

(1993) 07 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

COATED ABRASIVE NR.GUJCOMASOL FACTORY	APPELLANT
Vs	
DEPUTY ENGINEER, GUJARAT ELECTRICITY BOARD	RESPONDENT

Date of Decision : 30-07-1993

Acts Referred:

Citation : 1994 3 CPJ 398

Hon'ble Judges : P.M.Chauhan , R.K.Shah J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the judgment and order by the District Consumer Disputes Redressal Forum, Mehsana dismissing the complaint, holding that the bill issued on the basis of slow running of the meter by 19.27% is legal and valid even though the meter was subsequently got tested in the laboratory by the respondents and found to be correctly running. It is submitted by Shri C.U. Shelat, learned Advocate for the appellant that the approach by the learned District Forum is quite erroneous and they have totally neglected to consider the laboratory test report which was admittedly in favour of the appellant showing that the meter was correctly running. The admitted facts are that the appellant is having connection No. I-1929 3 Phase 60 H.P. industrial power line and connection No. C-1929 Single Phase for lighting purpose. Both the meters are of the ownership of the appellant consumer. On August 25, 1992, the GEB officers from Palanpur checking squad visited the factory of the appellant and on preliminary examination they found that the meter was moving slow by 19.27% and the meter was removed and taken to Divisional Laboratory, Siddhpur for testing. The respondent informed vide letter dated 24.9.92 that the meter shall be tested at the laboratory on 1.10.92 after breaking *the seals at the Divisional Laboratory, Siddhpur and, therefore, the appellant should depute the representative to remain present during the test. Accordingly Mr. R. Bhattacharjee, Manager of the unit remained present and during the test it was found that the seals were intact and rotation of the meter was also found correct. The Laboratory test report was prepared on the basis of the findings and was countersigned by the representative of the appellant. However, the copy was not

supplied to the appellant inspite of the request and the meter was also not installed. The opposite party subsequently alongwith letter dated 1.12.92 sent the average bill and demanded Rs. 7,918.18 on the ground of slow rotation of the meter as alleged by the Palanpur checking squad. The appellant protested to pay on the basis of preliminary verification by the checking squad as according to the appellant the verification was not dependable and authentic in absence of any series test which is required before raising such demand as per rules. As the respondent insisted the complainant filed complaint before the District Consumer Disputes Redressal Forum, Mehsana, which dismissed the complaint.

2. IT is admitted fact that the meter was tested in the laboratory on 1.10.92 in the presence of the representative of the appellant. Mr. P.K. Pancholi, learned Advocate appearing for the respondent for admitted before us that the laboratory test was that the meter was running correct. Mr. Pancholi however asserted that it was not obligatory to send the meter to the laboratory as per the instructions in circular dated 29.10.92 by the Chief Engineer and, therefore, the laboratory test should be ignored. IT appears that such submission has appealed the District Forum and, therefore, the District Forum observed that as per the circular dated 29.10.92 it was not necessary to get the meter tested in the laboratory in case the meter is found rotating slow as per the preliminary enquiry. IT is also observed by the District Forum that the rotation of the meter in the laboratory cannot be ascertained and only the seals are required to be checked in the laboratory. With due respect, the observations by the District Forum cannot be accepted as it is against the very basic principles of meter testing in the laboratory. IT was never the contention of the respondents that only the seals are to be checked in the laboratory and not the movement of the meter. On the contrary, the officers of the respondents removed the meter for specific purpose and tested it in the laboratory and not only that but it was tested in the laboratory on 1.10.92 in the presence of the representative of the appellant and found correct and for that purpose even previous notice was given to the appellant. When the meter is found correct in the laboratory which is on the contrary more exact test, the respondents cannot prefer the bill on the basis of the preliminary checking of the meter at the installation. When there are two conflicting reports, and one of them is in favour of the consumer, it should be accepted. The laboratory test was carried out in the laboratory of the respondent and by the officers of the respondent and, therefore, in any circumstances the respondent cannot deny the fact and also cannot deny the benefit of it to the appellant. IT is surprising that inspite of that fact, the officers of the respondent tried to insist to give the bill on the basis of slow movement of the meter. The respondent had issued the commercial circular No. 602 dated 12.4.90 by which guidelines were issued in respect of slow working of meter. The instructions are that in case the meter is considered to be inaccurate such meters should be replaced immediately after collecting the necessary testing fees if the meter is required to be tested at the instance of the consumer on account of such meter being fast according to his representation. The instruction is also for preferring

the bill on the basis of the average of the previous three billing periods. IT therefore contemplates the testing of the meter. The instruction is that representative of the consumer may be advised to remain present during the testing of the meter. As such it appears that as per the said circular the meter was sent for testing; and the representative of the consumer was requested to remain present and he did remain present and the meter was found correct. The said circular does not appear to have been superceded by another circular but the instructions are issued by another distribution circular No. 549 dated 29.10.92 with regard to the instructions in case of tempering of the seals or missing of the seals. In that circular the instructions are that it was desired by the Chief Engineer (Distribution) that in case the meter is found slow at site during the preliminary checking then the meter should never be taken to the laboratory for laboratory test as laboratory condition is ideal condition where L.F., P.F., Earth resistivity, Voltage etc. are maintained perfectly. Whereas the site conditions may not be ideal and contradiction in the result will create legal complications. IT was, therefore, desired by the Chief Engineer that where the meter is found slow at the site a good tested meter in series should be provided with proper tampered proof arrangements for both the meters or with RSS meter at site so that both the conditions i.e. preliminary testing and final testing are simulated. IT is also stated that in case the meter is to be taken to the laboratory for panchnama/laboratory report the meter should be packed in card-box and then to be wrapped in paper and should be sealed. IT should be taken care of that the seals are preserved. Admittedly, the procedure desired by the Chief Engineer is not followed in the instant case. IT is clear from the circular letter that the laboratory conditions are ideal conditions and, therefore, the perfect result could be achieved. The factory conditions may not be so ideal. Therefore, there may be variation but it does not necessarily follow that in all the cases there should be variation. This circular also does not prohibit testing in the laboratory but only instructs as to in what manner the meter should be sealed. The circular does not say that the meter should be tested only for the purpose of testing seal. IT is not understood as to on what basis such observation is made by the District Forum. The instructions also are that a good tested meter in the series should be provided with proper tampered proof arrangement for both the meters or with RSS meter at site. That is done with the purpose that both the conditions i.e. preliminary testing and final testing are simulated. The officers of the respondent should have followed such procedure or method for testing. They did not do it and preferred to take the meter to the laboratory where it was found that the meter was running correct. Once the meter having been found to be running correct, the respondent cannot escape the findings and cannot issue the average bill on the basis of the preliminary report. As the instructions were not properly followed and as the bill is given on the basis of the preliminary report, it amounts to deficiency in service. The demand is also illegal and improper and, therefore, the respondent cannot claim the amount as demanded on the basis of the average bill. The appeal therefore should be allowed and it should be held that the meter being correct the demand on the basis of average

bill is not legal and proper and as such it should be set aside. The appeal is allowed. Order of Consumer Disputes Redressal Forum, Mehsana is set aside. IT is held that the meter was correctly running and was not running 19.27% slow and the demand of Rs. 7,918.18 by average bill is not legal and proper and is set aside. Bill if paid be refunded. Parties to bear their own cost of the appeal and complaint. Appeal allowed. _____