

Dr. Sanjay Goyal Vs. Assistant Engineer

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Court : Chhattisgarh State Consumer Disputes Redressal Commission SCDRC
Raipur

Decided On : Feb-03-2014

Judge : R.S. Sharma, President & the Honourable Ms. Heena Thakkar,
Member

Appeal No. : Appeal No. 740 of 2011

Appellant : Dr. Sanjay Goyal

Respondent : Assistant Engineer

Advocate for Def. : Shri. R.K.Bhawnani

Advocate for Pet/Ap. : Shri. K. Anandani

Judgement :

1. This appeal is directed against the order dated 24.10.2010 passed by the District Consumer Disputes Redressal Forum, Surguja, Ambikapur (C.G.) (henceforth "District Forum") in complaint case no.145/2010, whereby the complaint filed by the appellant / complainant, has been dismissed by the District Forum holding that the appellant/complainant, failed to prove his case.

2. The facts of the complaint of the appellant/ complainant before the District Forum, are : that the appellant/complainant obtained one electric connection in his hospital and service no. is 1001894757. On 02.07.2010, a vigilance team of the

respondent/O.P. headed by the then Executive Engineer Mr.R. K. Mishra, inspected the premises of the appellant/complainant and verified the meter and the connected load and it was found that electricity load was 27 K.V.A. whereas the contract was for 6 K.V.A., therefore a penal bill for sum of Rs.30,183/- was sent to the appellant/complainant, which was paid by the appellant/complainant on 07.07.2010. On 25.11.2010 again a vigilance team headed by Mr. D.A.K. Jaiswal, Assistant Engineer (City) with other assistants, inspected the hospital premises of the appellant/complainant and thereafter on 26.11.2010 issued bills of Rs.22,887/- and Rs.27,960/- respectively to the appellant/complainant. The appellant/complainant filed consumer complaint before the District Forum.

3. Respondent/O.P. filed his written version before the District Forum accepted the admitted facts and denied the remaining averments made by the appellant / complainant and refused the allegation made that both the bills are contaminated and the bills were sent with intention to recover the amount from the appellant/complainant. It has further been averred that on 25.11.2010 the vigilance team of the respondent/O.P. inspected the hospital premises of the appellant/complainant and found that a 3 HP submersible pump was being used by the appellant/complainant unauthorisedly and illegally and a panchanama was prepared in this regard. The act of the appellant/complainant comes in the category of a crime under Section 135 of Indian Electricity Act and a case has been preferred before Special District Magistrate, which is pending. A bill of Rs.22,887/- was issued by the respondent/O.P. to the appellant/complainant for unauthorisedly using the electricity. The electricity load in the electric meter installed in the premises of the appellant/complainant is lesser whereas during the inspection contract load was found higher and for 26.570 K.V.A. load a bill of Rs.27,960/- was sent to the appellant/complainant. The appellant/complainant has filed complaint on the basis of baseless facts, therefore the complaint be dismissed by imposing a sum of Rs.10,000/- on the appellant/complainant as penalty and also to direct the appellant / complainant to pay advocate fee Rs.2,000/- and amount of bills Rs.22,887/- and Rs.27,960/- to the respondent/O.P.

4. Learned District Forum, after having considered the material placed before it, dismissed the complaint filed by the appellant/complainant.

5. Shri K. Anandani, learned counsel for the appellant/ complainant argued that order passed by the District Forum, is not sustainable.

6. Shri R.K.Bhawnani, learned counsel for respondent/O.P. argued that in view of judgment passed by Hon'ble Supreme Court in the case of U.P. Power Corporation Ltd. and Ors. Vs. Anis Ahmed, III (2013) CPJ (SC) 1, the complaint of the complainant / respondent is not maintainable before the District Forum. Therefore, the complaint is liable to be dismissed.

7. We have heard learned counsels for both parties and also perused the record of the District Forum and documents annexed with.

8. It is not disputed that electric service no. 1001894757 was in the name of the appellant/ complainant and according to the respondent / O.P. during the course of inspection, it was found that electricity load was found 27 K.V.A. whereas the contract was for 6 K.V.A., therefore a penal bill for sum of Rs.30,183/- was sent to the appellant/complainant, which was paid by the appellant/complainant on 07.07.2010. On 25.11.2010 again a vigilance team headed by Mr. D.A.K. Jaiswal, Assistant Engineer (City) with other assistants, inspected the hospital premises of the appellant/complainant and thereafter on 26.11.2010 issued bill of Rs.22,887/- and Rs.27,960/- respectively to the appellant/complainant. The appellant/complainant filed electricity bills and Spot Inspection Report dated 25.11.2010. In the Spot Inspection Report, it in para 12 it is mentioned that "HINDI? connected load œHINDI?

9. After inspection, respondent company found that the appellant / respondent was using the electricity unauthorisedly and thereafter respondent company made final assessment and sent bill to the appellant / company . Office of the respondent /O.P. sent electricity bill to the tune of 30,183/- to the appellant/complainant, which was paid by him on 07.07.2010. Thereafter bill of Rs.22,887/- and Rs.27,960/- were issued on 26.11.2010.

10. In U.P. Power Corporation Ltd. and Ors. Vs. Anis Ahmed(supra), Hon'ble Supreme Court observed thus :-

"45. The National Commission though held that the intention of the Parliament is not to bar the jurisdiction of the Consumer Forum under the Consumer Protection Act and have saved the provisions of the Consumer Protection Act, failed to notice that by virtue of Section 3 of the Consumer Protection Act, 1986 or Sections 173, 174 and 175 of the Electricity Act, 2003, the Consumer Forum cannot derive power to adjudicate a dispute in relation to assessment made under Section 126 or offences under Sections 135 to 140 of the Electricity Act, as the acts of indulging ""unauthorized use of electricity" as defined under Section 126 or committing offence under Section 135 to 140 do not fall within the meaning of "complaint" as defined under Section 2(1)(c) of the Consumer Protection Act, 1986.

46. The acts of indulgence in "unauthorized use of electricity" by a person, as defined in clause (b) of the Explanation below Section 126 of the Electricity Act, 2003 neither has any relationship with unfair trade practice" or "restrictive trade practice" or "deficiency in service" nor does it amounts to hazardous service by the licensee. Such act of "unauthorized use of electricity" has nothing to do with charging price in excess of the price. Therefore, acts of person in indulging in 'unauthorized use of electricity', do not fall within the meaning of "complaint" as we have notice above and therefore, the "complaint" against assessment under Section 126 is not maintainable before the Consumer Forum. The Commission has already noticed that the offences referred to in Sections 135 to 140 can be tried only by a Special Court constituted under Section 153 of the Electricity Act, 2003. In that view of the matter also the complaint against any action taken under Sections 135 to 140 of the Electricity Act, is not maintainable before the Consumer Forum."

[See also *Uttar Haryana Bijli Vitran Nigam Ltd. v. Om Prakash*, IV (2013) CPJ 571 (NC); and *DHBVNL v. Abhay Kumar Jain*, IV (2013) CPJ 599 (NC)].

11. Looking to the facts of the case, prima facie it appears that the act of indulgence in unauthorised use of the electricity by the appellant/complainant is made out and the appellant/complainant indulged himself in unauthorised use of the electricity.

12. In view of the order passed by Hon'ble Supreme Court in the case of U.P. Power Corporation Ltd. and Ors. Vs. Anis Ahmed (Supra), the complaint filed in the present case before the District Forum under the Consumer Protection Act, 1986 is not maintainable. Accordingly, without going into merits of the appeal, we dismiss the appeal filed by the appellant / complainant and dismiss the consumer complaint with liberty to the appellant/complainant to seek appropriate remedy available to him before other appropriate Forum. No order as to cost of this appeal.

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