

(2001) 07 NCDRC CK 0045

In the National Consumer Disputes Redressal Commission

KATYAR COLD STORAGE

APPELLANT

Vs

UTTAR PRADESH STATE ELECTRICITY BOARD

RESPONDENT

Date of Decision : 11-07-2001

Acts Referred:

Citation : 2002 1 CPJ 292

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna , Rachna J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the judgment and order dated 30.12.1994 passed by District Consumer Forum, Farrukhabad in Complaint Case No. 993/1993.

2. BRIEFLY stated the facts of the case are that the complainant carries on business of cold storage for preserving potatoes and opposite party U.P.S.E.B. supplies electricity to the complainant's cold storage since 1974. A heavy amount under the head "Coal Variation Charges" was levied against the complainant. The complainant filed Writ Petition No. 1157 against the opposite parties before Hon'ble High Court Allahabad. In this writ petition stay order was granted on 14.2.1979 staying the realisation of the aforesaid "coal variation charges" from the complainant. It is further alleged that in the subsequent bills of electric consumption from March, 79 demand of "coal variation charges" was not raised till July, 1988 and in the electricity bills issued by opposite parties during this period under the head "coal variation charges" the opposite parties mentioned only the expression "stayed by Hon'ble High Court". It is further alleged that the writ petition was finally dismissed on 10.10.1990. It is alleged that as the amount of "coal variation charges" was not mentioned in the bills during that period the complainant had no occasion to make payment to opposite party under that head. It is also alleged that subsequently in the bills issued to the complainant from August, 1988 these charges were made and the complainant made payment of the full amount. It is further alleged that after dismissal of the writ petition the opposite party did not raise any demand of "coal variation charges" in the bills for the period March, 1979 to July, 1988. As no

amount was claimed the complainant could not make these payments.

It is further alleged that coal variation charges always fluctuate and differ from month to month. For the first time by letter dated 20.1.1993 bill was sent for the period March, 1979 to July, 1988 demanding coal and fuel variation charges for a sum of Rs. 1,09,117.19. Further a sum of Rs. 2,30,117.30 was demanded as late payment surcharge for which no bill was sent earlier. The complainant paid fuel surcharge amounting to Rs. 1,09,670.19 before the date fixed. The complainant had now come forward and challenged the realisation of Rs. 2,30,117.30 on account of late payment surcharge. It is alleged that the same is quite illegal, unfair and arbitrary and the demand is violative of the rules framed by Electricity Board. According to the complainant if the fuel charges would have been indicated in the bills he would have paid the same in time. Therefore, there is no question for payment of late payment surcharge. The opposite party is not entitled to claim these charges.

3. IT is further alleged that the writ petition was dismissed on 10.10.1990 but the opposite party raised the fuel charges in the bill dated 20.10.1993 after a lapse of three years. Therefore, the opposite parties are not entitled to claim this amount. The opposite parties in their written statement alleged that the allegations contained in the complaint are wrong and the complainant is liable to pay late payment surcharges. According to opposite parties the complainant himself has filed Writ Petition No. 1157/79, M/s. Katiyar Cold Storage v. U.P. State Electricity Board, and obtained interim stay order on 27.3.1979 by which opposite parties were restrained from levying coal variation charges as the realisation of these dues was stayed by Hon"ble High Court. The amount mentioned in the bills which were sent from time to time to the complainant. After the dismissal of the writ petition the coal variation charges were shown in the bill and demand was sent to the complainant. The complainant has paid the coal variation charges but has not paid the late payment charges which the complainant is liable to pay. This amount is just and legal and the bills for the same could not be issued on account of stay order passed by Hon"ble High Court. There is no deficiency on the part of Electricity Board.

4. THE parties led their evidence before the District Forum who after considering the facts and circumstances of the case has come to the conclusion that as highly disputed questions of facts and law cannot be adjudicated without thorough investigation, which is not possible in summary proceedings at District Forum. THE complaint was dismissed and a direction was issued to the complainant to approach Civil Court. Aggrieved against this judgment and order passed by District Consumer Forum the complainant has come in this appeal. We have heard the Counsel for the parties. A perusal of the file goes to show that the dispute between the parties is with respect to realisation of late payment surcharge. It is evident that on account of filing of writ petition and stay order granted the coal variation charges could not be realised by the Electricity Board. The Electricity Board mentioned that because of stay order of High Court no coal

variation charges were indicated in the bills. According to the learned Counsel for the opposite party Electricity Board, there is no consumer dispute in the present case. Electricity charges consumed by the complainant have already been paid to the Electricity Board and amount relates to late payment surcharge. The contention of the learned Counsel of opposite party is correct. The complainant is a consumer of Electricity Board and consumes electricity in cold storage. The electricity charges were paid by the complainant on the bills sent by the Electricity Department. Now the dispute is about late payment surcharge. This dispute between the parties cannot be said to be a dispute coming under the Consumer Protection Act. These are charges for late payment of coal variation charges. Had these payments been made in time there would not have been any dispute between the parties. Whether the complainant is liable to pay these charges or not this dispute cannot be decided by District Forum under the provisions of Consumer Protection Act.

5. IN the present case there is no disputed question of law and fact which cannot be decided by this Commission. The points raised in this dispute can be effectively dealt with by the District Forum and Commission. As already mentioned in the earlier part of the judgment the matter is not covered under the provisions of Consumer Protection Act and as such it cannot be decided by the District Forum and the Commission.

6. THUS in view of the observations made by us the appeal is liable to be dismissed. The complainant may seek his remedy in proper Forum. ORDER The appeal is dismissed. The judgment and order passed by District Consumer Forum, Farrukhabad dated 30.12.1994 is confirmed. The complaint is dismissed. The complainant may seek his remedy in proper Forum.

There will be no order as to cost.

7. LET copy as per rules be made available to the parties. Appeal dismissed.