
(2006) 02 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

Dakshin Haryana Bijli Vitran Nigam

APPELLANT

Vs

PARIJAT POLYTHENE

RESPONDENT

Date of Decision : 08-02-2006

Acts Referred:

Citation : 2006 1 CPC 482 : 2006 3 CPJ 106

Hon'ble Judges : R.C.Kathuria , Banarsi Das J.

Final Decision : Revision Petition allowed

Judgement

1. CHALLENGE in this revision is to the interim order dated 29.6.2005 passed by District Forum, Faridabad whereby directions had been given to the petitioner-opposite party for restoration of the electricity supply to the premises of the complainant bearing account No. 2MS-518 on deposit of Rs. 1,34,000 being 30% of the determined amount as well as other directions which would be noticed at the appropriate stage.

2. PUT shortly, the facts as can be gathered from the record briefly stated are that the complainant was provided with connected load of 66.66 KW bearing account No. 2MS-518 at its premises located at plot No. 5-B situated in Sector 15-A, Faridabad by the opposite party. The complainant has been paying the electricity bills according to the consumption recorded regularly and the last bill amount was deposited on 30.5.2005. The details of the energy consumed for the period 30.12.2005 to 30.5.2005 have been given in para 5 of the complaint. On 12.5.2005 the complainant moved an application to the SDO (OP), East Old Faridabad to check and remove the defective meter installed at its premises. Thereafter the premises of the complainant was inspected by the vigilance staff of the opposite party and XEN M&P Faridabad was informed as per letter dated 1.6.2005, for the deployment of the staff to reopen the seal and to change the LTCT meter. The complainant purchased a new meter on 24.5.2005 from Hare Krishna Enterprises, Ballabgarh and got the same tested from M&P Palla. It is the case of the complainant that in its absence vigilance staff of the opposite party inspected the premises of the complainant and removed the meter after

disconnecting the electric supply to the premises of the complainant on 20.6.2005. Thereafter a memo bearing No. 627 dated 21.6.2005 was served upon the complainant wherein a demand of Rs. 13,40,000 was made on the allegations that M&P seals of the meter were found tampered and theft of energy was being committed. Forced by these circumstances, the complainant invoked the jurisdiction of the District Forum whereby it was alleged that the opposite parties with ulterior motive had caused harassment as they had also disconnected other meter of M/s Exquisite Enterprises Pvt. Ltd. bearing account No. ESI-210 and M/s M.G. Motors bearing account No. KK-21/0325 under NDS category. Terming the demand made in the notice bearing No. 627 dated 21.6.2005 issued by the opposite party as illegal and unjustified, directions had been sought for the restoration of the electric supply to the premises of the complainant. In addition a compensation amount of Rs. one lac was claimed on account of harassment and mental agony caused to the complainant. This complaint was instituted on 27.6.2005 and notice of the same was given to the opposite party for 29.6.2005. On appearance of the Counsel for the opposite party and after hearing them the impugned order was passed. The learned Law Officer representing the petitioner and learned Counsel representing the respondent have been heard at length.

The learned Law Officer representing the petitioner made a frontal attack on the legality of the impugned order dated 29.6.2005 passed by District Forum by making five-fold submissions. Firstly, that the District Forum without affording an opportunity to the opposite party to file reply to the complaint and the application seeking interim relief had decided the application which procedure has caused prejudice to the rights of the petitioner. Secondly, that the complainant was found indulging in committing theft of energy and for that reason action of the opposite party in disconnecting the electric supply to the premises of the complainant could not be termed as deficiency of service and for that reason the District Forum has no jurisdiction to grant the interim reliefs so detailed in the order. Thirdly, that while passing the impugned order, mandatory requirements of Section 13(3-b) of the Consumer Protection Act, 1986 have totally been ignored by the District Forum. Fourthly, that order of restoration of electric supply to the premises of the complainant without requiring to deposit the total amount of Rs. 13,40,000 so demanded in terms of the sales circular No. D-36/2004 issued under the provisions of the Electricity Act, 2003 (hereinafter referred to as the Act, 2003) was not sustainable. Fifthly, that the District Forum has no jurisdiction to stall the registration of the FIR by the opposite party against the complainant. Opposing the submissions made, the learned Counsel representing the respondent-complainant justified the impugned order of the District Forum for the reasons stated therein. Additionally, it was contended by him that demand raised in memo No. 627 dated 21.6.2005 served upon the complainant on the basis of circular No. D-36/2004 is totally illegal as this circular has been issued without any competent authority required under the provisions of Act, 2003.

3. THE reasons which prevailed upon the District Forum to issue the order for restoration of the electric supply to the premises of the complainant so recorded in the order are as under: "THE District Forum is of the opinion that evidence from both the sides are yet to be adduced only after adducing the evidence, a final decision will be taken in the case but at this stage it will be appropriate to direct the respondent to restore the connection of the complainant. Without going into the merit of the case, the Forum has observed that generally a factory is being run for 8 hours daily i.e., for one shift and the penalty always imposed by taking into consideration 3 shifts by the DHBVNL. If calculation is made then the amount is found to be approximately Rs. 4,46,667. Adopting the same formula which is generally adopted in all cases for the restoration of the connection, the complainant is directed to deposit 30% amount of Rs. 4,46,667, which becomes Rs. 1,34,000 approximately. THE respondents are ordered to restore the connection of the complainant bearing account No. 2 MS-518 on the basis of the old security after getting intimation of deposit of the requisite amount within 48 hours and further getting all the formalities completed required to be completed. THE respondents are also ordered not to get lodge any FIR against the complainant and if any FIR has been lodged the same be not pursued."

The submissions made from the side of the petitioner shall be dealt with in *seriatim*. The record of the case would show that the complaint was instituted in the District Forum, Faridabad on 27.6.2005. After it was admitted for hearing on the same day, notice of the complaint and that of the application for interim relief was given to the opposite party for 29.6.2005. The summons which were sent to the opposite party were issued on 28.6.2005 for 29.6.2005 and on 29.6.2005 the impugned order was passed. The grievance made from the side of the petitioner that adequate and proper opportunity was not given to the opposite party to file reply to the complaint as well as interim application are fully borne out from the record. It is not understandable as to why such a short notice was given to the opposite party because no reasons have been recorded in the order which could render any justification in this regard. The District Forum was duty-bound to take notice of the fact that opposite party is a commercial undertaking and would require ample and proper time to file reply to the contentious issues raised in the complaint as well as in the application for interim relief. Top hurry on the part of the District Forum to dispose of interim application has denied the opposite party to file their reply to the complaint as well as interim application so as to help the District Forum to decide the controversy in the proper perspective after taking notice of the stand of the opposite party supported by written statement, reply and documents in support thereof or otherwise. Thus, prejudice caused to the petitioner on this account is spelt out on record.

4. COMING to the other submission made, it is the case of the opposite party that the premises of the complainant were inspected by M&P Division on 20.6.2005 and it was found that MCB seal provided by SDO "O.P.", East Sub-Division, during re-setting the MDI on 5.1.2005 vide seal No. F-16069 sealer No.

BD687 verified by the SDO "O.P.", East Sub-Division were found tampered with. Accuracy of the same could not be checked. On further checking through MCB glass, it was found that seal of MDI was also found tampered and no seal was found at the meter cover and re-fixed on terminal cover. The meter was found tampered after tampering the above seals and it is a case of theft of energy and checking report dated 20.6.2005 was submitted to the authorities. Thereafter, penalty amount of Rs. 13,40,000 was assessed as per sales circular No. D-36/2004 for which notice bearing memo No. 627 dated 21.6.2005 was served upon the complainant. It is, however, case of the opposite party that checking report was signed by the representative of the complainant and at that time no objection was raised by him. A copy of the checking report was also delivered to the representative of the complainant. The complainant in the complaint has referred to the checking of the meter made by the officials of the opposite party and also admitted receipt of the demand notice bearing No. 627 dated 21.6.2005, but at the same time, it asserted that a team of vigilance of the opposite party had inspected the premises of the complainant in the absence of any responsible person of the complainant and had not delivered any inspection report or checking report to him. At the same time, it maintained that while disconnecting the electricity supply to the premises of the complainant, meter was also removed by the officials of the opposite party. It was brought to the notice of the District Forum by the Counsel representing the petitioner that at the time of checking of the premises of the complainant on 20.6.2005 seals of the meter were found tampered with and for that reason theft of energy was committed by the complainant for which demand notice was served and was under the circumstances justified. the District Forum after noticing the stand of the opposite party did not prima facie record any finding in this regard and brushed aside main issue by observing that "the Forum is of the opinion that evidence from both the sides is yet to be adduced. Only after adducing the evidence, a final decision will be taken in the case but at this stage it would be appropriate to direct the respondent to restore the connection of the complainant." Not only that, it has also clearly brought out from the impugned order that the District Forum has totally ignored the requirements of the provisions of Section 13(3B) of the Consumer Protection Act, 1986 while deciding the application. It has been expressly provided therein that "where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case."

From the above stated provisions, two key requirements are spelt out. Firstly, that the District Forum has to record a satisfaction of necessity and secondly to take extra care that the orders to be passed under the facts and circumstances of the case are just and proper. Needless to say by incorporating these requirements the Parliament in its wisdom has laid emphasis on facts and circumstances of case which would ultimately enable the exercise of power so vested in the District Forum under these provisions. The object appears to be

that the District Forum may not travel beyond the facts of the case and to pass orders for the reasons other than brought on record by the parties. These provisions aim to check on the fanciful or whimsical exercise of the process by the District Forum. Where interlocutory remedy has been provided under these provisions a onerous duty is cast upon the District Forum that exercise of this power should reflect that it has been done in just and proper manner on the basis of facts and circumstances brought before it. Therefore, these provisions also require the District Forum, at the initial stage, to consider existence of prima facie case that theft of energy was spelt out or not at the first instance and then to consider whether order of stopping the payment of the demanded money while restoring the energy supply to the premises of the complainant was called for or on what terms the interim order was to be passed. The above quoted order would clearly show that the genesis of the above stated provisions have not been kept in view while passing the impugned order. It deserves to be noticed that at this stage after recording a prima facie finding that theft of energy was committed by the complainant, the District Forum is required to keep in mind that it has no jurisdiction even to entertain and grant the interim relief. That being so, the question whether assessment of the penalty amount of Rs. 13,40,000 for which demand was made from the complainant vide memo No. 627 dated 21.6.2005 was justified under sales circular No. D-36/2004 or sales circular No. U-15/2005 issued in terms of the provisions of Section 15 of the Act, 2003, cannot be gone into at this stage under the provisions of the Consumer Protection Act, 1986. This conclusion can be explained on the premises that before obtaining electricity supply to the premises of the complainant, the complainant had entered into an agreement with the opposite party and the supply of energy is regulated by the terms and conditions set out in such an agreement. The complainant can only be construed as a consumer for enforcement of lawful right flowing from the bilateral agreement, not otherwise. By now it is well settled that it is only where the District Forum comes to a prima facie finding at the initial stage of the proceedings that the complainant had not committed theft of energy, then it would be required to examine the justification for passing the order which should be just and proper under the circumstances of the case.

5. COMING to the last submission made, it is discernible from the impugned order that the District Forum while calling upon the opposite party to deposit Rs. 1,34,000 being 30% of amount of Rs. 4,46,667 had adopted a formula of its own which has no sanction of law and for that reason such a direction in the order cannot be upheld. Surprisingly, in this case, the District Forum had even gone to the extent of directing the opposite party not to lodge any FIR in this case and in case any FIR is lodged against it, it should not be pursued. Such a direction under the law cannot be given and the direction so given being totally illegal cannot be allowed to be sustained and consequently the same cannot be enforced.

6. FOR the aforesaid reasons, we have come to the conclusion that the District

FORum had committed patent illegality while passing the impugned order and while accepting the revision petition the same is set aside. At the same time, we make it clear, it will be open to the complainant to move the District FORum afresh to consider his prayer and the District FORum shall give an opportunity to the opposite party to file reply to the application seeking interim order. No observations made in this order for the purpose of disposal of this revision petition shall be construed as an expression of opinion on the merits of the case. Revision Petition allowed.