
(2011) 07 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

BSES Yamuna Power Limited

APPELLANT

Vs

R.R.Auto

RESPONDENT

Date of Decision : 28-07-2011

Acts Referred:

Citation : 2011 0 NCDRC 517 : 2011 3 CPJ 333

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Final Decision : Revision Petition is allowed

Judgement

1. PETITIONER which was the Opposite Party before the District Consumer Disputes Redressal Forum (for short, the District Forum) has filed this Revision PETITIONER challenging the legality of the Order passed by the State Consumer Disputes Redressal Commission (for short, the State Commission) in Appeal No.836/06 whereby the State Commission has disposed of the Appeal filed by the PETITIONER holding that "other charges" mentioned by the District Forum in its Order dated 22.2.2003 means and include the "development charges". Facts giving rise to this Revision Petition are as under:

2. COMPLAINANT - Respondent herein applied for a commercial/industrial connection which was granted by the Petitioner on 30.1.1995 with the sanctioned load of 18 HP IP plus 1 KW IL i.e. equal to 14.428 KW. Respondent paid a sum of Rs.20,100/- . Thereafter in December, 1995 taking benefit of the Voluntary Disclosure Scheme, Respondent applied for enhancement of load of 17 KW and paid the requisite amount of Rs.23,800/- vide receipt No.006572 on 18.12.95 for load enhancement from 15 KV to 32 KV. The load of the Respondent was duly enhanced and meter with cable of adequate capacity was installed. On 20.3.1999 Respondent again applied for enhancement of load of 20 KW making the total load from 32 KW to 52 KW. The load of the Respondent was duly enhanced and meter with cable of adequate capacity was installed. During this period Respondent was to deposit LDC & SC of total enhanced of 52 KV. The Respondent deposited Rs.96120/- On 3rd January 2001 Respondent filed the complaint under Section 12 of the Consumer Protection Act, 1986 (for short, the Act) against the

Petitioner being complaint No. 59/2002. In the complaint, Respondent made the following averments: "(i). The Complainant is the registered consumer in respect of the electricity connection bearing K.No.JM-611-1554379/IX for standard load of 52 KW and has been making payment of bills till January, 2001. (ii) The industrial unit of Complainant was sealed on 3.1.2001 in view of orders passed by Hon"ble Supreme Court of India, as industrial units of Complainant was falling in the category of polluting unit. (iii) Complainant vide his letter dated 5.1.2001 asked for removal of meter and for providing him final bill. However, neither final bill was prepared nor meter was removed. Complainant sent another reminder letter dated 12.11.2001 in this respect. (iv) Complainant is entitled for the refund of security deposit with interest DVB rates which amount he had deposited to the tune of Rs.20,100/- vide receipt No.181154 dt.20.1.95 and receipt No.396512 dt.19.1.1995 for Rs.23,800/-. (v) Complainant averred that erstwhile DVB issued an office order No.ACE/C/CO.II/P.45/2001/3 dated 11.1.2001 stipulating that units which has been closed in compliance of the orders of the Hon"ble Supreme Court the billing shall be done upto the date of closure i.e. disconnection of energy. (iv) The act of DVB/Opposite Party of not providing final bill and also non removal of the meter of the said connection despite requests made repeatedly is an act of gross deficiency on their part also a violation of their administrative orders, for which the complainant deserves to be awarded a suitable compensation by the Hon"ble Forum".

Based on the aforesaid averments, Respondent inter alia prayed: "(i) Direct the staff/DVB officers to deliver final bill to the complainant upto the reading as was recorded on 3.1.2001 on the meter of the said connection when his connection was disconnected and his Industrial Unit was sealed by the SDM with further directions to remove the meter which is existing at site without supply connection. (ii) Award a compensation of Rs.10,000/- in favour of the complainant for the deficiency in service of DVB/its officers thereby causing mental agony and harassment to the complainant. (iii) Award litigation charges of Rs.2000/- in favour of the complainant with further relief if any, as deem fit by the Hon"ble Forum".

3. DISTRICT Forum vide its common order dated 22.2.2003 disposed of 5 complaints. Relevant portion of the order reads as under: "By this composite order we decide all the above said case in which respondents and facts are the same. The complainants had applied for fresh connection and deposited the necessary charged as per directions of the respondent. The connection was not energized and it was informed that there were some pending dues in respect of some other connections in the same premises and unless the dues were cleared, the connections could not be energized. Alleging deficiency of service, the complainants have moved the petition praying for the directions to the respondents to energize the connections in to the cost and compensation. However, during the pendency of the proceedings the complainant prayed for refund of security, preparation of the final bill and removal of the meter because they were not in need of the connections in view of the directions of the Hon"ble

Supreme Court regarding closure of polluting units in non-conforming areas and as such the complainants". It is observed that the connections were in the name of other and not the present complainants. Under the circumstance, we are of the view that the respondents are not entitled to recover the dues of somebody else from the present complainants especially when the same are also not recoverable being barred by law of limitation. We, therefore, direct the respondent to refund the security amount and other amounts deposited by the complainants along with the interest @ 15% per annum from the date of deposit by each of the complainant till the amount is actually refunded".. As regards the cost and compensation, the respondents shall pay to the complainant a sum of Rs.1000/- as compensation and Rs.250/- as cost of litigation to each of the complainants".

The order of the District Forum attained finality as no appeal was filed against the said order before the State Commission.

4. ON 17th March, 2004 Respondent filed application under Section 27 of the Act which was registered as Case No.169/2004. During the pendency of the execution proceedings, Petitioner paid the sum of Rs.28,194/- i.e. security deposit along with interest and compensation awarded by the District Forum by its order dated 20.2.2003. Respondent filed his objections stating that he had deposited a sum of Rs.1,20,970/- which was refundable as such with interest and now the due amount was Rs.1,25,286/- excluding the payment of Rs.28,194/-. District Forum rejected the Application by its order dated 6.6.2005 by recording the following findings: "(i). The first relief in the prayer is regarding the bill upto reading as was recorded on 3.1.2001, second relief is in respect of compensation and third relief in the prayer is regarding cost of litigation. (ii) No justice dispensing authority can grant relief beyond the scope of the complaint. (iii) It was not pleaded in the original complaint that load was never enhanced. The matter which was not the subject matter of the complaint cannot be considered at this stage. Consideration of such plea at the time of execution is against all cannons of law".

Aggrieved by the said order dated 6.6.2005, Respondent preferred the Appeal before the State Commission which was registered as First Appeal No.169 of 2004. The State Commission without issuing notice to the Petitioner disposed of the appeal by Order dated 31st May, 2006 and remanded the case to the District Forum to return a specific finding of fact as to whether the dues referred in the order dated 20.2.2003 had been paid by the Respondent with interest or not. District Forum after the remand of the matter disposed of the execution application by passing the following order dated 8.8.2006: "Sh.Sharma states that complainant deposited Rs.23,800/- on 18.12.95, 96120/- on 20.2.99, and Rs.1050 on 20.10.97. Hence, total amount is Rs.1,20,970/-. Both parties agree that amount of Rs.28,194/- was paid to complainant as security. Hence as per order of Hon"ble State Commission, OP is bound to pay Rs.92776/-. List on 29.8.06".

It would be seen that District Forum disposed of the execution application, without recording contention of either of the parties, by noticing that the Respondent had deposited in all Rs.1,20,970/- out of which Rs.28,194/- had been paid by the Petitioner to the Respondent and a direction was issued to the Petitioner to pay the balance amount of Rs.92776/-.

5. PETITIONER being aggrieved, filed the Appeal before the State Commission which has been dismissed by the impugned Order.

6. LEARNED counsel for the parties have been heard. In para 5 of the complainant, Respondent had asked for the refund of security deposit along with interest and no other amount. Para 5 of the complaint reads as under: "That it is submitted that the complainant is entitled for the refund of security deposit with interest at DVB rates which amount he had deposited to the tune of Rs.20,100/- vide receipt No.181154 dt.20.1.95 and receipt No.396512 dt.19.12.95 for Rs.23,800/- in terms of their own conditions of supply as he has to close his unit as per the orders of Hon"ble Supreme Court and so the use of electricity is beyond his control and he has no other alternative but to surrender the said electricity connection after clearance of the legitimate dues for which he has already made requests".

It is not disputed before us that the load as per the applications made by the Respondent had been enhanced twice for which Respondent had paid development charges. The development charges by nature are such expenses which are incurred by the service provider for providing the facility which in the present case was towards enhancement of the load twice i.e. from 15 KW to 32 KW and 32 KW to 52 KW. Respondent in his complaint had not asked for the refund of the development charges.

7. THE District Forum in its order dated 20th February, 2003 passed in the complaint had directed the Petitioner to refund the security amount and other amounts deposited by the complainants along with the interest @ 15% per annum from the date of deposit. Admittedly, security amount has been refunded to the Respondent. According to State Commission other amount would mean development charges, which had been paid by the Respondent to the Petitioner. It would be seen from the perusal of the original complaint and the order dated 20.2.2003 passed by the District Forum that issue of development charges was neither pleaded by the Respondent in his complaint nor considered by the District Forum in its order. No relief was sought by the Respondent for refund of the development charges. It was not pleaded in the original complaint that load was never enhanced. THEREfore, the respondent was not entitled to refund of the development charges. Consideration of such a plea at the time of execution cannot arise. In para 5 of the complaint the Petitioner had only asked for the refund of the security deposit of Rs.20,100/- along with interest which had already been refunded to the Respondent. Fora below have erred in directing the Petitioner to refund the development charges even when neither any such relief was prayed for in the complaint nor such a relief was granted in the final order

dated 20th February, 2003 passed by the District Forum. It was not pleaded in the original complaint that load was never enhanced. Consideration of such a plea at the time of execution cannot arise. In Para 5 of the complaint, Respondent had only asked for the refund of the security deposit of Rs.20,100/- along with interest which had already been refunded to the Respondent. Fora below have erred in directing Petitioner to refund the development charges even when neither any such relief was prayed for in the complaint nor such a relief was granted in the final order dated 20th February, 2003 passed by the District Forum. It was incumbent on the District Forum to give reasons while passing order dated 8th August 2006, especially when State Commission had remanded the matter to the District Forum to return a specific finding of the fact whether the dues referred in the order dated 20.2.2003 had been paid by the Respondent with interest or not. The State Commission failed to appreciate that the Order dated 8th August, 2006 was illegal as the conclusion arrived at by the District Forum was not supported by reasons. District Forum had directed Petitioner to pay Rs.92,076/- wrongly assuming that State Commission had directed the District Forum to order payment of Rs.92,076/- to Respondent. Fora below have erred in holding that "other charges" mean and include development charges. The development charges by nature are such expenses which are incurred by the service provider for providing the facility which in the present case was towards enhancement of the load twice i.e. from 15 KW to 32 KW and 32 KW to 52 KW. The development charges stand consumed. Therefore, the question of its refund could not arise.

8. FOR the reasons stated above, Revision Petition is allowed and the impugned order passed by the State Commission is set aside.