

(1995) 04 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

MODERN THREADS

APPELLANT

Vs

RAJASTHAN STATE ELECTRICITY BOARD

RESPONDENT

Date of Decision : 25-04-1995

Acts Referred:

Citation : 1995 3 CPJ 487 : 1996 1 CPR 283 : 1996 2 CLT 143

Hon'ble Judges : N.C.Sharma , Firoza Bano J.

Final Decision : Complaints dismissed

Judgement

1. THIS order will decide two complaints bearing Nos. 118/93 filed by M/s. Modern Threads (India) Ltd. and Complaint Case No. 120/93 filed by M/s. Modern Syntex (India) Ltd. against the Rajasthan State Electricity Board by a common order because in both these complaints the points involved are the same.

2. BOTH the Complainants are Public Limited Company any run industry. They have electricity connection in their industry from the Rajasthan State Electricity Board, which is Opposite Party in the complaints. The grievance of the Complainants in both these complaints is that the R.S.E.B. charged late payment surcharge (LPS) @ 24% in case payment of electricity bill was made after the due date by the Complainants. It is alleged that LPS was charged for 30 days even if payment of bill was delayed by one or two days after the due date of payment. The Complainants were forced to pay the late payment surcharge alongwith the electricity bill amount because if they did not make the payment, the payment of electricity bills were not accepted and the electricity connection was likely to be disconnected. Complaint Case No. 118/93 filed by M/s. Modern Threads (India) Limited relates to billing months January, July, October, November and December, 1990, January, March, June, July, August & October, 1991, January, February, April, June, August and December, 1992 and January, February and March, 1993. According to the Complainant, the Opposite Party received an amount of Rs. 2,94,881/- as excess late payment surcharge during the period from January, 1990 to 31.3.93. In Complaint Case No. 118/93 the

Complainant has prayed that the Opposite Party may be directed to refund the amount of Rs. 2,94,881/- as excess late payment surcharge during the period from January, 1990 to 31.3.93 alongwith interest @ 24% per annum.

Similarly in Complaint Case No. 120/93 filed by M/s. Modern Syntex (India) Ltd. the Complainant has prayed for the refund of an amount of Rs. 5,44,786.85 on account of the excess late payment surcharge recovered from the Complainant by the Opposite Party for the period from 23.1.90 to 31.2.92.

3. IT is clear that when high tension electric supply was taken by the Complainant from the Opposite Party in the year 1983, agreement was entered into between the parties. Clause 19 of the agreement provided that if the consumer failed to pay the amount of any bill due under the agreement within 17 days from the date of the bill, he shall be liable to pay late payment surcharge as provided in the attached rate schedule. If the amount of such bill remain unpaid for 17 days, after the date of its presentation, the Board shall give 7 days notice in writing or its intention to discontinue the supply of electrical energy. IT is also provided in Clause 19(b) of the agreement that if the payment of the bill is not made in full, necessary surcharge for late payment of the bill as mentioned in the relevant tariff schedule will be payable by the consumer. The Tariff schedule enclosed to the agreement mentioned that in the event that the monthly bill was not paid in full within the time specified on the bill, a surcharge of 2% shall be levied on the unpaid amount of bill for each 30 days successive period or part thereof, until the amount is paid in full. It is thus clear that the Complainant had entered into an agreement with the Rajasthan State Electricity Board clearly agreeing that if the amount of electricity bill was not paid by the due date, the Complainant will be liable to pay late payment surcharge as provided in the Tariff Schedule annexed to the agreement and already referred to above.

4. THE main contention on behalf of the Complainant is that the late payment surcharge is charged for 30 days even if the payment of the electricity bill is delayed by the Complainant by one or two days. So far as the facts of the case is concerned, the Complainant has filed a statement (Schedule 1) alongwith the complaint showing number of days by which delay was made in payment of various bills. THE delay ranged from 6 days to 33 days in relation to Complaint Case No. 118/93. So far as Complaint Case No. 120/93 is concerned, the delay period ranged from 6 days to 29 days. In any event, it is clear that according to the agreement entered into between the parties read with Tarif Schedule if the monthly electricity bill is not paid even for one day, two days or five days by the Complainant or any other high tension consumers, the surcharge @ 2% is levied in the unpaid amount to the bill for each 30 days successful period. On the basis of the agreement as existence, the Complainant is liable to pay the late payment sucharge as agreed upon by him. It was urged on behalf of the Complainant that this term in the agreement Tariff schedule was unconscionable and unreasonable. Here we may mention that Aditya Mills Limited and certain other industrial concerns including the two complaints had filed various writ petitions before the

Rajasthan High Court being Writ Petition No. 1450/93 and other writ petition mentioned in the Schedule enclosed to the Order which were decided by the Division Bench of Rajasthan High Court, Jodhpur on 25.8.94. In the writ petitions, the writ petitioners had prayed for quashing the provisions of payment of later surcharge contained in Part II (High Tension Tariff) of Tariff for Supply of Electricity, 1985 framed under Section 49, Electricity (Supply Act), 1948 and for quashing the demand for late payment surcharge made through bills enclosed with the writ petitions. The levy of late payment surcharge was challenged on the ground that the agreement entered into between the consumers and the R.S.E.B. were subject to the provisions of Section 74 of the Contract Act and, therefore, the agreement was unreasonable, arbitrary, void, penal and ultra vires. It was also urged in the writ petition that surcharge was payable for a delay of one day. It was also urged that interest @ 2% to 2% which was confiscatory in nature. All these writ petitions were dismissed by the Rajasthan High Court by its order dated 25.8.94. Thus the matter stands concluded by the decision of the Rajasthan High Court. It was rightly observed that timely payment of the bills to the R.S.E.B. is necessary for its working. The Rajasthan High Court relied upon the decision in *Associated Cement Co. Ltd. v. Commercial Taxes Officer*, reported in A.I.R. 1981 S.C. 1887 and held that interest was not in the nature of penalty. It also held that the late payment surcharge @ 24%-30% cannot be said to be shocking, unconscionable and unreasonable. It was also stated that there did not exist sufficient material to warrant the reduction of this rate under Section 74 of the Contract Act. In view of the decision of the Rajasthan High Court given in the above writ petitions, it is too late now for the Complainants in these complaints to contend that the provision relating to levy of late payment surcharge was illegal, unreasonable or arbitrary. Late payment of surcharge was rightly levied from the Complainant. Both these complaints, therefore, fail and they are dismissed. The Opposite Party will get Rs. 5,000/- as costs to be shared by the two complainants equally. Complaints dismissed.