

(2004) 11 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

GUJARAT ELECTRICITY BOARD

APPELLANT

Vs

REKHABEN S. JHA

RESPONDENT

Date of Decision : 30-11-2004

Acts Referred:

Citation : 2005 1 CLT 641 : 2005 1 CPJ 403

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

Final Decision : Appeal dismissed

Judgement

1. THIS appeal arises from order dated 20.7.2002 rendered by the learned Consumer Disputes Redressal Forum, Surendranagar in Consumer Dispute Complaint No. 107 of 1994 directing the opponent Gujarat Electricity Board (GEB for short) to refund Rs. 49,705.82 to the complainant with interest @ 12% p.a. from 24.6.1994 till payment and cost and compensation respectively in the sum of Rs. 500/- and Rs. 2,000/- to be paid within two months from the date of the order. Opponent GEB has subjected the aforesaid order to challenge in this appeal. We have heard the learned Advocates for the parties. We have gone through the impugned order.

2. IT would appear that the complainant has been residing in the premises bearing No. 66, Swastik Society at Surendranagar and having her Rachana Nursing Home/Hospital on the ground floor thereof with two different electric connections, one for the Nursing Home/Hospital and another for the residence. IT would further appear that the complainant was regularly paying electricity bills and did not have any occasion to handle or tamper with the meters or their seals. The said meters along with seals remained the same as they were installed. IT so happened that about a year before the day of the incident, the Dy. Engineer Mr. Bagadia had taken his wife to the complainant for consultation at around 9 O'clock at night. The complainant informed him that was not the time for consultation and an educated person should not go for such consultation at such point of time. The said engineer Mr. Bagadia got enraged and abused the complainant. Yet the complainant had given treatment to the wife of the said

officer of the opponent GEB. In the background of these facts of the incident, the complainant alleged before the learned Forum that Mr. Bagadia had sent some technician of opponent GEB on 24.6.1994 at the complainant's premises. The said person had disturbed the meter and the seals thereon and immediately telephoned Mr. Bagadia who rushed to the site. The said Mr. Bagadia apprised the complainant about the incident that happened a year before that date and alleged that the seals of both the meters were tampered with. He also threatened the complainant that she should pay the amount stated by him failing which the electric power connection would be disconnected. He further threatened that even if the amount as suggested by him would be paid up, the electric connection would not be restored for a month if such an amount was not paid up on the same day. He finally stated to the complainant that he had filed caveat in the Court and Forum and the complainant would not get any injunction from any Court of Law against disconnection of electric supply. The complainant having been left in helpless condition, was compelled to pay Rs. 44,676.37 under such circumstances for the electric connection of the nursing home/hospital and Rs. 4,969.45 for the electric connection in respect of her residential premises. The complainant was afraid about her patients in the clinic being rendered in helpless condition with regard to their health. She had, therefore, no alternative except to pay up the amount of the additional bills and give signature in the prepared statements. The said officer also recovered Rs. 25/- for each of the two connections by way of reconnection charges. Under such circumstances, the complainant approached the learned Forum for different reliefs. The opponent GEB resisted the complaint inter alia on the ground that the Dy. Engineer Mr. Bagadia had the occasion to consult the complainant in respect of health of his wife about 1 years before the date of the written statement but he did not take his wife at 9 O'clock at night as alleged by the complainant and he did not have any exchange of words with the complainant on that occasion. He had in fact the occasion to go for checking of electric connection in question on 24.6.1994 and found that the seals of the meters were in disturbed condition. He opened the seals and found that the reading of the meter was reversed. He, therefore, levelled the charge of theft of electricity against the complainant. He denied the allegation with regard to alleged threatening given by him to the complainant. He has asserted that he gave bills as per the ABCD formula in accordance with Condition No. 34 of the Conditions of Supply of Electricity. He has asserted that the complainant would not be entitled to compensation as prayed for.

After considering the material placed on record and after hearing the learned Advocate for the parties, the learned Forum came to the conclusion that there was no reason for the opponent GEB through the aforesaid officer to file any caveat application in the Court of Civil Judge (S.D.), Surendranagar and in the Forum which in fact were filed on 24.6.1994 when the checking of the electricity connection in question was made. We hasten to add here that the caveat applications appear to have been filed before hand or with pre-meditation under the aforesaid circumstances. The learned Forum has proceeded to record the

circumstances attending the Panchnama prepared by the aforesaid officer. Upon the intrinsic appearance of the Panchnama the learned Forum has observed that no independent person was kept present at the time of checking of the electric connection and no signature of any independent person has been obtained in the Panchnama. In the background of such state of affairs with regard to the Panchnama/statement of the consumer, the learned Forum has also observed that the meter was got tested subsequently but there was no evidence to show that the complainant was informed with regard to the time, date and place of checking of the meter so that the meter could be checked in presence of the complainant. The learned Forum has, therefore, come to the conclusion that there is violation of the principles of natural justice in the matter of checking of meters by and on behalf of the opponent GEB. Upon reference to the test report Mark 14/1, it transpires that the same was not found to have been prepared by any laboratory technician or officer but it contained the signatures of Dy. Engineer Mr. Bagadia and Executive Engineer Mr. Rathod. Another initial which appears is neither legible nor could be deciphered. The learned Forum has also referred to the meter reading roll stated to show marks of rubbing. It was, therefore, found that the meter reading roll was tampered with. The pressure coil and current coil of the meter was found to be in order. No foreign material was found from the meter. Appreciating all these observations appearing in the report, the learned Forum came to the conclusion that the same did not stand to establish case of theft of electricity. No independent Panch has been kept present at the time of laboratory test. Under such circumstances, the learned Forum came to the conclusion that there was great deal of substance in the allegation of the complainant with regard to what transpired when the complainant had an occasion to examine Mr. Bagadia's wife about a year before the date of the incident in question. The complainant produced subsequent bills to show that there was no incident of theft of electricity as the subsequent bills did not show any material difference between the prior bills and subsequent bills. The learned Forum did not accept the argument that the complainant managed to see that less electricity energy was used with a view to create evidence. Under such circumstances, the learned Forum distinguished the decisions which were cited on behalf of the opponent GEB and relied upon the decisions which were cited on behalf of the complainant.

3. THE learned Advocate appearing for the opponent GEB would submit that the statement/checking sheet bears the signature of the complainant. However, the complainant would explain under what circumstances she was required to sign such a checking sheet. She is neither an Electrical Engineer nor Electrical Technician. She is a medical practitioner and would hardly be aware about the mechanism of electric meters. She would not be interested in such an ugly act of tampering with the meter of her residence as well as her clinic in which she was running her maternity home. She would be more concerned with the profession and her patients. She approached the learned Forum with specific facts with regard to what happened a year before the date of the incident. This is,

therefore, a clear case where the officer of opponent GEB had an occasion to misuse his power and his technical knowledge with a view to harass the complainant. In our considered opinion, the learned Forum was clearly justified in upholding the complainant's grievance and passing the impugned order. It would be important to note that caveats were in fact filed on the day of the incident or possibly prior to the time when the incident took place. THEREfore, there was clear pre-meditation on the part of the concerned officer/employee of the opponent GEB. THERE is no report or information on the record of the opponent GEB suggesting that the complainant was regularly committing theft of electricity so that not only immediate checking was necessary but filing of caveat was also called for. THERE is no circumstance which would justify the action of the opponent GEB in filing caveat in the Civil Court as well as before the learned Forum. There is another circumstance which requires consideration even in this appeal. It is not the meter of the nursing home which is alleged to have been tampered with but the meter of the residential premises is also alleged to have been tampered with. Both the meters are owned by opponent GEB and they are in its possession inasmuch as officers/employees of the GEB have access to the meters. This Commission has been of a view that no occupier of residential premises would have any economic interest in handling or tampering with the meters and/or committing theft of electricity. Mere checking sheet or Panchnama would not suffice. These documents would have to be tested on evidence and touchstone of probabilities of each case. In the present case the circumstances noted above clearly go to indicate that a false case of tampering of meters has been set up with the aid of one of the employees who had gone to the complainant's premises and who had the occasion to misuse his technical knowledge of disturbing the meters.

4. BEARING in mind all the aforesaid facts and circumstances of the case, we do not find any merit in this appeal. We, therefore, pass following order. ORDER This appeal is dismissed with cost quantified at Rs. 500/-. Appeal dismissed with costs.