
(2016) 07 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

Case No : 3234 of 2011

KISHAN SINGH & ORS. & ORS.

APPELLANT

Vs

HARYANA VIDYUT PRASARAN NIGAM LTD.

RESPONDENT

Date of Decision : 28-07-2016

Acts Referred:

Consumer Protection Act, 1986, Section 24, Section 21(b) - Finality of orders - Jurisdiction of the National Commission

Citation : 2016 3 CPR 427

Hon'ble Judges : Rekha Gupta, Anup K Thakur

Advocate : Kishan Singh, Noopur Singhal

Final Decision : Petition Dismissed

Judgement

1. The present revision petition has been filed against the judgment dated 09.02.2011 of the Haryana State Consumer Disputes Redressal Commission, Panchkula ("the State Commission") in First Appeal no. 24 of 2004.

2. The facts of the case as per the petitioners/ complainants are that the petitioners got installed a tube well with the purpose to irrigate their fields and which bears account no. KAP 9. The electricity connection for tube well has an electricity meter and a five HP motor. They have to pay Rs.225/- monthly on flat rates, whereas for a tube well without meter Rs.325/- has to be paid per month. They have also paid for a capacitor which was installed with the connection about 23 years ago.

3. It was further mentioned in the complaint that an amount of Rs.5681/- was shown by the respondent against them in the month of May 1998 and an amount of Rs.834/- has been shown in excess, whereas it was not payable by them. Since, the dispute was not resolved well within time, therefore, the petitioners claimed that they were required to pay Rs.622/- in excess. In the year 1998 that the excess amount of Rs.834/- was again added in the bill of the petitioners which was not deducted up till date.

4. The complaint further reveals that the transformer through which electricity was being supplied to the tube-well of the petitioners was stolen and there was no electricity supply for consecutive 81 days, but the respondent charged for that period also. The petitioners have also mentioned in their complaint that the respondent has imposed an amount of Rs.32/- per month in June 1996.

5. The capacitor was installed about 23 years ago and nothing was chargeable from them on this account. The petitioners were paying its electricity consumption charges regularly have also mentioned in the complaint that in the month of November 1996 and December 1996 a bill of Rs.686/- was got deposited from them by the respondent on 20.01.1996, whereas the amount if it was calculated correctly only comes to Rs.656/-. Further from 01.03.1998, the electricity bill was of Rs.1692/- but an amount of Rs.1712/- was got deposited from them. On 26.02.1999 from June 1998 till February 1999, the bill accrued was Rs.2925/- as per the scheme of the Haryana Government but Rs.3000/- have been got deposited from them. The bill for March 1999 to August 1999, was only Rs.1950/- as per the scheme of the Haryana Government but the amount by adding surcharge and interest had been made Rs.2459.69. An amount of Rs.3451/- has been shown due against the petitioners, whereas this amount was not due if the previous amounts deposited by the respondent in excess had been adjusted against these dues.

6. The respondent on the other hand has taken the plea that no excess has been charged from the petitioners. The capacitor of the petitioners was not working as it was defective. The connection of the petitioners was disconnected on account of non-payment of the bills and it was a permanent disconnection. The respondent took the plea that an amount of Rs.5681/- was due against the petitioners but they deposited only Rs.4844/- on their own.

7. The District Consumer Disputes Redressal Forum, Faridabad ("the District Forum") vide its order dated 11.09.2003 while dismissing the complaint has observed as under: "From the perusal of the pleadings of the parties, evidence adduced by both the parties and after hearing the arguments of the parties, it has been observed by the Forum that the complainant has not come with clean hand before the Forum. First of all he should have deposited the dues and then should have come before the Forum on the ground that more dues have been taken by the respondent, whereas it fact no such dues have ever existed. It has also been observed by the Forum that if any dues were demanded from the complainant in excess then he should have come at that time before the Forum. The Forum has further observed that the cause of action has arisen particularly in the year 1996,1997 and 1998, and the Forum cannot consider those cause of action which has accrued with a gap of two years before the filing of present complaint, therefore, those cause of action which before two years from the filing of the present complaint are time barred and cannot be considered since the cause of action which has arisen within a period of two years before the filing of the present complaint if considered, then it was found that in the last complaint

are in arrears of the respondent and they have not deposited the same. In fact the complainants have tried to interlink on two subject matters, one those have accrued beyond two years before the filing of the present complaint and other which has accrued within two years from filing of the present complainants such they have further tried to get adjusted the amount of claim of those subject matters which have taken place before two years from the filing of the present complaint against those dues which have accrued within the two years before the filing of the complainants. The Forum observed the opinion that the complainants were in arrears and they have not deposited the same and the connection of the complainants was disconnected permanently vide PDCO no. 49/8117 which was affected on 07.10.1999. There is no deficiency of service has been proved against the respondent. Therefore, the complaint of the complainant is ordered to be dismissed with no order as to costs in the peculiar circumstances of the case."

8. Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission vide its order dated 09.02.2011 while dismissing the appeal both the on the grounds of limitation as well as on merit observed as under: "Under the facts and circumstances of the present case, we do not find it a fit case to condone the delay of 88 days. Hence, the application for condonation of delay is rejected. Even on merits, there is no force in the appeal, because first of all the relief sought by the complainants by filing the present complaint pertains to the year of 1996 to 1998 and the present complaint was filed on 12.01.2000. The District Forum while dismissing the present complaint has held that those cause of action which has arisen before two years from the filing of the complaint are time barred as per section 24 - A of the Consumer Protection Act, 1986. Secondly, the complaint of the complainants was rightly dismissed by the District Forum on the ground that the complainants have failed to deposit the due arrears in respect of their electricity connection well within time with the respondent - opposite party. Thus, the District Forum was justified in dismissing the complaint. Finding no merits in this appeal, it is dismissed both on the grounds of limitation as well as on merits".

9. Hence, the present revision petition.

10. We have heard the petitioner no. 1 who is appearing in person and the counsel for the respondent. Petitioner who is appearing in person has contended that the State Commission and the District Forum have wrongly concluded that the complaint was time barred, since this is a recurring cause of action. Further that the entire amount due was paid and the Fora below should have taken this fact into consideration.

11. Counsel for the respondent on the other hand argued in favour of the impugned orders. She has also drawn our attention to the orders of the Civil Judge, Hathin, Haryana which has been filed as per the directions of this Commission dated 25.01.2016.

12. As per section 24 (A) of the Consumer Protection Act, 1986, the District Forum and the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen. It is an admitted fact that the complaint before the District Forum was instituted on 12.01.2000 and primarily pertains to the bills for the year 1996-1997 and 1998. In the State Commission also the appeal was filed after a delay of 88 days. Coming to the merits of the case, we have heard the complainant in person but have also gone through the record. There is no evidence to support the allegation that the respondents were guilty of deficiency in service by charging excess amount in their bills. It is also an admitted fact that the complainants have failed to pay the bills in time which led to the disconnection of electricity.

13. We find that the Additional Civil Judge, (Senior Division), Hathin in Civil Suit no. RBT/ 1018 dated 28.07.2004 filed by Kishan Singh, one of the petitioners has also concluded that the petitioners/ plaintiff has not led even a smattering of evidence in support of his pleadings. Mere pleading without evidentiary support holds no value. He has also concluded that the petitioner had failed to prove that the demand of Rs.4261/- by the opposite party was illegal and not justified.

14. Mr Kishan Singh one of the petitioners then appealed before the District Judge Palwal, who vide its order dated 01.07.2014 came to the following conclusions: "After giving my thoughtful consideration to the submissions so made by both the sides, I find the present appeal completely devoid of any merits, because the appellant - plaintiff raised various and different types of disputes in between 25.06.1996 till the date of filing of this suit, for which, he was required to lead elaborative, cogent and convincing evidence, but he miserably failed to do so, despite availing sufficient opportunities. The instant suit could not have been decided by the learned trial court without any evidence, oral or documentary, in his favour. Hence, in the absence of any such evidence, it has rightly dismissed his suit. I have gone through the impugned judgment and decree and found no illegality or perversity in the same."

15. The petitioner has confirmed at the bar that he had since made the payment and electricity connection has also been restored in the year 2000 itself.

16. In view of the above, we are of the view that the State Commission and the District Forum have rightly dismissed the complaint of the petitioner both on the ground of limitation as well as on merits.

17. The Hon"ble Supreme Court in Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd., 2011 (3) Scale 654 has observed: "Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National

Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

18. Thus, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for our interference under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is hereby, dismissed. The complaint also stands dismissed.