

(2010) 01 NCDRC CK 0019

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Luv Properties Pvt Ltd , Luv
Properties Pvt. Ltd

APPELLANT

Vs

BSES Rajdhani Power Limited

RESPONDENT

Date of Decision: Jan. 5, 2010

Citation: 2010 1 CPJ 258

Hon'ble Judges: R.K.Batta , P.D.Shenoy J.

Final Decision: Complaint allowed.

Judgement

1. THE complainant is a Private Limited Company and the present complaint is filed through Sh. R. K. Jain, Chief Officer who is duly authorized. The complainant is the owner of the premises No. C-213, Defence Colony, New Delhi and holds two electrical connections standing in the name of Major S. P. S. Bedi (previous owner) at its said premises falling under District N2016(I) Bearing K. No. 3386501 having 3 Meters bearing Nos. 3346377, 0462279 and 3328049 and (II) K. No. 3385084 having 1 Meter bearing No. 3291659, and is a consumer within the meaning of Section 2(d) of Consumer Protection Act, 1986 (hereinafter referred to as the "CPA, 1986"). The complainant's application for change of name of the electrical connection was refused on the ground that until the records of the "DVB" show "misuse" of electricity the application cannot be processed or accepted. The respondent, in gross misuse of its powers and in abuse of its authority and in utter violation of all the conditions of supply, disconnected the Electricity of the complainant in June 2000 without prior notice on the false pretext of non-payment of two purported professional bills viz. Rs. 73,000 (K No. 3385084) and Rs. 45,990 (K No. 3386501). A copy of the disconnection order was also not supplied to the complainant. The respondent was liable to make credit adjustments in favour of the complainant for having received excess payment. The complainant has always been willing and ready to pay the corrected bills and he had even approached Hon'ble Delhi Minister for Electricity seeking his intervention on 3rd August, 1999.

2. AS the respondent had resorted to the extreme step of disconnecting the power supply, the complainant made several representations for restoration of power through letters dated 3.4.1997, 28.8.1997, 27.10.1998, 1.2.1999, 7.2.1999 and 3.8.1999. The matter was even taken up with Bijli Adalat. The respondent took more than a year to revise the bills. Instead of giving relief to the complainant by removing misuse charges from February 1997 the respondent imposed penal tariff with retrospective effect from October, 1993 till February, 1997 going back to more than seven years which is absolutely illegal and unjust. The mere glance of the bills shows that they have been prepared in a haphazard manner. The bills dated 9.7.2001 are illegal, indecipherable and misleading. Besides, the Meter readings given in the said bills and the Meter readings as stated in the MRI's report dated 17.2.2001 do not tally.

3. DUE to illegal disconnection of power, the complainant has been deprived of use of its property for more than 14 months causing a loss of around Rs. 80,000 per month (the last monthly rental of the premises). The premises had also been rendered uninhabitable and remained unoccupied since June 2000, due to which the belongings were looted in the year 2001 including electrical fittings, sanitary fittings, even hardware, electrical and water meters, etc., causing a loss of more than Rs. 3 lacs which have been explained in the FIR No 114280 dated 25.5.2001. The premises were used exclusively for the residence of the Executive of M/s. Century Textiles Ltd. from 1967 till January, 1997. Therefore, there was no cause for alleged misuse and if there was any commercial activity, then the respondent should have given notice to the occupant and carried out inspection.

The levy of high tariff charges from 1998 were unjustified which was prior to the findings of the inspection carried out in the year 1997 and in 1999 the report dated 9.2.1999 by MRI shows "No Misuse". Subsequently, the Executive Engineer concerned recommended withdrawal of misuse charges w.e.f. 28.8.1997 as per his internal memo dated 9.2.1999. Since the year 2000, complainant has been running from pillar to post.

4. THE case before Bijli Adalat was first taken up in October, 2000. Learned members asked the respondent whether any notice was issued to the occupant of the premises for the alleged "Misuse" during the year 1994 and, if so, to produce a copy of the same. This was replied stating that no notice was ever issued at that time. Though Bijli Adalat passed an order on 2.12.2000, the respondent took more than two years to finalise the bills and the complainant had to visit the respondent's office on several occasions and move from desk to desk and the complainant received a final bill only on 9.7.2001. The complainant was surprised to see that instead of withdrawing levy of misuse charges since 1997, respondent had imposed high tariff prior to 1997 going back to 1993 thereby taking away all the credit balance of the complainant and wrongly raised a demand of Rs. 19,169.35 and Rs. 23,823.36.

5. IT is a case of the complainant that levy of misuse charges by going back to 7-8 years is ex facie, unfair and unjustified and, therefore, illegal. This was just to wipe out the credit balance of the complainant and to force the complainant to pay a further sum of Rs 1,19,000. The complainant made following prayers:

"(i) That the electrical connection at its premises be restored forthwith and the electric meters be installed at any cost of the respondent.

(ii) That the misuse charges wrongly levied w.e.f. 1993 to 1997 be withdrawn and due credit be given to the complainant for the payments of more than 1 lac 50 thousand made by it in excess of the legitimate dues.

(iii) That the electric connection be transferred in the name of the complainant.

(iv) That a sum of Rs. 11 lacs 20 thousand be awarded as compensation for financial losses suffered by it for the premises being rendered unusable for 14 months due to the illegal disconnection.

(v) That a sum of Rs. 3 lacs be awarded towards compensation for the loss of fittings and fixtures and materials looted from its premises and for damage caused to the premises.

(vi) That a sum of Rs. 10 lacs be awarded towards special damages for mental agony and torture suffered by it.

(vii) That interest be awarded on the above sums from the date of the complaint till payment thereof.

(viii) That any other order/orders be passed as may be deemed fit and proper in the circumstances of the case".

6. THE premises were re-energized pursuant to the order dated 23.11.2001 of the Permanent Local Adalat (in short "the PLA") by installing a new meter whereby two previous connections in the name of the complainant were merged into one. The disputed bills for the two previous connections were also revised/corrected showing a credit balance with regard to both the connections in favour of the complainant. However, the respondent continued to raise bills for the non-existent meter and, thus, credit amount of Rs. 19,169.35 for the non-existent meter has been nullified by the respondent and a fresh liability was created. Several representations made by the complainant fell on deaf ears. When the complainant came to know that the credit balance computed by the respondent was incorrect, he immediately took up the matter on 11.2.2002, but it was not rectified. Even though the respondent categorically admitted in his letter dated 19.8.2003 as follows:

"While examining our consumer accounts we found that a large credit was lying in your energy account as on 1st July, 2002. As these credits pertain to the DVB period, we had taken up the matter with the Delhi Power Supply Company Limited (the Holding Company under GoNCTD to which all the liabilities of DVB stand transferred) who have advised us to cancel the credit and accordingly we have nullified the credit of Rs. 10459.00 lying as on 1.7.2002. As a consequent your energy bills for the period after 1.7.2002 have remained unpaid. You are requested to please make payment of all such unpaid bills to continue service to you. Also please submit details of proof of the credit lying in your account on 1.7.2002 to the Assistant Finance Officer (Distbn.) of your district as per the format enclosed so that we can refer the matter to the Holding Company (M/s. DPCL). We will be reverting back to you on receipt of feedback from DPCL. The inconvenience caused to you is regretted."

7. THE action of the OP shows that it wants to blow hot and blow cold alternatively.

8. LEARNED Counsel submitted that the last monthly rental was Rs. 80,000. He has submitted a copy of the Lease Deed between the complainant and Hundai Motors Limited wherein the premises were given on rent from 1.11.1997 for a period of two years @ monthly rent of Rs. 80,000. He has also drawn our attention to the FIR filed with the Police Station in Defence Colony to show the loss of Rs. 3 lacs due to burglary in the premises.

9. LEARNED Counsel for the complainant also submitted that the OP tried to mislead this Commission by submitting on Oath that the premises were energized prior to the filing of the present complaint (dated 31.7.2001) whereas the premises were actually energized in November, 2001 which is much after the present complaint was filed and that too, pursuant to the order of the PLA dated 23.11.2001. Further, learned Counsel for the complainant submitted that the submission of the respondent that the meter reader was not allowed to take the meter reading, is incorrect. On the contrary, at the relevant time, the premises were tenanted by an officer of UNICEF who never caused any obstruction. On the other hand, concerned officer of UNICEF even issued notice to the OP to bring on record the factum of meter being defective/faulty and requested for recalculation of the amount due by sending letters dated 7.9.2004, 15.9.2004 and 10.11.2004. Case of the opposite party

10. THE opposite party (in short "OP") submitted that the complaint had been filed on 31.7.2001 with several prayers one of which is restoration of the electricity supply. This prayer is no longer valid because the power had been restored. An inspection was carried out at the premises of the complainant on 22.4.1994 and it was found that the meter was being misused by the complainant. Hence, the noting "Misuse reported" was printed in every subsequent electricity bills strictly as per rules and regulations. The OP did not levy any Misuse Charges on the complainant till December, 1998 and it was levied, for the first time, in December, 1998. The electricity supply was disconnected in June, 2000 for not paying the long outstanding dues.

11. INSTEAD of getting the valid meter rectified, the complainant approached the Bijli Adalat for the settlement of the dispute which ordered, on 2.12.2000, levy of misuse charges from 22.4.1994 to 30.1.1997. Accordingly, revised bills were given strictly as per directions of the Bijli Adalat. Instead of complying with the directions of the Bijli Adalat, the complainant chose to approach the Lok Adalat.

12. THE Lok Adalat on 23.11.2001 directed withdrawal of all Misuse Charges and to raise the bills as per the actual consumption only. In compliance of the order of Lok Adalat, the supply of electricity was also restored and the connection was also transferred in the name of the complainant. A new meter was also installed at the premises of the complainant in replacement of the faulty tampered meter of the complainant.

13. AS the meters installed at the premises of the complainant were found to be defective and the bills could not be raised as per the actual consumption, new meters were installed on 5.3.2003. Subsequently, on 29.7.2004 when the meter reader went to record the readings in a routine manner, he was prevented from taking the readings. This was also brought to the notice of this Commission and as per its order dated 13.8.2004, the official of the OP was allowed to take the reading. The complainant has been paying the bills and there is no outstanding as the entire amount has been adjusted in the bills that has been raised subsequently. Learned Counsel for the OP submitted that the OP, in compliance with Section 24 of New Electricity Act, 1910, had raised the bills. Hence, there was no deficiency in service. Learned Counsel for the OP submitted that it is not the liability of the OP to pay any amount against alleged robbery at the premises of the complainant as the OP cannot be held responsible for the security of the property in question.

14. LEARNED Counsel for the OP further submitted that the complainant has claimed Rs. 10 lacs towards special damages for mental agony and torture suffered

by him. He submitted that there was no mental agony or torture as alleged by the complainant intentionally imparted by the OP. In fact, the complainant never tried to cooperate with the OP regarding rectification of the disputed bills. Therefore, there has been no deficiency in service and the complainant is not eligible for any compensation. Findings

15. LEARNED Counsel for the OP has cited a judgment passed by this Commission in "RP No. 355/2004 titled as Jharkhand State Electricity Board, Ranchi v. Anwar Ali, II (2008) CPJ 284 (NC), and connected revision petitions. In the judgment of the majority, it has been held as under: "In view of the aforesaid settled law, the Consumer Fora would have jurisdiction to entertain complaint against the final order passed by the assessing officer under Section 126 of the Electricity Act. Further, the jurisdiction of the consumer Fora is not barred by any provisions of the Electricity Act but the same is expressly saved under Section 173 read with Sections 174 and 175 of the Electricity Act.

V. In the result, we hold as under:

(i) Section 3 of the Consumer Protection Act and Section 175 of the Electricity Act, provide that they are in addition and not in derogation of rights under any other law for the time being in force. Therefore, the rights of the consumers under the Consumer Protection act are not affected by the Electricity Act.

(ii) A bare reading of Sections 173, 174 and 175, makes it clear that the intent of the Legislature is not to bar the jurisdiction of the Consumer Fora constituted under the Consumer Protection Act. The provisions of the Electricity Act have overriding effect qua provisions of any other law except that of the Consumer Protection Act, 1986, the Atomic Energy Act, 1962 and the Railways Act, 1989.

(iii) Section 42(8) of the Electricity Act specifically provides that the remedies conferred on consumer under Sub-sections (5), (6) and (7) of Section 42 are without prejudice to the right which the consumer may have apart from the rights conferred upon him by those Sub-sections.

(iv) Section 145 of the Electricity Act specifically bars the jurisdiction of the Civil Court to entertain any suit or proceedings in respect of any matter which an assessing officer referred to in Section 126 or an Appellate Authority referred to in Section 127 of the Electricity Act or the Adjudicating Officer appointed under the Electricity Act, is empowered to determine. Second part of Section 145 provides that no injunction shall be granted by any Court or Authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Act. For this purpose, if

we refer to Sections 173 and 174 and apply the principle laid down there-under, it would mean that qua the Consumer Fora there is inconsistency and, therefore, "other authority" would not include Consumer Fora.

(v) Consumer of electrical energy provided by the Electricity Board or other Private Company, is a consumer as defined under Section 2(1)(o) of the Consumer Protection Act and a complaint alleging any deficiency on the part of the Board or other private company including any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance which is required to be maintained by or under any law or in pursuance of any contract in relation to service, is maintainable under the Consumer Protection Act. Against the Assessment Order passed under Section 126 of the Electricity Act, a consumer has option either to file appeal under Section 127 of the Electricity Act or to approach the Consumer Fora by filing complaint. He has to select either of the remedy. However, before entertaining the complaint, the Consumer Fora would direct the Consumer to deposit an amount equal to one-third of the assessed amount with the licensee [similar to Section 127(2) of the Electricity Act].

(vi) Consumer Fora have no jurisdiction to interfere with the initiation of criminal proceedings or the final order passed by any Special Court constituted under Section 153 or the civil liability determined under Section 154 of the Electricity Act."

16. ACCORDINGLY, it is very clear that this Commission has jurisdiction to entertain the case.

17. WE have gone through the record of the case and heard learned Counsel for the parties. It is crystal clear that the OP had levied Misuse Charges on the complainant without giving adequate opportunity to defend his case. In Fact, the OP has stated in the letter dated 19.8.2003 to the complainant that "while examining our consumer account, we found that a large credit was lying deposited in your energy account as on 1.7.2002". The whole case was analyzed in great detail by the Permanent Lok Adalat which held its sittings on 2.11.2001, 29.8.2001, 26.9.2001 and 23.11.2001. On 23.11.2001, the Permanent Lok Adalat recorded as follows:

"23.11.2001

Present : Shri B.P. Aggarwal, Advocate for the Petitioner. Shri Prem Chand, ALO, Shri K. L. Gugnani (XEN) D NZD for the Department.

This case pertains to the assessment of misuse charges against DP connection No. 3385084 and DP connection No. 3386501. The meter reader had detected alleged misuse against both the connections on 22.6.1994. From 1996-97, in the computerized bills "misuse reported" remarks were being recorded and, therefore, the petitioner made a written representation on 3.4.1997 to MRI, Shri S. C. Sharma alleging that the property was under the tenancy of M/s. Century Textiles for residential use by its officers, since 1967 and there was no question of misuse in any part of the property by the tenants. She also complained that "misuse reported" remarks were being recorded in the bills wrongly and there was no misuse. On this application, it appears some inspection was made on 17.4.1997 and the supply was found being used for residential purpose. Another inspection was carried out on 9.3.1999 and no misuse was found."

It has been mentioned by the officer that computer started raising DLDS code bills from December 1998 onwards but not a single bill was paid fully. Therefore, the case of the petitioner is covered by office order dated 6.7.1999 as well as 3rd November, 1999 and no misuse can be levelled simply on the basis of stray remarks made by the Meter Reader as well as on the basis of "misuse reported" remarks. More so, this is not permissible on account of the fact that the petitioner after exercising due vigilance had made a protest on 3rd April, 1997 protesting against the "misuse reported" being printed on the bills and on site verifications the claim of the petitioner was found to be justified. It is not the case of the Department that any show-cause notice was given as there is no such report in the K. No. file.

The assessment of misuse from 22.10.1993 to 1.2.1997 was made in June-July 2001 on the basis of the detection/remarks made by the Meter Reader against the reading of 22.4.1994.

In view of the above, it is agreed and settled that no misuse shall be charged and the assessment of misuse shall be withdrawn. The demand shall be revised on actual consumption basis up to date of disconnection of supply as per MSR-15 register plus six months MG and meter rent of the sanctioned load after the date of disconnection of the supply plus cost of both the meters. The LPSC on the outstanding if found payable can be charged only upto the date of disconnection of supply."

18. THOUGH, the OP claims to have followed Section 24 of the Indian Electricity Act, 1910 the order of the Permanent Lok Adalat is crystal clear that the OP has wrongly imposed Misuse Charges on the complainant and further went to the extent of disconnecting the power supply which was restored after more than one year. The complainant has claimed compensation for deficiency in service. Records of the case and orders of the Permanent Lok Adalat proves that there has been deficiency in service on part of the OP.

19. THE prayers made by the complainant have been set out (supra). As the first three prayers have been answered, we do not propose to look into the same. The complainant has claimed Rs. 11,20,000 to be awarded as compensation for the loss suffered by him as the premises could not be put to use due to illegal disconnection of the power. The complainant has placed on record the Lease Deed with the Hindustan Motors Limited which shows that the complainant had an Agreement from 1.11.1997 to 31.11.1999 @ Rs. 80,000 per month. The Lease Deed also shows that the Complainant had received an advance of Rs. 4,80,000 interest free security deposit while giving the premises on lease which was to be adjusted towards the rent for the last four months of the lease period security deposit while giving the premises on lease which was to be adjusted towards the rent for the last four months of the lease period and also Rs. 1,60,000 were to be adjusted towards full payment of telephone dues by the lessee, etc. Though, the complainant has claimed loss of rent to the tune of Rs. 80,000 for 14 months, we deem it fit to award a sum of Rs. 8 lacs as the complainant could have taken some time to secure a fresh tenant and also spent some money to repair and repaint the premises before giving it to new tenant. During the hearing the learned Counsel prayed for reasonable interest on the awarded amount towards loss of rent of the premises which could not be leased out due to lack of electricity power which is an essential requirement. This amount of Rs. 8 lacs shall be paid with interest @ 9% p.a. from the date of filing of the complaint till the date of payment.

20. THE complainant has claimed Rs. 3 lacs towards compensation for the loss of fittings, fixtures and materials looted from the premises due to burglary for which the FIR was filed. The complainant is responsible for the security of the premises. The complainant could have engaged a professional security agency for round the

clock security of the premises, we do not propose to award any compensation towards loss due to burglary.

21. THE complainant has also claimed Rs. 10 lacs towards special damages for mental agony and torture suffered by him. In view of the fact that we have awarded interest on loss of rent, we do not propose to award separate compensation towards mental agony. OP shall also pay Rs. 20,000 as cost. Complaint allowed.