

(1995) 05 NCDRC CK 0055

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

RASI ENGINEERING
WORKS

APPELLANT

Vs

COMMISSIONER,
COIMBATORE
CORPORATION

RESPONDENT

Date of Decision: May 10, 1995

Citation: 1995 2 CLT 148 : 1995 2 CPR 224 : 1995 3 CPJ 15 : 1997 1 CPC 108

Hon'ble Judges: V.Balakrishna Eradi , B.S.Yadav , S.S.Chadha , R.Thamarajakshi , S.P.Bagla
J.

Advocate: R.Sama Rao , Mohana , M.A.Chinnasvamy , R.Mohan

Final Decision: Partly Allowed

Judgement

1. -THIS appeal and the cross-appeal F.A. No. 291/93 have arisen out of the order dated 9th June, 1993 of the State Commission, Tamil Nadu at Madras. THIS order will dispose of both the appeals.

2. THE bare facts are these. THE Complainant purchased a vacant plot of land in Bye-Pass Road, Coimbatore in S.F. No. 61/1, 63/2, 63/5 and put up a factory for the manufacture of weighing scales. THE Complainant applied to the Opposite Party for the supply of electrical energy needed for the manufacturing process. THE Complainant was granted two service connections namely one bearing No. 56172 for running a machinery of 3 K.V.A. and the second bearing No. 56173 for lighting. In the year 1983, the Complainant applied for the grant of an Industrial Load of 6 H.P. THE Opposite Party did not sanction the load applied for on the plea that the

area in which the Complainant's factory is located does not come under the jurisdiction of the Opposite Party and therefore, the matter was referred to the Government for obtaining sanction under Section 27 of the Indian Electricity Act, 1910.

In the meanwhile service connections of the Complainant were inspected by the Anti Power Theft Squad on 5.8.85. It was found that the Complainant had connected the load of 8 H.P. to 3 K.V.A. connection and the Opposite Party ultimately disconnected the supply on 7.8.85. The Opposite Party held that the Complainant had committed an illegal action and malpractice causing loss to the Opposite Party, and levied a sum of Rs. 1600/- as penal rate and directed the Complainant to pay the amount. The Complainant filed a suit being Suit No. 1334 of 1985 before the District Court, Coimbatore against the Opposite Party challenging the threatened disconnection and the penal rate and obtained interim injunction on 7.8.85. According to the Opposite Party the disconnection was effected on 7.8.85 before the order of the District Munsiff was received and it was reconnected after the receipt of the order.

The Government of Tamil Nadu in G.O.Ms. No. 714 dated 24.3.86 sanctioned the grant of additional load and permitted the Opposite Party to give power of 6 H.P. to the Complainant's factory. There was delay in the grant of additional load because according to the Opposite Party when a consumer is in arrears of electricity charges, he is not entitled for new connection without clearing the dues. The Complainant filed I.A. No. 1954/86 in the Court of District Munsiff and obtained an order dated 18.11.86 granting an interim mandatory injunction directing the Opposite Party to give additional power load of 6 H.P. which was later energised on 17.12.86. The suit has ultimately been decreed but an appeal being Appeal No. 52/92 filed by the Opposite Party is pending.

3. THE Complainant also filed on 26.3.87, another application for extra load of 8.75 H.P. According to the Complainant it had complied with all the formalities and deposited the requisite amount under the rules but the additional power was neither sanctioned nor connected. On 13.11.87 the Opposite Party sent a letter saying that the said application shall be considered only on the disposal of O.S. No. 1334/85 filed by the Complainant or upon the withdrawing of the said suit. THE Complainant filed Writ Petition No. 12077 in the High Court of judicature at Madras seeking a writ of mandamus directing the Opposite Party to give the supply since the application for new connection was in no way connected to Suit No. 1334/85. THE Complainant also moved an application for grant of interim relief. THE application for interim relief was dismissed by learned Single Judge. A writ appeal

was preferred by the Complainant to the Division Bench. THE writ appeal was finally disposed on 27.6.88. It is apposite to reproduce the entire order:

"This writ appeal is preferred against the order made in W.M.P. No. 17735 of 1987 in W.P. No. 12077 of 1987 by Mohan, J., dismissing the petition which was filed for directing the respondent to give additional load of 8.75 H.P. to the Service Connection No. 80965 on payment of necessary charges pending the writ petition. From the records produced, it is seen that on the request made by the appellant, the Government of Tamil Nadu passed a special order notwithstanding the fact that the premises of the appellant lying outside the area of the Municipal Electrical Undertaking directing the Commissioner of Coimbatore Corporation to supply electricity with a load of 6 HP. THE Appellant then applied for an additional load of 8.75 H.P. under application dated 26.3.87 addressed to the Corporation. THE Corporation passed the impugned order stating that the appellant's application for additional load will be considered only after the disposal/withdrawal of the case O.S. No. 1334 of 1985 which is now pending before the District Munsiff, Coimbatore. In our view, the impugned order dated 13.11.87 cannot be sustained because the question of disposal/withdrawal of the case is not a matter connected with the request of the appellant. Hence we quash that order. THE earlier order granting a load of 6 HP has been passed by the Government only as a special case in G.O. Ms. No. 714, Public Works Department, dated 24.3.86. Hence it is for the appellant herein to approach the Government for the additional load and depending upon the decision to be taken by the Government, the Corporation will accordingly act. THE writ appeal is ordered accordingly. No costs."

The Complainant made yet another application for additional supply of energy of 39.5 H.P. on 8.7.88 with a payment of Rs. 200/- as required under the rules. According to the Complainant the Opposite Party has granted installation licence for total capacity of 16 H.P. and 39 H.P., yet the power supply has been refused on most untenable grounds. The Complainant in his complaint prayed for direction to the Opposite Party to immediately give the new connections for power supply of 8.75 H.P. and 39.5 H.P. to his unit and also prayed for a compensation of Rs. 6,08,000/- under several heads as given in the complaint.

4. THE State Commission in the order under appeal has directed the Opposite Party to pay compensation to the Complainant in the sum of Rs. 50,000/- for failure to give additional load of 8.75 H.P. and 39.5 H.P. for the period till the filing of the complaint and also directed the Opposite Party to pay to the Complainant compensation in the sum of Rs.1,000/-per month for the period from the date of the complaint till the

above two additional loads are supplied and also to pay a sum of Rs. 3,000/- as costs to the Complainant.

So far as the claims arising out of the alleged deficiency in service due to the failure of the Opposite Party for granting the load of 6 H.P. is concerned, the State Commission rightly held that the claim for compensation is stale one, hopelessly time barred. The connection had been given on 17th December, 1986 when the cause of action for damages arose and the complaint should have been filed within three years therefrom. The complaint was filed only on 18th June, 1992 and thus the complaint on that basis fails. No fault can be found, in our view, with the reasoning and conclusion arrived at by the State Commission on that score.

The main submission of the Counsel for the Opposite Party is that the Complainant had already moved the High Court for not getting new connection and the Hon'ble High Court had directed the Complainant to approach the Government for getting the appropriate orders. In the absence of specific orders passed by the Government, the Complainant was not entitled to a new connections and, therefore, any consequential alleged damages cannot be agitated before the Redressal Forums. There is great merit in this submission.

5. THERE is a clear finding of fact inter-se parties that the factory of the Complainant is located outside the area of distribution of the Opposite Party. This question could not be investigated once again in the Consumer Forum for coming to a different conclusion. The finding of fact that "that the premises of the appellant is lying outside the area of the Municipal Electrical Undertaking" in the writ jurisdiction is binding on the parties.

6. THE State Commission did not correctly appreciate the controversy in the writ petition and formed an erroneous opinion that the later part of the order of the High Court is Obiter Dicta. THE relief claimed by the Complainant in the interim application in the writ petition was for a direction to Opposite Party to give additional load of 8.75 HP to the service connection on the payment of necessary charges pending the writ petition. This relief was dependent on the finding whether the factory of the Complainant was lying within or outside the area of the Opposite Party. After the High Court came to the conclusion that the factory of the

Complainant was outside the area, no direction could be issued or was issued for grant of additional load of 8.75 H.P. to the Complainant. THE grant of interim relief to the Complainant was refused as not granted after quashing the impugned order of 13.11.87. THE High Court left it to the Complainant to approach the Government for the additional load. THE Opposite Party was to act according to the decision of the Government. THE Complainant has not approached the Government for sanction. In the absence of the sanction of the Government, it cannot be said that there is any negligence or deficiency in service on the part of the Opposite Party in its alleged failure to grant the additional load of 8.75 HP. Similar would be the position with regard to the additional load of 39.5 H.P. As a result F.A. No. 291 of 1993 is allowed and the impugned order of the State Commission dated 9.6.93 is hereby set aside and the complaint dismissed. Consequently F.A. No. 284 is dismissed. THE parties shall bear their own costs throughout. Ordered accordingly.