
(1994) 10 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

DIRECTOR, GRAMIN VIDYUT SAHAKARI SAMITI

APPELLANT

Vs

TEJMANI PANDEY

RESPONDENT

Date of Decision : 13-10-1994

Acts Referred:

Citation : 1995 1 CCC 37 : 1995 1 CLT 396 : 1995 1 CLT 572 : 1995 1 CPC 343 : 1995 1 CPJ 53

Hon'ble Judges : V.S.Kokje , M.L.Tiwari J.

Final Decision : Appeal allowed

Judgement

1. MR. M.L. Tiwari, Member-The Director, Gramin Vidyut Sahakari Samiti, Amarpatan, Dist. Sattna being aggrieved by the order passed by the District Forum, Satna in Case No. 23/91 on 26.4.93 had preferred this appeal. The points for decision in this appeal are: (1) Whether it was lawful for the District Forum to issue mandatory injunction to reconnect the electric connection? (2) Whether the District Forum was correct in awarding Rs. 5,000/- as damages ?

2. REASONS for finding on point No. 1 - Under the scheme of the Act i.e. the Consumer Protection Act, 1986 there is no provision for issuing prohibitory orders on restraining M.P.E.B. not to disconnect the connection. The order passed by the District Forum dated 26.4.93 is quite contrary to the provisions of this Act, hence it is decided that the order was bad, ab-initio. The question of proceeding under order 39 Rule 4 of the Civil Procedure Code on 20.7.92 was wholly illegal because the provisions of Order 39 of the Civil Procedure Code are not applicable to the Consumer Protection Act, 1986. The observation of the District Forum dated 7.9.92 in the order sheet that the Forum has inherent powers to issue such prohibitory orders is against the provisions of law.

The reasons with finding on point No. 2 - From the statement of Shri Tejmani Pandey the complainant applicant it is clear that from 27.9.91 to 31.9.91 there was no electric supply because of burning of the transformer. It has come into evidence that in the statement of Shri R.B. Gupta that in the month of July, 91, August 91 the transformer was burnt. The complainant has not deposited the

arrears even after notice as per D-I. The learned District Forum in para 9 of its judgment under appeal hold that from 27.9.91 to 31.9.91 there was no electric supply because of the burning of the transformer.

3. THE burden of proving the damages the period for which there was no electric supply to the complainant was on the applicant. THE District Forum without any basis presumed that the Gramin Vidyut Sahakari Samiti has claimed electric bill for the period in which there was no electric supply. THE arguments that the Samiti respondent has not accepted the electric charges due and without any reason the applicant respondent was asked to go away. Shri Pratap Singh, non-applicant respondent No. 3 who is Accountant stated that July 91 to March 93 the complainant never deposited the arrears of the electric charges. If the clerk was not accepting the amount and the bonafides of the complainant were proper he would have remitted the amount by money order. This is not a case of sending bills without meter reading and the applicant has admitted that there was regular meter reading. It is to our surprise that the complainant who was to discharge the burden of proving the damage did not deduce any reliable evidence to establish the damages, and Rs. 5,000/- as damages awarded by the District Forum is based on surmises. From the evidence placed on record as per D-I the nonapplicant served the complainant with a notice to deposit the arrears which were as per D-2 and D-3 Rs.9,540/- out of the arrears of Rs. 10,047.40 part payment was done by the applicant and he was in arrears amounting to Rs. 9,540/- for C.L. No. 2145 he was in arrears of Rs. 187/-. There was no malafide intention on the part of the Gramin Vidyut Sahakari Samiti to trouble the complainant. On the contrary as per agreement with the complainant in case there was a strike or defect in the electricity apparatus, if any, damage is caused the Electricity Board will not supply electricity and is not liable and as per the copy of the agreement Shri Pandey has agreed to this condition. In these circumstances when there was no deliberate intention or object to cause damage to the applicant, the amount of Rs. 5,000/- awarded by the District Forum on the basis of surmises and conjecture is not justified.

4. IN result this appeal is allowed and the order of the District Forum, Satna is set-aside. IN the facts and circumstances of the case both the parties shall bear the cost of this appeal and that of the Forum. Appeal allowed.