

(2006) 10 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

Dakshin Haryana Bijli Vitran Nigam Ltd.

APPELLANT

Vs

Nanak Chand

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Citation : 2006 4 CPJ 401 : 2007 1 CLT 152

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

Final Decision : Appeal allowed

Judgement

1. CHALLENGE in this appeal is to the order dated 17.9.2002 passed by the District Consumer Disputes Redressal Forum, Rewari whereby while accepting the complaint of the respondent-complainant direction has been given to the appellant-opposite parties to pay Rs. 20,000 as compensation of Kharif and Rabi crops caused to the complainant; Rs. 500 as litigation expenses and Rs. 500 as compensation to the complainant.

2. IN order to decide the controversy raised in this appeal the facts as set out in the complaint need to be noticed briefly. The complainant has been provided with tubewell electricity connection bearing account No. MGAG-809 for his land located in village Chilhar, Tehsil and District Rewari. The transformer and wires of the service line through which the supply was being provided to the tubewell of the complainant were stolen on 24.5.2001. A complaint in this regard was recorded by the complainant in the complaint book of the opposite parties. On 5.7.2001 he moved an application addressed to the S.D.O., DHBVNL, Pataudi wherein he pointed out that after 24.5.2001 the electricity supply to his tubewell had not been restored. It was prayed that steps be taken immediately to restore the electricity supply to his tubewell and till the supply was restored, the electricity charges for the said period be waived off. However, no action was taken by the opposite parties in this regard. Forced by these circumstances, the complainant filed the present complaint alleging that due to non-restoration of the electricity supply to his tubewell, he had not been able to cultivate Guaar and Bajra crop in his field and on that account he had suffered a loss of Rs. 50,000.

Accordingly, it was prayed that the direction be given to the opposite parties to pay the aforesaid compensation amount to him and not to claim the charges of the electricity from 24.5.2001 till the electricity supply to his tubewell was restored besides Rs. 10,000 on account of mental agony and harassment caused to him. The complaint was contested by the opposite parties. In the written statement filed it was stated that the complainant had been getting the supply from 100 KVA transformer SOP to Mr. Thana Ram, Village Chillar and the said transformer was stolen during the night 20/21.5.2001. Thereafter, new transformer was installed on 19.9.2001 after it was drawn from the store vide SRW No. 8/1120 dated 18.9.2001. It was further stated that conductor 440 meter was stolen on the night falling between 8/9.6.2001 and a report was sent to the S.H.O., Palawas vide Memo No. 4017 dated 30.8.2001 and also to the Superintendent of Police, Rewari vide Memo No. 5177 dated 5.11.2001. It was further stated that no FIR was lodged and for that reason conductor could not be drawn from the store. At the same time it was stated that electricity supply could not be restored due to non-availability of the conductor and the non-registration of the FIR by S.H.O., Palawas. Rest of the allegations made in the complaint were denied because it was stated that the complainant had not been paying the due bills and as such he is not entitled to get any relief under the circumstances of the case. On scrutiny of the pleadings of the parties and evidence adduced on record the District Forum accepted the complaint as noticed above. It is against this order the present appeal has been filed by the appellant-opposite parties.

Arguments of the learned Counsel representing the respondent-complainant have been heard at length as none has appeared from the side of the appellant-opposite parties at that time.

3. AS no representation has been put from the side of the appellant during the course of arguments, the grounds stated in the memorandum of appeal have been taken into consideration. The impugned order has been assailed primarily on the ground that the District Forum has not appreciated the factual position because the transformer was stolen by some miscreants and as such there was no deficiency on its part in this regard. It was also stated that the District Forum had wrongly awarded the compensation of Rs. 20,000 and quashed the electricity bill from 24.5.2001 to 8.9.2002 with the observation that the complainant could not grow crop of Guaar, Bajra and Rabi crop in his land. Learned Counsel representing the respondent-complainant has vehemently urged during the course of arguments that the complainant has been denied the supply of the electricity to his tubewell from 24.5.2001 to 8.9.2002 with the result the complainant could not sow crops of Guaar and Bajra and in fact inadequate compensation has been awarded by the District Forum because the complainant has demanded Rs. 50,000 for the loss caused to the complainant on account of damage caused to the crop due to non-availability of the water for irrigating the fields due to non-functioning of the tubewell. In order to succeed the complainant has to establish that there was deficiency of service on the part of the opposite parties. Deficiency of service has been defined under Section 2(1)

(g) of the Consumer Protection Act, 1986 as under: "(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service". By now it is well settled that the opposite parties would be liable for deficiency of service where service is provided for consideration. In this case it is admitted by the opposite parties that theft of transformer and supply line wires was committed on the night intervening 20/21.5.2001 and 8/9.6.2001 respectively. It is also the case of the opposite parties that some miscreants had committed the theft of the transformer and the wires which were feeding the supply to the tubewell of the complainant. Therefore, there can be no question of deficiency of service when third party or anti-social elements are the contributing factor. There is no other material on record which could justify a conclusion that the opposite parties had any contributing role to play in this regard. Therefore, the stand of the opposite parties taken in the written statement that the opposite parties were not at fault, is established on record.

4. SO far as the quantum of compensation is concerned for the period involved, admittedly the complainant has only produced copies of Jamamandi for the year 1998-99 which shows that total land owned by the complainant and other co-sharers comes to 18 Kanals-12 Marlas. The complainant along with Sumer Chand and Rajinder has joint share to the extent of share in the land measuring 18 Kanals-12 Marlas. But the period involved is from 24.5.2001 to 8.9.2002. No Khasra Girdawari or Jharpatawar for the said period has been produced on record to find out the exact damage caused to the crop of the complainant on account of non-irrigation of the land due to non-supply of the electricity supply to the tubewell of the complainant. Under the circumstances of the case, the affidavit filed by the complainant in support of the stand taken in this regard cannot be taken as the basis to determine the compensation. In the affidavit filed nothing has been indicated as to in what manner he has tried to overcome the alleged loss. No such data has been furnished by him. Therefore, there is no justification for the District Forum to award the compensation amount of Rs. 20,000 to the complainant and that part of the order is consequently set aside. Coming to the other relief granted, definitely the opposite parties have failed to supply the electricity supply to the tubewell of the complainant from 24.5.2001 to 8.9.2002 and as such the District Forum was justified in issuing direction to the opposite parties not to claim any electricity charges in the bills from the complainant for the said period. For the aforesaid reasons, the order of the District Forum is modified and the appeal is allowed in terms stated above. Appeal allowed.