

IN THE SUPREME COURT OF INDIA
 CIVIL APPELLATE JURISDICTION
 CIVIL APPEAL NO. 7220 OF 2008

Assam State Electricity Board & Ors. .. Appellant(s)

Versus

M/s Purbanchal Cables & .. Respondent(s)
 Conductors (P) Ltd.

WITH CIVIL APPEAL NO.7221/2008

O R D E R

These two appeals, one by the Assam State Electricity Board and its functionaries and other by M/s Purbanchal Cables & Conductors (P) Ltd. have been preferred under Section 23 of the Consumer Protection Act, 1986 assailing the order dated 15.05.08 passed by the National Consumer Disputes Redressal Commission, New Delhi in O.A.No.109 of 1998.

The appellant Board remained ex parte before the Commission as the Board was bifurcated into various distribution and generating corporations and there was internal communication gap because of the administrative restructuring. As the Board did not file the written statement and the counsel who was representing it did not appear on the date of hearing, the National Commission proceeded ex parte and passed the impugned order.

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It is submitted by Mr. Hansaria learned senior counsel appearing for the appellants that the Commission due to lack of pleadings and proper assistance has misconstrued the transaction as deficiency in service and granted compensation of Rs.10 lakhs for deficiency of service and certain amount on other scores, although, the facts when appreciated in entirety would clearly reveal that there was no delay in delivery of goods. That apart, even if there was delay in delivery of goods it would not

attract the liability as the delivery was meant for commercial purpose.

Mr. Ritesh Agrawal learned counsel appearing for the respondent company would contend that controversy would be covered under provisions of Section 2(d)(ii) and not under Section 2(d)(i) as submitted by learned counsel for the appellants-Board. It is further urged by him that the Commission is absolutely justified in recording the fact that there was deficiency of service and accordingly thought it appropriate to grant compensation for deficiency of service, and certain sums towards mental agony and costs. In support of his appeal he would also urge that the quantum of compensation determined by the Commission is on the lower side and hence, it should be enhanced by this Court.

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Having heard the learned counsel for the parties, we are disposed to think that the points which have been raised by both sides have not been delineated by the Commission because the Board remained ex parte and did not file the written statement. In the absence of facts brought on record we can appreciate the handicap faced by the Commission in dealing with the controversy, but, we find that the Board is squarely responsible for the same. However, we think it appropriate to set aside the decision of the Commission, grant time to the appellant- Board in C.A.No.7220 of 2008 to file the written statement within a specified time and the Commission to decide the matter within a time frame. However, the respondent company has to be compensated by way of costs.

Accordingly, we allow the appeal preferred by the Board, set aside the order of the Commission and permit the Board to file the written statement within a period of

eight weeks subject to payment of Rs.1 lakh as costs to the
respondent-company and request the Commission to proceed
and finalise the dispute preferably within a period of six
months therefrom. We make it clear that as the matters are
remitted, all issues, both on facts and in law, are kept
open. As we have set aside the order of the Commission,
the amount that has been deposited by the Board before the

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Registry of this Court be released in its favour with
interest accrued thereon forthwith. There shall be no
order as to costs.

In the light of the foregoing discussion,
C.A.No.7221/2008 also stands disposed of.

.....J.
[DIPAK MISRA]

.....J.
[N.V. RAMANA]

NEW DELHI,
MAY 22, 2014.

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ITEM NO.104

COURT NO.5

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 7220 OF 2008

ASSAM STATE ELECT.BOARD & ORS.

Appellant (s)

VERSUS

M/S PURBANCHAL CABLES & CONDUCTORS(P)LD. Respondent(s)
(With appln. for stay,exemption from filing c/c of the impugned
order and office report

WITH CIVIL APPEAL NO.7221 OF 2008

Date: 22/05/2014 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE N.V. RAMANA
(Vacation Bench)

For Appellant(s) Mr. Vijay Hansaria, Sr.Adv.
in CA.7220/08 & Ms. Sneha Kalita, Adv
Res.in CA.No.7221/08 Mr. Ansar Ahmad Chaudhary,Adv.

For Respondent(s) Mr. Ritesh Agrawal, Adv.
in CA.7220/08 & Mr. Vijay Hansaria, Sr. Adv.
Apll.in CA.7221/08 Ms. Sneha Kalita, Adv
 Mr. Ansar Ahmad Chaudhary, Adv.

UPON hearing counsel the Court made the following
O R D E R

C.A.No.7220/2008 is allowed.

C.A.No.7221/2008 is disposed of.

(Usha Bhardwaj)
A.R.-cum-P.S.

[Renuka Sadana]
Court Master

Signed order is placed on the file.