

(2014) 05 NCDRC CK 0089

In the National Consumer Disputes Redressal Commission

DAKSHIN HARYANA BIJLI VITRAN NIGAM LIMITED

APPELLANT

Vs

BHAGWAN DASS

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Citation : 2014 0 NCDRC 267 : 2014 3 CPJ 223

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : SANJAY SINGH , SANJEEV SAROHA

Judgement

1. REVISION petition nos. 2842 of 2006, 2877 and 2878 of 2006 are filed against a common impugned order dated 28.07.2006. Since the State Commission and the District Forum have dealt all the three cases by a single order, we also propose to deal with these cases by a single order and the facts of the case are taken from RP no. 2842 of 2006.

2. THREE complaints have been filed by the respondents against the petitioner before the District Consumer Disputes Redressal Forum, Sirsa ("the District Forum "). The brief facts of the case as per the complainant/ respondent are as follows: Shri Ram Ditta Mal son of Shri Himta Ram was running an Atta Chakki and Kiryana Shop under the firm and name M/s Ram Ditta Mal Bhagwan Dass, Near Shiv Chowk, Anaj Mandi Road, Sirsa and electric power connections bearing no. YM/2 and NMP 3/204 were obtained in the name of Shri Ram Ditta Mal for the said Atta Chakki and Kiryana Shop being run in the building situated near Shiv Chowk, Anaj Mandi Raod, Sirsa and owned by the complainant. Shri Ram Ditta Mal had left the business many years ago, the business continued to be run by the complainant/ respondent and his two sons namely, Ved Parkash and Satpal. On account of his old age, respondent stopped taking part in the business activities of the aforesaid firm and his son Ved Parkash started looking after the Atta Chakki and Speller business in his capacity as proprietor of M/s Mehta Flour Mills and he had being paying consumption charges of electricity consumed through electric connection bearing no. YM/2. Similarly, Kiryana business was previously being looked after by Sat Pal (son of the complainant), who had died

and after his death his son Prem Kumar started looking after Kiryana business being run in the ground floor portion of the building. Prem Kumar had been consuming electricity through electric connection bearing no. NKP 3 of 204 and he had been paying consumption charges to the petitioner - Board regularly. Shri Ram Ditta Mal died in 1996.

3. THE said building has another electric connection for the residential portion/ first floor portion is in the name of respondent where respondent along with his family members are living and the respondent has been paying consumption charges to the petitioner - Board for the electricity consumed through the aforesaid electric connection and as such, respondent is a consumer of the petitioner - Board.

4. ON the intervening night of 3rd and 4th July 1998 when all the family members were sleeping in the residential portion, which is in the first floor portion of the building in question, Shri Ved Setia son of the Shri Sham Lal Setia awakened them at about 02.00/02.15 a m and told that electricity wires which are coming from main pole to the meters of Atta Chakki and Kiryana Shop had caught fire due to sparking. The respondent along with other family members came down and saw the fire, which was heading towards the Kiryana Shopa and Atta Chakki being run at the ground floor portion of the building. The matter was reported to the concerned office of electricity department through telephone at once and the complaint was entered at no. 117 and the attendant/ employee of petitioner - Board was requested to get disconnected the wires coming to building from the pole. However, the employee of the Board namely Mr Ripandeep Singh showed his inability in doing so by pleading shortage of man - power/ line staff and further advised them to contact the concerned JE of the area namely Mr Hazoor Singh. Mr Lachhman Grover, relative of respondent rushed to the house of JE Shri Hazoor Singh but he also did not take any action on the said request. Seeing the conduct of the employee of petitioner - Board, the matter was reported to Deputy Commissioner, Sirsa and an assurance was given by the official of the Deputy Commissioner, Sirsa office and made arrangement immediately for the said purpose. However, no employee of Electricity Board came at the spot and due to their total negligence and failure in providing the required service, the construction of the building owned by the respondent suffered extensive damages. Besides it, some clothes and other house hold articles which were at the first floor residential portion, completely destroyed in the fire. The renovation/ construction work of the building would require at least Rs.1.30 lakh. The report of registered valuer/ architect is attached herewith, who has given the said report after actual spot inspection of the building. The value of the clothes and other house -hold articles which were destroyed in the fire was about Rs.20,000/ -. In the intervening period, though the fire brigade people along with their vehicles had reached at the site of fire, but rescue operations could not be undertaken by them as there was current in the shutters of Atta Chakki and Kiryana shop and they showed their total helplessness in starting rescue operations without first getting the electricity

supply of the shop and Atta Chakki disconnected. The Fire Officer has also given the reasons for negligence of employees of HSEB for such extensive damage caused due to fire.

5. THE Deputy Commissioner, Sirsa also got assessed the losses suffered by the respondent and his family members by revenue authorities and after spot inspection they also reported the losses suffered by the respondent on account of said fire, the losses could have been averted if the employees of HSEB would have discharged their public duties in time.

6. THE negligence of the employees of HSEB is further clear from the fact that electricity connection of Atta Chakki, Kiryana Shop and residential portion were disconnected by them only at 08.45 a m on 04.07.1998 and by that time, the fire had already caused heavy damages not only to the constructions of the building but also to Kiryana Shop and Atta Chakki. For the negligence of the employees of the Board, matter was also reported to the City Policy, Sirsa by the grandson of the respondent on 04.07.1998 itself and Rapat no. 3 dated 04.07.1998 was registered in the police station, City Sirsa.

7. THE value of the loss suffered by the respondent is in the shape of extensive damage to the construction of the building and burning of cloths and other house-hold articles, is approximately Rs.1.50 lakh, besides it, respondent who had also witnessed the said tragedy, suffered mental shock, pain, agony etc., and on account of which the respondent has claimed Rs.50,000/- as damages. The respondent claimed a total sum of Rs.2.00 lakh as compensation on account of all kind of losses suffered by him due to the said negligence and deficiency in service on the part of Board Employees and its officers. The respondent is legally entitled to recover the said amount along with interest @ 18% per annum from the date of occurrence till the realisation of whole amount.

8. PETITIONER in their written submission before the District Forum have denied that Shri Ram Ditta Mal and Shri Bhagwan Dass were running an Atta Chakki and a Kiryana shop under the firm and name titled M/s Ram Ditta Mal Bhagwan Das. The electric connections in question were obtained in the name of Shri Ram Ditta Mal only, but it is denied that the said connections were obtained for the said Atta Chakki and Kiryana Shop being run in the building owned by the respondent. It is evident from the record with HSEB/ petitioner the said electric connections no. YM /2 and NMP 3/204 had been obtained in the name of Shri Ram Ditta Mal on his applications for the purpose and after having complied with the conditions for the purpose and also having entered into an agreement with HSEB/ petitioner for the purpose. Electric Connection in question existed throughout in the name of Shri Ram Ditta Mal and they exist in that name even today. It was never brought to the notice of HSEB/ petitioner that Shri Ram Ditta Mal had been in any business with anybody and that he had left the business many years ago. It is denied that the said business continued to be run by the respondent and his sons namely Ved Parkash and Sat Pal. It is relevant to mention here that the respondent and/ or his sons had/ have nothing to do with

the electric connections aforesaid and they could not consume electricity on the said connections for running the business as alleged. As such, the respondent and his sons have been using electric connections existing in the name of Shri Ram Ditta Mal wrongly and illegally. It is denied that said Ved Parkash had been paying consumption charges of electricity consumed through electric connection no. YM 2. Likewise, said Prem Kumar could not use electric connection no. NMP 3/204 without getting it changed/ transferred in his name after complying with the necessary conditions. It is denied that said Prem Kumar had been paying consumption charges through the respondent board regularly. The bills showing consumption of electricity on both the aforesaid electric connection have always been sent in the name of Shri Ram Ditta Mal and the same have always been paid in his name. Nothing was at any stage brought to the notice of HSEB contrary to that. These facts got to prove beyond doubt that it was Shri Ram Ditta Mal only and no one else who was/ is the consumer under HSEB. Both the said electric connections had not been obtained in the name of any firm and as such it is futile to talk of any firm allegedly existing between Ram Ditta Mal and the respondent. The story with regard to the alleged firms has rather been concocted and manufactured now to suit the case and the convenience of the respondent and his sons aforesaid. As averred in the complaint Shri Ram Ditta Mal had left the business many years ago, the electric connections existing in his name required to be disconnected forthwith and if anybody else wanted to use the name, then it was incumbent upon such person/s to apply for the change of name in the record of HSEB on entering into a fresh agreement with HSEB for the purpose. In the absence thereof, a person consuming energy on these connections is guilty of violation of rules and law and also the terms and conditions for obtaining the same. None using those electric connections is entitled to get benefit, in any form, and make any claim with regard to any alleged loss from HSEB. In view of the same there has been no privity of contract/ agreement between the present respondent and his sons and grandsons and HSEB. The respondent or said Ved Parkash or said Prem Kumar has never been a consumer under HSEB vis -à -vis electric connections no. YM 2 and NMP 3/ 204.

9. THE factum of said death of Shri Ram Ditta Mal in the year 1996 was never brought to the notice of HSEB. His death has come to the notice of HSEB only through this complaint and certain applications made to HSEB on and after the fire incident referred to in the complaint in hand. The complainant was guilty of concealing the factum of the death of Shri Ram Ditta Mal in the year 1996 and thereafter using electric connections existing in the name of Shri Ram Ditta Mal - deceased.

10. IT was vehemently denied that electric wires coming from the main pole to the meters in question had caught fire due to sparking. It wastechinally well - nigh impossible for sparking to come from pole side to meter end side. There must have been sparking inside the premises owing to some internal defect in the wiring or some other defect, cause, quite unconnected with the main electric

pole. It was quite relevant to mention here that the cable coming from the main pole to the meter side is even today is intact and safe. This fully proves that sparking was not from pole side, but was from inside the premises and hence, HSEB cannot be held liable in any manner, for any alleged loss, if any, suffered by the respondent. It was further relevant to state that there has been no loss or damage to the residential portion of the building at the first floor on account of the fire occurrence at the ground floor portion. It is denied that the fire was heading towards the Kiryana shop and the Atta Chakki being run at the ground floor portion of the building. It is totally wrong and incorrect to allege that Mr Lachhman Grover, a relative of the respondent rushed to the house of Shri Hazoor Singh, JE. Said Shri Lachhman Grover did not come to the house of the said J E nor did anybody else inform the said JE regarding the fire incident. The name of Shri Hazoor Singh JE has been dragged into the matter wrongly and malafidely by the respondent at the instance of said Shri Lachhman Grover who bore an old grudge and ill will against Shri Hazoor Singh J E. It once, so happened that on 22.02.1995 the industry premises of the said Shri Lachhman Grover, situated at village Ramnagria, having electric connection/ account no. S 2/1140 S/ P, were checked by Shri Hazoor Singh JE who had then detected unauthorised extension of load, i.e., connected load of 10.946 kw against the sanctioned load of 3.730 kw and as such the said consumer (Shri Lachhman Grover) was imposed a penalty amount to Rs.3330/ - which was duly realised from him. It is since then and on that account that Shri Lachhman Grover bore ill -will against the said JE and that is why Mr Grover 's name figures in the present complaint as a witness of the respondent. Hence, it is wrong to allege that Shri Hazoor Singh did not take any action. Even otherwise, one fails to understand as to why the respondent and his men did not try to contact any other JE or official of HSEB instead of allegedly reporting the matter to Deputy Commissioner, Sirsa. One also fails to understand as to why the matter was allegedly reported to Shri Hazoor Singh only and not to any other JE while there were/ are some other JE 's also in the Industrial Area Sub Division, HSEB, Sirsa.

11. IT was denied that due to the negligence and failure of employees of Electricity Board in providing required services, the construction of the building owned by the respondent suffered extensive damages. It was also denied that besides it, some clothes and other household articles as alleged were completely destroyed in the fire. As averred above, no damage, whatsoever, was caused to the residential portion at the first floor of the building. It was denied that the renovation/ reconstruction work of the building would require at least Rs.1.30 lakh. The impugned report of any valuer/ architect must have been falsely procured by the respondent in order to extract money from the petitioner. It is denied that the valuer has given the alleged report after actual spot inspection of the building. It was further denied that the value of clothes and other household articles allegedly destroyed in the fire was about Rs.20,000/ -. The respondent suffered no such loss and if at all he suffered any loss, it must be owing to his own fault, negligence, carelessness and improper maintenance of internal wiring/

apparatus. HSEB and/ or any of its employees are/ is not responsible for causing any such loss to the respondent, nor has there been any negligence, failure or slackness in service on their part, nor can they afford to be negligent and deficient or inefficient in service towards the consumer. The respondents have not been at fault at any stage in any manner.

12. IT was stated that on account of his cable having been burnt/ isolated inside the premises/ building due to fire, there could be no electric current in the shutters. It was at about 04.40 a m on 04.07.1998 that Shri Hazoor Singh JE received a telephonic message from Shri R N Jindal, SDO City Sub Division, HSEB Sirsa, to the effect that he was reaching the place of the said fire occurrence and that he (Hazoor Singh) should also reach there. Shri Hazoor Singh JE at once left for the place of occurrence and reached there at 04.45 am when said SDO had already reached there. The S E, ""OP "" Circle, HSEB Sirsa, Shri M P Seth had also reached the spot along with Shri R N Jindal. The fire brigade men had already left the place after extinguishing the fire. It is thus clear that the HSEB employees/ officials reached the spot as soon as they learnt of the fire occurrence. It was denied that the Fire Officers had also given the reason as negligence of the employee of HSEB for the alleged damages. Impugned report of Fire Officer, if any, must be wrong and incorrect and also a procured one. It is reiterated that there was no negligence, whatsoever, on the part of the employees of HSEB. It is, however, admitted that electric supply from the main pole was disconnected at 08.45 a m on 04.07.1998. It is, however, mentioned that two employees of HSEB namely Shri Hira Lal ALM and Shri Paan Singh ALM had visited the spot at 07.00 a m for the purpose of disconnecting the electric supply from the main pole, i.e., disconnecting cable from the main pole, but they were not allowed to do so by the respondent and his men who insisted that they should be given in writing as they desired before doing so. So that said HSEB employees came back and reported the matter accordingly to Shri R N Jindal, SDO. Then Shri Mani Ram J E was deputed for the purpose who visited the spot at 08.45 a m along with his staff and did the job. It is aptly notable that the cable inside the premises had already burnt and isolated and as such electric connection through the cable coming from the main pole was only up to the upper end of the building and as such even during the continuance thereof till 08.45 a m, it neither caused any loss, nor could it cause any loss in any manner. It is reiterated at the cost of repetition that whatever losses were suffered by the respondent, it must have been owing to certain defect in the internal wiring/ apparatus existing at the ground floor portion of the building where three electric meters stood affixed, connected to the Board supply line and in such an eventuality, it was the respondent who must have immediately disconnected such part of the internal wiring apparatus from the circuit and then should have informed the Board. The respondent in order to hide his own fault and negligence in the matter has put the blame upon the HSEB employees.

13. DISTRICT Forum vide its order dated 19.06.2000 allowed the complaint and directed the petitioner to pay Rs.75,000/ - to the complainant - Ved Parkash.

14. AGGRIEVED by the order of the District Forum, the petitioners filed three appeals no. 1045, 1046 and 1047 of 2000 before the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh ("the State Commission ") against the three respondents/ complainants. Vide order dated 26.07.2006 the State Commission upheld the order of the District Forum and dismissed the appeals. Hence, the present revision petitions. The main grounds for the revision petitions are as under: The State Commission failed to appreciate that the complainant do not fall within the purview and definition of ""consumer "" as defined under section 2(d) of the Consumer Protection Act, 1986 so as to be entitled to approach the Consumer by way of a complaint under the Act. The State Commission as well as District Forum failed to appreciate that the connection in question was taken in the name of Ram Ditta Mal and it was never brought to the notice of the petitioner that Ram Ditta Mal was running any business jointly. The complainant and his son had nothing to do with the above mentioned connections and they were not entitled to consumer any electricity from the said connections for running business as the same had been issued to aforesaid Shri Ram Ditta Mal, Ved Parkash and Prem Kumar could not use any electricity from electric connection no. YM 2 and NMP 3 of 2004 respectively without getting the same transferred in their name after compliance of necessary conditions. The State Commission as well as District Forum failed to appreciate that technically it is impossible that sparking would start at pole and move to the meter. In fact, sparking must have taken place inside the respondent 's premises due to some internal defect in the wiring. The cable coming from the main pole to the side of meter was intact till date, therefore, the petitioner Nigam could not be held liable for any alleged loss caused to the complainant on account of fire that broke in his present. The State Commission as well as learned District Forum failed to appreciate that the officials of electricity department went on the spot to switch off the supply at 07.00 a m but they were not allowed, to do so, therefore, they went again at 08.45 a m along with other staff members and did the job. The electricity department always gives proper and prompt service to its consumers but it had nothing to do with the internal wiring/ apparatus installed within the premises/ building of the consumer which is required to be maintained by the consumer itself. Since, there was negligence, deficiency in service on the part of the petitioner - Nigam, therefore, they are not liable to pay any amount of compensation as claimed by the respondent. The State Commission failed to appreciate that District Forum failed to invite any technical expert for evidence, even a Local Commissioner was not appointed for the purpose on the application of the petitioner - Nigam. The petitioners were held negligent without there being any expert evidence on the issue as to whether the sparking. Even in the absence of any independent expert witness, the petitioner had led evidence particularly in the form of log sheet brought on record by way of evidence showing that there was no spark in the voltage on the day of occurrence of fire nor any report of sparking from any quarters.

15. WE have heard the learned counsel for the parties and have carefully gone

through the records of the case.

16. DISTRICT Forum in their order on the question whether the respondents were consumers mainly stated that ""after hearing both sides and gone through the case file and in view of the case law cited as above first of all we are of the considered view that all the complainants being beneficiaries, users of electricity supply and by paying of consumption charges are the consumer of the OPs "". The State Commission also in its order of this issue whether the respondents were consumers stated that ""the preliminary objections taken by the appellants that the complainants have no privity of contract and they are not the consumers of HVPN as the electricity connections have not been transferred in their name, we concur with the findings recorded by the District Forum. Various documents on record to prove that they are immediate family members of late Shri Gurditta Mal in whose name the electricity connections was issued initially. Since the payment of bills have regularly been accepted by the appellant electricity board from the complainants they at this stage cannot contend that they are not the consumers. Hence, District Forum rightly entertained the complaints rejecting this contention of the appellants and holding the complainants as consumers of electricity departments on the ground of being beneficiaries of electricity accounts in question. Coming to the moot point agitated in appeal regarding deficiency in services, a perusal of the evidence brought on record by the respondents/ complainants of which C 5 the fire report is an important piece of evidence, in which it is recorded that it took to hours and one minutes to extinguish the fire in question. This report proves that the fire had engulfed the entire premises but the officials of electricity department even on being informed to disconnect the electricity supply arrived with considerable delay, which resulted in reducing the entire materials in Atta Chakki and Kiryana to ashes in the gutted premises. Had the officials of appellant department acted in time by disconnecting the electric supply, considerable materials probably could have been salvaged? It is proved from the record that call to the fire brigade was made at 0235 hours and the electricity department was informed prior to that. However, as per annexure C 7, signed by lineman Hira Lal and Pawan Singh, the disconnection has been recorded at 08.45 am on 04.07.1998 which admittedly proves considerable delay on the part of appellants in disconnecting the supply which is a deficiency in service on their part and the District Forum rightly, held them liable for the same. The respondent/ appellants also placed on record annexure C 22 a letter written by SDO address to Deputy Commissioner in which the aforesaid incident and lack of timely action on the part of appellant department has been mentioned. The aforesaid letter mentions clearly that in spite of being responsible to act promptly in such like situation, the appellant department was found wanting in doing the needful, which is regrettable. Without going into the other contents of these two documents, it is amply proved on record that a fire of the magnitude as averred in the complaint actually took place which resulted in massive loss to the materials in the complainant 's premises. The loss to the building also occurred and report of Shri R S Chugh,

Architect detailing the same has been placed on record. In view of this positive evidence in support of averments of the complainants, we hold that the District Forum, Sirsa has rightly appreciated the facts of the case and accepted the complaint partly "".

17. IT would appear from the record of HSEB that petitioner 's electric connection no. YM/2 and NMP 3/ 204 had been obtained in the name of Ram Ditta Mal. Shri Ram Ditta Mal died in the year 1996. This fact was never brought to the notice of the petitioner nor was any application made for the transfer of the said connection to any other person. It is also admitted that there were electric connections for residential portion/ first floor in the name of Bhagwan Dass, respondent no. 1, where he was living along with his family members. Petitioner had vehemently denied that the respondent were consumers stating that they have no privity of contract/ agreement with the petitioners for the two connections with regard to the connection for residential portion there was no damage to the same.

18. THE Counsel for the respondents failed to explain as to how they were consumers under the Consumer Protection Act, 1986 and they also failed to support their case and further, they could not bring anything on record to show that Ram Ditta Mal had two electric connections in his name and the same were transferred to the respondents. They also failed to bring on record any documents that the respondents were bonafide beneficiaries of the three connections which were for the residence. It is also an admitted fact that there was no damage by fire to the residence. Hence, the respondents have failed to prove that they were consumers under section 2 (1) (d) of the Consumer Protection Act, 1986 and have any privity of contract with the petitioners. Learned counsel for the petitioner have cited two judgments of the Hon 'ble Supreme Court in the case of Oriental Insurance Co. Ltd., vs Munimahesh Patel (2006) 7 SCC 655 and Uttar Pradesh Power Corporation Limited and Ors. vs Anis Ahmad (2013) 8 SCC 491. The above quoted cases are not applicable to the case on hand.

19. IN view of the foregoing discussion, we have no option but to allow the present revision petition. Consequently, the complaint filed by the respondents before the District Forum is liable to be dismissed.