(2010) 04 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

B S E S Yamuna Power Limited APPELLANT

Vs

Retired And Retiring Government Employees Cooperative Group Housing Society RESPONDENT

Date of Decision : 07-04-2010

Acts Referred:

Citation : 2010 4 CPJ 372

Hon'ble Judges : Ashok Bhan , S.K.Naik J.

Final Decision : Revision Petition allowed.

Judgement

1. BSES Yamuna Power Ltd., the petitioner herein, which was the opposite party before the District Consumer Disputes Redressal Forum (East), Convenient Shopping Centre, Saini Enclave, Delhi (for short, "the District Forum") has filed the present revision petition against the order passed by the State Consumer Disputes Redressal Commission, Delhi (for short, "the State Commission") wherein the appeal filed by the petitioner was partly allowed.

2. THE respondent-Retired and Retiring Government Employees Cooperative Group Housing Society Ltd., which is a registered society applied for two temporary electricity connections from the petitioner in the year 1994. The electricity connection K.No. 642002418 was sanctioned for domestic light and all the 259 occupants of the respondent-society drew light from the said connection. Respondent-society was given power supply through the said temporary connection, which in turn supplied electricity to all 259 occupants of the society. The said connection remained in operation till 20th August, 1996 whereafter independent electricity connections were installed in all the flats. Another electricity meter against temporary electricity connection No. 642002419 NH was installed in the respondent-society''s premises for water boosting and common light. Later on the same was made permanent which is still running and there is no dispute about this connection. The respondent-society had deposited a sum of Rs. 27,53,675 on 16th June, 1993 towards cost of electrification in order to obtain permanent connections for the said two temporary connections. The said

two connections were made permanent i.e. connection No. 23305124008 for domestic and connection No. 123030090108 for water boosting. The permanent connection was granted on 20th August, 1996 and till such time the respondent-society consumed 1057914 units in Connection No. 642002418 from April 25, 1994 and the outstanding was a sum of Rs. 18,60,304. The said due was raised against the respondent treating the connection No. 642002418 to be a single connection which was supplying electricity to all the 259 occupants. Respondent-society questioned the same and filed Civil Writ Petition No. 36 of 1995 before the High Court of Delhi. According to the respondent connection No. 642002418 should have been treated for 259 occupants as a separate meter for the individual and raise the bill accordingly. The respondent, in the said writ petition, sought a direction to Delhi Electricity Supply Undertaking [Unit] of which the petitioner is the successor to charge the normal tariff with slabs as applicable to the domestic consumer and further to pay interest of an amount of Rs. 7,15,962 due to the respondent-society as on 20th August, 1996 on the above mentioned deposit of Rs. 27,53,675 from June 16, 1993 as the DESU could not complete the work within stipulated time. The writ petition came up for hearing before the High Court on March 13, 1995 and the High Court directed the (then) Director, Electronic Data Processing (EDP) of DESU to give a hearing to all the occupants of the society or to its Secretary and to pass an appropriate order to quantify the amount due and payable by each of the flat occupant so that each of the flat occupant pays his separate bill based upon the electric meters which were reported to have been already installed in each of the distinct premises on various dates.

3. PURSUANT to the above order, Director, EDP after granting hearing to the parties passed a speaking order on April 19, 1995. In terms of the said order the society was allowed normal tariff from the billing month of June, 1994 i.e. the rate applicable for non-domestic and domestic connections. On the issue of slabs and interest the EDP gave the following directions: "The issue of slabs and interest were considered. For the non-domestic connection, there is no complication of slabs. The charges shall be as per the tariff. For the domestic connection, since the connection is single, only one slab is applicable as per the tariff. Further, this leads to accounting complications for DESU as well as to the Society if individual slabs are considered because the flats were occupied at different points of time. As far as interest is concerned, DESU has no past history of paying the interest for delaying the works. Also, giving slab and interest will amount to double benefit to the Society. Hence, the undersigned has chosen the middle path. It is advisable to stick to the tariff treating the domestic connection as single connection and giving single slab but at the same time the Society should get the credit of interest (a) 1% (per cent) per month of the deposit of Rs. 27,53,675. The consumer will get this amount in his bill from June 1994 onwards. This will offset the slab that is due to the Society/consumers."

(Emphasis supplied)

4. FROM the above order it is clear that the domestic connection was to be treated as a single connection and one slab was to be given. At the same time, the society was to be given credit of interest at the rate of 12% per annum on the deposit of the amount of Rs. 27,53,675. In continuation of the order dated April 19, 1995, the (then) Director, EDP passed another order dated 21st July, 1995 granting interest on the deposited amount of Rs. 27,53,675. The relevant portion from this order is reproduced below: "To avoid complication and further harassment to the members of the Society, it was decided that it will be more appropriate if the interest @ 1% per month i.e. 12% per annum on the deposit of Rs. 27,53,675 as decided in the earlier order dated 19.4.1995 is credited in the monthly bill from June, 1994 onwards raised at the normal tariff rate. For the purposes of consumption of the tariff, the normal tariff for domestic connection shall mean as follows: (a) 0-100 units Rs. 0.60 paise per unit (b) 101-200 units Rs. 1.00 paise per unit (c) 201-300 units Rs. 1.80 paise per unit (d) 301 and above Rs. 2.40 paise per unit

5. IN August 1998, respondent filed CM. No. 8164/98 in C.W.P. No. 36/1995. The High Court referred the case to Permanent Lok Adalat vide order dated 6.8.1999 passed in C.M. No. 8164/98.

6. RESPONDENT-Society pursuant to the direction of the High Court filed an application before the Permanent Lok Adalat which on taking up the matter noted in its order dated September, 9, 2002 that the respondent had contended that the order dated 21st July, 1995 passed by the Director, EDP was not complied with by the Department/DESU. Accordingly, the society filed CM No. 1894 of 1996 in the C.W.P.No.36 of 1995. The said CM along with two other CM''s was disposed of by the High Court, Delhi vide its order dated 26th September, 1996. The relevant portion of the said order reads as follows: "Learned Counsel for the petitioner submits that since most of the relief has already been granted to the petitioner, the petitioner would be satisfied on orders being made directing DESU to comply with the order of Mr. Y.N. Reddy, Director, EDP dated 21st July, 1995 (Page 116) directing payment of interest @ 12% bill from June, 1994 onwards, which were raised at the normal tariff rate. Learned Counsel for the petitioner submits that credit for interest is required to be given upto the date of permanent connection to the petitioner which was granted in the month of August, 1996. Learned Counsel for the DESU submits that DESU has no objection in giving credit to the petitioner on account of interest in terms of decision of Mr. Reddy dated 21st July, 1995. It is ordered accordingly. The DESU will give credit to the petitioner of interest at 12% p.a. from June, 1994 till grant of payment connection in terms of decision of Mr. Reddy dated 21st July, 1995."

7. FROM the above order it is clear that the only prayer made on behalf of the respondent was to direct the DESU/DVB to comply with the order dated 21st July, 1995 passed by the (then) Director, EDP and to direct the DESU/DVB to pay interest @ 12% per annum and for that credit be given in monthly bills from June, 1994 onwards which were raised at the normal tariff rates. Another plea

taken by the respondent before the Permanent Lok Adalat was that the credit for interest was required to be given up to the date of permanent connection to the petitioner which was granted in the month of August, 1996. There was no prayer that the order passed by the (then) Director, EDP was wrong to the extent that the domestic connection has been treated as a single connection and one slab was allowed as per tariff. But during the course of arguments before the Permanent Lok Adalat the respondent contended that as per order dated 26th September, 1996 passed by the High Court, DESU was required to bifurcate the amount payable by the respondent against the single domestic connection amongst the individual members of the society and thereafter to apply the slab system. Thereafter, the Permanent Lok Adalat, in its order dated 9th September, 2002, passed the following order: "The Learned Legal Officer, on instructions, from XEN (D) LNR, however, submitted that from the order dated 19.4.1995 which was re-iterated in the order dated 21.7.1995 passed by the (then) Director, EDP, it is clear that the domestic connection of the petitioner was a single connection and as such slab was made applicable as per the tariff, against this one connection. After going through the orders dated 19.4.1995 and 21.7.1995 passed by the (then) Director, EDP, and the order dated 26.9.1996 passed by the Hon''ble High Court, there appear to be merit in the submission made by the Learned Legal Officer. In the order dated 19.4.1995, it is clearly stated by the (then) Director, E.D.P. that since the domestic connection was single, only one slab was applicable as per the (prevalent) tariff. It was further stated, that since the society was being given interest @ 1% per month on the deposit of the abovesaid amount, the slab system cannot be made applicable by first dividing the amount of the single connection amongst individual members and then applying the slab system."

8. THE petitioner in pursuance to the direction of the order passed by the High Court raised a bill treating connection No. 642002418 as a single connection and one slab. Respondent, thereafter, filed the complaint before the District Forum which was decided on Novermber 23, 2004. The District Forum after taking into consideration the pleadings and the evidence led by the parties directed the petitioner to revise the bill of the respondent-society from 25th April, 1994 to 20th August, 1996 for consumption of 1057914 units at the rate prescribed by the order of the Director, EDP dated 21.7.1995 after giving slab of 259 occupants and credit of payment made by the respondent against connection No. 642002418 and to add the revised amount in the NH connection of the respondent i.e. 123030090108 within one month.

9. AGGRIEVED by the order passed by the District Forum, the petitioner filed an appeal before the State Commission. The State Commission partly allowed the appeal and directed the respondent-society to pay the arrears for the period from 25th April, 1994 to 20th August, 1996 on the basis of slab of 259 occupants if already not raised or paid by the respondents. The aforesaid bill was directed to be raised within 15 days whereafter respondent was granted one month''s time to make the payment. The petitioner was directed not to take any coercive steps

for disconnection of the electricity till then. The relevant observations of the State Commission read as follows: "11. Having accorded careful consideration to all the facts and circumstances, particularly the circumstances of Director, EDP having granted interest on the amount of Rs. 27,53,675 and having ordered for giving slab of 259 occupants, we in the interest of equity, good conscious and justice and to bury the hatchet once for all maintain the direction of the District Forum giving endorsement to the order of the Director, EDP as even otherwise the single connection was being used by the occupants in the residential society. It is not the case that the appellant has been deprived of the charges of electricity consumed by the 259 occupants, may be through a single slab system. We are also not unmindful of the fact that the appellant took three years in converting the connection and forced the respondent society to file writ petition in the High Court. It was on the direction of the High Court that the Director, EDP passed the aforesaid order and, therefore, we have no reason to deviate from the view taken by the Director, EDP. In the result, we partly allow the appeal directing the respondent to pay the arrears for the period from 25.4.1994 to April, 1996 on the basis of slab of 259 occupants if already not raised or paid by the respondents. Aforesaid bill shall be raised within 15 days whereafter respondent shall be granted one month time to make the payment and till then no coercive steps for disconnection of electricity shall be taken by the appellant.

10. LEARNED Counsel appearing for the petitioner contends that the Consumer Fora have no power to entertain, adjudicate and decide a matter which has been conclusively decided by the High Court in the writ petition filed by the respondent. That the Fora below have exercised its jurisdiction erroneously, in an illegal and arbitrary manner and virtually overruled the decision given by the High Court. The order passed by the High Court was on consent and the petitioner was stopped from challenging the same. That the benefit of slab applicable on a single meter could not be divided amongst 259 occupants which would be contrary to the order dated 21.7.1995 passed by the Director, EDP and confirmed by the High Court of Delhi. That the impugned order would give a double benefit to the respondent-society which has already been given adjustment on the account of interest as per order of the Director, EDP. As against this, learned Counsel for the respondent contended that in the original bill raised by the respondent no arrears were shown for the year 1994-1996 and the Electricity Board could not claim arrears for the period 1994-1996 after a lapse of 9-10 years.

11. COUNSEL for the parties heard at length. The principle grievance of the respondent-society before the High Court was of not granting the permanent connection despite deposit of charges amounting to Rs. 27,53,675. The essence of the order dated 21.7.1995 passed by the Director, EDP was to compensate the respondent with regard to the deposit of Rs. 27,53,675 lying with the DESU and simultaneously to find the solution to the slab applicable to the existing connection, benefit from which was being derived by the various occupants. The issue of slab was specifically raised before the High Court as relief was sought in

prayer Clause (B)(III)(i), which was considered by the High Court as well as by the Director, EDP. After due consideration and appreciation of facts and the issues, the prayer for slab on the basis of 259 occupants was declined and to compensate the respondent with regard to the deposit of Rs. 27,53,675, interest was given @ 12% from the date of deposit. The order of the High Court attained finality. In view of the finality acquired on the issue, the District Forum as well as State Commission could not reopen the issue and give a fresh adjudication, which runs contrary to the order passed by the High Court.

12. THE observations in the impugned order passed by the State Commission that the arrears which were being claimed by the petitioner pertain to the year 1994-1996; that it would be too much to ask the respondent to pay arrears of the year 1994 to 1996 in the year 2006 on the single slab system. The observation and the reasoning of the State Commission is absolutely erroneous as the same runs counter to the Order passed by the High Court with the consent of parties. Estoppel would operate against the respondents and they cannot be permitted to reagitate an issue which had already been decided by the High Court of Delhi at their instance.

13. THE finding of the State Commission in the impugned order that the Director, EDP in its order dated 21.7.1995 ordered the petitioner to revise the bill by sanctioning slab of 259 occupants after giving due credit of the permanent connection against the credit of payment made by the respondent against the connection in question is wrong. On the contrary the relevant observation of the order dated 21.7.1995 passed by the Director, EDP had not granted the slab benefit in respect of 259 occupants. The connection was to be treated as a single connection and the respondent was compensated in the form of interest on the amount deposited by the society. The Fora below have clearly erred in recording finding contrary to what had been decided and agreed upon between the parties before the High Court. For the reasons stated above, the Revision Petition is accepted. Orders passed by the Fora below are set aside and the parties are directed to strictly comply with the directions given by agreed Order issued by the High Court. Revision Petition allowed.

