

Executive Engineer, M.S.E.D.Co. Ltd. Vs. Shri. Ambadas Laxman Gholap

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Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC
Mumbai

Decided On : Jan-17-2013

Judge : Honourable Mr. S.R. Khanzode Presiding Member & Honourable Mr. Narendra Kawde Member

Appeal No. : First Appeal No. 860 of 2012 (Arisen out of Order Dated 17/05/2012 in Case No. CC/475/2010 of District Solapur)

Appellant : Executive Engineer, M.S.E.D.Co. Ltd.

Respondent : Shri. Ambadas Laxman Gholap

Judgement :

S.R. Khanzode, Presiding Judicial Member

Heard Mr.S.S.Kalekar-Advocate for the appellant and Mr.Tanaji Gholap A.R. /son of the respondent.Affidavit of respondent -Amabadas Laxman Gholap is filed today as per direction dated 19/12/2012. It is taken on record. Heard both the sides on merits.

This appeal takes an exception to an order dated 17/05/2012 passed in consumer complaint no.475/2010, Mr.Ambadas Laxman Gholap v/s..Executive Engineer, MaharashtraState Electricity Distribution Co.Ltd., Barshi, District Solapur; by the District Forum, Solapur. Consumer complaint pertains to alleged deficiency in service on the part of appellant/original opponent (herein after referred as the

opponent) for not giving energy connection already sanctioned in spite of payment of amount of `4,620/- on 10/02/1996. Thus, grievance is about not releasing the energy connection against the opponent, who is the Executive Engineer of Maharashtra State Electricity Distribution Co. Ltd., at Barshi District Solapur. Forum accepted the contention of respondent/complainant Mr.Ambadas Laxman Gholap (herein after referred as the complainant) and directed opponent to release the energy connection and also directed to pay compensation of `1,00,000/- and costs of `5,000/-. Feeling aggrieved thereby, this appeal is preferred by the original opponent.

Before proceeding, at the outset, it may be mentioned that at the intervention of the Commission, in presence of the Commissioner Advocate S.A.Patil, the requirements (of the necessary fittings) sine-quo-non to release the connection were got complied with and the energy connection was given to the complainant. Admitting this particular position, both the complainant and the opponent submitted that the relief granted directing the opponent to release the connection is now complied with. Appeal is therefore pressed only in respect of award of compensation of `1,00,000/- and costs of `5,000/-.

The fact that complainant applied for energy connection to his well situated in Gat no.74 on 15/02/1992, fresh application on 04/12/1995 and, further, giving him quotation dated 05/02/1996 and, accordingly, payment of `4,620/- by the complainant on 10/02/1996 are the facts which are not in dispute. According to Maharashtra State Electricity Distribution Co. Ltd., for releasing the energy connection, there was no electric motor pump even installed on the well, similarly, there was no proper wiring done and/or other equipments installed. Therefore, the test report (certifying all these compliances) given by the complainant which is sine-quo-non to release the energy connection since found false one and since the complainant failed to comply with all those requirements, energy connection could not be released. It is also submitted on their behalf that the policy of the Maharashtra State Electricity Distribution Co. Ltd., was well published and advertised in the newspaper from time to time and the complainant did not bother to come and comply those requirements. Complainant filed consumer complaint on 09/08/2010. Same is opposed by the opponent on the grounds referred above

as well as on the ground that the opponent-Executive Engineer of Maharashtra State Electricity Distribution Co. Ltd., being not a service provider and since complaint is not filed against Maharashtra State Electricity Distribution Co. Ltd., (which is a statutory limited company registered under the Companies Act and, as such, a separate and distinct juridic person), a service provider responsible for release of connection, the complaint is not maintainable. It is also contended that opponent/Executive Engineer is mere the employee of Maharashtra State Electricity Distribution Co.Ltd., (herein after referred as Company).

It cannot be disputed that Executive Engineer of the Company, namely, opponent could discharge only those functions as assigned to him by the company as an employer and, deficiency, if any, on the part of opponents needs to be assessed in light of the obligations which arises out of the duties and responsibilities assigned to him by his employer. Thus, he is a separate, distinct and juridic person within the meaning of section 2(1)(m) of Consumer Protection Act, 1986 (Act for brevity) than the company itself. It is a company which entertains the applications from its subscribers or consumers and releases the energy connections to them. Thus, the company is a service provider and not its any one of the employees including the opponent-Executive Engineer. The Company is not, admittedly, impleaded as a party and, as such, the complaint could not be entertained. The Forum very lightly and without any application of mind dealt with such objections and, thus, arrived at a wrong conclusion.

As earlier pointed out, the connection is given and ultimately released. Needless to say that unless there is a proper installation of electric meter with proper wiring and other equipments like capacitor, etc. supported by a proper and authenticated test report, certifying having completed such work, no energy connection could be released. Grievance of the company is that since those requirements which are sine-quo-non to release the connection were not complied with by the complainant, the connection could not be released. It is not that they were unwilling to release the connection. Complainant did not adduce any evidence to show that he has complied with all those formalities. This aspect is also not considered by the forum before holding deficiency in service on the part of the opponent.

As earlier pointed out, it is the Commission, which ultimately, in the interest of cultivators tried to intervene to get release the connection completing all the formalities. It appears that when ultimately in view of the contradictory statements made by the parties about completion of above referred sine-quo-non conditions, a Court Commissioner was appointed and, accordingly, Court Commissioner/Advocate Santosh Patil visited and submitted his report on 19/12/2012. It appears that the Commissioner would be visiting the spot, hurriedly complainant tried to install the pump and to do some wiring and these facts are well stated in the affidavit dated 18/12/2012 of Mr.Umakant Tohmat Darade, Junior Technician of M.S.E.D.C.L. Barshi. Today, when on the previous date noticing all these falsities on the part of the respondent, Commission asked him to file an affidavit and affidavit is filed today just denying the statements made in the affidavit of Junior Technician-Mr.Darade. One cannot believe it. Commissioner also clearly mentions that the wiring was required to be done and then the meter was installed in the box. This itself shows that all those wiring, necessary equipments and even the meter was not installed prior to 18/12/2012. The energy connection could not be released, since the complainant failed to satisfy the above referred conditions before releasing energy connection. If it is so, no deficiency in service on the part of the company could not be inferred, much less, against its employees including the opponent. We hold accordingly.

Since the connection was already released, we propose not to disturb the said status and direction in the impugned order. However, we will not support impugned order as far as awarding compensation of `1,00,000/- and `5,000/- as costs and consequent interest. Hence the order:-

ORDER

1. Appeal is partly allowed.

2. Impugned order is modified and direction to give compensation of `1,00,000/- and costs of `5000/- as incorporated in para 3 of the operative part of the impugned order as well as interest payable on the said amount as appeared in para 4 of the operative part of the impugned order stands set aside.

3. However, in the given circumstances, both the parties to bear their own costs.
4. Amount deposited by the appellant under proviso to section 15 of Consumer Protection Act, 1986 as well as a condition of stay be refunded to the appellant.

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