

(2003) 02 NCDRC CK 0005

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

MANAGING
DIRECTOR,
THIRUMAYAM RURAL
ELECTRIC
CO-OPERATIVE
SOCIETY LTD.

APPELLANT

Vs

A.PONNAIAH

RESPONDENT

Date of Decision: Feb. 28, 2003

Citation: 2003 3 CPJ 88

Hon'ble Judges: M.S.Janarthanam , R.Vanaroja J.

Final Decision: Appeal allowed

Judgement

1. THIS appeal is directed against the order dated 28.10.1999 in O.P. No. 22/1999 on the file of the District Consumer Disputes Redressal Forum, Pudukkottai.

2. THE appellants are the opposite parties namely, (1) THE Managing Director, Thirumayam Rural Electric Co-operative Society, Thirumayam (for short, "TRECS"), (2) THE Chairman, TRECS, Thirumayam while the respondent is the complainant by name Mr. A. Ponnaiah.

Facts as culled out from the materials placed on record may be related in order to understand the crux of the issue arising for consideration.

"TRECS", Thirumayam, was formed with the main object of electricity energy being made available to its members and other consumers in certain areas of the District

of Pudukkottai. The Government of Tamil Nadu passed G.O.Ms. No. 1716/Public Works Department dtd. 27.8.1982 granting licence to the said Society under Section 28 of the Indian Electricity Act, 1910 for the supply of electrical energy to the members and consumers in certain specified areas in the District. Paragraph 6 of the G.O. is relatable to the "source of supply" and the said paragraph reads as under :

"6. The source of supply is from 66 KV/11 KV Sub-Stations at Thirumayam, A. Thekkur and Pudukkottai. It has been contemplated to feed the area from the proposed Konnaiyur 66 KV/11 KV Sub-Station ultimately. The licence is to purchase energy from Tamil Nadu Electricity Board and to resale at the rates not higher than the tariff approved by Government to Tamil Nadu Electricity Board in its area."

3. PARAGRAPH 8 therein deals with "Limits of price for supply of electricity" and it reads as under :

"8. Supply of electricity shall be charged by the licensee at the same rates adopted by the TNEB to its consumers as may be revised from time to time."

The Society was formed in the year 1983 and it commenced its operation on and from 30.4.1983.

4. THE complainant it is said is an agriculturist. He claims to own certain extent of land in Survey No. 103/86 at Radhapuram in Pudukkottai District. THERE is a well it is said in the lands for irrigating the crops he had been cultivating in the said land. He is said to have sent an application to the Society on 27.8.1983 for getting electricity connection to the pumpset he had installed in the well for the purpose of irrigating his lands. Immediately after the receipt of the application for the said connection, he was told orally that electricity connection would be given to the motor pumpset he had installed in the well on priority basis. Notwithstanding the fact he was waiting for pretty long, no service connection was given to the electric motor he had installed in the pumpset. Subsequently, he had given a petition to the District Collector, Pudukkottai on the grievance day namely, 17.3.1992 complaining about the non-giving of the service connection to the electric motor he had installed in the well for irrigating the crops in his lands. THE petition so given had been sent to the

Society for remarks. No remarks, it appears, had been furnished on the petition so sent by the Collector.

Having waited for more than 16 years, the complainant lost patience and ultimately knocked at the doors of the Forum below by launching a complaint against the opposite parties contending that the act of the opposite parties in not giving electricity connection to the motor he has installed in the well for irrigating his crops would tantamount to deficiency in service on their part and claimed certain reliefs as prayed for in the complaint.

The complainant also filed an application for condoning the inordinate delay in filing the complaint in C.M.P. No. 9/1999. The opposite parties also filed a counter to the condonation application filed by the complainant.

5. THE opposite parties in pith and substance would contend that the complainant is not a consumer and the complaint as filed is barred by time. On merits, what is contended was that the claim of the complainant that he had given an application to the Society for giving electricity connection to the motor he had installed in his well for irrigating the crops is shorn of reality of the situation. To put it otherwise, he had not filed any application at all for getting electricity connection to the motor he has installed in the well. THEREfore, the question of giving electricity connection to him will not at all arise for consideration. THE complaint as such is liable to be dismissed.

6. DURING the course of enquiry, the complainant marked Exs. C1 to C6 on his side. The opposite parties did not place on record any document on their side.

The Forum below did not pass an order in the condoning of delay application in C.M.P. No. 9/1999 before ever the complaint was taken on file. The order in the condonation application in C.M.P. No. 9/1999 as well as the order in the O.P. had been pronounced simultaneously. In the main O.P. itself the delay had been condoned and a consequential order had been passed in C.M.P. No. 9/1999.

The Forum below recorded a finding that as a matter of fact the complainant had filed an application to the Society for getting electricity connection to the motor he had installed in his well for irrigating his crops. The non-giving of electricity connection would tantamount to deficiency in service on the part of the opposite

parties. The Forum below also granted compensation quantified in a sum of Rs. 1,000/- for the mental agony and anguish said to have been suffered by the complainant all along by the non-giving of electricity connection to the motor he had installed in his well for irrigating the crops in his lands. The Forum below also granted cost quantified in a sum of Rs. 500/-. There was also a further direction that the award as made by the Forum below must have to be complied with by the opposite parties within a period of one month from the date of its order. The Forum below however rejected the compensation as claimed for the loss of income by the non-cultivation of crops all along which was quantified in a sum of Rs. 80,000/- calculated @ Rs. 5,000/- per year.

7. AGGRIEVED by the order as above, the opposite parties resorted to the present action by engaging a Counsel of their choice namely, learned Counsel M/s. Vijay Narayan and R. Parthiban. On service of process, the respondent/complainant engaged a Counsel of his choice, namely learned Counsel M/s. N. Ravishankar and Vallatharasu.

When the matter came up for hearing before us today, learned Counsel appearing for the respondent/complainant were called absent and no representation is made on their behalf. We are however inclined to dispose of the appeal on merits of course after hearing arguments of learned Counsel M/s. B. Mohanakrishnan representing learned Counsel M/s. Vijay Narayan and R. Parthiban appearing for the appellants/opposite parties and on perusal of the materials placed on record.

8. FROM the submission of the said learned Counsel Mr. B. Mohanakrishnan and on perusal of the materials placed on record, the one and only question that crops up for consideration is as to whether the order of the Forum below is sustainable in law on the facts and in the circumstances of the case.

There is no pale of controversy that the service connection as applied for by the respondent/complainant is for the purpose of irrigating his lands. G.O.Ms. No. 1716/Public Works Department dated 27.8.1982 makes it crystal clear that the supply of electricity shall be charged by the licensee the opposite parties at the same rate adopted by the Tamil Nadu Electricity Board (TNEB) to its consumers as may be revised from time to time.

Supply of electrical energy to the agriculturists by the TNEB came up for consideration before us in A.P. Nos. 39 to 41/2000 and R.P. Nos. 36 to 38/2001. We passed an elaborate order in those matters on 12.12.2001. What we stated in paragraph 40 of the said order is relevant for the present purpose and it reads as under :

"40. From the various clauses of the terms and conditions of electricity supply of the Board as referred to above, it is crystal clear that in respect of service connection given for agricultural operations for free supply of electrical energy, nothing is leviable from such users of electrical energy except the collection of Rs. 50/- per service connection and that too only in respect of three phase service connection and no single phase service connection by way of registration charges. In the instant cases, admittedly, the applications were submitted by the individual complainants to the 2nd opposite party through the medium of the 1st opposite party for getting service connections to electric motor and pumpset installed in their respective lands for purposes of irrigation under free supply scheme. Nothing is traceable to records as to whether the applications submitted by the individual complainants for getting electricity service connections is relatable to a three phase connection or a single phase service connection. The further sordid fact is no material worth the name in the shape of any exhibit had been filed by the complainants evidencing payment of registration charges for the service connections they have applied for. Therefore, it cannot at all be stated with certainty that the individual complainants had paid any registration charges even at the minimal sum of Rs. 50/- per service. Even assuming for argument sake that they in fact applied for three phase connections and paid Rs. 50/- per service by way of registration charges, we are of the view that the payment of such nominal registration charges can by no stretch of imagination be construed as payment effected for the rendering of service by the opposite parties Electricity Board officials. Thus, practically in the case of free supply of electricity to the complainants/applicants/farmers no fee or charge had been made by the opposite parties for the consumption of electrical energy by them in operating their motor and pumpset for irrigation purposes. As such, the service rendered by the opposite parties in the sense of supplying electrical energy to the complainants for operating the motor and pumpsets installed in their lands for irrigation purposes is absolutely free of charge. Such being the case, it cannot at all be stated that the complainants availed or hired the services of the opposite parties for supplying electrical energy to them for consideration. Thus, the element of consideration for the rendering of the service by the opposite parties is completely absent and in such a situation to say that the individual complainants must have to be construed as consumers qua the opposite parties as has been said by learned Counsel appearing for the complainants cannot at all be acceded to, on the facts and in the circumstances of the case."

9. FROM what has been stated in paragraph 40 of the order as extracted above, it is crystal clear that the element of consideration for the rendering of service by the opposite parties is completely absent and in such a situation to say that the complainant must have to be construed as a consumer qua the opposite parties cannot at all be acceded to on the facts and in the circumstances of the case. Once the complainant cannot at all be construed as a consumer, it goes without saying that the deficiency in service on the part of the opposite parties cannot at all arise for consideration.

10. IN this view of the matter, the appeal deserves to be allowed.

In fine, the appeal is allowed; the order of the Forum below is set aside and the complaint itself is dismissed. We however make no order as to costs on the facts and in the circumstances of the case. Appeal allowed.