

(1996) 10 NCDRC CK 0069

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

SUB DIVISIONAL OFFICER,
H.S.E.B.

APPELLANT

Vs

ASHOK COLD STORAGE,
JAGADHRI

RESPONDENT

Date of Decision: Oct. 11, 1996

Citation: 1997 1 CPC 276 : 1997 1 CPJ 470

Hon'ble Judges: M.R.Agnihotri , S.Kulwant Singh J.

Final Decision: Appeal accepted

Judgement

1. HARYANA State Electricity Board has come up in appeal against the order dated 28th March, 1995, whereby complaint of M/s. Ashok Cold Storage for refund of the balance amount of security with 12% interest has been allowed and also a refund of Rs. 11644/- with 12% interest from 9th November, 1994 till the date of payment, has been granted.

2. COMPLAINANT, who has got a commercial electricity connection for the cold storage approached the District Forum, Jagadhri with the grievance, that though the electricity connection stood permanently disconnected w.e.f. 27th October, 1993 and the entire pending dues had been cleared, yet the security amount of Rs. 42,830 A had not been refunded. Later on a refund of Rs. 31,186/- was made to the complainant on 9th November, 1994 but the remaining amount of Rs. 11,644/- still remains to be paid. In their reply, the H.S.E.B. pleaded that according to the condition No. 12 of the agreement executed by the complainant with H.S.E.B., the material used at the time of grant of electricity connection to the consumer has to

be treated as the property of H.S.E.B., after the disconnection of the electricity connection, no matter it might have been supplied by the consumer himself. Despite all this, the learned District Forum took the view that this condition was very oppressive and could not be enforced as the complainant might have spent Rs. 50,000/- on the material of which the H.S.E.B., could not become the owner. In these circumstances, the complaint was allowed by directing the H.S.E.B. to refund the whole amount with 12% interest thereon.

In the appeal before us, the learned Counsel for the appellant has vehemently contended, that the complainant had entered into an agreement with H.S.E.B., condition No. 12 whereof empowered the H.S.E.B., to claim the material of the disconnected connection. The learned District Forum could not declare the condition as oppressive. Therefore, the order of the District Forum deserves to be set aside. After hearing the learned Counsel for the parties and having gone through the record, we find merit in the contention of the learned Counsel for the appellant-H.S.E.B. Inasmuch as it is beyond the competence and the jurisdiction conferred by the Consumer Protection Act on the District Fora to question the correctness, validity or constitutionality of a certain provision. It is for the Civil Courts or the Hon''ble High Court in writ jurisdiction to pronounce upon the same. Therefore, the complainant being bound by the agreement entered into by him at the time of grant of electricity connection cannot be permitted to back out from the same. So far as the decision reported as *M/s. Gurunath Travels v. Dr. A.P. Paliwal II* (1994) CPJ 56 (NC)=1994 (2) C.P.C. 95 is concerned, reliance placed by the learned District Forum is wholly misplaced. In the majority decision, the Hon''ble National Commission has nowhere held that under the Consumer Protection Act jurisdiction vests with the Forum to pronounce upon the correctness or reasonableness of a certain provision statutory or otherwise. The complainant may in an appropriate case approach the Civil Court for the redress of his grievance if a particular condition is oppressive, unreasonable or illegal. Consequently, we accept the appeal filed by the H.S.E.B., set aside the order passed by the learned District Forum and dismiss the complaint. Appeal accepted.