
(2003) 03 NCDRC CK 0012

In the National Consumer Disputes Redressal Commission

Deputy Engineer, Gujarat Electricity Board

APPELLANT

Vs

MADANLAL MANILAL DESAI

RESPONDENT

Date of Decision : 05-03-2003

Acts Referred:

Citation : 2003 2 CPJ 601

Hon'ble Judges : M.S.Parikh , M.K.Joshi J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal arises from order dated 17.3.2001 rendered by the Consumer Disputes Redressal Forum, Panchmahal District in Application No. 94 of 1998, directing cancellation of the disputed three bills issued by the opponent Gujarat Electricity Board (GEB for short) and adjusting the amount paid by the complainant towards the actual electricity power used by the complainant as per regular bills at the prevalent rates after installation of the new meter, to pay penal interest @ 15% upon the opponent GEB committing default in complying with the order and to pay compensation in the sum of Rs. 500/- and cost in the sum of Rs. 500/-.

2. IT was the complainant's case that the complainant had got constructed a house at the address stated in the complaint prior to 1998 and had obtained electricity connection from opponent GEB who had installed the meter much prior to 1999. The complainant had been residing at Ahmedabad for years and the house was remaining closed. In June, 1990, the complainant's son had his service at Godhra and, therefore, he had gone to reside in the house in question. As the meter was closed, he gave application to the opponent GEB for replacement of the meter by a new meter but of no consequence. IT was only in July-August, 1998 that the concerned officer/personnel of the opponent GEB went to the site for replacement of the meter which was around 30 years old. At that time, theft of electricity by tampering with the meter was alleged against the complainant. IT is the complainant's case that the allegation is false inasmuch as if he wanted to tamper with the meter, in the aforesaid

circumstances, he would not have applied to the opponent GEB for replacement of the meter. IT was also the case of the complainant that in order that the opponent GEB or its officers may not be held to be negligent, they had put up a false allegation of power theft against the complainant. The complainant, therefore, prayed for setting aside the disputed bill and compensation in the sum of Rs. 10,000/-. The opponent GEB filed reply but without any affidavit in support thereof alleging that when the premises was checked on 15.7.1998, it was noticed that the impressions on both the lead seals were not properly visible, that some gap was noticed on the left side of the meter glass and, therefore, the meter was required to be taken into custody. Thereafter, on 24.8.1998, the complainant's representative Mr. Vijaybhai remained present and the meter was checked in the laboratory of the opponent GEB. IT was found that there was a piece of paper inside the meter. Accordingly, the opponent GEB prepared additional bill for Rs. 1,179.79 based on the allegation of power theft. The complainant paid that bill. The opponent GEB also issued further additional bill based on ABDC formula on 15.7.1998 for Rs. 5,873.30. The complainant presented a caveat in the Civil Court at Godhra on 10.12.1998 (probably against apprehended disconnection of electricity). The complainant, however, filed the complaint in question before the learned Forum instead of approaching the Appellate Committee as per Condition No. 34. The learned Forum considered the fact that written statement was not supported by affidavit of any officer or person and that the alleged checking sheet and/or Panchnama was not presented before the learned Forum. IT, therefore, upheld the case of deficiency in service canvassed by the complainant against the opponent GEB. The learned Forum also considered the facts that there was an application made from the side of the complainant way back in the year 1992 stating that the premises in question was not in use prior to that and that the opponent GEB was negligent in not replacing the meter in spite of repeated applications from the side of the complainant. The learned Forum, therefore, upheld the stand of the complainant that with a view to escape the charge of negligence and deficiency in service, the opponent GEB had put up a false case of power theft against the complainant. IT, therefore, directed the opponent GEB for issuance of revised bills as per the average use of electricity by the complainant and as per the rates prevalent at the disputed period. The learned Forum also ordered cost and compensation as stated above. We have heard the learned Advocate appearing for the opponent GEB. No one is present for the original complainant. We have gone through the impugned order. In our considered opinion, there is no infirmity in the impugned order inasmuch as the opponent's stand of power theft alleged against the complainant was not supported by any affidavit or documentary evidence. In the background of the facts noted above, the opponent GEB ought to have placed necessary reports on record well in time. It ought to have placed affidavit of the concerned officer/employee of the opponent GEB. This is a clear case where the opponent GEB could not dispute before the learned Forum that the premises remained closed for number of years, that the complainant's son went to reside there on assuming his job at Godhra somewhere in 1990-92, when he had an occasion to

give application to the opponent GEB stating therein that the meter in question was closed and not working, that the complainant's son repeated such applications subsequently also and that the opponent GEB did not take any action worth the name for as many as six years or little more. In the background of such facts, it was quite obvious for the opponent GEB and more particularly officers/employees of opponent GEB to see that no fault or negligence was attributed to them. That precisely appears to have happened in the present case levelling allegation against the complainant as stated above. Under such circumstances, no indulgence is required to be shown in favour of the opponent GEB in the present case. However, for the finality of the present proceeding, we have chosen to refer to the Xerox copy of the report of the concerned checking Inspector of the laboratory of the opponent GEB. The report clearly indicates that the body seals of the meter are in good condition, although a piece of paper was found in the meter. This statement is supported by the submission that fitting of the glass of the meter was loose and, therefore, the glass was moving resulting into possibility of inserting any substance inside the meter. It is under such circumstances that the Inspector has drawn conclusion that as the piece of paper was found inside the meter, there was tampering of the meter. This conclusion, on the face of it is not tenable inasmuch as the internal wiring is noted to be in order and the seals are noted to be in order and intact. The meter was not in working condition. For the first time the premises was occupied by the complainant's son upon his assumption of service at Godhra. He immediately brought to the notice of the opponent GEB about this fact. If he was in any manner instrumental in inserting piece of paper inside the meter, he would have hardly bothered to intimate the opponent GEB about this fact. Yet, the opponent GEB sat silent for as many as six years. There can be no better case than this of displaying of gross negligence and gross deficiency in service on the part of the opponent GEB in not attending to the grievance/complaint of the consumer which was repeated on number of occasions.

It is submitted that in case of power theft, a consumer might be referred either to the Appellate Committee or to the Civil Court and case of power theft can hardly be adjudicated in a process under the Consumer Protection Act, 1986. This argument would hold good in case of power theft as such. There must be prima facie appearance of such cases. This is not a case where there is any prima facie appearance of power theft. Mere bald allegation of power theft will not suffice. If that would be the proposition, opponent GEB would escape its responsibility only by making of allegations without any prima facie support thereof. That is not the correct legal proposition. It has first to be shown before the Forum or Commission that there is prima facie case of power theft. In the present case it is not so. The facts are, on the contrary, contra-indicative of such an allegation. In that view of the matter, even if the xerox copy of the report which is shown to this Commission is taken into consideration, the opponent GEB cannot escape its liability of deficiency in service to the consumer in question. In above view of the matter, no indulgence is required to be shown in the present

case. Following order is, therefore, passed. ORDER This appeal is dismissed, with no order as to costs. Appeal dismissed.