

Harmit Singh Vs. C.G.S.P.D.C.L., Dangania, Raipur and Another

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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 21

Appellant : Harmit Singh

Respondent : C.G.S.P.D.C.L., Dangania, Raipur and Another

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

Advocate for Pet/Ap. : Shri. G.S.Lamba

Judgement :

(Order)

R.S. Sharma, President:

1. This appeal is directed against the order dated 28.12.2011 of District Consumer Disputes Redressal Forum, Durg (C.G.) (henceforth "District Forum") in Complaint Case No.271/2011, whereby the complaint of the appellant / complainant has been dismissed. Feeling aggrieved by that order, this appeal has been filed by the complainant.

2. The case of the complainant before the District Forum in brief are that an electricity connection was installed at the residence of the complainant / appellant in his father's name, Shri Rawel Singh bearing Service no. 100231853/37473068-01-040687. According to electric consumption, electricity bill has been regularly deposited per month by the complainant. The employee of the OPs, Electricity Board comes every month for recording meter reading and the electric meter has been shown O.K. every month, which proves that the electric meter is in fine condition. Electric meter has been inspected by the employee and officers of the OPs on 07.05.2011. After preparing Inspection Report of the meter, Japti Panchnama has been prepared by the OPs. The meter of the complainant has been seized reluctantly without agreement of the complainant and OPs stopped the electric line of premise of the complainant. Electric meter has been inspected on 09.05.2011 at laboratory placed at Bhilai-3. Appellant / complainant was called at the time of inspection. During inspection of the meter, 1 Unit putting by R.S.S. meter, 1 Unit consumption, has been found in the meter of the appellant / complainant, which proved that there was not any fault in the meter of the appellant/complainant and it was shown correct consumption on the basis of electricity flow. Apart from it, after preparing the report related tempering in the meter, bill of Rs.1,44,930/- as a fine has been given on 10.05.2011 and failing which, OPs denied to restart the electric connection, then in the under protest the appellant deposited the aforesaid illegal bill. Thereafter, the OPs restarted the electric flow. By doing this, the OPs committed deficiency in service. The appellant sent a notice on 28.07.2011 through Advocate for demanding to dismissed the aforesaid illegal bill of Rs.1,44,930/- and thereafter the complainant / appellant filed complaint before the District Forum under Section 12 of the Consumer Protection Act seeking amount of Rs.1,44,930/- and Rs.10,000/- towards mental agony and Rs.2,000/- towards cost of litigation from the OPs.

3. In reply of the complaint, the OPs / respondents averred that the employee of the OPs comes to inspect the meter, but looking to the meter externally, 'O.K.' is written. At that time minute inspection does not make because the authorization of the inspection is only to the Assistant Engineer, Sub-Engineer and Executive Engineer. Only by writing 'O.K.', it cannot be supposed that the meter is in good condition. The meter installed at the resident of the complainant, was tested on

09.05.2011 by constituting a special team. After opening meter body, they found that some gluing material was glued in the meter. Tempering was found with Phase of the P.V.C. Board and Nutral C.T.Point in the meter. After giving 1 K.W. load, less billing was found than prescribed rate, due to tempering. Thus, it cleared that theft of electricity was being committed by the complainant by tempering with the meter. For the purpose of theft of electricity, complainant defaced the meter. This act of the complainant is punishable crime under Section 135 of the Electricity Act, 2003. A complaint has been filed before Special Judge (Electricity Act) against the complainant before District Court. The complainant filed the complaint on the basis of false fact. The OPs provided bill towards fine to the complaint, as per rules. OPs have not committed deficiency against the complainant and the complaint be dismissed with cost.

4. Shri G.S.Lamba, learned counsel for the appellant argued that order passed by the District Forum is illegal and not sustainable in law, and is liable to be set aside. He further argued that during inspection of the meter, 1 Unit putting by R.S.S. meter, 1 Unit consumption, has been found in the meter of the appellant / complainant, which proved that there was no fault in the meter of the appellant/complainant and it was showing correct consumption on the basis of electricity flow. In spite of this, learned District Forum has passed the order holding that the theft of electricity has been committed by the complainant. Therefore, the finding recorded by the District Forum is not sustainable in the eye of law. The appeal of the appellant is liable to be allowed and order passed by learned District Forum is liable to be set aside.

5. Shri R.K.Bhawnani, learned counsel for respondents supported the impugned order and submitted that it does not call for any interference by this Commission.

6. We have heard counsel for both parties and have also perused the record of the District Forum.

7. Learned District Forum, after having considered the documents placed before it, held that the OPs/respondents have not committed any deficiency in service and the appellant dishonestly used the electricity and committed theft of electricity. Therefore, the District Forum, dismissed the complaint by the impugned order.

8. Respondents / OPs specifically pleaded in paragraph of their written statement that offence under Section 135 of the Electricity Act, 2003 was registered against the appellant / complainant and charge-sheet was filed before the Special Judge and Session Judge, Durg, which is pending before the Special Judge.

9. 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)].

10. In view of the judgment 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 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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