imposed penal charge to the tune of Rs. 99,963/- and disconnected the supply of electricity through A/c No. A-400 on the same day. On making representations the supply was restored on 7th April 1992 after a provisional deposit of Rs. 15,000/-. The complainant appealed against the aforesaid action of the Board to the Superintending Engineer cum Appellate Authority. The said appeal was allowed on the finding that as all the three connections belonged to the one party, it was not a case of resale of electricity and, therefore, the imposed charges on the complainant would not be levied. However, he gave an extraneous direction that all the three connections of the complainant should be clubbed. In October 1992, in the relevant bill, the Board raised a demand of Rs. 35,879/- as S.O.P plus Rs. 2,709/- and on an enquiry it was conveyed to the complainant that the additional amount was towards the difference in tariff rate for the two connections. Aggrieved, the complainant filed a complaint before the Haryana State Commission. The complainant contended that that there was deficiency in service by the Board as the levy was wholly illegal because of the contravention of the procedure for clubbing etc. and that there was no provision for levy of charges retrospectively for a decade. With regards to relief, it was claimed that due to illegal disconnection of electricity in the industrial premises from 2nd April 1992 to 7th April 1992 a financial loss of Rs. 94,000/- has been suffered, apart from humiliation and loss of reputation for which he claimed Rs. 50,000/- as damages. The additional charge of Rs. 38,000/- towards clubbing charges from

September 1983 to April 1992 were sought to be quashed. The State Commission allowing the complaint held that the unauthorized disconnection of the electricity energy from 2nd April, 1992 to 7th April, 1992 was wholly unwarranted and the opposite party must bear the consequences thereof and that the Board could not point out any specific provision whatsoever including the Sale Circular No.28 of 1983, which authorised such retrospective penalties. The State Commission, therefore, held that the retrospective clubbing for ten years was patently unauthorized and therefore the levy of the clubbing charges of Rs. 38, 580/- were liable to be set aside. Feeling aggrieved the Board filed appeal before the National Commission.

Issue

The main issue before the National Commission was whether there was deficiency in service on the part of the Electricity Board in levying charges retrospectively for a decade and whether the decision of the State Commission directing the Electricity Board to pay the compensation was right in accordance with the provision of the law.

Decision

The National Commission held that clearly appellant Board has no case so far as levy of penalty on the allegation of resale of energy was concerned in view of the order passed by the Superintending Engineer-cum-Appellant Authority of the Board according to which it was not a case of resale of energy. The charges on this account were not leviable. The Board has not challenged the said order of the Superintending Engineer and it has become final. The learned Counsel for the appellant Board relied upon the Sale Circular No.28 of 1983 about levying clubbing charges and justifying disconnection. The National Commission was of opinion that in that respect also the Board has no case. As per the order of the Appellate Authority the direction was to club the three meters prospectively. The Board could not club the three meters from the date of the circular i.e. retrospectively. Before any action for disconnection of electricity was to be taken by the Board an advance notice of three months should have been issued to the concerned consumer for complying with the instructions. Admittedly in the present case no such notice was given to the complainant.

As noticed, the vigilance staff of the Board inspected the premises of the complainant on 2nd April 1992 and noticing arrangement of diversion of electricity, imposed penalty charges for resale of electricity and disconnected the connection

on the same day. In such circumstances the disconnection of the electricity supply to the complainant will have to be held against the instructions issued by the Board.

The National Commission observed that it was clear that the imposition of clubbing charges retrospectively was bad and the disconnection was also not in line with the instruction issued by the Board and, therefore, the finding of the State Commission on these points will have to be upheld.

Further the learned counsel for the appellant also disputed the amount of compensation awarded by the State Commission to the complainant against the Board. The Commission said that no ground has been laid before them for reducing the amount of compensation. In this regard the action of the officers of the Board was held to be highly arbitrary. The supply was restored on 7th April 1992 only after the complainant had been forced to make a provisional deposit of Rs. 15,000/-. The National Commission held that they did not find any ground to interfere with the amount of compensation awarded by the State Commission. Accordingly, the appeal was dismissed with costs which was assessed at Rs. 1,000.

Appeal dismissed.

Haryana State Electricity Board v. Tanuj Rashi Poultry Farm

II (1996) CPJ 15 (NC)

Facts

Shri S.K. Gupta, a Non-Resident Indian, set up a poultry farm in village Kakar Majra, Tehsil Naraingarh, District Ambala, involving an investment of about a crore of rupees. He applied for and secured an electric connection in November 1990. From this period up to the month of July, 1991 two electricity meters were burnt but were not replaced in time though he had applied for it and made the necessary payments to the Haryana State Electricity Board (H.S.E.B). His main allegation was that he had to submit to the illegal demands of the employees of the HSEB that he did because his business was of such a nature that it couldn't operate without electricity even for an hour. On the 18th September 1991 Shri S.K. Gupta contacted the Sub-Divisional Officer of HSEB with complaint of unsatisfactory supply of electricity to his poultry farm. On being informed that the connected load was more than the sanctioned load he moved an application for the extension of load. Thereafter, Shri C.D. Sood, the concerned Sub-Divisional Officer, threatened the complainant with penalty for unauthorized extension of load unless his illegal financial demands were satisfied. In July, 1992 the electricity meter was burnt followed by the burning of meter again in August-September, 1992 resulting in total disruption of electricity supply to the farm for 25 days and consequently the loss of 3080 birds. The value of loss was calculated as Rs. 1.50 lakh. On 10th October 1992 Shri C.D. Sood, visited the poultry farm and later summoned complainant to his office and threatened him with serious consequences, unless he was given some graft money. As complainant refused to give any more illegal gratification, he was served with a letter dated 25th November 1992 levying a penalty and other charges to the tune of Rs. 12,568/-, which he deposited under protest. His application for extension of load was also not accepted in spite of many attempts made by him. Thereafter, he addressed a complaint to the Chief Minister of Haryana. Finding that no meaningful action was being taken by the HSEB he filed a complaint before the Haryana State Commission seeking a relief to the tune of Rs. 5.20 lakh including the loss due to death of 3080 birds and also because he had to purchase a generator.

The Haryana State Electricity Board denied all the allegations made by Shri Gupta. After hearing the complaint, the Haryana State Commission concluded that the allegations of the complainant as regards non-replacement of burnt meter for a period 25 days and death of as many as 3080 birds stood substantiated on the

basis of the evidence, oral and documentary, led by both the parties. As regards the allegations of graft etc., the State Commission observed that it was a question of believing word against word in the absence of any concrete or corroborative evidence and, therefore, allowed the benefit of doubt to Shri Sood, the S.D.O. The State Commission allowed a relief of Rs. 75,000/- for the loss of birds etc. including harassment and other business loss. They also held that recovery of Rs. 12,560/- for unauthorized extension of load on the basis of inspection was also not valid, and therefore, directed that this amount which was paid by Shri Gupta under protest should be refunded to him. Thus, a total amount of Rs. 87,568/- was directed to be paid to the complainant as against his claim of Rs. 5,28,500/-. Aggrieved by that order of the State Commission, the Haryana Electricity Board filed an appeal before the National Commission.

Issue

The main issue involved in the case was whether there was deficiency in service on the part of the Electricity Board in not replacing the burnt electricity meter resulting in the total disruption of electricity supply for 25 days and consequently the loss of 3080 birds and whether the order of the State Commission directing the Board to pay compensation was as per the law.

Decision

The National Commission held that the conclusions arrived at by the Haryana State Commission were based on cogent reasoning and proper appreciation of the facts. Therefore, there were no grounds to interfere with the order of the State Commission and hence the appeal was dismissed by the Commission. It was observed by the National Commission that the attitude of Shri Sood in dealing with the complaint of Shri Gupta, particularly his action in penalizing him to the extent of Rs. 12,560/- and recovering that amount on pains of disconnection was not as is expected of a public servant. It would have been appropriate on the part of the Haryana State Electricity Board to make an inquiry into his conduct rather than wasting public money in this litigation. The National Commission thus upheld the order of the Haryana State Commission, dismissed the appeal and further directed that the Haryana State Electricity Board shall pay Rs. 2,000/- as costs to the respondent.

Appeal dismissed.

**Chairman, Tamil Nadu Electricity Board &
Ors. v. M. Abdul Hameed**

I (1996) CPJ 312 (NC)

Facts

The Respondent/Complainant, M. Abdul Hameed was the owner of a house site. A high-tension electric wire of the Tamil Nadu Electricity Board (TNEB) was passing above his house and causing hindrance to the construction of his house. He approached the Electricity Board for its shifting and an order was passed by the Board on 24th November, 1979 for payment of expenses of Rs. 2,533/- which the respondent /complainant paid on 27th February 1980. But the wire was not shifted. Feeling aggrieved, the complainant filed a complaint before the District Forum with a claim for removal of the high-tension electric wire and compensation of Rs. 2,00,000/-. The contention of the Electricity Board was that since there were houses on all sides and they were raising objection to the shifting of the high-tension wire, they could not carry out the work. The District Forum rejected the contention and directed TNEB to remove the said electric wire and pay compensation of Rs. 10,000/- and cost of Rs. 500/- to the complainant. Electricity Board preferred an appeal before the State Commission. The State Commission held that it is a well settled principle of law that without the consent of the owner of the private land, the Electricity Board cannot take its supply lines over his land in any height whatsoever from the surface because under the ordinary law, the owner of the site is the owner of everything up to the sky and down to the centre of the earth. It was, therefore, the duty of the appellant to remove the high-tension electric wire over the complainant's land. If the neighbouring owners object to the shifting of the line over any of their land/buildings, the Board must take the wire by a circuitous route or by putting the underground cables at public street for which necessary powers are conferred on it under Section 12 of the Indian Electricity Boards Act. Thus the State Commission confirmed the order of the District Forum. Against this order, the Electricity Board filed a revision petition before the National Commission.

Issue

The main issue raised was whether there was deficiency in service on the part of the TNEB in not shifting the high-tension wire above the house of the complainant in spite of receiving payment towards the same 15 years back and whether the decision of the District Forum affirmed by the State Commission was in accordance with the law.

Decision

The National Commission held that the Electricity Board has reiterated the point that the high tension electric wire passing above the land was not meant for supply of electricity to the respondent /complainant and that the request made by him was not in his capacity as a consumer of electricity in relation to the Board but was one of the enjoyments of his land as owner thereof. There was also force in the point made by the petitioner-Board that the said wire has been in existence for more than 40 years and that although the complainant had paid the charges for shifting in 1979, he had kept quiet for over 15 years. The Board averred that the shifting of the line may cause low voltage in the area and expressed their helplessness in the matter of shifting the overhead wire. However, the Board could have intimated the position to the complainant as soon as they found it difficult to shift the wire and should have refunded the charges collected in March 1980. The complainant has pointed out that the Board has no right to delay the matter after keeping the amount paid by him. Available records did not show that the Board had returned the charges to the complainant.

The National Commission in the facts and circumstances of the case directed the petitioner –Board to refund the shifting charges of Rs. 2,533/- to the complainant within a period of 3 months from the date of receipt of this order with interest @ 12% per annum from April, 1980 till the date of refund. As far as the main question of shifting of the high-tension line above the site of the complainant was concerned Commission said that the complainant might seek remedy by way of civil suit. The revision petition was thus disposed of as above. Parties were directed to bear their respective costs.

Petition disposed of.

Haryana State Electricity Board v Naresh Kumar

I(1996) CPJ 306 (NC)

Facts

The Respondent/Complainant was proprietor of a reputable business establishment in the name and style of Gupta Rice and General Mills. The Mill was having an electric connection from Haryana State Electricity Board for running the same. The cable installed by the Board from the transformer to the meter of the complainant was in a state of disrepair and had been sparking at several places leading to the ignition of the rice husk lying in the Mill, which had been burnt a number of times. The complaint regarding this was lodged with the Board and on 10th September 1993 the complainant contacted Sub Divisional Officer with an urgent prayer to replace the cable or repair the same. He refused to do so unless a sum of Rs. 1000/- was paid as illegal consideration. On the complainant's refusal to accede to that unreasonable demand, the official got infuriated and threatened him with dire consequences. It was further alleged that on 11th February, 1993 at about 5.30 p.m. Shri R.D. Aggarwal, SDO along with other employees visited the Mill of the complainant in his absence and asked the Chowkidar to load 10 bags of rice in the van of the opposite party on threat of hostile action but the Chowkidar of the Mill expressed his inability to meet such a demand and informed the complainant about the same. The Board on 12th February 1993 disconnected the electric supply of the complainant without any notice and without disclosing any reason or affording any opportunity of hearing to the complainant. The complainant rushed for redress to the senior officers but the electric connection was not restored. The complainant alleged that he suffered grave financial loss besides humiliation because of the deficiency in service of the Board in illegally disconnecting the electric supply and not restoring it. The complainant claimed a compensation of Rs. 1,80,000/-. The stand of the Board before the State Commission was that on 11.2.93 at 4.00 p.m. the S.D.O. along with the staff visited the premises of the Mill for routine inspection/checking of the meter equipment installed at the site and the inspection was carried out in the presence of both the representatives of the Mill. It was found that Yellow phase P.T. wire joint in CT/PT Chamber was loose and thus the meter was recording 33% less than the actual consumption. The representatives were asked to sign the inspection report and meter sealing record, which they refused. It was alleged that the officials of the Board had no option but to disconnect the supply and to raise a demand of Rs. 73, 837.46 to compensate slow running of the

meter in the past. The State Commission also noticed the provisions of Section 20, 24 and 26 (6) of the Indian Electricity Act as well as statutory instruction No.115 of the Sales Manual issued by the Board and came to the conclusion that the Board or its officials could not arbitrarily disconnect the electric supply of their consumers without any notice to them on the mere alleged basis of one or the other employee of the complainant refusing to sign some documents. The State Commission granted a compensation of Rs. 50,000/- besides directing the restoration of electric supply and costs of Rs. 5000/-. Aggrieved by that order, both the parties filed appeal before the National Commission.

Issue

The main issue raised in the instant case was whether there was deficiency in service on the part of the Electricity Board in disconnecting the electric supply to the respondent / complainant without any prior-notice and whether the order of the State Commission was as per the law.

Decision

The National Commission held that the main submission of the Counsel for the Appellant was that the finding of the State Commission that it was extremely doubtful whether Exhibit R 2 was prepared as alleged and purported to have been done on behalf of the officials of the Board and further whether the consumer or his employees Joginder Pal and Devi Dayal had ever refused to sign or attest the same was not sustainable on the face of the entries in the register of inspection maintained by S.D.O. M&P, Bhiwani. There was no merit in the submission. The stand taken by the Board in its written statement was that the inspection party had reached and done the inspection on the 12th February 1993 at 4.00 p.m. but Annexure R2 and R3 record the inspection on 11.2.93. Exhibit R2 was again dated 16.2.93 under the signatures of Shri R.J. Jindal. It was the Board's case that the Inspection Report Exhibit R2 was prepared at the very spot of inspection and the representatives of the complainant were asked to sign the Inspection Report and meter reading record to which they refused. Both Shri Joginder and Devi Dayal gave sworn testimony that at no stage any inspection report had been made or presented to them and they refused to sign. In cross-examination of both these witnesses, it was not suggested to them that they had declined to sign the alleged inspection report. On these established facts, the inference was irresistible that Exhibits R2 and R3 had been prepared subsequently to support and justify the disconnection. In view of the above facts, the National Commission upheld the finding of the State Commission that the Board has failed to establish the very foundation upon which

they summarily proceeded to take the drastic action of disconnection of the complainant's electric supply without any notice.

Report Exhibit R-2 records that when the accuracy of the meter was checked, it was found within limits, but the same was running slow by 33%. It was not seriously contended that the view taken by the State Commission that such disputes were fully covered by Sub-section (6) of Section 26 of the Indian Electricity Act, and proviso expressly laid down a period of not less than seven days notice before disconnection, was not correct. In view of this the National Commission upheld the reasoning and conclusion of the State Commission that the Board was guilty of the deficiency in service, which it had undertaken to render to the consumer under the Indian Electricity Act and the Electricity Supply Act as also the statutory instructions of its own Sales Manual by disconnecting the electricity supply without any prior notice.

It was observed that the electric supply of the complainant was disconnected on 12th February 1993 and was restored only on 6th April 1993 under the orders of the State Commission. The State Commission on the basis of the evidence on the record evaluated that the complainant would have suffered loss of Rs. 50,000/- during that period, as the Mill was non-functional. The National Commission found the assessment of the compensation by the State Commission was on sound principles and fair therefore, the quantification by the State Commission was upheld. The National Commission noticed that the Board has withdrawn the notice served upon the complainant dated 13.9.93 which demanded a payment of Rs. 86,108/- including Rs. 73,877.46 on account of additional charges as per M & P checking report dated 11.2.93 and the running bill pending from March, 1993 and August, 1993. The amount of Rs. 55, 000/- had been tendered by cheque in favour of the complainant before the State Commission.

In the result, both these appeals failed and thus dismissed leaving the parties to bear their own costs.

Appeals dismissed

**R.R. Gopal @ R. Rajagopal v. The Chairman, Tamil Nadu
Electricity Board**

I(1996)CPJ143(NC)

Facts

The Appellant was the publisher and editor of the Tamil political weekly “Nakkheeran” which was dedicated to factual reporting of the administrative lapses, corrupt practices, unjust activities, etc. of the Government officials, industrialists, public persons and anti-social elements. The complainant for the purpose of his business had rented entire upstairs portion of House No.49, Harrington Road, Madras, which had a separate electricity meter in the name of the owner, but electricity bills were paid by the complainant. The complainant was using the said premises as office and work place and had installed electronic equipments working on electrical energy for pre-press processing work. In the complaint, the grievance was that in the evening of 18.12.1991, the workmen of Tamil Nadu Electricity Board (T.N.E.B.) were seen digging the electric cables and doing some technical work on the poles and boxes from where electric connection was laid to the complainant’s premises. After they left, it was found that electricity was disconnected to the building housing the complainant’s premises and to several other buildings in the surroundings. In spite of several telephonic complaints and personal visits on the next day to Assistant Engineer no convincing answer was given and a cable fault was alleged. On 19.12.1991 electricity supply to M/s. Dhanam Printers, where the complainant was carrying on printing and binding works was also disconnected and the same excuse of cable fault was given to the owner of “Dhanam Printers”. The Electricity Board’s officials restored the electricity connection to the neighbouring five houses on 24.12.1991 by pulling long overhead cables from the main boards and different houses and to the ground floor of the building occupied by the owner on 20.12.1991 by similarly drawing a cable from a distant house. However, the owner was warned that if he lent the electricity supply to Nakkheeran office upstairs, then the temporary connection would be disconnected. Aggrieved, the complainant filed a Writ Petition in the High Court of Madras praying for an order directing the Respondent to restore the electric supply to the complainant and to the said printing press doing his works. Thereafter, electricity supply to the complainant’s premises and to M/s Dhanam Printers was restored.

Before the State Commission, the Complainant alleged that it was a cold-blooded victimization motivated by sheer malice, vengeance and oppressive attitude.

The whole object of this unjust act was to weaken the complainant, to terrorise him, to oppress his press freedom, to set stumbling blocks in his professional strides, to torment him, to suppress his publication and to eventually eradicate his weekly. The complainant sought a direction against the opposite parties to pay Rs. 1,64,810/- to the complainant, Rs. 64,810/- as compensation for the pecuniary loss and rupees one lakh for the pain and suffering of the complainant.

The State Commission referred to the provisions of Section 14 (1) (d) of the Act empowering it to award compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party. It opined that negligence constitute the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man could not do. The State Commission also opined that negligence and intentions are contradictory terms and in fact negligence is the antithesis of intention and so intention is not an element of negligence. Since the complainant alleged intentional and malicious wrongdoing, the majority directed the complainant to seek proper remedy in the proper forum and dismissed the complaint with costs. Aggrieved by that dismissal of complaint by the State Commission, the complainant filed an appeal before the National Commission.

Issue

The main issue involved in the case was whether the complainant alleging disconnection of electricity because of cold-blooded victimization motivated by sheer malice, vengeance and oppressive attitude of the respondent, Electricity Board was entitled to compensation on these grounds.

Decision

The National Commission held that the significant thing, which was required to be highlighted, was the fact that service of any description which is made available to potential users specifically included within its scope the provision of facilities in connection with the supply of electrical energy. The supply of electric energy has in express terms been included by the Legislature in the definition of service. This Commission has considered and come to a firm conclusion in a number of cases that the statutory bodies like the Delhi Electric Supply Undertaking and similarly constituted bodies under the various Corporation Acts and the corporate bodies like the Tamil Nadu Electricity Board or other State Electricity Boards render service under Section 2 (1) (o) of the Act and that the sale of electricity is for consideration

and the supply of electricity on a continuing basis over a period of time against payment, therefore, is hiring of service under Section 2 (1) (d) (ii) of the Act.

The National Commission has already taken the view in its decision *B.N. Virani v. Consumer Education and Research Society & Ors.*, First Appeal No. 193 of 1993, *Consumer Education & Research Society & Anr. v. The General Manager, Western Railway & Ors.*, First Appeal No. 216 of 1993 and *Union of India & Anr. v. Consumer Education & Research Society & Ors.*, First Appeal No. 371 of 1993 that the reliefs which can be granted to a complainant against the opposite parties by the Consumer Forums are only those which are enumerated in Section 14 (1) of the Act. It is significant to note the provision of Clause (d) of Sub-section 1 of Section 14 reads as follows:

“to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party,”

It is the negligence in the performance of deficient service that is the foundation of the grant of the relief of compensation to a consumer for any loss or injury suffered by the consumer. Negligence is not an affirmative word; on the other hand it is a negative word. It is the absence of such care, skill, and diligence in rendering the service as is expected of or required of a reasonable man. It is omitting to do something that a reasonable man would do or doing something, which a reasonable man would not do. It is want of proper care or attention in rendering the service judged from the standards of performance by a reasonable man. Under Section 14 (1)(d), compensation is payable to the consumer for loss or injury suffered by the consumer due to negligence of the opposite party. If there is no negligence or negligence is not established, then the Consumer Forums have no jurisdiction to grant any compensation. Inability to render service due to reasons beyond the control of the person required to render service would not be deficiency in service because it falls within the well-known exception *Force Majeure*.

Intentional is doing for a purpose with an ultimate aim. The intentional act is the natural consequence of something consciously done. The Legislature by using the words “deficiency” and “negligence” clearly intended that the remedy for intentional malicious acts are outside the jurisdiction of Consumer Forums under the Act. What the Legislature intended to be done or not to be done can only be legitimately ascertained from what it has chosen to enact, either in express words or by reasonable and necessary implications. In this case, the complainant said that “it was not negligence, it was not delinquency of duty, it was not ruthlessness in

rectifying the cable fault. But it was cold-blooded victimisation motivated by sheer malice, vengeance and oppressive attitude”. These types of complaints are not to be considered and decided by the Consumer Forums as the negligence and intentions are contradictory terms. In fact negligence is the ante-thesis of intention and so intention is not an element of negligence. The reliefs which could be granted under Section 14 (1) (d) are solely dependent on the establishment of the negligence in the performance of deficiency in service.

The State Commission was thus right in rejecting the complaint. The appeal was dismissed leaving the parties to bear their own costs.

Appeal dismissed.

**U.P. State Electricity Board & Ors. v.
Mona Confectionery Industries**

I(1996) CPJ98 (NC)

Facts

The Respondent/complainant was the owner of a unit registered as small-scale industry for manufacture of sweets and toffees, in the District Industry Centre, Dehradun. The complainant had taken a huge amount of loan of Rs. 28,02,000/- from the U.P. State Financial Corporation. He also invested his own money to the extent of Rs. 12,86,000/- to establish the industry and install the machinery. To run the unit the complainant submitted an application to the Board for 40 H.P. electricity connection on 17th September, 1986 along with receipt of necessary charges of Rs. 25/- in March 1988. The Chief Minister of U.P. also issued necessary orders to the Board to supply electricity to the complainant unit on priority basis. The Minister of State for Petroleum, Union of India and the Joint Secretary of the Board also wrote to give power connection to the unit on priority. The complainant was directed to deposit advance security and line expenses amounting to Rs. 14,176/- that were deposited by the complainant on 5th October 1989. The complainant was further directed to deposit Rs. 150/- in the account of Electricity Supervisor, which was deposited on 23rd September 1988. Despite due compliance of all the directions of the Board and its officers, the complainant could not get the electricity connection. Oral prayers were made repeatedly, but no action was taken. Thereafter, a notice dated 28th June 1989 was served upon the Board despite that connection was not given to the complainant. Aggrieved by that the sole proprietor Shri Ratish Mohan Agarwal filed a complaint in July 1989 before the State Commission alleging deficiency on the part of the Electricity Board. He contended that for want of power connection the production could not be started in the unit, though he had arranged to install the machinery. Further the complainant was informed by the U.P. State Financial Corporation that in case the instalment and interest were not deposited by 31st March 1989, the Corporation would take over the unit. The complainant alleged that he had suffered the loss amounting to Rs. 6,85,072.92 on the following counts:

(i) Loss in terms of interest on the loan taken from the Financial Corporation and Loss of net profit.

(ii) The State Commission allowed the complaint and directed the opposite parties to pay an amount of Rs. 30, 000/- to the complainant by 31st August, 1992

failing which the said amount was to bear interest at the rate of 16 % per annum from 1st September, 1992 till payment. Feeling aggrieved by that order, both the parties filed separate appeals. Appeal No.278/92 filed by the Respondent/Complainant M/s Mona Confectionery Industries while the Electricity Board filed Appeal No.273/92. The opposite parties prayed for setting aside that order while the complainant prayed for compensation at the rate of Rs. 80,000/- per month from 25th October, 1988 to 28th August, 1989 on account of damages / loss said to have been suffered by him.

Issue

The main issue before the National Commission was whether there was deficiency on the part of the U. P. Electricity Board in not supplying electricity to the complainant and whether the order of the State Commission was in accordance with the law.

Decision

Before the National Commission the question to be decided in these appeals was whether the B & L form for power load was submitted on 25th October 1988 as claimed by the complainant or on 1st May 1989 as alleged by the opposite party. The argument of the complainant was that in the B & L form submitted on 25th October, 1988 it was clearly mentioned that 36.5 H.P. load and 3.5 H.P. light load total 40 H.P. was required and that form was duly checked by the Board's officers. The opposite party contention was that the said form was only for lights and fans while duly filled form both for power and light was submitted on 1st May 1989. After careful consideration of the circumstances of the case the National Commission was of the view that the contention of the opposite parties was worthy of acceptance. As per the facts of the case at page 70 of the paper book (Appeal No. 273/82) there was a undated letter on the letterhead of Mona Confectionery Industries signed by R.M. Agarwal, addressed to Sub-Division Officer, Electricity Distribution Sub-Division, Dehradun, on which it was written that "I have completed the fittings in connection with the electricity. The form could not be deposited in Dehradun Electricity Office and I am presenting in your office the said form for fittings of light and power. The prayer was made that kindly give connection immediately". On that letter there was an endorsement dated 1st May, 1989 by some officer of the Electricity Board to the effect "forwarded in original the B & L form dated 30th April, 1989 for verification and report". On 28th April 1989 the complainant was informed by an officer of the Board to produce the B & L form necessarily required for the advancement of the departmental procedure. The complainant had denied that he had received the

letter dated 28th April 1989. However, that letter was having the dispatch number and it was very doubtful that the Board's officers had fabricated the letter. Another thing noticed by the Commission was that the complainant has not explained at what point of time he had submitted the letter, which was at page 70 of the paper book. It was not his case that he had submitted that letter with the B & L form originally submitted by him on 25th October 1988. It was not possible that to commit forgery the Department traced out that letter from the file and then made the endorsement date 1st May 1989. The contractor engaged by the complainant had signed that B & L form only on 30th April 1989. The said Contractor, in reply to the department's letter wrote that the B & L form dated 28th October 1988 was issued by him after light fittings and after completing the wiring for power and motor connection he had given the declaration (i.e. B & L form) on 30th April, 1989.

The National Commission held that the complainant appeared to be a very influential person. He obtained a letter from the Minister of State for Petroleum and Natural Gas. It was the complainant's own case that he had been approaching the Chief Minister and other senior officers for the electric connection. However, he had not produced any documentary evidence on the file to show that after the submission of the B & L form on 25th October, 1988 he pressed the Board or any of its officers to give the electric connection immediately. If the electric connection was not given soon after the submission of the B & L form on 28th October, 1988 the complainant who appeared to be influential would have raised hue and cry. His only contention was that he had been approaching the officers and orally pressing them to give him the electric connection after the submission of the said B & L form in October 1988. For the first time he had given a notice in writing to the Department *vide* a letter on 28th June 1989 and soon thereafter the complaint was filed. In the said notice also it was not prayed that the department be directed to give him the electric connection. Only damages had been claimed.

After receipt of the B & L form, the Sub-Division Officer wrote a letter-dated 19.6.89 to the Executive Engineers, Electricity Distribution Division, Dehradun. In this letter it was mentioned that the B & L form verified by the Junior Engineer was attached with that letter and an indent for installation of meter be placed with the A.E. (Dehradun). On 28th June 1989 the Assistant Engineer (State) or Executive Engineer wrote a letter to the Assistant Engineer (Meter) wherein subject was mentioned as "M/s Mona Confectionery, Ravi Pokhri regarding installation of meter of 40 H.P. Electricity Connection". The Assistant Engineer was asked to inform the Executive Engineer's office after arranging the instalment for connection of 40 H.P. to Mona Confectionery. As on 24th August 1989 the meter could not be checked for

want of connecting supply so it was checked on 28th August 1989.

The notice was given by the complainant on 28th June, 1989. Letter dated 19th June 1989 already referred to above was dispatched before the issue of the complainant's notice. The National Commission was not prepared to believe that all these letters were forged or fabricated.

In view of these discussions the Commission held that there had been no delay in giving electric connection to the complainant and the Board and its officers could not be held guilty of any negligence or deficiency in rendering of service. Consequently, the Appeal No. 273/92 was accepted while Appeal No. 478/92 filed by the complainant was dismissed. The order passed by the State Commission was set aside. The parties were directed to bear their own costs.

Appeal No. 273/92 allowed &
Appeal No. 478/92 dismissed.

**Executive Engineer, O & M, Tamil Nadu
Electricity Board & Ors. v. K.R. Mani**

III (1995) CPJ 46 (NC)

Facts

The Complainant was running an industry M/s Omega Grantie having a sanctioned load of 40 H.P. He applied for an additional load of 89 H.P. on 27.5.1990 and on demand, deposited a sum of Rs. 12,250/- on 16.8.1990 as earnest money. The first appellant passed an order on 1.12.1990 sanctioning the additional load of 89 H.P. The complainant subsequently on 25.4.1991 paid a sum of Rs. 6,440/- as estimated cost of work. The complainant alleged that to satisfy the conditions of supply he also installed the machines at huge cost. But the opposite parties deliberately delayed effecting of the additional load for obvious reasons and ulterior motives. The opposite parties also disconnected the existing load falsely alleging that an additional unauthorized load of 24 H.P. was used by him and demanded a sum of Rs. 19,900/-. The complainant paid the amount under protest but the opposite parties failed to restore the connection. Aggrieved, the complainant filed a suit to declare the assessment notice as null and void and for mandatory injunction to restore the connection. The connection was restored only on 7.5.1992. The complainant in his complaint claimed that he suffered a loss of Rs. 6,99,655.50/- due to delay in the connection of the additional load, which was only connected on 31st July 1992 for which the complainant sought compensation. The opposite parties contended that the alleged delay was not extraordinary or inordinate and there was no negligence or culpable conduct on their part. It was further submitted that the complainant had unauthorisedly utilized the additional load of 24 H.P., which was detected on inspection and the assessment for Rs. 19,900/- was rightly made and demanded.

The State Commission was of the view that delay of nearly 20 months in giving connection after sanctioning the additional load exhibited deficiency of service and negligence of opposite parties and granted a compensation of Rs. 25,000/- besides costs of Rs. 2,000/-. Aggrieved by order of the State Commission, the Electricity Board filed appeal before the National Commission.

Issue

The main issue involved in the case was whether there was deficiency in service on the part of the Electricity Board in delaying the connection of the additional load to the complainant.

Decision

The National Commission held that no evidence was adduced by the appellants on record either before the State Commission or in appeal to establish that the materials such as poles, conductors, transformer etc. were not available in store or approval of the P & T Authorities for line crossing was required or if required when it was applied for and when it was given. The State Commission rightly held that the appellants had not produced the necessary records to establish that they were taking steps without any default and delay in giving the additional load was unavoidable. The appellants were thus held to be guilty of gross deficiency in service and negligence.

As regards the suit filed before the High Court, the National Commission held that the High Court of Madras was not called upon to pronounce upon any deficiency in service. It was a petition for a writ of mandamus calling upon the appellants to perform its statutory duty and the relief of mandamus was granted on 16.4.1992 to provide the additional load as agreed during the month of July, 1992. The assessment of the quantum of compensation by the State Commission was held to be fair and reasonable.

The appeal failed and was dismissed with no order as to costs.

Appeal dismissed.

Rasi Engineering Works v. Commissioner, Coimbatore Corporation

III(1995)CPJ15(NC)

Facts

The Appellant/Complainant started a factory for the manufacture of weighing scales and applied to the opposite party for the supply of electrical energy. The complainant was granted two-service connections one for running a machinery of 3 K.V.A. and another for lighting. In 1983 the complainant applied for the grant of an industrial load of 6 H.P. The opposite party did not sanction the load, as the area in which the complainant's factory was located did not come under its jurisdiction. The matter was referred to the Government for obtaining sanction under Section 27 of the Indian Electricity Act, 1910. In the meanwhile the Anti Power Theft Squad on 5.8.1985 inspected service connections of the complainant. It was found that the complainant had connected the load of 8 H.P. to 3 K.V.A. connection. In view of the unauthorized connection the opposite party ultimately disconnected the supply on 7.8.1985 and levied a sum of Rs. 600/- as penalty. The complainant filed a suit before the District Court, challenging the threatened disconnection and the penalty and obtained interim injunction on 7.8.1985. After receipt of the order the reconnection was made by the opposite party.

The matter was referred to the Government for obtaining sanction under Section 27 of the Indian Electricity Act, 1910. The Government of Tamil Nadu sanctioned the additional load but it was not granted to the consumer in view of the outstanding arrears. The complainant filed a suit in the Court of District Munsiff and obtained an order granting interim mandatory injunction directing the opposite party to give additional power load of 6 H.P., which was energized on 17.12.1986.

On 26.3.87 the complainant filed another application for extra load of 8.75 H.P., complied with all the formalities and deposited the requisite amount under the rules. But the additional power was not sanctioned. The opposite party sent a letter saying that the said application would be considered only on the disposal of suit before the District Court or upon the withdrawal of the said suit. The complainant filed writ petition in the High Court seeking a writ of mandamus directing the opposite party to give the supply since the application for new connection was in no way connected to civil suit. The complainant also moved an application for grant of interim relief, which was dismissed by learned Single Judge of the High Court. An

appeal was preferred by the complainant to the Division Bench, which held that the question of disposal/ withdrawal of the case was not a matter connected with the request of appellant. Hence the earlier order was quashed.

The complainant made yet another application for additional supply of energy of 39.5 H.P. on 8.7.1988 with a payment of Rs. 200/-. According to the complainant the opposite party had granted installation licence for total capacity of 16 H.P. and 39 H.P., yet the power supply had been refused on untenable grounds. The complainant filed a complaint before the State Commission alleging deficiency on the part of the opposite party and prayed for direction to the opposite party for immediate new connections for power supply of 8.75 H.P. and 39.5 H.P. to his unit and also prayed for a compensation of Rs. 6,08,000/- under several heads.

The State Commission in its order directed the opposite party to pay Rs. 50,000/- as compensation for failure to give additional load for the period till the filing of the complaint and a compensation of Rs. 1,000/- per month for the period from the date of the complaint till the above two additional loads were supplied and also to pay a sum of Rs. 3,000/- as costs to the complainant. Against the order of the State Commission the appeal and cross appeals were filed before the National Commission.

Issue

The main issue raised before the National Commission was whether there was deficiency on the part of the Electricity Board in refusing the power supply inspite of granting installation licence to the complainant.

Decision

The National Commission held that so far as the claims arising out of the alleged deficiency in service due to the failure on the part of the opposite party in granting the load of 6 H.P. was concerned, the State Commission had rightly held that the claim for compensation was stale one and hopelessly time barred. The connection had been given on 17th December 1986 when the cause of action for damages arose and the complaint should have been filed within three years. The complaint was filed only on 18th June 1992 and thus the complaint on that basis fails.

The main submission of the Counsel for the opposite party was that the complainant had already moved the High Court for not getting new connection and the Hon'ble High Court had directed the complainant to approach the Government for getting the appropriate orders. In the absence of specific orders

passed by the Government, the complainant was not entitled to a new connection. Therefore, any consequential alleged damages could not be agitated before the Redressal Forums. The National Commission held that there was merit in the submission. There was a clear finding of fact inter-se parties that the factory of the complainant was located outside the jurisdiction of the opposite party. This question could not be investigated once again in the Consumer Forum for coming to a different conclusion. The finding of fact that “that the premises of the appellant was lying outside the area of the Municipal Electrical Undertaking” in the writ jurisdiction was binding on the parties.

The State Commission did not correctly appreciate the controversy in the writ petition and formed an erroneous opinion that the later part of the order of the High Court was *Obiter Dicta*. The relief claimed by the complainant in the interim application in the writ petition was for a direction to opposite party to give additional load of 8.75 HP to the service connection on the payment of necessary charges pending the writ petition. This relief was dependent on the finding whether the factory of the complainant was lying within or outside the area of the opposite party. After the High Court came to the conclusion that the factory of the complainant was lying outside the area, no direction could be issued or was issued for grant of additional load of 8.75 H.P. to the complainant. The grant of interim relief to the complainant was refused as not granted after quashing the impugned order of 13.11.1987. The High Court left it to the complainant to approach the Government for the additional load. The opposite party was to act according to the decision of the Government. The complainant has not approached the Government for sanction. In the absence of the sanction of the Government, it could not be said that there was any negligence or deficiency in service on the part of the opposite party.

As a result F.A. No. 291 of 1993 was allowed and the impugned order of the State Commission dated 9.6.1993 was set aside and the complaint dismissed. Consequently F.A. No. 284 was dismissed. The parties were directed to bear their own costs.

Ordered accordingly

**Genetic Industrial Gases (P) Ltd. v. The U.P.
State Electricity Board & Ors.**

II(1995)CPJ176(NC)

Facts

The Complainant, M/s Genetic Industrial Gas Pvt. Ltd. was allotted a plot to work on a project. It applied for electric connection to U.P. State Electricity Board. U.P. Finance Corporation, which had advanced a loan the company, also addressed letters to the Board to sanction power load of 97 H.P. in favour of the Company. By March 1990, the construction of the factory building and installation of plant and machinery was completed, but the electricity connection was not granted. In the absence of power connection the company had to depend on diesel generator set involving minimum expenditure of Rs. 4,000/- on maintenance besides affecting the production schedule. In December 1990 the company came to know that the estimate report has been prepared charging a sum of Rs. 3,891/- to the company and the balance amount was to be borne by the board. The company accordingly sent a Demand Draft of Rs. 3,891/-. However this D.D. was returned to the company with letter stating that the estimate has not been sanctioned and no demand note has been sent to the company to deposit the amount. The company wrote a letter to the Executive Engineer, Moradabad for early preparation of estimate and release of power connection immediately. Executive Engineer sent a letter dated January 16, 1992 with a copy of revised estimate and directed the company to deposit Rs. 14,550/- as security charges and Rs. 38,150/- as S.C charges on or before February 15, 1992. Accordingly the amount was paid by the company on January 23, 1992. Thereafter, the Executive Engineer informed Sub-Divisional Office, Gajraula to take necessary action about supply of electricity but no action was initiated. Aggrieved complainant filed a complaint before the National Commission, alleging deficiency in service on the part of the Electricity Board, that inspite of the company fulfilling all the obligations and parting with a sum of Rs. 52,700/- as early as on January 31, 1992, the board did not release the electric connection to the factory. Meanwhile the connections had been released to four other units which were not even set up in February 1990 whereas company's power connection was sanctioned on February 21, 1990 but the connection was not released. The company prayed to the National Commission that direction be issued to the Board to release the connection and claimed Rs. 88,71,407/- as compensation towards the loss suffered by the company due to inaction on the part of opposite parties and interest on Rs. 52,700/- @ of 24% from January 23, 1992, the date on which the amount was deposited.

The opposite party contended that the complaint was false, vexatious and frivolous as the company had run only for six days production wise in the last four years from which it appeared that it was not in running condition. The complaint was filed only to make a case before U.P. Financial Corporation from where the company had taken loan. The opposite party was not in a position to give power connection as the energisation of the newly constructed 33/11/KV Sub-station of Industrial Estate, Gajraula was not possible due to non-availability of the MVA Transformer. Understanding genuine problem of the board the complainant moved the board to supply energy through rural feeder. The change of source of power supply delayed the completion of formalities. The total cost was estimated as Rs.2,33,580/- out of which the petitioner was required to pay Rs.1,62,011/-. On knowing that sub-station at Industrial Estate would be completed soon, the petitioner insisted for supply from the newly constructed sub-station. The complainant was favoured by the Board in preparing the estimate in advance before the sub-station was energized to avoid any delay. However it was found that the complainant had not installed L.T. Switching System for taking supply as required by Rule 50 of the Indian Electricity Rules, 1956. Complainant even did not comply with the reminders sent to install switching system so that connection could be released. In view of complaint, connection was released on November 11, 1993 but company's representative refused to sign the report. Another letter was sent on November 12, 1993 to install switching system but no action was taken. Thus complainant himself was responsible for delaying the release of electric supply. The power connection was disconnected on June 13, 1994 as complainant did not deposit the outstanding electricity charges of Rs.1,98,428/- plus late payment charges.

Issue

The main issue involved in the case was whether there was any deficiency in service on part of the board in not supplying electricity.

Decision

The National Commission was of the view that delay in the supply of power to the complainant's unit was occasioned due to the fact that the sub-station at the Industrial Estate, Gajraula was under construction. When the construction was completed the transformer was not available. When ultimately the sub-station was energized it was found that the complainant had not installed the LT Switching System. Consequently, the delay was mainly on the part of the complainant. The National Commission thus held that there was no deficiency on part of the Electricity Board. The Commission dismissed the complaint with cost assessed at Rs. 5,000/-.

Complaint dismissed.

M.P. Electricity Board v Baboo Lal

II (1995) CPJ 132 (NC)

Facts

The Respondent /Complainant Baboo Lal was a consumer of electricity supplied by M.P. Electricity Board for running his factory. When the audit party of the Electricity Board conducted a surprise inspection of his premises, it was found that the meter in his factory had been tampered with by reversing it on one side with the result that the meter was recording energy in forward direction on two phases and in the reverse direction on one phase thereby bringing about the overall consequence that the meter was recording only 1/3 of the total consumption. On detection of this illegal tampering with the meter connection, the audit party prepared a 'Panchnama' on the spot on January 9, 1990 and raised the impugned bill of Rs. 9,787.90/- for the period April, 1989 to February, 1990. Aggrieved by that, the respondent/complainant filed a complaint before the State Commission alleging deficiency in service on the part of the Electricity Board. The State Commission allowed the complaint and directed the Board to pay a sum of Rs. 1,000/- as compensation to the complainant, together with a sum of Rs. 500/- by the way of cost and granted a declaration that the Madhya Pradesh Electricity Board is not entitled to recover any amount from the complainant on the basis that the meter was defective unless the Board refers the meter to the Electrical Inspector and gets it decided through him. Aggrieved by that order of the State Commission, the M.P. Electricity Board filed an appeal before the National Commission.

Issue

The main issue involved in the case was whether the case of defective meter required reference to the Electrical Inspector as per the direction of the State Commission.

Decision

The National Commission held that the State Commission has erroneously proceeded on the basis that the Electricity Board had issued the bill in question to the respondent /complainant on the basis that the meter in the complainant's premises was defective and did not record correctly the actual consumption of energy in the complainant's factory. In the present case the audit party of the Electricity Board had conducted a surprise inspection of the consumer premises

and found that the meter in the complainant's factory had been tampered with reversing it on one side with the result that the meter was recording energy in forward direction in two phases and in the reverse direction in one phase thereby recording only 1/3 of the total consumption. On detection of this illegal tampering with the meter connection, the audit party prepared a 'Panchnama' on the spot on January 9, 1990 and raised the impugned bill for Rs. 9,787.90/- for the period April, 1989 to February, 1990 and it was this bill that was served on the complainant with a demand for payment.

The National Commission further held that Section 50 of the Indian Electricity Act vests the Electricity Board with the power to take such action in the event of illegal tempering of meter connection and Section 23 of the said Act authorizes such billing. Thus this was not a case where there was any inherent defect in the meter so as to require the matter being referred to the Electrical Inspector before serving a bill and making a demand for its payment as has been wrongly assumed by the State Commission. The records clearly proved that there was tempering with the meter connection by the consumer, it could not be said that there was any 'deficiency' in service on the part of the Electricity Board so as to warrant the grant of any relief to the consumer in proceeding under the Consumer Protection Act. As already pointed out the order of the State Commission was wholly on the wrong basis as this was not a case of the meter being suspected to be defective.

The order of the State Commission granting the reliefs to the respondent was held to be wholly without jurisdiction and thereby set aside. Thus the National Commission allowed the appeal dismissing the complaint filed by the respondent/complainant.

Petition allowed.

P.J. Thomas v. Kerala State Electricity Board

II (1995) CPJ 56 (NC)

Facts

The appellant/complainant was the proprietor of St. George Furniture Industries, which was registered as S.S.I unit. After the completion of the factory building and the erection of machineries, the complainant approached the Kerala State Electricity Board (KSEB) for necessary power supply. Initially he applied for the power connection under the General scheme for 25 HP and power allocation was made on 16.8.1985. Under the conditions of supply of electrical energy, registration for service connection was to be made within two months of power allocation, failing which the allocation would automatically stand cancelled. The complainant did not register for service connection and the power allocation made in the favour of the complainant stood cancelled. Thereafter, the complainant applied under the Priority Scheme for 35 HP power connection on 2nd August, 1986. Under the priority scheme the complainant was required to deposit Rs. 36,000/-. As the complainant was in financial difficulties, he applied to the Minister for payment of the amount in instalments, which was allowed. The complainant executed a bond for payment of Rs. 36,000/- on 19th December 1987 when he remitted the first instalment. The complainant obtained the licence from the Panchayat Authorities for running the factory on 23rd November 1987. On 21st January 1988 the complainant revised his requirement and made an application to the respondent for supply of 18 HP power and not 35 HP as already demanded. On 2nd March 1988, 18 H.P. power connection was given to the complainant. After the complainant had paid the last instalment he was given the additional power connection of 17 H.P. from 8th July 1989 after the transformer was installed at the premises of the complainant.

The complainant filed a complaint before the State Commission alleging deficiency in service on the part of the Electricity Board. The State Commission dismissed the complaint. Aggrieved by that order, the complainant filed appeal before the National Commission. The allegation of the complainant was that even after he had paid the first instalment, the Opposite Party, Electricity Board did not take even the preliminary steps to provide electricity connection to him and the delay on the part of Opposite Party resulted in heavy loss to him and he had to pay interest for the loan amount taken from the State bank of Travancore and the Kerala Financial Corporation. The Opposite party pleaded that there had been no avoidable delay in giving power connection of 35 HP to the complainant, as after

paying the last instalment, the complainant was required to install transformer. After he did so the connection was given to him. The complainant did not comply with the conditions of supply. The main argument of the appellant was that as per the feasibility report of 19th September 1986, 35 HP power could have been given from the existing 63 KVA transformer at Odanthode and this fact was suppressed from him.

Issue

The main issue raised before the National Commission was whether there was delay by KSEB in supplying electricity to the complainant leading to deficiency on their part.

Decision

The National Commission held that all the documents produced by both the parties had been fully considered by the State Commission and it had held that there was no negligence, delay or indifferent attitude on the part of the Opposite Party in giving connection to the complainant. After going through the record and after considering the arguments of both the sides, the National Commission did not find any infirmity in the said finding.

The National Commission did not find any force in the appeal and dismissed the same. However, in the circumstances of the case, the parties were directed to bear their own costs.

Appeal dismissed.

**Maharashtra State Electricity Board v.
Sheshrao Ajabrao Sherkar**

1995 (2) CPR 106 (NC)

Facts

The complainant applied for electricity connection for domestic purposes to Assistant Engineer, Anjangaon, MSEB. The application was processed and a demand for Rs.1,350/- was raised which included Rs.250/- towards service connection charges, Rs.100/- as security deposit and Rs.1000/- towards service line charges. The amount was deposited on 6.11.1989 and the electricity connection was energized on 6.1.1990. The rural rectification scheme was sanctioned and implemented for Anjangaon and other rural areas under Achalpur Division after March, 1990 according to which service line charges were not to be recovered after March, 1990 from prospective consumers where Rural Electrification Scheme has been brought into force. The complainant filed a complaint before the District Forum for refund of Rs. 1,000/- towards the service line charges with interest. The complaint was allowed and MSEB was directed to refund Rs. 1,000/- with interest. The appeal in the State Commission against the order of District Forum was dismissed. The State Commission upheld the order of the District Forum. Against the order of the State Commission, MSEB filed revision petition in the National Commission.

Issue

Was the complainant entitled to refund of service line charges and whether there was any deficiency in service on part of MSEB?

Decision

The National Commission held that the amount of service line charges were determined according to the circular issued by MSEB providing guidelines for recovery of capital cost contribution (non-refundable) from new consumers in the area where there was no service line or infrastructure sufficient to meet the need of the prospective consumers of electricity within the reasonable period. Section 49 read with Section 79 of the Electricity (Supply) Act, 1948 authorises MSEB to supply electricity to the person other than the licensee on such terms and conditions as it may deem fit. The MSEB was thus empowered to frame conditions for supply of electricity which included not only the power to recover the cost of electricity but also charges of service interest, penalty etc. The demand for the capital cost

contribution (non-refundable) was framed in exercise of powers vested in MSEB under the Conditions of Supply made under Section 49 read with Section 79 of the said Act. As per the judgment of the Supreme Court in *Green Rubber Industries v. State of Bihar* (1990) 1 SCC 731 the consumer has either to take supply on the conditions on which it is offered or to go without it. The Commission, re-affirmed its earlier view that the reasonableness or otherwise of the cost or price charged for service is not a matter falling within the purview of the adjudication under the Consumer Protection Act and all that forums are concerned with is whether there has been any deficiency in the matter of rendering service that has been contracted for. The National Commission held that in the case there was no allegation of deficiency in service. The District Forum and the State Commission acted without jurisdiction in allowing refund of amount.

Thus, the revision petition was allowed. The orders of the State Commission and District Forum were set aside. The parties were directed to bear their own costs throughout.

Revision allowed.

**Alacrity Foundations (Pvt.) Ltd. v The Chairman,
Tamil Nadu Electricity Board**

I(1995)CPJ237(NC)

Facts

The Appellant/ Complainant, Alacrity Foundations Pvt. Ltd was a company engaged in the construction of residential and non-residential apartments in Madras. It was dealing with the opposite party for seeking electricity connection for the construction purposes. The complainant made an application for electric connection on 3.4.1990 for a complex known as 'Anandra', but the service connection was effected only on 26.9.1991. In order to avoid delay the complainant supplied materials worth Rs. 55, 854/- free of cost and offered a space within the complex free of cost for putting up the distribution transformer. Despite all the facilities offered by the complainant, the opposite party took one year and five months to give the electricity connection. Aggrieved by that the complainant filed a complaint before the State Commission contending that on account of this delay he has been put to much loss as the complex was ready for occupation in January, 1991 but for electricity connection, it could not be occupied before September, 1991 and as a result the complainant has suffered loss amounting to Rs. 9, 69,354/- which included the cost of material supplied by the complainant. Thus the grievance of the complainant was that the opposite party has inordinately delayed giving of connection to the apartments constructed by the complainant. The Electricity Board contended that all efforts were sincerely made to effect the supply as early as possible and there has been no deficiency of service resulting in any loss. The State Commission held that there has been inordinate and avoidable delay of more than 10 months in the supply of electricity and this would amount to deficiency in service. It was further held that advance supply for the load of 100 KW was affected in addition to the temporary supply for construction purposes of a load of 45 KW and this supply must have been available to the complainant and apartments owners and it could not therefore be said that the complainant owners were unable to occupy the premises for want of electricity energy. The State Commission, therefore, refused to grant any compensation on the ground that the apartments could not be occupied for want of electric connection. The State Commission, however, held that the complainant was entitled to compensation for mental pain and agony as it had to wait nearly for one year and 5 months to get permanent connection and thus a compensation of Rs. 10,000/- was considered sufficient by the State Commission to meet the ends

of justice. Aggrieved by that order of the State Commission both the parties filed appeals before the National Commission.

Issue

The main issue raised before the National Commission was whether there was deficiency in service on the part of the Electricity Board as there was delay in supplying electricity to the complainant as per the terms and conditions between them.

Decision

The National Commission said that the contention of the complainant was that its requirement was of 218.52 KW while only 10 KW supply was given on 13th March 1991 in addition to the temporary supply. It was also pointed out that the State Commission fell into error while holding that the load of 100 KW was supplied in March, 1991 in addition to the temporary supply of 45 KW for the construction purposes when it was an admitted fact that in March, 1991 a load of 10 KW was supplied in addition to the temporary supply for construction purposes. The National Commission agreed that the State Commission has fallen into some error but was of the opinion that there was nothing on the file to show that on account of the alleged delay in supply of electricity the complainant had suffered any loss. As it was clear from the counter filed by the opposite party, residential flats had already been sold and the owners themselves had applied for electricity connection. There was also no evidence to show that exactly when the commercial complex was completed and that any allotted purchaser of the space in the commercial complex refused to occupy that space for want of electricity. It has also not been shown that the temporary electricity supply, which had already been given, was insufficient for use of occupants in the commercial complex.

After going through the various dates given in the order of the State Commission about the various works carried out by the opposite party, the Commission found that though there had been some delay at one or two stages of the work it could not be said that there was inordinate delay.

In the light of above observations, the National Commission did not find any force in either of the appeals and confirmed the order passed by the State Commission and dismissed the appeals. There was no order as to costs.

Appeals dismissed.

Haryana State Electricity Board v. Laxman Singh

I(1995) CPJ 234(NC)

Facts

The complainant/respondent colluded with junior engineer of the Board and illegally obtained power connection in June 1991. For this junior engineer received a consideration of Rs. 2,000/- for giving power connection but no receipt was given to the respondent. No meter was installed on the ground that power meters were in short supply. Power was supplied to the respondent on the basis of Rs. 100/- per month representing the average consumption. In July 1991, SDO visited the site and demanded Rs. 5,000/-. On refusal to pay, the power connection was disconnected. A complaint was made before District Forum, which directed restoration of electric connection. On appeal the State Commission upheld the order of the District Forum holding that power connection had been duly released by the Junior Engineer on payment of installation charges. Against the order of the State Commission Board filed a revision petition in the National Commission.

Issue

Whether the connection of respondent was duly sanctioned and authorized and the disconnection constituted deficiency on the part of State Electricity Board. Can the employee be deemed to be acting on behalf of an organization or institution when the employee acted unlawfully and illegally and can the service by him be deemed to be deficient service rendered by the concerned organization.

Decision

The National Commission held that the Respondent was due in his turn for power connection and it was unfairly and unjustifiably denied to him. No doubt the respondent was in need of power connection and he obtained the same, by giving illegal gratification to the Junior Engineer for which the engineer was subsequently suspended from service and was facing departmental enquiry. The connection which was subsequently disconnected by the SDO was an unauthorized and wrongfully given connection. A priori non-provision of the service to which a potential consumer may not be eligible at a particular point of time would not constitute deficiency in service. The National Commission thus held that State Commission was in error when it held that the power connection had been duly released by the Junior Engineer. The respondent had managed to obtain the

connection by dubious means and therefore subsequent disconnection was fully justified and could not be deemed to constitute deficiency in service on the part of HSEB. Thus, the revision petition was allowed and the orders of the State Commission and the District Forum were set aside. There was no order as to costs.

Revision Petition allowed

**Kanchenjunga Chemicals Ltd. v
U.P. State Electricity Board & Ors.**

I(1995)CPJ138(NC)

Facts

The complainant was a small-scale manufacturer of chemicals at Ghaziabad. His industry required continuous power supply so he entered into an agreement with U.P. State Electricity Board (UPSEB) on 6th April 1983 and power connection was given on 31st May 1984. According to the complainant, being a continuous process industry, it was exempt from power cuts altogether for a period of five years i.e. till 31st May 1989 in accordance with the policy for power supply to such industry in vogue at that time. The complainant filed a complaint before the National Commission alleging that he has been subjected to,

- (i) Power cuts contrary to the commitment that this industry would be free from power cuts altogether for a period of the five years,
- (ii) Unauthorized disconnection from time to time,
- (iii) To pay bills for power during the period the power supply remained disconnected.

Therefore, the opposite party-UPSEB was guilty of deficiency in service and he claimed damages of Rs. 15 lakh for the loss caused to him. He also claimed Rs. 10, 10,135/- by way of refund of excess charges collected from him for the electricity consumed. He further claimed interest at 24% on the said amount from January 19, 1987 onwards.

Against the allegations, the Electricity Board contended that the exemption applied only to units on independent feeders and the unit of the complainant was being supplied power from the mixed feeder and therefore, he was not entitled to exemption from power cuts under the said notification. The opposite party further explained that the consumer was required to pay minimum charges during the period of disconnection as per the judgment of the High Court of Allahabad in the case of *Modi Steel Ltd.* in which the right of the Electricity Board to levy and recover minimum charges during the period of disconnection was upheld. Further as per the agreement also, the complainant was obliged to pay minimum charges during the period of disconnection.

Issue

The main issues involved in the case were

(i) Whether the complaints regarding unjustified and unauthorized power cuts, illegal disconnection and inflated bills prior to September 1989 were barred by limitation and

(ii) Was there any deficiency in service on the part of Electricity Board on ground of power cuts and disconnection of electricity?

Decision

The National Commission held that the opposite party UPSEB has *prima facie* explained how the power cuts from 1984 to 1989 were authorized in terms of the Government's notification of February 1984 on the subject as the complainant was receiving power supply from a mixed feeder and not an independent feeder and hence it was not exempt from power cuts. It has also explained how it was justified in recovering the minimum charges during the period of disconnection of power supply.

The National Commission further held that it was not possible for the Commission to go into the allegation whether the disconnection was due to violation of the instructions regarding power cut at this stage of time and whether the bills had been prepared correctly or not. The fact was that the major portion of the complaints was belated as they related back to the year 1984-85 which made it extremely difficult to examine the same after elapse of long time. *Prime facie*, therefore, the U.P. State Electricity Board could not be held guilty of deficiency in service in relation to the complainant. It would therefore be, appropriate for the complainant to agitate his grievance and claim for refund of charges if recovered in excess and pursue his claim for damages before a Civil Court. The complaint was thus dismissed without prejudice to the right of the complainant to seek redress through a suit in a Civil Court. There was no order as to costs.

Complaint dismissed.

Haryana State Electricity Board v. Dev Raj Vinayak

I (1995) CPJ 124 (NC)

Facts

The Respondent/Complainant Dev Raj Vinayak, owner of a brick kiln applied for an electric connection for running the brick kiln. Two other persons *viz.*, Narain Prashad and Bikhi Chand had also been granted separate and distinct electric connection with meters in the same premises. The latter two consumers fell into arrears in the payment of electricity bills, which amounted to Rs. 24,868/-. However, the State Electricity Board disconnected electric supply of the respondent / complainant even though he had made no default whatsoever, in the payment of electricity charges so far as his electricity connection was concerned.

Aggrieved by that the respondent/complainant filed a complaint before the District Forum alleging deficiency on the part of the Electricity Board. The District Forum dismissed the complaint as having no merit. Against the order of the District Forum an appeal was filed before the State Commission. The State Commission set aside the order of the District Forum and came to the conclusion that the Respondent's electricity was disconnected unauthorisedly and granted relief to him. Aggrieved by the order of the State Commission, the Electricity Board filed a revision petition before the National Commission and contended that the Respondent / Complainant had obtained three electric connections on the same day for the brick kiln, one in his own name and two other electric connections in the name of his employees.

Issue

The main issues involved were whether the disconnection of electricity by the Board due to benami connections in the name of two others in the same premises being used by the complainant, deficiency in services and whether the direction of the State Commission to provide relief and compensation to the respondent was right in accordance with the law.

Decision

The National Commission held that the complainant had obtained three connections so as to obviate the payment of line rent. As per the tariff, rent charges have to be paid for one single connection of higher capacity, where as by splitting up the connection into three connections, each falling below the limit for the rent for

the line, he was exempted from line rent. The respondent /complainant had obtained all the three meters on the same day *viz.* 7.2.1999 and they bore consecutive meter numbers. All the three meters were installed in the same brick kiln. For these two electric connections, their rent charges were in arrears because of non-clearance of the dues. Subsequently, the connection of the respondent was also disconnected as it was in the same premises.

The National Commission held that from the facts stated in the Revision Petition, it was found that the two connections in the name of two other persons, were benami connections, whose real beneficiary was the respondent /complainant, and that was done to escape the liability for the line rent. Thus National Commission was of the view that there has been no deficiency on the part of revision petitioner-Electricity Board and the act of disconnection could not be criticized. It was further held that if the respondent felt that the Electricity Board has unfairly and arbitrarily disconnected his electric connection, he was free to seek redress in a Civil Court and this order would not prejudice him in any manner.

Thus the revision petition was allowed and the decision of the State Commission was set aside. There was no order as to costs.

Revision allowed.

**Asstt. Accounts Officer, GT/M.E.D.C./Central & Anr v.
M.R. Murali**

I(1995) CPJ 39 (NC)

Facts

Originally the electricity connection provided by the Tamil Nadu State Electricity Board stood in the names of four tenants who were in possession of four shops. At the instance of the complainant's father who alleged that the tenants had consented to transfer connection to his name, the Electricity Board transferred the registration to the complainant M. R. Murali's father's name showing him as the consumer in respect of particular electricity connections. The tenants raised objection stating that they had not given their consent for transfer of the connections to the name of the complainant's father. Thereupon the Board conducted an investigation to produce evidence showing that consent in writing had been given by the tenants for the transfer of the registration. Since the complainant's father failed to comply with the said requirement of production of evidence, the Board cancelled its earlier order sanctioning transfer of connections to the name of the complainant's father.

After the death of his father, the complainant approached the District Forum with the grievance that notwithstanding a request having been made by him to transfer the connection in his favour as successor of his father, the Board failed to do so. The District Forum allowed the complaint. The State Commission confirmed the order of the District Forum in appeal. Aggrieved by that, the Board filed a revision petition before the National Commission challenging the order of the District Forum as affirmed by the State Commission.

Issue

The main issue raised before the National Commission was whether there was any deficiency in service on the part of the Board in refusing to transfer electricity connection in the name of the respondent/complainant after the death of his father and whether the decision of the District Forum as affirmed by the State Commission was in accordance with law.

Decision

The National Commission observed that it was absolutely clear that the complainant had no *locus Standi* at all. The transfer of the connection in the name of his deceased father had been cancelled by the Board and if he had any case that

the said cancellation was bad he should have approached the ordinary Civil Court and not the Consumer Forum. The grant of relief to the complainant by the District Forum and the State Commission was totally without jurisdiction and hence the Revision Petition was allowed. The orders passed by the State Commission and the District Forum were set aside. There was no order as to costs.

Revision Allowed.

Maharashtra State Electricity Board v. K.L. Ramani

1995(1) CPR 334(NC)

Facts

The respondent-complainant had filed an application in prescribed form for a new electric connection with the concerned office of MSEB. But no action was taken by the Board for giving electric supply. The complainant also met the officers of the Board but still there was no response. Aggrieved complainant filed a complaint before the District Forum alleging deficiency on the part of the Board. It was contended by the Board that the application form was not properly filled, which caused delay and the deficiencies in the application were conveyed to the complainant on phone. The District Forum came to the conclusion that it was the duty of the officials of MSEB to give guidance to the complainant to remove deficiencies and lacunae found in the application form. As regards some of the officials, it was observed that they had shown inexcusable negligence and dereliction in performance of their duties and departmental enquiry should be held against them, which should be completed within six months from the date of order. It was further directed that the Board should give a new three phase 5 HP electric connection to the complainant within a period of one month from the date of order and pay a compensation of Rs. 1,500/- for the loss caused to the complainant. It also threatened action under Section 27 of CPA if directions were not carried out. Appeal against the order of the District Forum was dismissed, confirming the order of District Forum by a non-speaking order. Revision was filed in the National Commission against the order of the State Commission by MSEB.

Issue

The main question was whether the failure to grant electric connection to the complainant who had not filled a proper application for connection constituted deficiency in service.

Decision

The National Commission agreed with the observations of the District Forum that there was delay and harassment of complainant in getting the connection from Board and it was duty of the officers of the Board to have communicated to the respondent-complainant the deficiencies in his application. Also, that the officers of the Board sat on the application for unduly long time. But it held that the failure

to grant electric connection to an applicant who had not filled a proper application for connection did not constitute deficiency in service and the case did not fall within jurisdiction of the Consumer Forums under Consumer Protection Act. Further it was beyond the competence of the District Forum to direct an enquiry to be held against the officers of the Board and that three phase 5 H.P. connection be given to respondent-complainant.

The National Commission thus allowing the revision petition set aside the orders of the State Commission and the District Forum. There was no order as to costs.

Revision allowed.

**Municipal Corporation of Delhi (DESU) v. Capt. V.K.
Ramchandani**

1995 (1) CPR 677 (NC)

Facts

Complainant had two electric connections in his farmhouse one for the tubewell and the other for the poultry farm. In October 1998 overhead wires snapped, resulting in disruption of electric supply. The wires were repaired after 33 days and electric supply was restored in the area. However, complainant's electric supply was not restored. The complainant filed complaint in the State Commission claiming a compensation of rupees two lakh. The DESU contended that the electric connection was being misused by the complainant. He had converted his premises from farmhouse to an unauthorized colony. Thereby changing the use of the connection. Further, the service lines became accessible to the unauthorized consumers who tapped the lines unauthorisedly resulting in damage to the service line. The State Commission held that there was no report of misuse or pilferage, DESU had failed to prove misuse. Therefore, the State Commission directed DESU to restore electric connections within one month from the date of the order. However, the President of the State Commission awarded Rs. 10,000/- for the loss and mental agony, as there was no evidence of the damages he had suffered. However, the other two members were of the opinion that Rs. 10,000/- as compensation was on the lower side and complainant was entitled to damages @ of Rs.25,000/- per year i.e. Rs.85,000/- for the three years during which the electric connection remained disconnected. Against the order of the State Commission both the parties went in appeal before the National Commission.

Issue

Was there any deficiency in service on the part of DESU in disconnecting the electricity to the farmhouse of the complainant on ground of misuse?

Decision

The National Commission dismissed the appeal filed by the complainant on the ground that it was barred by limitation and there was no sufficient cause to condone the delay. On the appeal filed by the DESU the Commission held that there was not an iota of evidence in support of the contention that no agricultural activity was being carried out on the poultry farm and it had been converted into an

unauthorised colony. The report of the Joint Committee, which found irregularities, was neither placed before the State Commission nor before the National Commission. Further from the photograph of the Farm placed on record by the complainant, except poultry farm no residential building appeared to have been constructed.

Thus the National Commission rejected the contention of misuse and held that they did not find any reason why the connections could not be restored. On the question of compensation awarded to the complainant by the State Commission, the National Commission agreed with MCD that the compensation was on a higher side particularly when there was no evidence of loss. The complainant did not appear in the witness box to state the loss he suffered nor any document was produced to support his claim. Therefore, the Commission was of the view that the ends of justice would be met if compensation awarded to the complainant was limited to Rs. 25,000/-. Hence the appeal by the M.C.D (DESU) was partly accepted while maintaining the order of the State Commission regarding restoration of electric connections of the complainant. The amount of compensation awarded was thus reduced to Rs. 25,000/-. The parties were directed to bear their own cost in both the appeals.

There was some difference of opinion as regards the compensation amount among the members of the National Commission. As per Mr. Y. Krishan, Member, compensation of Rs. 85,000/- awarded by State Commission was not excessive. He affirmed the majority opinion. In addition he held that DESU should pay Rs. 10,000/- as costs.

Appeal allowed partly.

Annexure

MODEL FORM OF NOTICE, COMPLAINT, AFFIDAVIT AND REPLY
MODEL FORM-1 NOTICE BEFORE FILING THE COMPLAINT

Name and address

.....
(of the trader, dealer, firm, company, etc.)

.....
(Complete address)

IN RE: (Mention the goods/services complained of giving details)

.....
Dear Sir,

This is to bring to your kind notice that I had purchased.....from your
..... for a consideration of Rs..... paid in cash vide your cash
memo/Receipt/Invoice No.....(or through cheque No dated
drawn on.....bank for a sum of Rs.....

The said goods are suffering from the following defects:

(i)

(ii)etc

I have reported the above matter to you several times (give reference of earlier
letters, if any) but despite all my pleadings you have not made good the defect in
the goods (or deficiency in services) which is indeed regrettable and highly
unbusiness like. On account of your aforesaid dereliction of duty and failure and
neglect to rectify the same I have suffered losses/incurred expenses

.....
.....
.....
.....

(give details)

which you are liable to compensate to me.

You are hereby finally called upon to

(i) remove the said defects in the goods

and/or

- (ii) replace the goods with new goods
- and/or
- (iii) return the price/ charges paid
- (iv) pay compensation for financial loss/injury/interest suffered due to your negligence
(give details)

in the sum of Rs with interest @..... % per annum within.....days of the receipt of this notice failing which I shall be constrained to initiate against you for redressal of my aforesaid grievances and recovery of the aforesaid amount such proceedings, both civil and criminal as are warranted by law, besides filing a complaint under the statutory provisions of The Consumer Protection Act, 1986 exclusively at your own risk, cost, responsibility and consequences which please note.

Place.....
Dated.....

Sd/-
.....

Model Form –2 -The complaint

BEFORE THE HON'BLE DISTRICT CONSUMER DISPUTES
REDRESSAL FORUM AT

OR

BEFORE THE HON'BLE STATE CONSUMER DISPUTES
REDRESSAL COMMISSION AT

OR

BEFORE THE HON'BLE NATIONAL CONSUMER DISPUTES REDRESSAL
COMMISSION AT NEW DELHI

IN RE: COMPLAINT NO OF 20 IN THE MATTER OF:
(FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Complainant

VERSUS

(FULL NAME)(DESCRIPTION)(COMPLETE ADDRESS)

..... Opposite Party/ Parties

**COMPLAINT UNDER SECTION 12/SECTION 17/
SECTION 21 OF THE CONSUMER PROTECTION ACT, 1986.**

RESPECTFULLY SHOWETH

INTRODUCTION

(In this opening paragraph the complainant should give his introduction as well as that of the opposite party/parties.)

TRANSACTION

(In this paragraph complainant should describe the transaction complained of, *i.e.*, particulars and details of goods/ services availed; items of goods/kind and nature of service; date of purchase of goods/availing of service; amount paid as price/consideration, full or in part towards the goods/service; Photocopies of the bill/cash memo/voucher or receipt should be attached and properly marked as Annexure – A,B,C and so forth or 1,2,3 and so forth.)

DEFECT/DEFICIENCY

(In this paragraph complainant should explain the grievance, *i.e.*, whether the loss or damage has been caused by some unfair trade practice or restrictive trade practice adopted by any trader or there is some defect in the goods or there has been deficiency in service or the trader has charged excessive price for the goods. One should elucidate the nature of unfair trade practice adopted by the trader, *i.e.*, relating to the quality of goods/services; sponsorship; warranty or guarantee for such period promised. The nature and extent of defects in goods should be explained and so should the deficiency in service. In case of excessive price one should specify the details of actual price fixed by or under any law for the time being in force or as set out on goods and their packing vis-a-vis the price charged by the trader. Complaint can also be filed against offer for sale of goods hazardous to life and safety when used. You should narrate your grievance and rest assured it is being read /heard by compassionate and pragmatic judges. Photocopies of relevant documents must be attached.)

RECTIFICATION

(In this paragraph complainant should highlight what attempts were made by him to set things right, *i.e.*, personal visits or negotiations; communication in writing if any; whether any legal notice was got served and / or whether he has approached any other agency for redressal like, Civil or Criminal Court of competent jurisdiction; the stage of its proceedings, its outcome, if any, alongwith copies (certified preferably) of such proceedings. The nature of response got from the trader when irregularities were brought to his notice, should also be disclosed here).

OTHER PROVISIONS

(In this paragraph reference may be made to any other law or rules or regulations of particular procedure which is applicable to the case and/or which has been violated by the trader and consumer's rights under the same. There are incidental statutory obligations, which traders must fulfil and in case of their failure to do so the case in *prima facie* made out and Forum would take cognizance).

EVIDENCE

(In this paragraph complainant should give details of documents and/or witnesses he will rely upon to substantiate his case. The documents attached as Annexures as stated above may be incorporated in a proper list and a list of witnesses (if any) may be filed similarly). The annexures should be attested as "True Copy".

JURISDICTION

(In this paragraph complainant should liquidate the claim in the complaint, *i.e.*, upto 20 lakh; 20 lakh to one crore; or above and set out the pecuniary jurisdiction of the Forum/ State Commission/National Commission, as the case may be. The territorial Jurisdiction should be highlighted to obviate any formal objection).

LIMITATION

That the present complaint is being filed within the period prescribed under section 24A of the Act.

RELIEF CLAIMED

(In this paragraph complainant should describe the nature of relief he wants to claim. *i.e.*, for removal of defects in goods or deficiency in service; replacement with new goods; return of the price or charges, etc., paid and/or compensation on account of financial loss or injury or detriment to his interest occasioned by negligence of the opposite party and elucidate how you have calculated the amount of compensation claimed).

PRAYER CLAUSE

It is, therefore, most respectfully prayed that this Hon'ble Forum/ Commission may kindly be pleased to (Details of reliefs which complainant wants the Court to grant)

Place:

Dated:

Complainant Through
(Advocate or Consumer Association, etc.)

Verification.

I, the complainant above named, do hereby solemnly verify that the contents of my above complaint are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein. Verified this day of 20 at..... Complainant.

Note: Although it is not compulsory, complainant may file an affidavit in support of the complaint which adds to the truth and veracity of allegations and gives credibility to the cause. It need not be on a Stamp paper but one should get it attested from an Oath Commissioner appointed by a High Court. The format is just as simple.

Model Form –3- Affidavit in support of the complaint

BEFORE THE HON'BLE.....IN RE: COMPLAINT NO.....OF 20.....IN THE MATTER OF:

.....
..... Complainant

.....
..... Opposite party

AFFIDAVIT

Affidavit of

Shri.....S/o. Shri
aged.....years, resident of

.....

- (1) That I am complainant in the above case, thoroughly conversant with the facts and circumstances of the present case and am competent to swear this affidavit.
- (2) That the facts contained in my accompanying complaint, the contents of which have not been repeated herein for the sake of brevity may be read as an integral part of this affidavit and are true and correct to my knowledge.

Deponent

Verification:

I, the above named deponent do hereby solemnly verify that the contents of my above affidavit are true and correct to my knowledge, no part of it is false and nothing material has been concealed therein.

Verified this.....day of.....20.....at.....

Deponent

Model Form –4- Reply by the trader to the complaint

BEFORE THE HON'BLE THE CONSUMER DISPUTES
REDRESSAL FORUM/COMMISSION AT.....

IN RE: COMPLAINT NO..... OF 20.....

IN THE MATTER OF:

..... Complainant

VERSUS

..... Opposite Party

DATE OF HEARING.....

**WRITTEN STATEMENT ON BEHALF OF RESPONDENTS TO THE
COMPLAINT OF THE COMPLAINANT**

RESPECTFULLY SHOWETH:

Preliminary Objections

- 1 That the present complaint is wholly misconceived, groundless and unsustainable in law and is liable to be dismissed as such. The transaction question was without any consideration and free of charge.
- 2 That this Hon'ble Forum/ Commission has no jurisdiction to entertain and adjudicate upon the dispute involved in the complaint in as much as it is not a consumer dispute and does not fall within the ambit of the provisions of the Consumer Protection Act, 1986, hereinafter called the said Act and is exclusively triable by a Civil Court and as such the complaint is liable to be dismissed summarily on this score alone.
- 3 That the dispute raised by the complainant in the present complaint is manifestly outside the purview of the said Act and in any event, the Act is in addition to and not in derogation of the provisions of the..... Act. The proceedings initiated by the complainant under the Act are honest, null and void and without jurisdiction.
- 4 That the definitions of 'Complainant', 'Complaint' 'Consumer Dispute' and 'Service', as defined in Section 2(1) of the said Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not 'consumer' and the controversy involved in the complaint is not a 'consumer dispute'.
- 5 That the present complaint is baseless and flagrant abuse of process of law to harass and blackmail the answering respondent.
- 6 That the complainant has no *locus standi* to initiate the present proceedings.
- 7 That the complaint is bad for non-joinder of necessary and proper party and is liable to be dismissed on this score alone.
8. That the complainant has already filed a Civil Suit for in a court of competent jurisdiction which is pending disposal in the Court of and the present complaint has become infructuous.
9. That the present complaint is hopelessly barred by limitation.
10. That this Hon'ble Forum/Commission has no territorial or pecuniary jurisdiction in as much as the amount involved in the subject-matter exceeds/is less than the limit prescribed by Section 11(1) Section 17(1)(a)(i)/Section 21(a)(i) of the Act.
- 11 That the present complaint is frivolous and vexatious and liable to be dismissed under Section 26 of the Act.

12 That the present complaint has not been verified in accordance with law.

On Merits:

In these paragraphs respondent must reply each and every allegation made and contention raised by the complainant, factual and legal as well. In case one has already made good the defect or deficiency, elucidate steps taken. One may have, *inter alia*, following goods defences as well.

- 1 That the transaction entered between the parties to the above dispute is a commercial one and the complainant cannot claim any relief from this authority in as much as(give details)
- 2 That the complainant had purchased the goods as a seller/retailer/distributor, etc., for consideration of resale and as such is barred from moving this Hon'ble Forum/Commission for the alleged defect/deficiency etc. in as much as
(give details)
- 3 That the complainant has already availed the warranty period during which the answering respondent has repaired/replaced the goods in question. The complainant is thus legally stopped from enforcing this complaint or to take benefit of his own wrong.
- 4 That the present complaint is an exaggeration beyond proportion despite the fact that the complainant is himself responsible for delay and laches in as much as he has on several occasions changed his option for class of goods/type of allotment scheme of flats/model of vehicle, etc
(give details)
- 5 That the answering respondent is well within his rights to charge extra price for the subject-matter of the above dispute in as much as time was not the essence of delivery thereof. The complainant is liable to pay the increased price w.e.f on account of escalation due to excise duty/budgetary provisions etc. in as much as.....
(give details)
- 6 That the complainant has accepted the goods and/or service towards repair/replacement etc. without protest and the present complaint is merely an after thought.
- 7 That without prejudice the answering respondent as a gesture of goodwill is prepared to.....(give details of rectification, if any, which can be done in case of minor or tolerable problems to avoid harassment to consumer and litigation problems)

The allegations of defect/default/negligence and/or deficiency in service are wholly misconceived, groundless, false, untenable in law besides being extraneous and

irrelevant having regard to the facts and circumstances of the matter under reference.

Prayer clause with all the submissions made therein is absolutely wrong and is emphatically denied. Complainant is not entitled to any relief whatsoever and is not entitled Model Form costs.

Sd/
(Opposite Party)

Place:

Dated:

through

(Advocate)

Verification

I, the above named respondent do hereby verify that the contents of paras to of the written statement on merits are true and correct to my knowledge. While paras to of preliminary objections and to of reply on merits are true to my information, belief and legal advice received by me and believed to be true while the last para is prayer to this Hon'ble Court. Verified at thisdayof.....20.....

Sd/-
(Opposite party)