

(2008) 06 NCDRC CK 0005

In the National Consumer Disputes Redressal Commission

MARBLES AND MINERAL PVT LTD

APPELLANT

Vs

JAIPUR VIDYUT VITRAN NIGAM LTD

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Citation : 2008 4 CPJ 178

Hon'ble Judges : Sunil Kumar Garg , T.P.Gupta J.

Advocate : Gururaj Saraswat , Paras Jain

Judgement

1. -THIS appeal has been filed by the appellant against the order dated 27. 11. 2004 passed by the learned District Forum, Camp Jaipur, Jaipur in CC No. 266/03 whereby the complaint of the complainant-appellant claiming refund of alleged excess amount recovered from it was dismissed.

2. THE brief facts giving rise to this appeal are that the appellant firm had taken an M. I. P. electric connection of 199 H. P. for its medium industry at Jaipur. On 24th June, 1996, the appellants informed the respondents that it is going to close down some of the machines and that a load of 40 H. P. will remain connected. It, therefore, applied for reduction of the sanctioned load from 199 H. P. to 40 H. P. and paid the prescribed fee of Rs. 500 on 26. 6. 1996 for such reduction. The complainant stated that as no reply was given for one month to his reduction of sanctioned load, the reduction in sanctioned load is deemed to have become effective on the expiry of one month period from the date of depositing the amount. The complainant alleged that in spite of this the O. P. had continued to give it electric bills on the basis of sanctioned load of 199 H. P. The complainant alleged that he requested the O. Ps. to disconnect the supply and to give it a "no dues certificate" on 2. 11. 1997. On this, the O. Ps.-respondents raised a demand of Rs. 2,99,045. The complainant states that it deposited the amount on 26. 12. 1997 under protest. It, therefore, filed a complaint in the Forum below claiming the refund of this amount, the refund of security deposit of Rs. 27,000 and other damages. The respondents filed an affidavit in reply and admitted that the appellant had applied for reduction of sanctioned load from on

26. 6. 1996 but as the application made by the complainant was incomplete, there was no automatic reduction after the lapse of one month. The respondents also submitted that on 31. 7. 1996 the O. P. had inspected the premises of the complainant in his presence and at that time the load was found to be 156 H. P. and not 40 H. P. and, therefore, the application of the complainant was not accepted and the complainant was informed accordingly. The respondents also submitted that on 10. 2. 1998, the complainant has resorted to settlement of its dispute with Settlement Committee and that is pending even now. The respondents maintained that they had charged the complainant according to the tariff.

After hearing both the parties, the learned District Forum dismissed the complaint holding that the appellant had not reduced the sanctioned load and as such the respondents had not committed any deficiency in service.

3. AGGRIEVED from this order, the appellants have filed this appeal. We have heard the arguments and submissions made by the learned Counsel of both the parties, perused the impugned order passed by the learned District Forum and considered the materials placed on record. The learned Counsel for the appellants had advanced the same pleas that were raised in the Forum below. The learned Counsel for the respondents has sought to justify the order.

4. IN this case, there is no dispute that the complainant had applied for reduction of sanctioned load in its industry from 199 H. P. to 40 H. P. and had deposited the prescribed fee of Rs. 500 for the purpose on 26. 6. 1996. There is also no dispute that the sanction of reduction in connected load was not issued by O. Ps. within one month from the date of application or deposit of prescribed fee. It is also not in dispute that the O. Ps. had issued a circular dated 22. 5. 1995 which provides that the sanction of reduction in connected load should be issued within a period of one month from the date of application and in any case the reduction in sanctioned connected load shall be deemed to have become effective after one month's period from the date of furnishing of "I" form by the consumer. This legal fiction was created for curtailing the delay in issuing sanction for the reduction of load and one month period was considered to be sufficient for processing the request of the consumers.

5. IT is also well settled that when a legal fiction is created, it must be given its full effect. *M. Venugopal v. D. M. , LIC of India*, JT 1994 (1) SC 281; *State of Bombay v. Pandurang Vinayak*, AIR 1953 SC 244; *American Home Products Corp. v. Mac Laboratories*, (1986) 1 SCC 465; *Dargah Committee, Ajmer v. State of Rajasthan*, AIR 1962 SC 574; *Bhavnagar University v. Palitana Sugar Mill (P) Ltd. , VII (2002) SLT 322= (2003) 2 SCC 111*. It is also well settled that in construing a legal fiction the purpose for which it is created should be kept in mind and should not be extended beyond the scope thereof or beyond the language by which it is created. Furthermore, it is well known that a deeming provision cannot be pushed too far so as to result in an anomalous or absurd position. *Maruti Udyog Ltd. v. Ram Lal and Ors. , II (2005) SLT 1= (2005) 2 SCC*

638.

6. IN this connection, the respondents had submitted that as the application of the complainant for reduction of load was incomplete, the request for reduction was not accepted. The case of the complainant, as is put forth in its application dated 24. 6. 1996 sent to the respondents, is that it is going to close down some of the machines but there is no evidence on record as to when exactly the complainants voluntarily reduced the connecting load to 40 H. P. The plain reading would show the intention of the complainant to close down some of the machines and reduce the connecting load to 40 H. P. It did not say that it had in fact reduced the connecting load. In this view of the matter, it cannot be said that under the circular letter dated 22. 5. 1995 its connecting load was reduced automatically after one month from the date of application under the deeming clause.

This conclusion finds support from other evidence placed on record by the parties. There is evidence on record that the premises of the complainant were inspected on 31. 7. 1996 by O. Ps. in the presence of the complainant and the concerned officer of O. P. had calculated the existing load in the industry of the complainant as 156 H. P. The report of the concerned Assistant Engineer was drawn on the back of "I" form submitted by the complainant on 24. 6. 1996 stating the result of check up in assessing the total connecting load of 156 H. P. The report clearly points out that instruments of 36 H. P. were running with power supply and another load of 120 H. P. was found installed as original with all installations, cable, starter and control panel. This report bears the signatures of the complainant in English. In this way, it was found as a fact that up to the time of joint check of premises of the complainant, the existing load was only 156 and not 40 H. P. as claimed by the complainant.

7. THERE is also evidence on record that the complainant was informed on 31. 7. 1996 itself that the connected load is not in accordance with the "I" form submitted by the complainant and that the motor cable panel, etc. had not been removed and continue to be installed at their original place. They also informed the complainant that in such circumstances it is not possible to consider reduction of load. The complainant did not file any reply to this letter. The respondents again reminded the complainant on 27. 8. 1996, referring to the previous letter dated 31. 7. 1996, reiterating the above position, and requested the complainant to submit new "I" form for the existing load. This was followed by two other reminders on 26. 9. 1996 and 24. 10. 1996, but the complainant did not explain the matter or furnished requisite information.

8. THERE is evidence on record that instead of explaining the matter or giving requisite information, the complainant chose to request for closure of the electric connection. On 2. 11. 1997, the complainant requested the O. P. that it did not want electric connection in future and as such its security deposit should be refunded to it. The complainant has not stated or furnished evidence as to when it deposited the prescribed fee for closure/disconnection of electric connection

and without such deposit the O. Ps. could not have disconnected the electric connection of the complainant. The O. Ps. have, however, admitted that the electric connection of the complainant was disconnected on 25. 2. 1997 and in such circumstances it can be said that after completing the formalities by the complainant, the O. Ps. have disconnected the electric connection of the complainant on 25. 2. 1997, and in this view of the matter, the dispute now remains for reduction of connecting load up to 25. 2. 1997 only. In the back drop of the facts stated above which are not seriously disputed by the complainant, it is clear that the appellant-complainant had reduced the sanctioned connecting load of electricity from 199 H. P. to 156 H. P. only and not 40 H. P. as claimed by the complainant. The respondents-O. Ps. had themselves admitted this position on the reverse of the "I" form submitted by the complainant and also in their letters dated 31. 7. 1996 and 27. 8. 1996 sent to the complainant.

9. WHEN such is the admitted position between the parties, in our considered opinion, the respondents were entitled to raise electric bills against the complainant taking the connecting load to be 156 H. P. from 26. 7. 1996 to 25. 2. 1997. As against this, the O. Ps. have issued electric bills to the complainant for the above period taking the connecting load to be 199 H. P. and the complainant had deposited these charges amounting to Rs. 2,99,045 on 26. 12. 1997. In this way, the complainant is entitled to refund of the excess amount charged by the respondents, along with interest. The complainant has committed delay in making payment of the dues during the period from 25. 2. 1997 to 26. 12. 1997 and for this period the O. Ps. are entitled to charge interest on the due amount and for this purpose interest at the rate of 6% p. a. is considered to be appropriate.

10. AS regards charging of fuel charges, there is no dispute that under the tariff the rate per unit under the Medium Industrial Service, etc. , is varied according to the annual rate of fuel surcharge and is worked out as per the prescribed formula and there is no evidence on record that the respondents have charged fuel charges arbitrarily. As such, there is no deficiency on the part of the respondents in charging fuel charges from the complainant. In the light of above observations, the appeal filed by the complainant deserves to be partly allowed.

Accordingly, the appeal is partly allowed, the impugned order is quashed and set aside, and the complaint of the complainant is allowed in the following manner:

1. The O. P.-respondents shall raise an amended bill for the period ending 25. 2. 1997 taking the connecting load to be 156 H. P. in place of 199 H. P.
2. On the amount found due, interest @ 6% p. a. for the period from 25. 2. 1997 to 26. 12. 1997 shall be added in the bill.
3. The amount that was paid by the complainant on 26. 12. 1997 would then be appropriated against the above demand and the balance excess amount should be refunded to the complainant, along with interest @ 6% p. a. from 26. 12. 1997 to the date of payment.
4. The security deposit of the complainant would also be returned in accordance with the rules prescribed by the O. P.-respondents.
5. There will be no order as to

costs in this appeal. Appeal partly allowed.