

Jayakumar Vs. Asst. Engineer, Tamilnadu Electricity Board, Panruti and Others

Jayakumar Vs. Asst. Engineer, Tamilnadu Electricity Board, Panruti and Others

SooperKanoon Citation : sooperkanoon.com/1109724

Court : Tamil Nadu State Consumer Disputes Redressal Commission SCDRC Chennai

Decided On : Mar-17-2011

Judge : Thiru a.K. Annamalai, M.a., M.L., M.Phil., Presiding Member Judicial & Tmt. Vasugi Ramanan, M.a., B.L., Member

Appeal No. : F.A.No.557/2008 [Against order in COP.No.85/2004 on the file of the DCDRF, Cuddalore]

Appellant : Jayakumar

Respondent : Asst. Engineer, Tamilnadu Electricity Board, Panruti and Others

Judgement :

The Appellant as complainant filed a complaint before the District Forum, Cuddalore alleging deficiency against the opposite parties to pay a sum of Rs.10,048/- collected as power factor charges for the month of October 2003, which was later adjusted towards CC arrears during 2003 December month E.B. charges of Rs.6160/- (ii) to refund of excess amount Rs.6160/- collected from the complainant in December 2003 over and above the charges for consumed units and for (iii) to declare the claim of Rs.10,807/- by opposite party is ultra virus and for damages of Rs.10,000/- and for cost of Rs.5,000/-. The District Forum, allowed the complaint in part against the opposite parties. Against the said order, this

appeal is preferred by the complainant, praying to enhance the order of the District Forum, Cuddalore, dated 21.05.07 in COP. No.85/2004.

This appeal coming before us for hearing finally on 03.03.2011, upon hearing the arguments of the counsel on both sides, and perused the documents, written submissions as well as the order of the District Forum, this Commission made the following order :-

A.K.ANNAMALAI, PRESIDING MEMBER JUDICIAL

1. The complainant is the appellant.

2. The complainant/appellant filed a complaint before the District Forum, against the opposite parties for the direction of refund of excess amount of Rs.10,848/- collected by the opposite parties without prior intimation for the use of electricity and for refund of Rs.6160/- excess payment paid in December 2003 in excess of the charges for Rs.5600/- without any intimation and to declare the demand for Rs.10,807/- added on 28.7.2004 in the consumer electricity card without any prayer notice is illegal and not to collect the same from the complainant and for Rs.10,000/- as compensation for mental agony and Rs.5,000/- towards cost and to refund the amount collected up to 2003 for power factor amount.

3. The opposite parties denied the allegations of the complainant and before the District Forum after having an enquiry on the basis of materials placed before the District Forum, the District Forum allowed the complaint in part by directing the opposite parties to waive the demand for Rs.10,807/- towards the arrears for the period from 7/2 to 5/3 as entered on 28.7.04 in Exhibit A2 and shall not be recovered from the complainant in any manner and also to pay a sum of Rs.5,000/- towards compensation for mental agony and deficiency of service and for a sum of Rs.1,000/- as cost.

4. Aggrieved by the allowing of complaint in part the complainant has come forward with this appeal in which it is stated that when once the District Forum has found the opposite parties are in deficiency of service the District Forum ought to have allowed the complaint in full by granting all the reliefs as prayed for and

allowing in part of the prayer alone is erroneous and thereby praying for allowing the appeal by granting entire relief as prayed for.

5. The respondents counsel contended that the District Forum after considering all the aspects allowed the complaint in part which needs no interference. The opposite parties have not come for any appeal against the orders passed by the District Forum in favour of the complainant.

6. While considering bothsides contentions and averments and arguments and on perusal of the District Forums order, it is found that on the side of the opposite parties, the witness RW1 was cross examined by the complainant and in the elaborate cross examination the lapses on the part of the opposite parties regarding the wrong assessment of EB Erroneous meter fixed in the service connection of the complainant and rectification of defects and also the replacement of old meter with electronic meter were all elicited and also it was accepted that there was wrong billing relating to the period earlier to September 2003 and it was also admitted through Exhibit A5 and A6 the excess amount were paid by the complainant and subsequently adjusted for earlier dues after taking steps for removal of defects and fixed the new electronic meter on 28.4.07. The subsequent demand for Rs.10,807/- was found to be erroneous by the District Forum and directed the opposite parties to waive the same and directed not collect the same from the complainant also as prayed for. But as far as refund of Rs.10,148/- and Rs.6160/- are concerned it was admitted that under protest for the demands made for Rs.20,048/- and Rs.11,760/- were paid by the complainant in September 2003 and December 2003 respectively as per Exhibits A5 and A6. It is also not in dispute for the consumption of charges for 3/2003 a receipt was issued for Rs.5,979/- as Exhibit A7. For the amount paid in September 2003 for Rs.20,048/-. The only electricity charge for the month payable was Rs.9,913/- and there was an excess amount of Rs.10,135/- which is one of the refunds claimed by as excess by Rs.10,048/- in the prayer for the excess amount paid in October 2003. But before this Commission, the calculation memo was filed by the appellants counsel in which it was stated that a sum of Rs.20,098/- was collected for September 2003. But as per Exhibit A6 it was for Rs.20,048/- may be in the memo due to typographical error it was much as Rs.20,098/-and for the

consumption charge it was mentioned as Rs.9913/- and thereby the difference in excess must be Rs.10,135/- and as far as the 2nd payment is concerned the demand was made for Rs.11,760/- as per Exhibit B2 meter card during period mentioned as compensation charges as per Exhibits A5 and B2 he has paid only Rs.10,215/- in which the sum of Rs.4,615/- alone in excess paid and for which subsequently it was adjusted for consumption charges to the extent of Rs.5600/- alone for the period before December 2003 and thereby an excess payment of Rs.4,615/- is collected regarding those two excess collections. The District Forum has given a finding stating that those amounts were properly calculated as per the instructions of Government Order and regulations on the basis of the oral details furnished by RW1 in her cross examination. But while considering the facts and circumstances of the case it was established by the complainant the meter was defective even prior to the fixation of electronic meter and the reading was not properly recorded due to some defects as pointed out by the laboratory report and thereby for those defective meter running period also the charges were calculated and when once the District Forum came to the conclusion that there was deficiency of service in this regard. It cannot disallow part of the excess payment on the basis of the oral submission made by RW1 alone without looking in to the aspects of other facts regarding the defective meter non information of maintenance of minimum power factor before and after fixing the electronic meter to the complainant and when the complainant has raised his objections by giving protest letters as and when wrong or excess demand made by the opposite parties and in view of the materials placed before the District Forum by the complainant in this regard the District Forum ought to have allowed those claims for refund also. As far as the compensation for mental agony and deficiency of service and costs are concerned the complainant claimed for Rs.10,000/- and Rs.5,000/- respectively. The District Forum allowed the sum of Rs.5,000/- as compensation and we find that the amount is reasonable and acceptable and there will be no need for any interference in the same and as well as regarding cost also a sum of Rs.1,000/- is awarded which is normally used to be awarded before the District Forum in which also we feel no need for interference.

7. In the result, the appeal is allowed in part by modifying the order of the District Forum, Cuddalore in COP.No.85/2004, dated 21.05.07 as follows:-

(a) The opposite parties are directed to refund a sum of Rs.10,048/- collected as excess payment and to repay Rs.4,615/- for the excess collection after adjustment from the payment of Rs.10,215/- (b) The opposite parties are directed to waive the demand for Rs.10,807/- towards arrears for the period from 7/2002 to 5/2003 as entered on 28.7.2004 in white card Exhibit A2 and shall not be recovered from the complainant in any manner (c) also to pay a sum of Rs.5,000/- towards compensation for mental agony for deficiency in service on the part of the opposite parties with cost of Rs.1,000/- and (d) There will be no order as to costs in this appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com