

(1991) 04 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

OPERATION, H.S.E.B., HISSAR

APPELLANT

Vs

CHANDER BHAN

RESPONDENT

Date of Decision : 22-04-1991

Acts Referred:

Citation : 1991 0 CPC 96 : 1991 1 CPJ 653 : 1993 2 CLT 285

Hon'ble Judges : S.S.Sandhawalia , Basanti Devi , Tikka Singh J.

Final Decision : Appeal allowed

Judgement

1. WHETHER a lis under the Consumer Protection Act, 1986, pertaining to services hired, can be decided merely on the basis of the complaint and the controverting counter-version thereto alone? This is the focal threshold question in this appeal.

2. THE relevant facts lie in a narrow compass, but deserve notice in some detail. Dr. Chander Bhan respondent had preferred a somewhat brief single page complaint, giving rise to this appeal, before the District Forum at Hisar on the 23rd May, 1990. THEREIN it was alleged that the complainant was constructing a house on plot No. 462, Sector 15-A, Hisar, wherein for the supply of electricity a domestic meter No. HB-526 was installed, for which payment on the basis of average bill from January, 1990 onwards was duly made. However, on the 9th May, 1990 a case under Section 379 of the Indian Penal Code and under Section 39 of the Electricity Act was registered against him by the police at the instance of the Electricity Department for stealing electric energy through bypassing the installed meter. Further a notice-cum-bill amounting to Rs. 3961.50 was issued against the complainant, and, apparently, the said amount was deposited under protest. THE primal grievance of the complainant was that the bill amount was false because he had never consumed the energy as had been shown therein, and consequently, he was not liable to pay the aforesaid amount. THE relief claimed was that a direction be issued to the Department to withdraw the said illegal bill. Only a copy of the notice-cum-bill was attached to the somewhat cryptic complaint. Notice was issued to the opposite party by the District Forum

on the said complaint for the 20th June, 1990. In response thereto a counter version, controverting the material allegations in the complaint, was duly filed. The material part of the averments was in para 6 thereof, which deserves notice in extenso:- "6. On dated 9.5.90, the premises of Sh. Chander Bhan was raided by Sh. G.K. Sharma, Asstt. Director Vigilance, H.S.E.B., Panchkula, along with H.C. Goyal, J.E., Sh. Ganeshi Lal Inspector of Police and Staff of S.H.O. Hisar. The consumer was stealing electricity by connecting one phase direct, bypassing the Electric meter. The F.I.R. No. 107 dt. 9.5.90 was lodged under Section 379 of IPC, Section 39, Electricity Act, with S.H.O. Civil Line, Hisar and a sum of Rs. 3,951,50 charged to the consumer as per Sale Circular No. 28/89. The connected load of the consumer was 5.560 KW." Apart from the above, the firm case set up by the opposite party was that the amount of the Bill was calculated wholly in accordance with the Sales Circular No. 28/89 dated 31st July, 1989, duly issued by the Haryana State Electricity Board. True copies of the service connection order, the checking report dated the 9th May, 1990 and the relevant Sales Circular dated 31st July, 1989, were annexed to the counter version.

A close perusal of the record discloses that after the receipt of the counter version, no evidence of either party was at all adduced. The case was fixed forthwith for hearing on the 5th July, 1990 at Hisar. Apparently, after hearing the arguments of the parties on the basis of the complaint and the counter version alone, the Forum proceeded to record its order now under appeal.

3. THE very brief discussion of the merits in paragraph 3 of the order aforesaid would show that after noticing the matters, which were not in dispute, the Forum forthwith as a dictum concluded that the inspection report was worst than cryptic and a highly placed person like the complainant must not suffer simply by recording a phase used to commit theft. Consequently, it was held that the relevant report was not correctly prepared and no action could be taken on that basis, and the same was summarily quashed. THE complaint was allowed with the direction that the amount deposited by the complainant be adjusted in the future bills. Whilst assailing the order aforesaid, Mr. Sanjay Bansal, learned Counsel for the appellant, has primarily contended that the findings of the District Forum are rested on no foundational base, whatsoever. It was pointed out that the bald complaint was unsupported by any evidence and the allegations made therein had been stoutly controverted on behalf of the appellant, and in particular in para 6 of the counter-version. It was submitted that admittedly there was no previous animus betwixt the parties and, there was, no motivation for the very responsible officials of the Haryana State Electricity Board to have falsely recorded the checking report, clearly mentioning the bypassing of the electric meter and, thus, indicative of the theft of electricity, which was still the subject-matter of investigation and criminal prosecution. In particular, it was pointed out that no evidence, whatsoever, was led in support of his case on behalf of the complainant and there was nothing on this record on the basis of which the authentic checking report could be brushed aside or the case of the complainant accepted in toto. In sum, the submission was that the matter was

the clearest case of no evidence at all to sustain any quasi-judicial finding.

4. FACED with the obviously uphill task of supporting the order, Mr. Ranbir Singh, Advocate, learned Counsel for the respondent, was somewhat half-hearted in his submissions and merely took the stand that in the situation the matter could at best be remanded for a fresh trial. It would appear that the basic issue herein formulated at the very outset is yet res Integra despite the passage of nearly four years since the enforcement of the Consumer Protection Act, 1986 (hereinafter called "the Act"). In any case, learned Counsel for the parties expressed their inability to cite any precedent in support of their respective stands. The matter has, therefore, to be resolved basically on the language of the Act and the Rule framed thereunder and on larger principle. Pride of place must here be given to Section 13 of the Act, and in particular Sub-section (2), which governs the procedure for deciding complaints relating to "services" as in the present case. The relevant part of the Sub-section deserves notice in extenso:- "(2) The District Forum shall, if the complaint received by it under Section 12 relates to goods in respect of which the procedure specified in Sub-section (1) cannot be followed, or if the complaint relates to any services, - (a) xx xx xx xx (b) Where the opposite party, on receipt of a copy of the complaint, referred to him under Clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute, - (i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or (ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum."

A plain reading of the aforesaid provisions would highlight the fact that a consumer dispute under the Act can be settled by the District Forum only on the basis of some evidence. Pointed attention needs to be focused on Clause (ii) above, which clearly lays down that even where the opposite party omits or fails to take any action to represent his case before the Forum, the matter has still to be decided on the basis of evidence brought to its notice by the complainant himself. Thus, even in ex parte proceedings the decision of the Forum has to necessarily rest on the basis of evidence. Obviously, it would be more so where the opposite party comes forward to deny or dispute the allegations made in the complaint. Such a situation is governed by Clause (i) afore-quoted and by statutory mandate such a consumer dispute can only be settled on the basis of evidence adduced by the complainant or the opposite party. It appears to us to be somewhat wasteful to elaborate the obvious and the provisions afore-quoted would leave no manner of doubt that in a contested consumer dispute the decision of the District Forum has to rest on the basis of evidence.

5. APART from the statute, on the larger principle also it seems somewhat elementary that the orders of the Redressal Agencies under the Act, which

undoubtedly are quasi- judicial in nature, have to rest on a firm footing. It is true that proceedings under the Act should be titled against hyper-technicalities. Nevertheless a basic modicum of factual footing in the shape of evidence (documentary or oral), to our mind would be necessary to sustain the adjudication by a Forum.

6. IN the light of the above, the answer to the question posed at the outset is rendered in the negative and it is held that a contested consumer dispute under the Act can only be decided on the basis of evidence and not de hors thereof. Once it is held as above, it inevitably follows that this appeal must succeed. The somewhat cryptic complaint herein was not even verified and not supported by any evidence worth the name in support of all allegations made therein. The opposite party stoutly controverted the allegations in the complaint and annexed documentary evidence on which they proposed to rely. Significantly, no replication was even filed on behalf of the complainant to assail the opposite party's stand. No evidence, whatsoever, was led in support of the complaint. Even an affidavit of the complainant to sustain his allegations was not placed on the record, far from examining any witness or placing authentic or proved documentary evidence on the record. That being so, there was no foundation, what-so-ever, on which the complainant's case could succeed or the stand taken by the opposite party be summarily brushed aside. The findings of the District Forum in its brief order were more in the realm of conjectures than on facts. The conclusion arrived at may be labelled as hanging in the mid-air without any evidentiary basis. It seems manifest that there has been no fair trial of the consumer dispute raised before the District Forum. As has been pointed above, the statutory mandate of the Act is that the same has to be settled on the basis of evidence which is totally lacking here.

Regretfully, we find no option but to set aside the order under appeal and remand the case back for an expeditious adjudication in accordance with the Act and the Rules. Pronounced in open Court. Appeal allowed.