

(1992) 07 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

PATEL KANTILAL KEVALDAS-/

APPELLANT

Vs

DEPUTY ENGINEER, GUJARAT ELECTRICITY BOARD

RESPONDENT

Date of Decision : 29-07-1992

Acts Referred:

Citation : 1992 2 CPR 521 : 1992 3 CPJ 213

Hon'ble Judges : S.A.Shah , R.K.Shah J.

Final Decision : Appeal allowed with costs

Judgement

1. THE appellant complainant filed a complaint for the refund of Rs. 1276.63 on the ground that the Gujarat Electricity Board (Board) has recovered this excess amount on the ground that the complainant was committing theft of electricity.

2. THE District Forum dismissed the complaint on the ground that the complainant had given a statement and admitted that there was no seal or lock. He further stated that it was found that there was a theft in the laboratory testing report. Coming, to this conclusion the Forum has rejected the claim of Rs. 1081.63 of the complainant. An appeal was filed before us and in the appeal we had observed that on perusal of Exhibit 9/2 the complainant has only signed that he was present at the testing laboratory. It is not under stand able as to why the meter was sent for testing because there was no averment or allegation that the meter was not recording correct reading. The only case of the opponent as it appears is that the complainant was doing theft by taping the main lines at the meter end. We had again observed that "obviously the burden to prove that the complainant was engaged in theft of energy is on the respondent No evidence either in the form of oral or affidavit has been recorded by the District Forum. The record marked 9/2 appears to have been produced by the opposite party i.e. the Board and not the appellant. Mere production of the record is not enough". Considering this lacuna where the burden to prove that me complainant was engaged in committing theft was upon the Board we wanted to give one more chance to the Board to produce evidence 2 either by way of affidavit, oral evidence or any other evidence permissible under law, remanded the matter to

the District Forum directing the District Forum to give full opportunity to both the parties to adduce evidence, if any.

We find that the Board has not produced any evidence either by way of affidavit or oral evidence to prove that the complainant was engaged in theft. That a person was engaged in theft was a serious charge and one cannot jump to a conclusion merely because there is an allegation, and merely because the complainant was present. He has not signed the panchnama because the same according to him was not correct . In any view of the matter the allegations must be proved supported by affidavit or by oral evidence and mere allegation in the written statement is no proof of the fact. We are also surprised to find that the District Forum has also given, same judgment without considering the observations made by us. One thing is, therefore, very certain that the Board has not taken the advantage of the opportunity given to it to adduce evidence. In these circumstances we have no alternative except to allow the appeal and set aside the decision of the District Forum which is not based upon any evidence, but based upon mere allegation. We have time and again stated that mere allegation in the pleading is no proof of the contention thereof. Allegation must be supported by affidavit or by evidence on oath because such requirement of law can be explained. If a person tells a lie on oath or affidavit he can be prosecuted for giving false evidence (perjury) and nobody will come forward to give false evidence on oath on account of legal consequences and that is why we are accepting the evidence by way of affidavit or deposition on oath. We, therefore, shall have to allow the appeal. Appeal allowed with costs.