(2015) 09 NCDRC CK 0033

In the National Consumer Disputes Redressal Commission

Case No : 3639 of 2009

KERALA STATE ELECTRICITY BOARD & ANR — APPELLANT

Vs

YESU ADIMANADAR (NOW DEAD); A Y JAYARAJ — RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Citation : (2015) 09 NCDRC CK 0033

Hon'ble Judges : K S Chaudhari

Advocate : M T George, Jayaraj, S Beno, J James

Final Decision : Petition dismissed

Judgement

K. S. Chaudhari, Member

[1] This revision petition has been filed by the petitioner against the impugned order dated 23.05.2009 passed by the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram (in short, ''the State Commission'') in Appeal No. 1052 of 2042 The Secretary, K.S.E.B Vs. Yesu Adimandar, by which while partly allowing the appeal, the order of the District Forum allowing complaint was modified.

[2] Brief facts of the case are that the complainant/respondent was running a small scale industrial unit of Cardamom processing at Pamabanar. The complainant availed a power connection from the opposite party/petitioner bearing consumer no. 1034. The opposite party had issued power connection to the complainant under LT-IV category meant for small scale industrial units. The industrial unit of the complainant was registered under small scale industrial unit and the document had been submitted to the opposite party while availing electric connection. Being an industrial unit the complainant was charged Rs.3.25 per unit as current charges. The complainant was meeting his ends from the earnings from the industrial unit. The complainant was collecting only wages he received from the nearby Cardamom producers for processing their raw cardamom. The complainant was charging his customers as per the electricity

charges charged by the opposite party. The complainant had been remitting the current charges in time. The opposite party was accepting the charges remitted by the complainant without any dispute. After that a bill dated 16/06/2004 was issued to the complainant by the 2nd opposite party demanding to remit Rs.92,057/- (Rupees Ninety Two Thousands Fifty Seven Only) for the period from 12/03/2004 to 06/03/2004. The opposite party had also threatened to disconnect the power supply if the amount is not paid. It was submitted that the complainant was paying current charges in time and no bills were pending. If the opposite party was going to charge the complainant retrospectively as per the hiked rate, it would cause mental agony and financial burden to the complainant. Alleging deficiency on the party of the opposite party, complainant filed complaint before the Consumer Disputes Redressal Forum, Idukki (in short "the District Forum"). The opposite party resisted the complaint and submitted that the complainant''s processing unit was connected with load of 25 KW and complainant was included as LT-IV tariff. It was further submitted that after the order of the Regional Audit Officer, complainant was included in LT VIII A tariff and bill was served for last six months and prayed for dismissal of the complaint. The District Forum after hearing both the parties allowed the complaint and directed the OP not to realize any amount under bill dated 14.06.2004 and not to charge complainant except under tariff LT-IV and not to interfere with supply of the complainant''s premises. The appeal filed by the OP was partly allowed and except order pertaining to raising the demand, rest of the order was set aside, against which the present revision petition has been filed along with application for condonation of delay.

[3] Heard learned Counsel for the parties and perused the record.

[4] As there is delay of 18 days only in filing this revision petition, the delay is condoned for the reasons mentioned in the application. The delay stands condoned.

[5] Learned Counsel for the petitioner submitted that as complainant was using electricity for commercial purpose, he was not the consumer under the Consumer Protection Act and further submitted that the bill was raised properly, even then the Ld. State Commission committed error in dismissing the appeal party and upto this extent, the revision petition be allowed and impugned order be set aside and complaint be dismissed.

[6] On the other hand, ld. Counsel for the respondent submitted that the order passed by the Ld. State Commission is in accordance with law hence revision petition be dismissed.

[7] First of all it is to be seen whether the complainant was consumer under the Consumer Protection Act or not. The OP has not raised any objection in the written statement and first time argued that as consumer was using electricity for the industrial unit for commercial purpose, he is not a consumer. In support of this argument, he placed reliance on the judgement of Hon''ble Apex court in

U.P Power Corporation Ltd. Vs. Anis Ahmad, 2013 9 Scale 334. On the other hand, Ld. Counsel for respondent submitted that complainant was running this unit for earning his livelihood as mentioned in the complaint. The complainant has specifically pleaded that he was running small scale unit for earning his livelihood and this fact has not been denied by the opposite party in its written submission. In such circumstances, it can be held that the consumer was using electricity in his small scale unit for earning his livelihood. So he was consumer under the Consumer Protection Act and aforesaid judgment is not applicable to the present case.

[8] Ld. Counsel for the petitioner submitted that the opposite party had power to issue supplementary bill. In support of his contention, he placed reliance upon the judgment of Hon''ble Supreme Court in Swastic Industries Vs. Maharashtra State Electricity Board, 1997 9 SCC 465 in which it was held that there is no deficiency of service in making supplementary demand for escape billing. There may be negligence or collusion by subordinate staff in not properly recording the reading or allowing pilferage to the consumers.

[9] Aforesaid judgment is not applicable to the facts and circumstances of this case because bill has been issued on the basis of audit objection and treating complainant under LT-VIII tariff, whereas he was provided connection under LT-IV tariff. When complainant was provided connection in LT-IV category only on the basis of audit objection he could have been treated under LT-VIII tariff without giving any opportunity to him of being heard and no supplementary bill for last six months could have been raised. The aforesaid supplementary demand was not raised on account of not properly recording the reading, whereas the case in hand is that the demand was raised for changing category of tariff, which was not proper and ld. State Commission has not committed any error in dismissing the appeal to this extent. I do not find any illegality, irregularity or jurisdictional error in the impugned order and revision petition is liable to be dismissed.

[10] Consequently, revision petition filed by the petitioner is dismissed with no order as to cost.