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RAJESH SENGER Vs SURESH KUMAR

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: May 17, 1999

Citation: 1999 2 CPJ 318 : 1999 3 CPR 363 : 2000 1 CLT 323 : 2000 1 CPC 206

Hon'ble Judges: K.C.Bhargava , D.D.Bahuguna J.

Final Decision: Complaint partly allowed

Judgement

1. THE complainant by means of this complaint claimed damages worth Rs. 5,52,045/- details of which have been given in the complaint.

2. ACCORDING to the complainant he had installed a small factory for manufacturing steel furnitures after obtaining a loan of Rs. 1,44,700/- from

Financial Corporation. This workshop was being run in the name of M/s. Phool Steel Furniture Industries. It is also registered in the Industries

Department. This industry was established in the year 1992 and was ready to start production, but could not do so in the absence of electricity

connection. The complainant applied for 5 Horse Power connection from Electricity Board through District Industry Centre. The load was

sanctioned on 6.12.1991, a copy of this is Annexure 1. The complainant deposited a sum of Rs. 25,000/- on 26.10.1989 with opposite party No.

1 copy of this is Annexure 2. Inspite of several visits to the Department of the opposite party No. 4 an estimate dated 9.6.1992 for a sum of Rs.

11,712/- was received which was deposited by him on the same date. A copy of this is Annexure 3. Inspite of depositing the estimate, electric

connection has not been energised. Thereupon he wrote a letter dated 20.9.1992 for energising the electric connection. By letter dated 24th

September, 1992 the opposite party with untrue facts mentioned that the connection could not be given on account of non-availability of poles and

it was assured that the connection will be energised in October, 1992. Copy of this is Annexure 5. As a matter of fact the poles were available in

the department prior to 24.9.1992. These facts have been wrongly mentioned about non-availability of poles. Complainant personally contacted

the opposite parties and also wrote letters on 25.9.1992, 8.10.1992 and 23.11.1992; copies of which are Annexures 6 to 8. On account of non-

energisation of connection, the factory of the complainant is lying closed and could not be started. On account of these facts, the machinery has

starting rusting and is causing loss to the complainant. The complainant is suffering loss @ 18% six monthly interest on the amount invested and

also suffering on account of earning. He is being forced to pay Rs. 1,000/- per month unnecessarily to the guard. The complainant has also been

deprived of free service and replacement during the guarantee period of the machines on account of which he has suffered Rs. 20,000/-. He has

also claimed a sum of Rs. 1,20,000/- on account of mental torture etc. and a sum of Rs. 11,712/- on account of loss in interest on the amount

deposited for taking connection.

In the written version the opposite party has alleged that an agreement was executed by the complainant with U.P. State Electricity Board for

supply of connection. The complainant cannot be a consumer as electricity has not been given to him as yet. The case cannot be filed against the

opposite parties under their personal name. The machines and apparatus were purchased by the complainant in the year 1992, the deposit of

earnest money has also been admitted but it is alleged that it was for a 25 HP load. Subsequently an application was moved for getting 5 HP line

and thereafter load was sanctioned on 6.12.1991, and in serial order priority order was also given. Till the date of the deposit of estimate, the

internal fittings and installation at the premises of the complainant were not complete and unless these fittings are complete, no connection can be

released and formalities have to be completed before releasing the connection. After the deposit of the estimate on 9.6.1992, line order was issued

by opposite party No. 2 on 17.6.1992 and the work of construction of line to the premises of complainant was taken up alongwith completion of

all the formalities. The Assistant Electrical Inspector was also directed to check up the B&L, Form etc. Copy of this letter is Annexure C-1.

Requisition for supply of material was sent to store and 1st package of material was received on 17.9.1992. Thereafter again opposite party No. 2

inspected the site on 27.9.1992 and found that the information regarding the fittings of Motor etc. given in B&L Form was incorrect and there was

no fittings and work of the factory could not be started even after supply of electricity. A letter was sent to the complainant to complete the fittings

on 28.2.1992. Copy of this is Annexure C-3. The material sent under this invoice dated 17.9.1992 was not complete as the poles were not sent

due to non-availability. Poles were subsequently received on 24.9.1992, copy of which is Annexure C-4. The assurance given in the letter dated

24.9.1992 was given under the influence of wrong information given by the complainant. Letters contained in Annexures 6 and 7 are denied and

they are repetition of incorrect facts. The supply could not be released on account of non-supply of fittings and non-installation of 5 HP Motor etc.

This information was conveyed to the complainant by letter dated 28.9.1992. On 19.10.1992 the site was inspected by the Assistant Director

(Electrical Security) and the fittings were found incomplete. By letter dated 29.10.1992 the entire position was made clear to the complainant by

the Assistant Director. Copy of this letter is Annexure C-5. Thereafter the complainant did the installation of 5 HP fittings and the inspection was

again done on 11.10.1992 and the report was submitted regarding completion of the work. On 19.1.1993 directions were issued to the Assistant

Engineer (Meters) for installation of the meter and giving the connection. Copy of this letter is Annexure C-6. It is alleged there was no laches or

carelessness on the part of the opposite parties. It is further alleged that three/four attempts were made for installing the meter but it could not be

done due to complainant''s attitude as some times the cable, meter board and meter box were not prepared and fixed and sometimes the

representative or wife of the complainant did not allow the staff to install the meter. Copy of letter dated 13.5.1993 alongwith report dated

10.5.1993 as received from AE, Meters is annexed as Annexure C-7.

Thereafter another attempt was made to instal the meter and by letter dated 27.5.1993 the complainant was asked to confirm the date on which

the meter could be installed. Copy of this is Annexure C-8. This letter remained unanswered. No loss has been caused on the part of the

negligence and carelessness of the opposite party.

3. NO services were rendered by the opposite party as the electricity has not been given to the complainant. The complainant has not come with

clean hands and is guilty of concealment of facts on account of which he is not entitled to get the connection.

In the replication the complainant has repeated the allegations already made. Besides alleging that he has invested on machinery worth Rs.

1,25,000/-, he has also spent Rs. 2,27,174/-on building construction of the factory. He had to also incur day-to-day expenses which was essential

for making the unit in a working condition. The connection was energised on 22.5.1993 vide Annexure 11. The complainant is a consumer and has

the right to file the present complaint. The estimate amount of Rs. 11,712/- as deposited on 9.6.1992 and inspite of that, the electricity connection

was not released to the complainant till 22.5.1993. The delay was not on the part of the complainant. It is also alleged that the estimate is

deposited after the entire installation, fittings and wiring is done in the premises. It is wrong to say that on deposit of estimate on 9.6.1992, opposite

parties were ready to give electricity connection and the connection was released only after filing the present complaint. Sri Suresh Kumar,

Executive Engineer vide his letter dated 20th September, 1992, copy of which is Annexure 5 to this affidavit, goes to show that he was very sorry

to inform that on late receipt of PCC pole, the connection could not be given. It is wrong to say that opposite party No. 2 inspected the site on

27.9.1992. The entire fittings was complete much before the filing of B&L Form.

4. IT is also wrong to say that the entire material was received under invoice dated 17.9.1992. Invoice dated 24.9.1992 is a fabricated documents

and the complainant was never informed of this before. If there was any difficulty in the installation, then it should have been informed by the

opposite party to the complainant. One Sunil Kumar Tyagi got connection in his factory within 28 days from the date of deposit of the entire

amount with the Electricity Board. Similarly J.K. Conveyer Industries, Muzaffarnagar also got electric connection within one month of its applying

and depositing estimate. Several other persons got electric connection within a short time. Connection was not given to the complainant but he

could not oblige the officials of the Electricity Department and hence it took 18 months to release connection.

The parties have filed affidavits and evidence in support of their respective claims.

We have heard the Counsels for both the parties, and have perused the evidence on record.

5. IT is an admitted fact that a sum of Rs. 25/- was deposited by the complainant on 26th October, 1989 for taking electric connection.

Applications for load of 5 KVA was moved on 21.2.1991. The Electricity Board gave estimate for the same on 9.6.1992. The estimated amount

was deposited by the complainant on the same day.

6. ACCORDING to the complainant a reminder was sent on 20.9.1992 vide Annexure IV to the affidavit of the complainant. Learned Counsel

for the complainant argued that when the estimate was deposited on 9.6.1992 it was the duty of the Electricity Deptt. to have issued the

connection; while learned Counsel for the opposite party argued that the connection could not be released to the complainant as formalities were

not completed by the complainant and on checking of the premises of the complainant, it was found that necessary wiring, 5 HP motor and

installation of electric meter was not done. The contention of complainant that the connection was not released on the ground that non-availability

of poles was denied. As far as the non-energising of the electric connection for non-availability of poles with the State Electricity Board, it is argued

by the learned Counsel that this fact has been wrongly introduced by the complainant and actually the poles were already in stock and the letter

was wrongly issued under some misapprehension.

A perusal of the document filed by the complainant which is letter dated 21st of September, 1992 written by the Executive Engineer on behalf of

opposite party No. 4 acknowledges the receipt to letter dated 20.9.1992 and stated that he was sorry to inform that on account of late receipt of

PCC poles, he could not release the connection so far. It was also mentioned that the material is expected to be received by the end of this month

and the connection shall be energised in the month of October, 1992. This letter really goes to show that the poles were not available in stock on

account of which the connection could not be released. In para 8 of the counter affidavit filed by the opposite party it has been mentioned at page

4 that the material sent under invoice dated 17.9.1992 was not complete as the poles were not sent due to non-availability. The poles were

subsequently received under invoice dated 24.9.1992. A true copy of that invoice has been annexed as Annexure C-4 to this affidavit. Annexure

C-4 is invoice dated 24.9.1992 by which poles were received. In the same para in the counter affidavit it has also been mentioned that the

assurances given in this letter was given under the influence of wrong information given by the complainant. We are unable to understand this

explanation as to what wrong information was given by the complainant which compelled the opposite party to give this wrong information in the

letter dated 24.9.1992 which is Annexure C-4 filed by the opposite party. No paper has been received by the complainant which might have been

written by the complainant or any other person on his behalf in order to show that the poles were not there and the connection could not be

energised earlier. The averment of this para clearly indicates that the poles were not available till 24th September, 1992 and it appears that after

24th September, 1992 Annexure v was written by the Executive Engineer. The poles were received by the opposite party by invoice dated

24.9.1992. These poles must have been received after issuing a letter dated 24th September, 1992 because the poles were sent from Meerut to

Muzaffarnager. Naturally it would have taken some time for the poles to reach Muzaftarnager from Meerut. The date of the verification of the

receipt is not legible, but it is certain that the poles would have been received sometimes on 24th September, 1992 after the letter in dispute was

written. Moreover in para 8 of the counter affidavit of the opposite party, it is clear that the poles were not sent vide invoice dated 17.9.1992

when other material was sent because of non-availability of poles. Had the poles been in stock a week before, 24th September, 1992, then there

was no reason as to why the poles were not sent along with other material which was sent vide invoice dated 17.9.1992. Thus according to own

allegation of opposite party, this fact is true that the Poles were not available with the opposite party on account of which there was a delay in

energising the connection. The opposite party is trying to place this blame on the complainant while saying that the poles were available and the

opposite party was prepared to energise electricity connection immediately.

In this connection it may be worthwhile to mention that the complainant had refuted the allegations of the opposite party about non-availability of

poles. By letter dated 25.9.1992, which is Annexure VI to the complaint, the complainant has mentioned that on 24.9.1992 according to the

enquiry, the poles had already been received. He has also mentioned in this letter that these poles be fixed immediately, otherwise they will be used

somewhere. He has also mentioned that on account of non-availability of electricity, he is suffering loss. To above letter dated 24.9.1992, the

complainant has also sent a reply on 8.10.1992 copy of which is Annexure VII to the complaint in which it has been written that he has received

letter dated 24.9.1992 about the non-availability of poles but according to the enquiries of the complainant, the poles have passed Muzaffarnagar

Octroi Post two days before. Thus it showed that the complainant was trying his best to get the electricity connection and was also tracking the

movement of electricity poles.

7. THE first B&L Form was submitted by complainant on 8.6.1992, a copy of which is Annexure P-4 of the affidavit filed by Sri S.K. Sharma. It

shows that the licence contractor has submitted necessary form after mentioning the particulars. P-5 is another B&L Form which was submitted on

behalf of the complainant. According to the learned Counsel for the opposite party, the Electrical Inspector went on the spot to check the wiring

etc. and found that the wiring was not complete the hence the complainant was informed to complete necessary formalities by fixing the motor and

laying the electric connection.

Annexure P-7, the affidavit of Sri S.K. Sharma, is a letter written by the Electrical Inspector verifying that the complete fittings has been done. This

is dated 20.11.1992. We need not enter into the controversy as to whether the electric fittings at the factory of the complainant was complete or

not prior to 20.11.1992 because the complainant has not claimed damages for the entire period but has confirmed his claim for damage for the loss

sustained by him within the last one year prior to the filing of the complaint. This fact is clear from the Relief No. 16 where he has mentioned to the

loss to the production is for one year only.

8. ACCORDING to the complainant even after the wiring was found in perfect condition on 20.11.1992 and all the formalities were completed by

that date, the connection was not released immediately but was released in the month of May, 1993. It may be mentioned here that the inspection

was again done by the SDO on 11.1.1993 and the line order was issued on 19.1.1993 but the connection was not energised till 22.5.1993. It is

not understandable as to why the connection was not energised immediately after all the formalities were completed by the complainant and the

wiring was found in order. After the wiring etc. was found to be in order on 20.11.1992 and after inspection by the SDO on 11.1.1993 the line

order was issued on 19.1.1993 but to energise the connection a period of four months was taken. The complainant has filed documents to show

that he had taken loan from the U.P. Financial Corporation. It is not necessary to deal those letters here. Learned Counsel for the opposite party

has argued that the partnership was entered into much after the application by complainant for giving electric connection. ACCORDING to

learned Counsel, the partnership came into existence and provisional registration of the agreement was made on. ACCORDING to the learned

Counsel, the machine was not purchased before 1992. ACCORDING to the learned Counsel for the complainant, previously this firm was

proprietorship of the complainant alone and later on When he entered into partnership the same was executed. Moreover, the existence of

partnership firm had no hearing on the grant of connection because the connection had to be given by the opposite party for use in the factory and

it is for the complainant to see whether he wishes to run the factory in his sole proprietorship or under the partnership of some other person.

Opposite party cannot take advantage of this fact.

It has been tried to argue by the learned Counsel for the opposite parties that whenever the staff of opposite party No. 4 went to energise the

connection, the wife of the complainant and the staff of the complainant refused to do so. This allegation does not appear to be correct because

there is nothing on record to prove this contention. As a matter of fact this allegation has been taken in para 10 of the written statement. It is

mentioned that it was informed by the Assistant Engineer, Meters that efforts for installing the meter were made three or four times but the

installation of meter could not be done due to complainant''s attitude, sometimes the cable, meter board, and meter box were not prepared and

fixed and some times the representatives or wife of the complainant did not allow the staff to instal the meter. A reference has been made to

Annexure 7 filed alongwith the written statement which is a letter written by the Assistant Engineer Meters to the Executive Engineer. This has been

replied in para 21 of the replication by the complainant. It has been alleged in that para that question of residing of complainant''s wife does not

arise in the factory. It has also been replied that the complainant is not married so far as the latter alleged that the complaint is a fabricated one. It

has no where been alleged in the written statement argued by the learned Counsel for the opposite party that the complainant also resides in the

same premises in which the factory is located. The factory does not have a residential area because there is no document on record to prove this

fact. The averments of the complainant that there is no residential portion in the factory is to be relied upon. However, when the complainant is not

married, how can his wife be present in the factory premises and would not have allowed the Asstt. Engineer Meters or the staff to energise the

electrical connection or to install the meter. These are false and fabricated in order to delay the supply to the complainant by the opposite party

No. 4. In order to shield the undue delay in enrgising the connection for the reasons best known to the staff of opposite party No. 4, this false plea

has been taken. Thus we find that the contention of the opposite parties is not correct and no reliance can be placed on this part of the version put

forward by the opposite parties.

Thus we find that after the completion of the formalities by the complainant, the opposite party took undue time in energising the connection which

shows the deficiency in service on the part of the opposite party for which the opposite party is liable to pay damages.

9. AS regards the damages, the complainants has claimed under different heads which have already been narrated in the earlier part of the

judgment. The complainant has claimed damages on account of loss of production, on interest paid to UPFC, rusting of machine, amount on expiry

of guarantee period, mental torture, and amount paid to the security guard etc. It is not necessary for us to deal separately with each of the items

and in our opinion, a consolidated, amount of damages can be awarded to the complainant which on the basis of evidences on record, we assess

at Rs. 1,00,000/-. Thus we find that the complaint is liable to be allowed partly. ORDER

10. THE complaint is partly allowed and the opposite party No. 4 shall pay a sum of Rs. 1,00,000/- as damages to complainant. We assess the

cost of this litigation at Rs. 5,000/-. THE compliance of this order shall be made within a period of two months from the date of the judgment.

Damages in the form of interest shall also be payable on the above amount at the rate of 18% per annum till the date of payment if the amount is

not paid as directed above within two months. THE opposite party No. 4 may realise the amount from the employees who were responsible for

delay in energising the connection. Let copy of this order be made available to the parties as per rules. Complaint partly allowed.