(2008) 09 NCDRC CK 0025

In the National Consumer Disputes Redressal Commission

Dakshin Haryana Bijli Vitran Nigam Ltd APPELLANT

Vs

Megh Raj RESPONDENT

Date of Decision : 11-09-2008

Acts Referred:

Citation : 2008 4 CPJ 11

Hon'ble Judges : M.B.Shah , Rajyalakshmi Rao , K.S.Gupta J.

Advocate : Abhishek Sharma , Ajay Jain , Ajay Majithia , Neeraj Kumar Jain , R.S.Mann , Sachin Jain , Sandeep Chaturvedi , Vivek Sharma

Judgement

1. THE only question which requires consideration in these Revision Petitions is - whether under the Electricity Act, 2003, the officers of the electricity company are empowered to arbitrarily direct the consumers to deposit the amount according to their whims with a threat that failure to deposit the said amount would result in disconnection of electricity power or they would be prosecuted?

2. IN our view, the Electricity Act, 2003 (hereinafter referred to as the Act for brief) nowhere empowers the officers concerned to adopt such an arbitrary procedure. Under the Act, in the case of alleged unauthorised use of electricity, procedure prescribed under Section 126 of the Act is required to be followed. If that procedure is not followed, it is to be highlighted that the Act nowhere empowers the officers of the electricity company to act according to their whims and harass the consumers at large. These Revision Petitions would illustrate how the officers exercise their powers arbitrarily.

In all these cases, it is alleged that there was unauthorized use of electricity by some means or the other, by the consumers. This was detected when the officers visited the premises of the consumers. Without issuing any Notice as contemplated under Section 126 or without passing any provisional order as contemplated under Section 126 of the Act, the officers straightaway issued an order contemplated under Section 152 of the Act, which provides for compounding of offences.

3. FACTS, in brief, in these Revision Petitions are as under: revision Petition No. 3144/2007 The consumer was provided with electricity connection bearing account No. MT-11/0280 at his premises. On 27. 4. 2006, Shri V. K. Vohra, Asstt. Executive Engineer, Mandb, Hisar in the company of other staff members checked the meter installed at the premises of the complainant and found that MCB as well as company seals of the meter were tampered with. The connected load was found to be 1. 053 KW against the sanctioned load of 3 KW. The pulse rate was very slow so to say three pulses instead of 11 pulses and for that reason the meter was running very slow. The meter was removed and handed over to the members of the Checking Party. Report was signed by the complainant Megh Raj and other officials of the Checking Party. Thereafter, a notice bearing No. 2474-75 dated 1. 5. 2006 consisting of penalty amount of Rs. 67,592 and compounding amount of Rs. 12,000 total being Rs. 79,592 was served upon the complainant. The complainant was directed to deposit the said amount within three days of the notice failing which it was stated that the report would be lodged in the concerned Police Station. Aggrieved by the demand made in the above stated notice, the complainant invoked the jurisdiction of the District Forum by filing the present complaint. Revision Petition No. 3364/2007

4. ON 30. 1. 2006, the officials of the opposite parties checked the meter of the complainant bearing account No. B-1/4/41 installed at the Atta Chakki of the complainant. At the time of checking, they found the meter glass gasket tampered with in order to insert the x-ray film to stop the disc and to abstract the energy illegally and unlawfully. The meter was removed and sealed into a cardboard box. In addition, the cables were also removed and taken into possession. Separate Checking Report was prepared which was signed by the complainant. Thereafter, a penalty amount of Rs. 2,40,000 was determined and Notice bearing Memo No. 602 dated 31. 1. 2006 was issued to the complainant. Revision Petition No. 3539/2007 On 19. 9. 2005, the domestic electricity meter of the complainant bearing account No. DL-21/2099 was checked by Shri Man Mohan Singh, J. E. Vigilance Staff in the company of Shri Prem Chand Rathi, J. E. (Operation) and other staff members, in the presence of Shri Vivek Kumar, son of the complainant. The meter box was opened and it was found that firm seals of the meter were tampered with from latch wire. Glue type material was found filled in the plastic punch. The load was also found to be 8. 956 KW. The electric supply of the complainant was disconnected. The meter was removed and packed in the presence of the complainant and handed over to Shri Prem Chand Rathi, J. E. Taking it a case of theft of energy, penalty amount of Rs. 90,000 was determined for which Demand Notice bearing No. 1856 dated 22. 9. 2005 was issued to the complainant. Revision Petition No. 3596/2007

5. THE complainant obtained a NDS electricity connection bearing No. SH01-2699-J/ai-449 with a sanctioned load of 2. 1 KW at his premises for running a small water pump in order to earn livelihood for himself and his family members.

6. ON 19. 1. 2006, the vigilance staff of the opposite parties checked the meter installed at the premises of the complainant and found him committing theft of electrical energy. On the basis of the checking report dated 19. 1. 2006, a penalty amount of Rs. 60,000 was determined and a Demand Notice bearing No. 58/ca dated 20. 1. 2006 was issued to the complainant. Revision Petition No. 3668/2007 The complainant is having electricity connection bearing account No. B1-1632 in her premises. On 20. 3. 2006, Vigilance team headed by the AEE, namely, Shri S. L. Bindal accompanied by other officials, checked the meter installed at the premises of the complainant and found that all the three Mandt seals of the meter were tampered with. The impression of the drill bit was also found existing in the Mandt seals with digits projected and disturbed at the entry points of the lace in lead seals. The top Mandt seals bearing impression J-22355/ aom having lace wire were found not inserted through the whole path of the meter body and the lace wire was found directly connected in the lead seal without routing through the designated whole meter body. Load was found to be 14. 646 KW whereas the sanctioned load was found to be 19. 5 KW.

Taking it a case of theft of energy, the electricity supply was disconnected and the meter was removed and sealed in a cardboard box. On the basis of the checking report dated 20. 3. 2006, a penalty amount of Rs. 81,000 was determined and a Demand Notice bearing No. SPL-1 dated 20. 3. 2006 was served on the complainant. Revision Petition No. 3669/2007

7. ON 9. 9. 2005, the electricity meter bearing account No. H-541, installed at the premises of the complainant, was checked by the vigilance team of the opposite party. They found that the complainant was using excess load of 9. 746 KW in place of the sanctioned load of 7. 2 KW. They also suspected the genuineness of the seals of the meter and for that reason recorded in the checking report that genuineness of Mandt seals may be got verified from Mandt lab along with accuracy at the time of replacement of mechanical meter with electronic meter. The meter was taken into possession and was sent to Mandt Lab, Dhulkot and the Mandt round seals were found existing on the meter cover bearing impression AM-140. The testing branch No. on the meter was DKTC-261. The said meter was tested on 3. 7. 2005. The seal impression AM-140 existing on the meter cover was not functional in the lab on 3. 7. 1985 as the sealing plier with impression AM-140 was in operation in the lab from the period 16. 2. 1987 to 27. 5. 1988 as per record. Accordingly, it was concluded that the meter cover with impression AM-140 was fake. Taking it a case of theft of energy, penalty amount of Rs. 40,000 was assessed and Demand Notice bearing No. 1192 dated 17. 11. 2005 was served on the complainant. Revision Petition No. 3813/2007

8. THE complainant has been provided with an electricity connection bearing account No. CT13-1633-E/kc2-234 at his business premises wherein the complainant and his family members had started the work of aluminium moulding. On 20. 10. 2005 the vigilance staff of the opposite parties checked the

meter installed at the premises of the complainant and found that I/c PVC service line existing inside the enclosed room, could be shifted outside the room through appropriate route. They further found two numbers joints fixed in the service line feeding to the connection. The reading of 1522 units was found accumulating and both the Mandt seals (found) were found tampered with. Lace wire was also cut and refixed with adhesive material for abstracting the energy illegally. The meter was removed and taken into possession by sealing in accordance with the prescribed procedure. Taking it a case of theft of energy, a Demand Notice bearing Memo No. 727 dated 20. 10. 2005 was issued to the complainant demanding compounding fee of Rs. 21,850. Revision Petition No. 3347/2007

9. THE complainant is doing the work of electroplating to earn his livelihood for which an electricity connection bearing account No. TP-187 has been provided to him.

10. ON 3. 1. 2006, the said meter was checked by the vigilance staff of the opposite parties and recorded observation in the checking report "the Electro Mechanical Meter may be replaced with electronic meter. The removed Electro Mechanical Meter may be sent to Lab at Dhulkot for ascertaining the genuineness of the seals and accuracy. The domestic load is intermixed with SP Load whereas the industrial load not found available at this site". Thereafter, notice for checking the meter on 7. 3. 2006 at Dhulkot was issued to the complainant to be present at the time of testing of the meter at the AEE Mandp Lab, Dhulko. On opening the cardboard box, 2 Nos. Mandt seals bearing No. Y-93031/am-120, Y-93032/ a-62727 existed on the meter cover. As per the record available in the lab, the said meter was tested in the lab on 7. 11. 1994 with seals No. A-62726 with sealer impression No. AM-10 and AOM 24 provided on meter cover. As the existing seals of the meter cover did not tally with the lab record, it was concluded that the seals on the meter were fake and duplicate. Taking it a case of theft of energy, a Demand Notice bearing Memo No. 211 dated 8. 3. 2006 was issued to the complainant levying penalty of Rs. 2,20,700 and Rs. 700 as cost of the meter which had been replaced. Revision Petition No. 3319/2007

The complainant is having electricity connection bearing account No. RA-11/48 at his premises. On 28. 6. 2006, Shri Ashok Panny and Shri Prem, J. E. with other staff members visited the premises of the complainant in order to check the meter installed therein. They found a cut in the PVC. Taking it a case of theft of energy, the electricity supply was disconnected.

11. BASED on the checking report, a compounding Notice bearing Memo No. 914 dated 29. 6. 2006 was issued whereby the complainant was asked to deposit Rs. 46,016 assessed as compounding amount though the total liability was indicated to be Rs. 1,31,530. Revision Petition No. 3277/2007 The electricity meters bearing account No. BS/55 and BS/154 installed at the premises of the complainant were checked on 9. 2. 2005 by the vigilance staff of the opposite parties. In the checking report in respect of connection No. BS/55, it was

recorded that TDCO was effected on 18. 10. 2004 but three phases were alive as displayed in the meter. It was further mentioned that factory was shut down and the maintenance was in progress. The meter fuses grips were found removed. Pulse checking was found to be normal when checked with the required instrument.

12. IN respect of the second meter bearing account No. BS/154, the inspecting team recorded that the meter installed in MCB was not sealed by the operation staff. Thereafter the meter was further checked by opening the MCB door and it was found that the meter terminal plate was found missing. Four meter cover seals were found existing and intact. One side rivet strip was found broken on meter cover. The meter was removed and packed in cardboard box for sending the same to the Mandt lab. The meter was tested in the lab of the opposite parties and as per report dated 22. 3. 2005 it was observed that a small gap was created between the meter body and meter cover on the RHS of the meter. In addition, after scratching the sticker mentioning "caution: ROTOR BLOCKED" a created pin hole was found below the sticker in the front side of the above meter glass in the metallic cover and some scratches were also visible on the specification plate specially on the 1000 digit. Taking it a case of theft of energy, a Demand Notice bearing Memo No. 1801 dated 24. 3. 2005 was served on the complainant to pay a penalty of Rs. 93,120. Revision Petition No. 3244/2007

13. THE complainant is having electricity connection bearing account No. PS31/2527. On 20. 6. 2006, the meter installed at the premises of the complainant was checked by Shri A. S. Babbar and Shri S. K. Bali, staff members of the opposite parties. They found that MCB was broken and after opening the meter top seals were found tampered with.

14. TAKING it a case of theft of energy, penalty amount of Rs. 1 lakh was determined and a Demand Notice bearing No. Spl. I dated 21. 6. 2006 was served on the complainant. Revision Petition No. 4261/2007 The complainant is having electricity connection bearing account No. YY13/4727. On 27. 9. 2005, the officials of the opposite parties inspected the meter installed at the premises of the complainant. At that time, father of the complainant and one Ashok Kumar were also present. During the checking, the outgoing phase grip of the meter was found disconnected and the phase was being taken from flat rate tubewell of Punnu Ram existing in the same premises which was connected directly with the PVC wire from the main line to the fitting of the house and poultry farm. The meter was found dead and stopped intentionally to steal energy unlawfully and illegally. The meter and PVC were removed and handed over to Shri R. L. Beniwal. The photographs of the place were taken by Shri Pradeep Kumar.

Taking it a case of theft of energy, a Demand Notice bearing Memo No. 1691 dated 28. 9. 2005 demanding Rs. 30,000 as penalty was issued to the complainant. Revision Petition No. 1660/2008

15. AN electricity connection bearing account No. C-2166 has been provided at

the shop of the complainant. On 12. 4. 2006, the officials of the opposite parties checked the meter installed at the aforesaid premises and found one Mandp seal tampered with and refixed. They also checked the accuracy of the meter functioning and found the meter to be running slow by 75%. Taking it a case of theft of energy, a Demand Notice bearing Memo No. 737 dated 19. 4. 2006 was issued to the complainant asking him to pay the compounding amount of Rs. 19,291. Revision Petition No. 850/2008

16. THE complainant is having two electricity connections bearing account No. TT-39/309 DS and TT-39/4365 NDS at his residential premises as well as dairy premises. One of the meters was three phase electronic and other was single phase mechanical meter. On 10. 9. 2005, the officials of the opposite parties inspected the above stated meters. On checking of the three phase electronic meter, MCB was found to be loose and after removing the MCB, all the four firm seals were found to be tampered with. In case of SP mechanical meter, a hole was found in the lower portion of the meter body. Taking it a case of theft of energy, the supply to the meters was disconnected and both the meters were removed. A penalty of Rs. 24,750 was determined in respect of meter account No. TT-39/309 DS and another penalty amount of Rs. 41,350 was determined in respect of the meter account No. 39/4365 NDS and a Demand Notice bearing Memo No. 1282 dated 10. 9. 2005 was served on the complainant. Revision Petition No. 436/2008

17. THE complainant is having electric connection bearing account No. SK-17/3052. On 28. 2. 2006, the staff of the opposite parties checked the meter installed at the premises of the complainant and found him taking electricity supply directly from the main line by connecting the PVC wire from main line to the grip. The meter was removed and checking report was prepared. The load was also found to be 2. 329.

18. TAKING it a case of theft of energy, a Demand Notice bearing No. 264/ca dated 28. 2. 2006 for the demand of Rs. 12,000 was issued to the complainant. Findings: From the findings of fact recorded by the State Commission and the District Forum, it is apparent that the orders passed by the officers of the electricity company are arbitrary, unjustified and de hors of statutory provisions. It is high time that the concerned officers should be given training or should be made aware of the powers under the Act so that such misuse may not be there in future. In any case, if there is unauthorized misuse of electricity, the same can be dealt with in accordance with law.

At this stage it would be necessary to reproduce the procedure prescribed under Section 126 of the Act, which reads as under: Section 126. Assessment- (1) If on an inspection of any place or premises or after inspection of the equipments, gadgets, machines, devices found connected or used, or after inspection of records maintained by any person, the assessing officer comes to the conclusion that such person in indulging in unauthorized use of electricity, he shall provisionally assess to the best of his judgement the electricity charges payable by such person or by any other person benefited by such use. (2) The order of provisional assessment shall be served upon the person in occupation or possession or in charge of the place or premises in such manner as may be prescribed. (3) The person, on whom an order has been served under Sub-section (2), shall be entitled to file objections, if any, against the provisional assessment before the assessing officer, who shall, after affording a reasonable opportunity of hearing to such person, pass a final order of assessment within thirty days from the date of service of such order of provisional assessment, of the electricity charges payable by such person. '' (4) Any person served with the order of provisional assessment may, accept such assessment and deposit the assessed amount with the licensee within seven days of service of such provisional assessment order upon him. (5) If the assessing officer reaches to the conclusion that unauthorized use of electricity has taken place, the assessment shall be made for the entire period during which unauthorized use of electricity has taken place and if, however, the period during which such unauthorized use of electricity has taken place cannot be ascertained, such period shall be limited to a period of twelve months immediately preceding the date of inspection. (6) The assessment under this section shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified in Sub-section (5).

Explanation- For the purposes of this section,- (a) "assessing officer" means an officer of a State Government or Board or licensee, as the case may be, designated as such by the State Government ; (b) "unauthorized use of electricity" means the usage of electricity- (i) by any artificial means ; or (ii) by a means not authorized by the concerned person or authority or licensee ; or (iii) through a tampered meter ; or (iv) for the purpose other than for which the usage of electricity was autho-rised; or (v) for the premises or areas other than those for which the supply of electricity was authorised. In short, the aforesaid section (a) empowers the concerned officers to have an inspection of any place or premises of the consumer to which electricity is supplied; (b) after inspection of the equipments/gadgets/ma-chines or devices found connected or used, if the assessing officer comes to the conclusion that such consumer is indulging in unauthorised use of electricity, he is required to provisionally assess to the best of his judgment the electricity charges payable by such consumer or by any other person benefited by such use; (c) such conclusion can also be arrived at on the basis of inspection of the record maintained by the consumer; (d) the order of provisional assessment is required to be served upon the person in occupation or in possession or in-charge of the premises in such manner as may be prescribed; (e) thereafter, consumer is entitled to file objection against the provisional assessment before the assessing officer; (f) thereafter, reasonable opportunity of hearing is required to be given to such consumer; (g) after giving reasonable opportunity of hearing, final order of assessment within 30 days from the date of service of such provisional assessment order is required to be passed; (h) Sub-section (4) empowers the consumer to accept the provisional assessment and deposit the assessed amount with the electricity company within 7 days of service of such provisional assessment order on him.

Further, as stated above, the provisional assessment order, power is restricted for the period prescribed under Sub-section (5), which provides that such assessment shall be made for the entire period during which unauthorised use of electricity has taken place and, in any case, if the period during which unauthorised use of electricity has taken place cannot be ascertained, such period shall be limited to a period of 12 months immediately preceding the date of inspection.

19. ALSO, there is further limitation under Sub-section (6) for assessment in case of unauthorized use of electricity that such assessment shall be made at a rate equal to twice the tariff applicable for the relevant category of services specified under Sub-section (5). The aforesaid entire procedure is required to be followed before passing the assessment order.

20. NOT only this, under Section 127 of the Act, the said assessment can be challenged by filing appeal within 30 days of the said order. At present, we are not required to consider the provisions of Section 127 in detail. All the aforesaid statutory provisions are required to be kept in mind before passing any order either of the provisional assessment or before launching prosecution. Further, even if we refer to the amended provisions of Section 135 whereby Section 135 (1a) is added with effect from 15. 6. 2007, then also in the case of apparent theft of energy, the officers are required to make the assessment under Section 126. This would be clear if we refer to the third proviso to Section 135 (1a). Section 135 (1a) reads as under: "without prejudice to the provisions of this Act, the licensee or supplier, as the case may be, may, upon detection of such theft of electricity, immediately disconnect the supply of electricity: provided that only such officer of the licensee or supplier, as authorised for the purpose by the appropriate Commission or any other officer of the licensee or supplier, as the case may be of the rank higher than the rank so authorised shall disconnect the supply line of electricity: provided further that such officer of the licensee or supplier, as the case may be, shall lodge a complaint in writing relating to the commission of such offence in police station having jurisdiction within twenty four hours from the time of such disconnect: provided also that the licensee or supplier, as the case may be, on deposit or payment of the assessed amount or electricity charges in accordance with the provisions of this Act, shall, without prejudice to the obligation to lodge the complaint as referred to in the second proviso to this clause, restore the supply line of electricity within forty-eight hours of such deposit or payment;

21. THIS provision would apply in case where there is apparent theft of electricity as contemplated under Section 135 (1). That means, the ingredients of Section 135 (1) (a) to (e) are required to be prima facie satisfied. In any set of circumstances, the third proviso to Section 135 (1a), which contemplates deposit or payment of the assessed amount or electricity charges in accordance

with the provisions of the Act, would definitely mean that procedure of assessment under Section 126 is followed. We make it clear that Section 135 (1a) was not applicable in the present cases because the raid was carried out by the officers in the year 2005/2006.

22. HOWEVER, as stated above, the officers have not understood the provisions of Section 126 of the Act and no provisional or final assessment was made in all the aforesaid cases. Straightaway they presumed that it was an offence for which complaint under Section 151 of the Act is to be filed and thereafter the officers thought that they were empowered to compound the offences as contemplated under Section 152 of the Act. Therefore, they straightaway issued Notice directing the complainants to pay the amount on the basis of Schedule under Section 152. This is nothing but arbitrary and against the law. Section 152 of the Act provides as under : Section 152 compounding of offences- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the appropriate Government or any officer authorised by it in this behalf may accept from any consumer or person who committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, a sum of money by way of compounding of the offence as specified in this Table below: nature of Service rate at which the sum of money for compounding to Be collected per Kilowatt (KW)/horse Power (HP) or part thereof for Low Tension (LT) supply and per Kilo Volt Ampere (KVA) of contracted demand for High Tenstion (HT) (1) (2)1. Industrial Service twenty thousand rupees ; 2. Commercial Service ten thousand rupees; 3. Agricultural Service two thousand rupees; 4. Other services four thousand rupees: provided that the Appropriate Government may, by notification in the Official Gazette, amend the rates specified in the Table above. (2) On payment of the sum of money in accordance with Sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such consumer or person in any criminal Court. (3) The acceptance of the sum of money for compounding an offence in accordance with Sub-section (1) by the appropriate Government or an officer empowered in this behalf shall be deemed to amount to an acquittal within the meaning of Section 300 of the Code of Criminal Procedure, 1973 (2 of 1974). (4) The compounding of an offence under Sub-section (1) shall be allowed only once for any person or consumer.

The learned counsel appearing on behalf of the petitioner submitted that once the officers arrived at the conclusion that the consumer has committed theft of electricity without following the procedure under Section 126 straightaway complaint can be filed, as contemplated under Section 151 and even in cases where the complaint is not filed they have power to issue notices under Section 152 of the Act for compounding the offences.

In our view, the aforesaid submission cannot be accepted. Bare reading of Section 152 indicates that power under Section 152 is to be exercised if any consumer or person has committed or who is reasonably suspected of having committed an offence of theft of electricity punishable under this Act, applies for compounding of the offence, the officer is empowered to compound the offence by charging the amount as provided in the table stated under Section 152. Further, Sub-section (2) also indicates that on payment of money in accordance with Sub-section (1) any person in custody in connection with the offence shall be set at liberty and no proceeding shall be instituted or continued against such consumer or person in any Criminal Court. This would also establish that such power may be exercised when complaint as provided under Section 151 is pending. Further, Sub-section (3) of Section 152 declares that acceptance of the sum of money for compounding an offence would amount to acquittal within the meaning of Section 100 of the Cr. P. C. meaning thereby that there must be some prosecution pending before the Court.

23. IN view of the aforesaid finding on question of law, we are not discussing the evidence which is appreciated by the State Commission and the District Forum. Hence, the orders passed by the State Commission and the District Forum in the aforesaid Revision Petitions cannot be said to be in any way erroneous.

24. IN the result, the Revision Petitions are dismissed. There shall be no order as to costs. R. Ps. dismissed.

