
RIGHTS AND INTERESTS OF CONSUMERS UNDER THE ELECTRICITY ACT, 2003

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ABSTRACT

Consumers are the centre around which any business institution runs. Everything should be centred on the interests of a consumer when it comes to framing legislatures by the law makers. The earlier Acts which used to guide the electricity laws of our country had failed to contain provisions within them with regards to the subject line of ‘consumer interests and how to protect them’. Then came the Electricity Act, 2003 [EA, 2003], which was the first electricity regulation which talked in detail about the interests, rights and grievance of consumers.

This paper will analyse what the previous laws regarding electricity were about and why they had to be repealed. The paper further attempts to explain the vision due to which EA, 2003 was passed and why this Act was ground-breaking, along with explaining the provisions governing the consumer interests and duties within the EA, 2003 and will also take the help of case laws to further understand how and when to avail rights under consumer protection.

Introduction

The Electricity Act, 1887¹ was the first ever Indian legislation regarding the generation, use and distribution of electricity in India. This Electricity Act of 1887 was repealed by the Indian Electricity Act, 1903 and it was repealed by the Indian Electricity Act, 1910 which was the first comprehensive legal framework in the field of electricity laws of the country.

The Indian Electricity Act, 1910²[EA, 1910] was centred on the provisions of 'supply of energy'. The EA, 1910 however, had no express provisions regarding consumer rights and interests in the Act. After the 1910 Act, The Electricity (Supply) Act, 1948³ was introduced to facilitate the regional development of electricity by setting up local bodies to facilitate the working of the electricity laws of our country. The Electricity (Supply) Act, 1948 provided for compulsory establishment of State Electricity Board [SEB] and Central Electricity Authority [CEA]. However, there were still no provisions for the domestic consumers.

In the case of *Western U.P. Electric Power and Supply Co. Ltd v. State of U.P. and Anr.*⁴, Western U.P. Electric Power was a company which used to hold a licence under Section 3(1) of the Indian Electricity Act 9 of 1910 to supply electricity in certain areas in the State of U.P. Hind Lamps later applied to the Government of U.P. to grant direct supply of electrical energy from the State Electricity Board. The State Government by order directed the State Electricity Board "to supply electrical energy directly to Hind Lamps upon terms and conditions similar to those on which it supplied electrical energy other consumers".

There was a notification issued by the U.P. Government directing the State Electricity Board to supply energy directly to a consumer at a rate lower than the rate at which it was supplied to the licensee. It was alleged that this amounted to discrimination between that consumer and the other consumers and also between the consumer and the license. This was also challenged under Article 14⁵ of the Constitution. In this case, adequate opportunity of making a representation was afforded to the Company to satisfy the State Government that it was not in the public interest to supply electrical energy directly to Hind Lamps. The appeal was dismissed.

¹ Passed by the Governor General of India in council

² The Indian Electricity Act, 1910, No. 9, Act of Parliament, 1949

³ The Electricity (Supply) Act, 1948, No.49, Act of Parliament, 1949

⁴ (1969) 1 SCC 817

⁵ Art 14, Constitution of India

The Electricity Regulatory Commissions Act, 1998 was added to provide a new dimension towards the development of the power sector in the country. This legislation was very significant as through this legislature the Government sought to distance itself from the regulations which were earlier vested in the Government, however, the same problem was carried on by this Act too as there were no express provisions regarding consumer protection in any of these Acts.

Finally, in 2003, The Electricity Act, 2003 [EA, 2003] came into picture. EA, 2003 has now amended all the three Acts- the Indian Electricity Act, 1910, The Electricity (Supply) Act, 1948, and The Electricity Regulatory Commissions Act, 1998.

Provisions for consumers under EA, 2003

EA, 2003 is one of India's first express 'consumer welfare' legislation as it says so in its preamble that 'An Act to consolidate the laws relating to generation, transmission, distribution, trading and use of electricity..., protecting interest of consumers and supply of electricity to all areas...' The EA, 2003 not only brought with itself a liberalisation in the generation, distribution, supply etc. of electricity but also brought the concept of consumer interest into the electricity world. The act's broad scope has implications for the sector's organization, operation, and regulation. The new act eliminates licencing requirements for generation by captive industries, introduces a number of measures to address the management and finances of distribution utilities, decentralises responsibility for rural electrification, and allows for open access in transmission and the gradual introduction of open access in distribution, along with scope for power trading.

If we look at the introduction to the concept of Open Access and distribution the consumer is basically given a choice to take supply from a person other than is distribution licensee which is likely to benefit not only big consumers who takes supply in bulk but also the small consumers. The EA, 2003 also specifically and categorically provides for the supply of electricity in the rural areas. The factor which distinguish is this act is the freedom of captive generation plant that a person can set up a power plant to generate electricity primarily for his own use which could indirectly benefit the consumers.

One of the most striking features of this act as the specific and detailed provisions regarding the consumer protection and measures which are mentioned against the theft of electricity. The EA, 2003 requires every distribution licensee to set up a grievance redressal forum.

Representation against the forum lies before the ombudsman to be appointed by the State Commission. There are provisions for performance standards of licences to be specified by the regulatory commission and failure to comply with the standards make the licences liable to pay compensation to the affected person. Another provision which is regarding the Universal Service obligation of the licensee is to supply electricity to consumer on demand, also stand out in the Act as failing to do so will attract a penalty. Further the act also requires the state government to set up a district level committee which would review the quality of power supply as well as consumer satisfaction. The EA, 2003 is also stated to be the progressive legislature in the true sense of the term.⁶

Definition of Consumer under EA, 2003

The EA, 2003 defines ‘consumer’ as a person who is supplied with electricity for his own use by a licensee or the Government or by another person engaged in the business of supplying electricity to the public under this Act or any other law for the time being in force and it also includes any other person whose premises are for the time being connected for the purpose of receiving electricity with the works of a licensee, the Government or such other person.⁷

For the purpose of interpreting the term consumer, the expression ‘consumer’ does not only mean the recorded consumer but also the occupant of premises enjoying electricity.⁸ As per section 22 of the EA, 2003⁹, dealing with the revocation of the license of the licensee, if purchase of the utility does not take place, the Appropriate Commission is empowered to pass any such directions or formulate such schemes as they may deem fit for the interest of the consumers. However, a consumer cannot claim for continuous supply of electricity. In the case of *Geeta Pump (P) Ltd v. District Judge*¹⁰, it was held that the Electricity Board is empowered to cut consumption of energy and demand compulsorily in respect of different kinds of consumers as provided therein.

Provisions specifying the conduct of Authorities towards consumers

Further, Section 24 of the EA, 2003¹¹ empowers the Appropriate Commission to suspend the licence of a distribution licensee if he/she fails to provide quality electricity to its consumers.

⁶ SP Chatterjee, Chatterjee’s commentary on The Electricity Laws of India, 16, 2nd edition 2010

⁷ The Electricity Act, 2003, S 2(15), Act of Parliament, 1949

⁸ Ashit Kumar Patil v. West Bengal Steel Electricity Distribution Company Ltd., AIR 2009 Cal. 1

⁹ The Electricity Act, 2003, S 22, Act of Parliament, 1949

¹⁰ AIR 2000 All. 58

¹¹ The Electricity Act, 2003, S 24, Act of Parliament, 1949

As per Section 40¹², which provides for the duties of transmission licensees, it is the duty of a transmission licensee to provide non-discriminatory open access to any consumer provided by State Commission on payment of transmission charges and the surcharges. In addition to that, as the Section 42¹³, it shall be the duty of distribution licensee to provide every distribution licensee shall within 6 months from the date of grant of license establish a grievance redressal forum as per the guidelines given by the State Commission. Rule 7 of the Electricity Rules, 2005¹⁴, and states that the forum shall consist of officers of the licensee and the Appropriate Commission shall nominate who is familiar with the consumer affairs. In the case of Bihar State Electricity Board v. Bihar Electricity Regulatory Commission¹⁵, it was held that the EA, 2003 did not make any distinction between private and commercial consumer and any person who is supplied with electricity by Board is a consumer within the meaning of Section 42(5).

In the *Balaji Ispat case*¹⁶, it was held that any dispute between any consumer and distribution licensee can be raised before consumer forum. Thus, any dispute regarding consumers in relation to supply or charges of service condition would be within the jurisdiction of consumer forum, not the Regulatory Commission, but the Regulatory Commission would have jurisdiction when it comes to examine the appeal on whether the Board was not implementing the order and thus violating the provisions of the Act. In such cases, the Ombudsman would settle the dispute.

The Section further states that the State Commission to permit a consumer or a class of consumers to receive supply of Electricity from a person other than the distribution licensee. If the grievance of a consumer is not addressed, he has the recourse to approach the Ombudsman appointed by the State Commission.¹⁷

Further, in the case of *Brihan Mumbai Electric Supply and Transport Undertaking v. Maharashtra Electricity Regulatory Commission [MERC]*¹⁸, it was held at the consumer when the consumer approached MERC to enforce a distribution licensee, his obligation under the Act but on the date he was not a consumer of the Act but wanted to become a consumer.

¹² The Electricity Act, 2003, S 40, Act of Parliament, 1949

¹³ The Electricity Act, 2003, S 42, Act of Parliament, 1949

¹⁴ The Electricity Rules, 2005, Rule 7, Acts of Parliament, 1949

¹⁵ AIR 2010 (NOC) 1082 Pat.

¹⁶ *Balaji Ispat and Anr. V. Jindal Steel and Power Ltd*, AIR 2015 (NOC) 735 Chhat.

¹⁷ *Eminent Sea Foods Pvt Ltd v. KSEB*, 2008 (2) KLT 294

¹⁸ 2014 ELR (SC) 0773

Respondent no. 3 not being a consumer could approach the consumer grievances redressal forum. The MERC had the required jurisdiction to entertain the consumer's petition.

As per the provisions of Section 43 of the EA, 2003¹⁹, there is a universal obligation on the part of the distribution licensee to supply electricity on request. However, when a consumer has a separate supply, he shall not be entitled to demand or continue to receive supply of electricity from a licensee unless he has agreed that the licensee pay him the price determined by the Appropriate Commission.

It is obligatory for a consumer to produce documents of title or of lawful possession as owner or tenant of premises with complete certificate.²⁰In the case of *Lakshmikutty v. Kerala State Electricity Board*²¹, the court allowed a domestic consumer by virtue of notification to use electrical energy in some portion of premises for non- domestic purposes.

In the case of *Chandra Khamaru v. Smt Nayan Malik*²², the appellant was held to have a right to obtain electricity and distribution licensee has the obligation to supply electricity. The Act itself has not defined the expressions 'domestic' or 'commercial' but in the ordinary sense, domestic would mean use for personal residential purposes, and commercial would mean use for the purpose of business.²³ However, professional activities cannot be charged at commercial rates.²⁴

In the case of *Bihar State Electricity Board through Chairman, Patna v. Iceburg Industries Ltd.*²⁵, it was held that the board had neither accepted nor rejected plea for instalment payments, and where initial disconnection of electricity itself was illegal and contrary to consumer's forum order, they were directed to pay a fine. A customer cannot be penalised if not intimated of inspection.

As per Section 53 of the EA, 2003²⁶, CEA is empowered to frame regulations specifying measures for protecting the public from dangers arising from these activities, eliminating the risk of injury to any person. Section 56 of the EA, 2003²⁷ deals with the disconnection of supply

¹⁹ The Electricity Act, 2003, S 43, Act of Parliament, 1949

²⁰ Pawan Kumar Tandon v. New Municipal Committee, AIR 1986 Del 454

²¹ AIR 2003 Ker 283

²² JT 2011 (10) SC 1952

²³ KK Mitra, Commentaries on The Electricity Act, 2003, 148, 2017

²⁴ Gujrat Vij Company Ltd. V. Brabham Rempora, AIR 2010 Guj 131

²⁵ AIR 2013 Pat 78

²⁶ The Electricity Act, 2003, S 53, Act of Parliament, 1949

²⁷ The Electricity Act, 2003, S 56, Act of Parliament, 1949

in default of payment. On non- payment of charges for electricity, or any other sum due, the licensee or the generating company may disconnect the supply to such person, however, they must provide a notice to that person not less than fifteen days before making such disconnection. Although, the supply shall not be cut if such person deposits, under protest if the sum is claimed from him or the charges due from him for each month calculated on the basis of average of the electricity charges paid by him during the preceding six months. The provision also states that any sum due from a consumer shall not be recoverable after two years as arrears of charges paid for electricity and licensee shall not cut off the supply of electricity. The same was also held in the cases of *M/s Hindustan Ferro Alloys Ltd. v. Executive Engineer UPSE Board*²⁸, relying on the Supreme Court judgment of *Municipal Corp. of Delhi v. Ajanta Steel Co.*²⁹. In the case of *Maharashtra State Electricity Board v. M/s Madhusudandass and Brothers*³⁰, the Bombay High Court held that when there is a bona fide dispute between the parties, it is not justified in cutting off the electricity supply.

If a customer dies before clearing his dues, then the dues can be recovered from his estate.³¹ In the case where the premises constituted of two different floors having separate connections, there were no arrears with respect to the first floor, and thus, it was held that no direction for cut the supply of power to the first floor can be made.³²

The "offenses and penalties" section of the Electricity Act, 2003 is found in Part XIV. It is evident from Section 126 when read in conjunction with Sections 135 to 140 that various acts of "unauthorised use of electricity" constitute the "offenses" mentioned in Sections 135 to 140 and are punishable by the appropriate sentence and fine. To fully understand, it is necessary to refer to Section 135, which deals with "theft of electricity." Interference with metres or licensee work, tapping electricity, creating or causing to be created any connection with overhead, underground, or underwater lines or cables, service wires, or service facilities of a licensee; tampering of meter, installation or use of tampered meter, loop connection, or any other device or method which interferes with accurate or proper registration, calibration, or metering of electric current, or otherwise results in a way in which electric current is measured in an ineffective manner, all constitute for theft of electricity.

²⁸ AIR 1995 All 209

²⁹ AIR 1990 SC 882

³⁰ AIR 1966 Bom 498

³¹ *Vijai Kumar v. State of UP*, AIR 2004 All 172

³² *Excutive Engineer, Kendra Para Electrical Division CESO Kendra Para v. Bibhu Ranjan Parida*, AIR 446 NOC

It is evident from a cursory reading of Sections 126³³ and 135 to 140³⁴ that while "unauthorised use of electricity" attracts a civil consequence of a penal charge of electricity, double the rate of electricity, for which assessment is made by the assessing officer under Section 126; the same acts of "unauthorised use of electricity" constitute "offences" under Sections 135 to 140 for which sentence and fine have been prescribed.

The Electricity Act, 2003 and the Consumer Protection Act, 1986 run parallel for giving redressal to any person, who falls within the meaning of 'consumer' under Section 2(1)(d) of the Consumer Protection Act, 1986.³⁵

Consumer Protection: Standards of Performance

Part VI of the EA, 2003 deals with the specific provisions which was not found in the previous electricity laws, it deals with 'Consumer Protection: Standards of Performance'. Section 57³⁶ provides with the standards of performance of the licensee. It requires that the Appropriate Commission needs to specify the standards of performance of a licence or a class of licensees after consultation with the licences and the persons likely to be affected failure to meet such standards. It also makes the licensee liable to pay compensation to the affected person as may be determined by the Appropriate Commission. The concerned licensee shall be given the reasonable opportunity of being heard before the determination of such compensation and the compensation so determined shall be liable to be paid by the concern licensee within 90 days.

Further section 58³⁷ provides that Appropriate Commission may specify different standards under subsection (1) of section 57 for a class or classes of licences. the standard of performance have to be construed in terms of the provisions of the act for electricity supply and parameter set out for the electricity supply including the conditions which are led down for the grant of licence under section 16 and also the requirements of national electricity policy and plan as maybe applicable. Further, Section 29 provides for the compliance with regards to the Regional Load Dispatch Centre for ensuring stability of grid operation and for achieving the maximum economy and efficiency of power system under its controlled reason. The power of Transmission licences provided under Section 40 and 42 have also to be considered.

³³ The Electricity Act, 2003, S 126, Act of Parliament, 1949

³⁴ The Electricity Act, 2003, S 135 to 140, Act of Parliament, 1949, this part of the EA, 2003 deals with the provisions relating to offences and penalties with the most important aspect being the theft of electricity.

³⁵ UP Power Corp. Ltd. v. Anis Ahmed, AIR 2013 SC 2766

³⁶ The Electricity Act, 2003, S 57, Act of Parliament, 1949

³⁷ The Electricity Act, 2003, S 58, Act of Parliament, 1949

Section 59 of the EA, 2003³⁸ provides that every licensee is required under this provision to furnish the commission the information in regards to the level of performance achieved and the number of cases of compensation and aggregate amount of compensation and such information shall be published at least once in every year in the specified form and manner.

In the case of *Prem Cottex v. Uttar Haryana Bijli Vitran Nigam Ltd. and Ors.*³⁹, it was held that when a consumer was himself negligent on his part to pay the electricity charge due to him, he will be liable to pay it. This case tried to take the help of *Assistant Engineer, Ajmer Vidyut Vitran Nigam Ltd. and Anr. v. Rahamatullah Khan alia Rahamjulla*⁴⁰, where it was held that when the licensee company issues the bill, quantifying the fees that must be paid, and the obligation to pay arises from the consumption of electricity. Therefore, even though the obligation to pay may arise from the consumption of electricity, electricity charges would not become "first due" until the consumer receives the bill.

Conclusion

EA, 2003 was undoubtedly one of the most liberal and clever pieces of legislation. It has tried to cover every single aspect regarding the consumer interest by providing various provisions and explanations within its Section. The EA, 2003 takes care and account for the interests of the consumers and at the same time also imposes various duties on their part.

The future of a country lies in its electricity sector and the strength of that electricity sector is its consumers and being the strength of the economy it is very important for a democracy to take care of the people, something which is well done by the EA, 2003. The EA, 2003 takes care of both the rights of the consumers as well as the obligations on their part.

³⁸ The Electricity Act, 2003, S 59, Act of Parliament, 1949

³⁹ 2021 SCC OnLine SC 870

⁴⁰ (2020) 4 SCC 650 2020 SCC Ontine SC 200