

Executive Engineer and Another Vs. Yogendra Prasad Agrawal

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Court : Chhattisgarh State Consumer Disputes Redressal Commission SCDRC
Raipur

Decided On : Jan-09-2014

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

Appeal No. : Appeal No. FA/12 of 252

Appellant : Executive Engineer and Another

Respondent : Yogendra Prasad Agrawal

Advocate for Def. : Shri. Sanjay Tiwari

Advocate for Pet/Ap. : Shri. R.K.Bhawnani

Judgement :

(Order)

R.S. Sharma, President:

1. This appeal is directed against the order dated 30.04.2012 of District Consumer Disputes Redressal Forum, Rajnandgaon (henceforth referred to "District Forum") in complaint case no.66/2010, whereby the appellants / OPs have been jointly and severally directed that the amount of Rs.60,662/-, which was paid by the complainant / respondent be adjusted from the bill of month of June and July,

2010 on the basis of previous 5 months' average bill and after adjustment, if any amount is refundable, balance amount be returned to the respondent with interest @ 6% p.a. and also awarded Rs.2,000/- towards advocate fee and cost of litigation within a period of two months from the date of order. If the amount is not paid by the OPs within the stipulated period, the same will carry interest @ 6% p.a.

2. The case of the respondent / complainant before the District Forum, are that the complainant / respondent obtained three electric connections in his premises and service no. are 1001150849/54450370-10-017574. The complainant / respondent regularly paid the electric bill to the appellants / OPs. On 17.07.2010, the employees of the appellants / OPs had inspected the premises of the complainant / respondent and it was found that the appellants / OPs had given load 1.440 KW, but instead of 1.440 KW, appellants / OPs obtained load 4.190 KW and the reading was noted as 32360 and thereafter meter was replaced. There was no need to replace the meter and gave electric bill of Rs.77,790/- on the basis of consumption of 22572 units. The complainant / respondent did not consume the above units. Consumption of unit of the complainant's premises was 200 units per month. He never consumed 400 units per month. Therefore, bill of Rs.77,790/- was excessive and incorrect. Appellants / OPs threatened the complainant / respondent that if the said bill will not deposit by the complainant then the electric connection will be disconnected. Due to threatening, the complainant / respondent deposited the amount under Protest. Then the complainant / respondent filed consumer complaint before the District Forum and the District Forum allowed the complaint of the complainant / respondent.

3. Appellants / OPs filed their reply before the District Forum and denied the averments made by the complainant / respondent and they submitted that on 17.07.2010, officer of the appellants / OPs inspected the premises of the complainant / respondent and found that the appellants / OPs gave electricity load for 1.440 KW, but instead of load 1.440 KW, the complainant using load 4.190 KW. On the spot inspection, there is difference between sold unit and recorded unit, therefore, the electric bill as Rs.76,610/- was sent to the complainant / respondent and the bill was sent to the complainant / respondent on the basis of inspection report of vigilance team. Therefore, appellants/ OPs have not

committed any deficiency in service and the complaint of the complainant / respondent, is liable to be dismissed.

4. Learned District Forum, after having considered the material placed before it, allowed the complaint of the respondent / complainant and directed the appellants / OPs that the amount of Rs.60,662/-, which was paid by the complainant / respondent be adjusted from the bill of month June and July 2010 on the basis of previous 5 months' average bill and after adjustment, if any amount is refundable, balance amount to the respondent be returned with interest @ 6% p.a. and also awarded Rs.2,000/- towards advocate fee and cost of litigation within a period of two months from the date of order. If the amount is not paid within the stipulated period, the same will carry interest @ 6% p.a. from the date of order.

5. Shri R.K.Bhawnani, learned counsel for appellants / OPs submitted 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.

6. Shri Sanjay Tiwari, learned counsel for the respondent / complainant supported the impugned order passed by learned District Forum and submitted that the order passed by learned District Forum is based on the evidence available on record and does not call for any interference by this Commission.

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. 1001150849/54450370-10-017574 was in the name of the complainant / respondent and according to the appellants /OPs initially electric connection was provided to the complainant / respondent for load 1.440 KW, but the complainant / respondent instead of 1.440 using 4.190 KW and when vigilance team of the appellants / OPs visited the premises of the complainant / respondent and inspected the reading, then found that the reading was 32360. Appellants / OPs filed copy of meter reading diary and electricity bill. The complainant also filed electricity bill and Spot Inspection Report. In the Spot

Inspection Report, it is mentioned that "HINDI"

9. After inspection, appellant company found that the complainant / respondent was using the electricity unauthorizedly and thereafter appellant company made final assessment and sent bill to the complainant / respondent. Office of the appellants /OPs sent electricity bill to the tune of Rs.60,662/- which was payable on 29.07.2010. Thereafter, another bill was issued for Rs.76,610/-, which was payable on 25.08.2010. In both bills, there are contradictory reading regarding consumption of electricity bill and complainant / respondent never consumed 22572 units within two months. It is not possible for the complainant to consume 22572 units within two months, therefore, the bill issued by the appellants/OPs was illegal and incorrect and complainant cannot be forced to deposit the aforesaid amount.

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. 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 allow the appeal filed by the appellants / OPs and dismiss the consumer complaint with liberty to the respondent/complainant to seek appropriate remedy available to him before other appropriate Forum. No order as to cost of this appeal.

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