
(1992) 02 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

ASSTT. ENGINEER, P.H. RENT SUBDIVISION

APPELLANT

Vs

BIDYASAGAR SHAW

RESPONDENT

Date of Decision : 29-02-1992

Acts Referred:

Citation : 1992 1 CPR 709 : 1993 1 CPJ 287

Hon'ble Judges : S.C.Mohapatra , R.N.Panigrahi , J.Patnaik J.

Final Decision : Appeal allowed

Judgement

1. OPPOSITE party is appellant in this appeal.

2. UNDISPUTABLY complainant a consumer of water supply by opposite party. In 1968, water supply connection was given on approved plan. Charges for water supply were required to be paid on meter reading. Meter became defective for some time. When a demand of more than Rs. 9,000/- was served on complainant this complaint was filed on 28.3.1991. Case of opposite party is that water connection plan was sanctioned in favour of Gopal father of complainant since 1968. Consumer was paying the charges on the basis of meter reading up to April, 1972. Since May, 1972 to January, 1973 meter was out of order and in February, 1973 only it was repaired to function which continued up to June, 1973. On the basis of actual meter reading amount was calculated to be Rs. 58/- and average monthly consumption was Rs. 11.60 per month. From May, 1972 to January, 1973 complainant was to pay at the rate of Rs. 11.60 per month. From August, 1973 the meter was out of order till end of December, 1979 and on the same average consumption complainant was to pay. Meter was replaced in January, 1980 and functioned till January, 1981. According to actual meter reading complainant was intimated to pay Rs. 48/-. Meter went out of order in February, and March, 1981 and the average consumption for these 2 months comes to Rs. 18.22. The demand was thus revised and complainant was to pay Rs. 1,069/- for the period ending in March, 1981. A general survey was made in Madhusudan Nagar and complainant was served with a provisional notice with a part demand for the period from April, 1981 to December, 1987 which came to

Rs. 5,929/-. On 22.1.1988 the bill was subsequently revised up to January, 1991 and the amount of Rs. 9849/- has been de- manded. It is stated that the complainant has made major addition and alternation in public health installations by having overhead tank, sump and there is increase of taps beyond the sanctioned plan by deviating from the Rules. As yet, the violation has not been regularised.

On the basis of the aforesaid statement, District Forum has passed the order to charge at the average rate as indicated in the order accepting case of the complainant which is grievance of opposite party in this appeal.

3. APPELLANT has filed the rules relating to water charges at different times in this appeal. Respondent has also filed objection to the same. Mr. D. Das, learned Additional Standing Counsel submitted that the complainant is not a consumer within the meaning of the Consumer Protection Act (hereinafter referred to as "the Act"). This submission requires careful consideration.

4. CONSUMER is a person who pays for the goods purchased and pays for the hire of service. Water is no doubt goods. But essentially, supply of water is service rendered. Payment is made essentially for the service rendered though charges are calculated on quantity of water supplied. However, there is a minimum charge which would not be in case of sale. Thus, supply of water is essentially a service, although the water supplied is goods and any defect in goods would make a supplier liable under the Act. This is both purchase of goods as well as hire of services. Where the consumer suffers on account of such supply of defective water or when service including demand of charges is deficient, complainant as the consumer can make a grievance. Demand of hire charges more than the rate amounts to deficiency in service. In the present case, there is dispute relating to the period for which the meter was out of order. There is dispute relating to the volume of water supplied while complainant states that the pressure was low and period of supply was half an hour per day. Opposite party has stated that the supply was regular and there was no deficiency. Government resolution and rules which regulated the rate of charges have not been considered by the District Forum. Grievance of appellant that no evidence was taken and no inquiry was made before the order was passed. On perusal of the order sheet we find that both parties were heard on 1.6.1991. It does not appear that any party requested District Forum for bringing to record any material. District Forum cannot be blamed if on the materials it heard a party in the circumstances of the case.

5. IT will not be out of place to mention that the order of District Forum should be speaking order. There should be clear findings based on reasons since appeal is provided for against the order. Since it is Civil dispute and a person having judicial experience is the President, we expect that the judgment as in Civil Suit should be passed. While considering the dispute, District Forum should always remember that by rules, time limit for disposal is fixed. The said rules should be adhered to. Where it is not possible reasons therefor, should be reflected in the

order itself. There is no scope for grant of adjournment to opposite parties. This should also be kept in mind. IT is for the opposite party to take care to present its case within the time stipulated.

6. IN conclusion, the nature of dispute requires reconsideration. Order is accordingly, set aside, District Forum is directed to consider the complaint afresh after giving opportunity to parties to produce materials for explaining the same in support of their respective cases. Since the disputes relates for a period up to January, 1991 District Forum shall give opportunity to complainant to amend the complaint to bring any dispute up to date if so advised. IN case of amendment, opp. party shall get chance for filing additional statement of its case. IN case no amendment is made by the complainant within the time to be stipulated by the District Forum, this complaint shall be heard in respect of grievances till January, 1991 and complainant may file complaints in respect of the other periods in future. In the result, appeal is allowed. There shall be no order as to costs. Send back the records and one copy of the affidavit and counter affidavit with documents which have been filed in the Commission. No costs. Appeal allowed.
