

(1996) 02 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

GANDHI INDUSTRIAL CORPORATION

APPELLANT

Vs

GUJARAT ELECTRICITY BOARD

RESPONDENT

Date of Decision : 07-02-1996

Acts Referred:

Citation : 1996 2 CPR 366 : 1996 3 CPJ 335

Hon'ble Judges : R.C.Mankad , Jatin P.Vaidya J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal by the original complainant is directed against the judgment and order dated March 4, 1993 passed by the District Consumer Disputes Redressal Forum, Valsad (District Forum for hort) in Complaint No. 29 to 1992.

2. THE appellant who was complainant in the aforesaid complaint is running a factory in the name and style of Gandhi Industrial Corporation at Umbergaon and he is engaged in the business of manufacturing gummed stamp papers used for printing postage, revenue stamps, Court fee stamp etc. For running the factory he had taken electric connection from the Gujarat Electricity Board (Board for short). THE meter recording consumption of electricity in the factory was not properly working and sometimes it did not record the energy consumed. Sometimes the meter was running fast and sometimes slow. THE Board, however, did not taken any action and according to the appellant issued bills for large amounts. THE appellant was threatened with disconnection of electricity supply if he failed to make payment of the bills. THE appellant filed complaint before the Electrical Inspector under the provisions of the Electricity Act. THE Electrical Inspector, after hearing the parties, by his order dated December 1, 1987 directed the Board to charge electricity consumption charges on the basis of average consumption of past 12 months and not to charge rent for the meter for the said period. THE appellant demanded refund of the amount on the basis of the order of the Electrical Inspector. THE Board, it is alleged, found that Rs. 28,526/- were paid in excess by the appellant and it was liable to refund the same on the basis of the calculation made as directed by the Electrical Inspector.

THE Board preferred appeal against the order of the Electrical Inspector. This appeal, however, came to be dismissed by the Additional Chief Secretary to Government of Gujarat on February 7, 1991. THE Board, however, did not refund the amount. It is in the background of above facts that the appellant approached the District Forum by way of aforesaid complaint praying for recovery of Rs. 28,526/-, interest of Rs. 78,763.95/- compensation of Rs. 10,000/- and cost of Rs. 5,000/- from the Board. The Board resisted the appellant's complaint by written statement Exh. 8. It was inter alia contended that the District Forum had no jurisdiction to entertain the complaint and that it was barred by limitation. It was further contended that the amount of Rs. 28,526/- which was refundable to the appellant was adjusted in the bill of September 1991, which was for Rs. 37,175.90. After deduction of the amount refundable the appellant was called upon to pay only Rs. 8,649.90. There was therefore no justification to file complaint before the District Forum. It was submitted that the appellant was not entitled to any relief as prayed for by it.

The District Forum by its impugned judgment and order held that the appellant was not a consumer within the meaning of Consumer Protection Act, 1986 (Act for short) inasmuch as the energy which he had obtained from the Board was used for commercial purpose. It was further held that under Section 14 of the Act, the District Forum had no jurisdiction to execute or implement the order passed by the Electrical Inspector. According to the District Forum, what in effect the appellant had prayed for was execution/implementation of the order of the Electrical Inspector. It was further held that the appellant's complaint was barred by limitation. What the appellant was seeking was refund of amount on the basis of order passed on December 1, 1987. The last date for filing complaint was December 1, 1990 and the complaint having been filed on May 7, 1992 it was barred by limitation. In this view of the matter, the District Forum dismissed the appellant's complaint. Being aggrieved by the order of the District Forum, the appellant has preferred this appeal.

3. THE only contention which was raised before us by the appellant's learned representative was that the District Forum has erred in not awarding interest on the amount refundable from the date it was ordered to be refunded till the date it was actually adjusted or refunded. In any case, such interest be awarded upto April 2, 1990, the date on which the appeal filed by the Board was dismissed by the Additional Chief Secretary. We are unable to accept the submission advanced on behalf of the appellant. Section 26 of the Indian Electricity Act under which the appellant had approached the Electrical Inspector amongst other things provides that the decision of the Electrical Inspector shall be final. Therefore, if the appellant wanted to make claim for interest for the delayed refund of the amount, he should have requested the Electrical Inspector to pass appropriate order. It is pertinent to note that Sub-section (6) of Section 26 lays down as to how the amount to energy supplied to the consumer or the electrical quantity contained in the supply was to be estimated. The period for which such estimate was to be made was period not exceeding six months. In the instant case, the

period which the Electrical Inspector appears to have taken into consideration is period of 12 months for the purpose of estimating the average consumption by the appellant. Apparently this could not have been done in view of the provisions of Sub-section (6) of Section 26. But apart from that while giving direction to the Board to take average of past 12 months, the Electrical Inspector appears to have taken into consideration the delay in replacement of the defective meter. No provision of Electricity Act or rules made thereunder is brought to our notice which provides for appeal to the Additional Chief Secretary of Government of Gujarat. However, that question is not material so far as the dispute involved in this appeal is concerned. In our opinion, the decision of the Electrical Inspector having been made final, the claim of interest is not sustainable. It is not disputed that the amount refundable which was calculated as per the direction given by the Electrical Inspector has been refunded or adjusted in the amount payable by the appellant in subsequent bill of September 1991. Conditions of supply which in effect and substance is a contract between the Board and Consumer do not provide for payment of interest for delayed refund of the amount. Therefore, considering all the facts and circumstances of the case, it is difficult to hold that the Board was guilty of deficiency of service for non-payment of interest on the delayed refund.

4. WE also find force in the argument that the claim made by the appellant was barred by limitation. The foundation of the appellant's claim is the order dated December 1, 1987 passed by the Electrical Inspector. In other words, the amount became refundable under the said order. In substance, the appellant in his complaint prayed for refund of the amount of Rs. 28,526/- under the direction given by the Electrical Inspector. Such a complaint/claim even if maintainable under the provisions of the Act should have been made within three years as rightly held by the District Forum. Therefore, the claim made by the appellant in its complaint is barred by limitation, the complaint having been filed on May 7, 1992. Consequently, the claim for interest is also not maintainable. The observation made by the District Forum that the appellant could not invoke the jurisdiction of the District Forum under the Act for implementation or execution of the order passed by another statutory authority viz. Electrical Inspector is also correct. On that ground also the appellant's complaint is not maintainable. In the light of the above discussion that appeal deserves to be dismissed. We accordingly dismiss the same. However, there will be no order as to costs. Appeal dismissed.