

Divisional Engineer and Another Vs. Suresh

Divisional Engineer and Another Vs. Suresh

SooperKanoon Citation : sooperkanoon.com/1147498

Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC
Nagpur

Decided On : May-15-2014

Judge : The Honourable Mr. B.a. Shaikh, Presiding Member & the
Honourable Mr. S.B. Sawarkar, Member

Appeal No. : First Appeal No. A/1623 of 2002

Appellant : Divisional Engineer and Another

Respondent : Suresh

Judgement :

S.B. Sawarkar, Member:

1. The instant appeal challenges the order of the D.C.D.R.F., Nagpur dated 05/08/2002 passed in complaint No. 107/2002 granting the complaint. The Forum directed the O.P. to reconnect the electric supply by providing a new meter in the span of the 30 days.

2. Brief facts beneath the appeal are that the complainant Suresh Bhikaji Sakharkar has a Floor Mill with two electrical connections at village Watoda, District Nagpur. He was regularly paying the bills of electricity. On 11/04/2002 the officers of flying squad of the O.P. No.1 inspected the meters in his floor mill and prepared the inspection report for meter No. 410012547386. They disconnected the supply and also filed a complaint against him in the Police Station.

3. The complainant complained that when the seal of the meter was intact, the flying squad conspired and made out a case of electricity theft as the complainant did not pay the officers of O.Ps. who demanded 25,000/-. As he could not pay, the O.Ps. disconnected the supply, removed the electricity meter and stopped the business of the complainant causing him a loss of Rs.200/- per day from 11/04/2002. He therefore, prayed to direct the O.Ps. to reconnect the electric supply and not to disconnect electric supply. To provide temporarily and provisional supply and further grant damages of Rs.50,000/- for the loss.

4. The O.P. No.1 -Sub Engineer, M.S.E.B., Wathoda and O.P. No. 2 -Executive Engineer, M.S.E.B. Nagpur appeared before the Forum. They countered the complaint on the ground that the O.P. had inspected the meter placed in the floor mill of the complainant and had found irregularity in the meter leading to detection of theft. It was found that the incoming R.V. and B cables were connected to phase 1 4and5 and the out going R.V.B were connected to phase 2,3and6 leading to non recording of consumption of electricity which was a theft. Therefore, the O.P. disconnected the supply as per the provisions of the Act and raised the bill of Rs.55,693/- for consumption of electricity. The O.P. stated that the action was correct as it was a theft case and without payment of the raised consumption bills, the connection cannot be restored. The O.P. further submitted that the complainant directly approached the Forum without paying the raised bill and using the proper available remedy available.

The O.P. also objected to the jurisdiction of the Forum as issue involved is theft of electricity and denied any deficiency in service.

5. The Forum considered the contentions of both the parties and passed order as above.

6. Aggrieved against the order, the O.P. No.2- filed the appeal before us. Hence, being referred as appellant. The complainant is being referred as the respondent.

7. We heard both the parties. The appellant relying on the judgment passed by the Honble Supreme Court in the case of Panjab Sate Electricity Board Vs. Ashwani Kumar, reported in 1997 DGLS (Soft) 462, claimed that the jurisdiction of the Civil

Court is barred as the remedy by way of the departmental appeal was available in case of recovery of the electricity dues. The appellant also cited the Electricity Rules stating therein that the dishonest abstraction of energy shall be deemed to be the theft within the meaning of the Electricity Act and the supply will be restored only after the consumer suitably compensates the Board as provided in the Act.

8. The appellants Advocate also relied on the judgment of the Honble National Commission given in the case of Nazir Khan Vs. Uttari Hariyana Bijali Vitaran Nigam, reported in IV (2011) CPJ 181 (NC), holding that, in view of the checking report and lab report, the consumer is liable to pay the impugned penalty and further holding that the acquittal will have no impact on collection of penalty.

9. The appellants Advocate also relied on the judgment delivered by the Honble National Commission in the case of Ram Kumar Vs. Uttari Hariyana Bijali Vitaran Nigam and Anr., reported in IV (2013) CPJ 59 (NC) holding that the issue of raising penalty and compounding cannot be called as deficiency in service. Thus the appellant termed the judgment of the Forum to be not well considered, unreasoned and requested to set it aside.

10. The respondents Advocate submitted the judgment of the Honble Supreme Court of India in the case of Municipal Corporation of Delhi Vs. Ajanta Iron Steel Company Pvt. Ltd., reported in AIR 1990 Supreme Court 882, holding that the allegation of theft whether true or not can be decided in the appropriate proceeding, pending which the direction to restore the electricity supply can be issued. It cannot prejudice the appellant.

11. Relying on the judgment, the respondents Advocate requested to confirm the judgment passed by the Forum below. The respondents Advocate also submitted that his meter was inspected by the officers of the appellant in 1999 and had found it to be proper. He further submitted that the raiding party found the meter in proper sealed condition. When it was so how can the respondent tamper the meter keeping the seal intact. He also submitted that the respondent was acquitted of the charge of theft on 29/11/2000. The respondent claimed that he was falsely implicated by the appellants officers, in the theft case because he did not give them the bribe and made a false case of theft when seal of the meter were intact.

12. We considered the contentions of both the parties. It is a fact that the respondent is acquitted of the prosecution lodged against him. However, it cannot absolve him of the demand raised by the appellant, in the light of the judgment passed by the Honble National Commission in Nazir Khan Vs. Uttari Hariyana Bijli Vitaran Nigam Ltd. As referred supra by the appellant, the Honble National Commission held that æ It is a case of civil liability- that is with regard to recovery of the penalty. Acquittal will have no effect in the present case.?

13. We also find that the respondent did not approach the correct authority when the demand of bribe was made to him by the officers of the appellant. In the absence of any cogent evidence only verbal allegations cannot be accepted.

14. Thus in the light of the above reasoning of the Honble National Commission, the respondent can not avoid to pay the penalty and raised demand of the appellant. It also shows that, the Forums order does not hold ground in the background of the fact and reasoning put forth by the appellant through the various judgments submitted by him as cited above. Thus the Forums order being not on sound legal footing needs setting aside. The appeal therefore, needs to be accepted but in the circumstances without any cost. We thus pass the order as below.

ORDER

- i. The appeal is allowed partly.
- ii. The impugned order of the Forum dated 05/08/2002 is set aside. The complaint thus stands dismissed.
- iii. No order as to cost
- iv. The order be sent to both the parties.