

(2003) 10 NCDRC CK 0015

In the National Consumer Disputes Redressal Commission

M.P. ELECTRICITY BOARD

APPELLANT

Vs

MINI ENTERPRISES

RESPONDENT

Date of Decision : 20-10-2003

Acts Referred:

Citation : 2004 4 CPJ 589

Hon'ble Judges : N.K.Jain , B.L.Khare , Pramila S.Kumar J.

Final Decision : Appeal dismissed

Judgement

1. THE aforesaid two appeals arise out of the same order dated 11.12.2001 passed by the District Forum, Bhopal in Case No. 318/2001. Opposite parties, the officers of the M.P. Electricity Board aggrieved by the order quashing Board's demand for Rs. 12,604/- and directing them to pay back Rs. 1,000/- recovered from the complainant-consumer and also to restore power supply have filed Appeal No. 35/2002 while the complainant dissatisfied with the amount of compensation has filed Appeal No. 39/2002.

2. COMPLAINANT, M/s. Mini Enterprises is a manufacturing unit carrying on its manufacturing business on a plot of land bearing No. 1187 in industrial area, Govindpura, Bhopal allotted to it on lease by the State Government, Department of Industries. Power connection was given to the complainant by the opposite parties some time in the month of November, 2000. Earlier this plot was with one M/s. Geeta Electron Mech on lease from the Government. It appears that the Government authorities terminated the lease of M/s. Geeta Electron Mech and got the plot vacated before allotting the same to the complainant. COMPLAINANT it appears has set up some industrial unit on the said plot and also applied for power connection. The authorities of the M.P.E.B. while granting power connection to the complainant laid down a condition that the complainant has to clear the arrears due from the earlier occupier of the plot i.e., M/s. Geeta Electro Mech. The Board also obtained an undertaking on affidavit from the complainant for payment of the said dues. However, facility to make payment in instalments was accorded to the complainant, who it appears has paid one such instalment

amounting to Rs. 1,000/-. The complainant, however, declined to pay the remaining arrears amounting to Rs. 12,604/- and instead approached the Forum below challenging the said demand. The complaint of the complainant was resisted by the opposite party-board on the ground that under the General Conditions (22A) prescribed by the Board under Section 49 of the Electricity (Supply) Act, 1948 the complainant-consumer was liable to clear the dues outstanding in respect of the supply of power at the said premises prior to the same being allotted to the complainant. The Forum below after hearing both the parties allowed the complaint cancelling the said demand and also ordering for refund of the amount already recovered and for restoration of supply of power to the complainant. This is how the matter has come up before this Commission in appeals filed by both the parties.

We have heard Mr. Umesh Nigam, learned Counsel for the opposite parties and Shri B.S. Sharma, who is representing the complainant in his capacity as President, Akhil Bhartiya Upbhokta Congress, a body recognized by the State Government to take up cases on behalf of the consumers.

3. THE question requiring determination is whether in the facts and circumstances of the case, the complainant-consumer is liable to pay the arrears of the electricity charges due from the person who occupied the said premises on rent immediately preceding to allotment to and occupation by the complainant-consumer. It is nobody's case that the complainant had any interest in the business run by the previous occupier or that the latter has now any such interest in the unit set up by the former on the premises in question. THE premises in fact belonged to the Industries Department of the State Government who after evicting the former lessee have allotted the same to the complainant herein. THE complainant has thus occupied the said premises and established its unit on it under a fresh lease from the Government and has no connection whatsoever with the previous allottee, vis-a-vis the opposite parties-Board also, he is a new consumer having obtained fresh power connection under a separate agreement. However, the opposite party-Authorities before according new power connection to the complainant have obtained an undertaking on oath from the latter that he would pay all the dues (amounting to Rs. 12,604/-) outstanding in respect of supply of power at the said premises prior to his taking the same on lease. It requires no intelligence to say that the complainant was under pressure and had no option put to sign the said undertaking or else he would not get the connection and his newly set up industrial unit would not function. THE moot question is whether the complainant was in law duty bound to pay the said arrears. THE answer has to be an emphatic No. Mr. Umesh Nigam, learned Counsel for the Board had drawn our attention towards Condition Nos. 22 and 22A of the General Conditions prescribed by the Board in exercise of power conferred under Section 49 of the Electricity (Supply) Act, 1948. Section 49 authorises the Board to provide for such terms and conditions as the Board may think fit for supply of electricity to any person not being a licensee. The term "any person" used here obviously refers to a consumer not being a licensee of

the Board under the Act. It would be useful to refer General Condition Nos. 22 and 22 A which thus read as follows: "22. Assignment or Transfer of Agreement- The consumer may at any time with the prior consent in writing of the Board transfer his right under the agreement for supply of electricity tendered by the consumer to any other person approved by the Board who shall execute another agreement to this effect in the form prescribed by the Board.

22A. On the transfer of any premises, being made by the consumer, voluntarily or otherwise, which is supplied electricity, or on the said premises being allotted or acquired by any other person in any manner, the Board shall have the right to either discontinue the supply or not to re-commence supply, as the case may be, unless all the dues outstanding in respect of supply at the said premises prior to such transfer, allotment or acquisition, are paid by any such transferee, allottee or acquirere. Provided if property or asset of any consumer's unit is sold by Financial Corporations constituted under the State Financial Corporation Act, 1951 for recovery of their legal dues, no liability of the erstwhile consumer regarding electricity dues shall be recoverable from such vendee."

4. A careful reading of the aforesaid conditions would show that these provisions primarily deal with the transfer of a connection or a premises having such connection, by a consumer to another person. Condition No. 22A seems to have been added with an object to deal with surreptitious transfer or assignment by a consumer to avoid payment of arrears. In any case Condition No. 22A is an enabling provision vesting a discretionary power with the Board to insist for payment of the previous dues from a successor occupier, allottee or assignee before giving any new connection to him. Needless to say that this power has to be used discreetly and particularly in those cases in which the intention of transfer or assignment was to avoid payment. In the case before us, the circumstances are totally different. The previous occupier was evicted from the premises by the Government and altogether fresh lease was granted in favour of the complainant. Under these circumstances, it was wholly unreasonable and unjust on the part of the officers of the Board to require him to clear the dues of the previous occupier before giving power connection to him. The demand was wholly illegal and recourse to the General Condition No. 22A was unjustified. The Forum below was thus right in holding that there was deficiency in service on the part of the Board and its officers. The complaint was rightly allowed calling for no interference in appeal by this Commission. The grievance of the complainant in his appeal is regarding amount of compensation. The Forum below has already cancelled the bill raised by the officers of the Board and also granted refund of the amount recovered from the complainant. The power connection has also been ordered to be restored with a further direction that in case of default, the Board shall pay compensation at the rate of Rs. 50 per day. We are satisfied that there was no need to award any further compensation in the matter. For what we have said above both the appeals fail and are dismissed but with no order as to costs. Appeal dismissed.