

(2011) 09 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Dakshin Haryana Bijli Vitran Nigam Ltd

APPELLANT

Vs

Fateh Singh

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Citation : 2012 1 CPJ 80

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

Final Decision : Revision Petition dismissed.

Judgement

1. THIS revision petition has been filed by the Dakshin Haryana Bijli Vitran Nigam Ltd. (hereinafter referred to as the "Petitioner") being aggrieved by the order of the State Consumer Disputes Redressal Commission. Haryana (hereinafter called as the "State Commission") in Appeal No. 3206/2002 wherein Shri Fateh Singh was the Respondent.

2. THE brief facts of the case according to the Respondent who was the original complainant before the District Forum, are that he was a consumer of the Petitioner/Electricity Nigam having Electricity Connection No. 28/SP in his shop at Village Arya Nagar, District Hisar. On 19.7.2002 the electricity meter in his premises was routinely removed and taken away by the Petitioner's staff and a new meter was installed in its place. At the time of its removal no defect was pointed out to the Respondent. He was, therefore, surprised and shocked to receive a letter from the Petitioner/Nigam dated 12.8.2002 that as per the checking of the meter on that date by the Vigilance Party of the Petitioner, it was found that three of the seals and the body of the meter had been tampered with. Since the meter had been removed from the Respondent's premises several days earlier and no defects/tampering was detected, it was obvious that this checking report was false and fabricated specially since the Respondent had never tampered with any of the seals or the meter body as alleged. Respondent was further shocked to receive another letter dated 14.8.2002 from the Petitioner/Nigam levying a penalty of Rs. 62,733 on account of theft of electricity for a period of 6 months. Respondent being aggrieved by the unjustified and

arbitrary action of the Petitioner/Nigam filed a complaint before the District Forum on grounds of deficiency in service and requested that the Petitioner be directed to set aside the penalty of Rs. 62,733 and also pay compensation of Rs. 20,000 for unnecessary harassment and humiliation caused to the Respondent.

3. PETITIONER denied the above allegations and stated that on 19.7.2002 the meter was removed from the premises of the Respondent by one Mr. Roor Mal Singh, A.F.M. and checked by the Petitioner's Vigilance Party on 12.8.2002 when it was found that all the three firms seals and the meter body had been tampered with which indicated that the Respondent had been stealing electricity by tampering with the said meter. A penalty of Rs. 62,733 was accordingly charged from the Respondent for committing theft of the electricity as per the instructions on the subject of the Petitioner/Electricity Nigam. Respondent despite notice did not deposit the amount and instead challenged the fair and legal penalty order of the Petitioner. Under the circumstances, the Respondent's complaint had no basis and deserves to be rejected.

4. THE District Forum after hearing both parties allowed the complaint on the grounds that the meter which was removed by the Petitioner/Electricity Company was checked behind the back of the Respondent and as such was not maintainable. Further, no evidence was produced to confirm the fact that the seals and meter were tampered with and that the Respondent had committed theft of the electricity. Therefore, the penalty of Rs. 62,733 levied by the Petitioner/Electricity Company was quashed and the Petitioner was directed to refund the deposited amount of penalty to the Respondent along with interest @ 9% from the date of its deposit till the date of payment. Respondent was further awarded refund of the deposited amount of Rs. 5,350 for the new meter along with interest @ 9% and Rs. 500 as litigation costs.

5. AGGRIEVED by this order, Petitioner filed an appeal before the State Commission which dismissed the appeal by making the following adverse observation: "It is admitted case of the opposite parties that the meter installed at the premises of the complainant was removed on 19.7.2002 on the basis of MCO No. 90/52 dated 17.7.2002. What was the justification for removal of this meter has not been explained from the side of the opposite parties. Even at the time when the meter was removed the same was not sealed at the spot. Surprisingly enough, the opposite parties have taken the stand in the written statement filed that the removed meter remained in the custody of Shri Roor Mal Singh, A.F.M. Why the meter in question remained in the custody of Shri Roor Mal Singh, A.F.M. and not in the custody of competent authority, remains a mystery. Even when the said meter was checked by the officials of the Vigilance Staff of the opposite parties on 12.8.2002, they found three firm seals and meter body tampered with, the opposite parties were duty-bound to explain to record that after the period the meter was removed from the premises of the complainant on 19.7.2002 upto 12.8.2002 it was not tampered with. It is admitted on record that at the time of inspection of the meter on 12.8.2002, the

presence of the complainant was not secured. Under the circumstances of the case, the checking report prepared on 12.8.2002 cannot be made the basis to fix the liability of the complainant. Moreover, it is not the case of the opposite parties that the meter in question was sent to the M&T Lab as required under the prescribed procedure. By now it is well settled that mere tampering of the seals of the meter is not a conclusive proof of theft of electric energy because the charge of theft of energy is a criminal charge and has to be proved by cogent and convincing evidence to be led by the opposite parties. The position of law in this regard has been well explain in case H.V.P.N. through its Sub-Divisional Officer (OP) v. Sanjeev Malik, etc., 2005 (2) CPC 645. Under the circumstances of the case no fault can be found with the finding of the District Forum."

Hence the present revision petition.

6. LEARNED Counsel for both parties made oral submissions. Counsel for Petitioner contended that in compliance with the Instructions/Regulations of the Petitioner/Nigam, its Vigilance Staff routinely carries out periodic checks of its customers' premises to detect cases of theft of electricity for which no notice is required to be given. In the instant case, after due inspection and suspecting some irregularity the meter was taken away by Assistant Foreman, Shri Roor Mal Singh, of the Petitioner/Nigam and later subjected to a detailed check by the Vigilance Staff of the Petitioner/Nigam wherein it was noted that three firms seals as well as the body of the meter has been tampered with a view to commit theft of electricity. Therefore, a penalty of Rs. 62,733 was calculated as per instructions contained in the Sales Circular No. 31/98 of the Petitioner/Nigam and raised against the Respondent. There was no bias or mala fide on the part of the staff of the Petitioner who merely carried out their duties in accordance with the orders/regulations of the Petitioner/Nigam. Learned Fora below, however, failed to appreciate these facts and erroneously held the Petitioner/Nigam guilty of deficiency in service.

7. COUNSEL for Respondent on the other hand pointed out that as observed by the State Commission the fact that the meter was not inspected in the presence of the Respondent and was kept by one individual of the Petitioner/Nigam for several days without any explanation for the same and inspected by the Vigilance Party three weeks after it was removed indicated that the entire case was fabricated. Further, in case the meter was found to have been tampered with, as per the procedure prescribed in the circulars of the Petitioner, it was required to be sent to the M&T Lab to confirm whether it was actually tampered, with the intention to steal the electricity. By not following the prescribed procedure, it is further confirmed that the case of theft against the Respondent is false and fabricated and he was wrongly penalized for the same. The Fora below rightly commented adversely on the irregularities committed by the Petitioner/Nigam in dealing with this case and without any proof concluding that there was theft of electricity by the Respondent. The present revision petition, therefore, deserves to be dismissed.

8. WE have heard the learned Counsel for both parties and have gone through the evidence on record.

9. WE note that it is a fact that the meter was removed on 19.7.2002 from the premises of the Respondent and at that time no inspection of the meter to check for tampering was carried out in the presence of the Respondent. It is further not disputed by the Petitioner that the meter remained in the custody of their Foreman, Roor Mal Singh, for three weeks i.e. upto 12.8.2002 when it was purportedly checked by the Vigilance Staff which noted that the three seals and the meter body was tampered with and a case of theft of electricity against the Respondent was made out on these grounds. It is also admitted that the meter was not sent to the M&T Lab. We specifically asked the Counsel for Petitioner to explain why the meter was not checked in the presence of the Respondent at the time of its removal; why it remained in the custody of the said Roor Mal Singh, A.F.M. for three weeks and also why the Vigilance Party finally checked the meter again behind the back of the Respondent. No explanation whatsoever could be provided for these lapses. Further, it is on record that even after the Vigilance Party concluded that there was a prima facie evidence of tampering of the meter, the said meter was not sealed and sent to the M&T Lab as per the procedure laid down in the circulars/regulations of the Petitioner/Nigam. Counsel for Petitioner also could not explain this serious lapse. In fact, even before the Fora below, these omissions and deviations from the prescribed rules, regulations and instructions were not explained because of which the Fora below rightly concluded that the Petitioner/Nigam acted in an arbitrary and unjustified manner and that no proof of theft of electricity was made out against the Respondent in the present case.

10. IN view of these reasons, we agree with the findings of the Fora below that the Petitioner/Nigam did not act in accordance with the provisions of its own circulars while dealing with suspected cases of theft of electricity and, therefore, we see no merit in this revision petition which is dismissed. The order of the State Commission is upheld in toto. The penalty of Rs. 62,733 imposed by the Petitioner/Electricity Company is, therefore, quashed and the Petitioner is directed to refund to the Respondent, the deposited amount of penalty together with Rs. 5,350 along with interest @ 9% and Rs. 500 as litigation cost.

11. IN this revision petition also the meter after being inspected by the Vigilance Staff of the Petitioner/Nigam was not sent to the M&T Lab as per the prescribed procedure in the Circular of the Petitioner/Nigam. In view of this the Fora below concluded that merely because on physical verification it was indicated that the meter had been tampered with because there was a gap between the meter cover and the meter glass on the left side of the meter, it cannot be concluded that there was theft of electricity, in the absence of the meter not having been sent to the M&T Lab to confirm that there was any tampering or otherwise. Since the main points in this case are similar to those in R.P. No. 2444 of 2007, in this case also, for the reasons cited in R.P. No. 2444/2007 by us, we uphold the order

of the Fora below and dismiss the revision petition. Petitioner is directed to refund the amount already deposited by the Respondent along with interest @ 12% p.a. from the date-of deposit till the date of realization of amount within one month from the date of this order. Revision Petition dismissed.