

Dr. Aman Vs. the Asst. Engineer Electric Department and Another

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Oct-04-2013

Judge : The Honourable Mrs. M. Shreesha, Presiding Member & the Honourable Mr. S. Bhujanga Rao, Member

Appeal No. : FA 870 of 2013 against CC 12 of 2003, Dist. Forum, Ranga Reddy

Appellant : Dr. Aman

Respondent : The Asst. Engineer Electric Department and Another

Judgement :

Oral Order: (Smt. M. Shreesha, Member)

1) Aggrieved by the order in CC No. 12/2013 on the file of Dist. Forum, Ranga Reddy, the complainant preferred this appeal.

2) The brief facts as stated in the complaint are that the complainant is a tenant of H.No. 1-12-71, Right Portion, Public Sector Colony, New Bowenpally, Secunderabad for which S.C. No. BZ-60133 was provided in the name of owner i.e., Md. Ikramullah. The complainant alleges that on 28.1.2012 the Assistant Engineer along with four others visited the premises at about 3.00 to 4.00 p.m. pulled the seal of the electricity meter and put the same in her bag and left the place. Later they informed that the meter was tampered and she has to pay Rs. 60,000/- to Rs. 80,000/- for tampering the electricity meter. The complainant

submits that the meter was sent to MRT lab for testing which revealed that the meter is functioning normally. The opposite parties lodged a complaint against her stating that she is running a hospital in H.No. 1-12-171. The complainant denied the said allegation and contended that it is being used for their domestic use. The complainant submits that they are running a clinic and Homeo Stores in the shop bearing No. 20-4-23-1/F, Kilwaf, Hyderabad. The opposite parties installed a new meter in H.No. 1-2-171 on 7.5.2012 by obtaining the signature of her sister. The complainant alleged that the opposite parties booked a false case against them. She alleges that the opposite parties have been issuing the bills under commercial category whereas they are consuming the power for domestic purpose. Despite her petition to higher authorities to do justice, there is no response. Hence this complaint for a direction to Ops to refund an amount of Rs. 716/- + Rs. 267/- collected in excess along with rentals for 9 months amounting to Rs. 47,250/- together with compensation and costs.

3) The opposite parties filed counter denying the allegations made by the complainant. They contended that S.C. No. BZ-60133 stands in the name of Md. Ikramullah and that a complaint u/s 126 of A.P. Electricity Act has been booked against the complainant and a penalty was also imposed under APER Act, 2004 for unauthorised utilization of power. If the complainant is aggrieved by the said order, she has to prefer an appeal before the Superintending Engineer. During the routine inspection made by the opposite parties on 12.1.2012 it was found that the impressions on the seals of the electricity meter are not clear. When the opposite parties suspected some mischief, they replaced the old meter with a new Electro Digital meter as per the directions of APER Commission. Upon inspection, it has been observed that the complainant is using the premises for Magnetic Therapy. Accordingly based on the inspection report they issued a bill for Rs. 1,718/- to the complainant under Category-II for the period from January to May, 2012. In spite of several reminders, the complainant did not pay the amount assessed u/s 126 of the Act and after affording sufficient opportunity the service was disconnected on 31.8.2012. The opposite parties submit that they did not charge any excess amount from the complaint. The complaint is not maintainable before the Consumer Forum and prayed for dismissal of the complaint with costs.

4) The Dist. Forum based on the evidence adduced i.e., Exs. A1 to A7 and Exs. B1 to B6 and the pleadings put forward dismissed the complaint holding that there is no deficiency of service on behalf of opposite parties.

5) Aggrieved by the said order, the complainant preferred this appeal contending that the opposite parties without any notice made provisional assessment order on 22.2.2012 and final assessment order on 11.4.2012 and they also collected an excess amount of Rs. 267/- during the Telangana Movement between October and December, 2011. While denying the allegation made by the opposite parties, the appellant/complainant contends that when the meter was sent for MRT Lab for testing the report revealed that the meter is functioning normally. Hence she prayed that the complaint may be allowed as prayed for.

6) The point that falls for our consideration is whether the complainant is a consumer and whether the instant complaint is maintainable before the Consumer Forum under the provisions of the Consumer Protection Act?

7) We observe from the record that the main contention of the opposite parties is that the complainant was illegally utilizing the power supply for commercial purpose and indulging in malpractices. Ex. B2 is the provisional assessment order dt. 2.2.2012 issued u/s 126 of the Electricity Act was served to the owner and if there is no reply within 15 days, final assessment order will be issued to the consumer and if there is any objection, an appeal could be preferred to the Superintending Engineer/Divisional Engineer aggrieved by the order u/s 126 of the Act.

8) We rely on the judgement of the Honble Supreme Court in U.P. Power Corporation Ltd. Vs. Anis Ahmed in Civil Appeal No. 5466 of 2012 decided on 1.7.2013, the Apex Court held as follows:

47. In view of the observation made above, we hold that:

(i) In case of inconsistency between the Electricity Act, 2003 and the Consumer Protection Act, 1986, the provisions of Consumer Protection Act will prevail, but ipso facto it will not vest the Consumer Forum with the power to redress any

dispute with regard to the matters which do not come within the meaning of service as defined under Section 2(1)(o) or complaint as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

(ii) A complaint against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

(iii) The Electricity Act, 2003 and the Consumer Protection Act, 1986 runs 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 or the Central Government or the State Government or association of consumers but it is limited to the dispute relating to "unfair trade practice" or a "restrictive trade practice adopted by the service provider"; or if the consumer suffers from deficiency in service; or hazardous service; or the service provider has charged a price in excess of the price fixed by or under any law.

From the aforementioned point No. 2 of para-47 of the order, it is clearly stated that the complaint against the assessment made by the assessing officer under section 126 of the Electricity Act is not maintainable before the Consumer Forum.

9) In view of the above decision which is directly applicable to this case, we are of the opinion that the complaint is not maintainable before the Consumer Forum and that the complainant cannot be defined as consumer under the Consumer Protection Act. Hence this appeal is liable to be dismissed. The appellant/complainant is at liberty to approach the appropriate forum for redressal of his grievance and the time spent for prosecuting the proceedings before the Consumer Fora under the Consumer Protection Act shall be excluded for the purpose of limitation vide. Laxmi Engineering Works Vs. P.S.G. Industrial Institute reported in 1995 SCC (3) 583.

10) In the result this appeal is dismissed but without costs.

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