
(2008) 04 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

RAWAT COLD STORAGE AND GENERAL MILLS PVT LTD

APPELLANT

Vs

GOVT OF U P

RESPONDENT

Date of Decision : 15-04-2008

Acts Referred:

Citation : 2008 3 CPJ 26

Hon'ble Judges : K.S.Gupta , S.K.Naik J.

Advocate : Daleep KrDhayani

Judgement

1. COMPLAINT was filed, inter alia, alleging that the complainant is having a cold storage at Debai Road, Shikarpur, Distt. Bulandhsahar. In the year 1997, there was bumper crop of potatoes. To ensure that potatoes may not get rotten, a meeting under the Chairmanship of District Magistrate Bulandhsahar/opposite party No. 3 was summoned. It was also attended by the representative of U. P. State Electricity Board/opposite party No. 2. In the meeting, it was impressed upon by opposite party No. 3 on opposite party No. 2-Board to provide regular supply of electricity to the cold storages which preferred to store the potatoes. Cold storage run by the complainant was lying closed. Being assured of regular supply of electricity, the complainant entered into an agreement with the Board and paid various charges for 90 KVA. Electricity connection was provided on 22. 4. 1997. By 9. 5. 1997 about 24,419 quintals of potatoes were stored in the cold storage. It was alleged that as the supply of electricity was restricted to 5-7 hours a day, the complainant wrote letters dated 27. 5. 1997 to the District Horticulture Officer and opposite party Nos. 2 and 3 informing of short supply of electricity. Complainant also gave public notice intimating the farmers that because of irregular supply of electricity, it was unable to preserve the stored potatoes and would not be responsible for any loss caused to the stored potatoes. Farmers started demanding compensation @ Rs. 400 per bag from the complainant. By the letter dated 23. 6. 1997, the complainant sought intervention of opposite party No. 3 and the District Horticulture Officer. Opposite party No. 3 constituted a committee to ascertain the position of the stored potatoes headed by SDM, Shikarpur. In the inspection report dated 14. 7. 1997,

it was mentioned that the potatoes had rotten and be cleared out of the cold storage immediately. Acting on this report, the opposite party No. 3 reached the conclusion that a total amount of Rs. 36,99,494 was to be given to the farmers as compensation. So, it directed the Tehsildar to realise this amount from the complainant. Complainant filed a writ petition in Allahabad High Court which ordered deposit of Rs. 1. 00 lakh which was deposited. Attributing deficiency in service on part of opposite party No. 2, the complainant has sought direction to opposite party No. 2-Board to pay amount of Rs. 36,99,494, pay Rs. 18,31,425 being amount of storage charges @ Rs. 75 per quintal, pay Rs. 16,70,000 towards compensation for the damage caused to the wooden structure of the cold storage and Rs. 8,00,000 for the damage to the machinery and fixtures and Rs. 33,62,851 as compensation towards loss of business for the year 1998-99 and interest.

2. WRITTEN version was filed by U. P. Power Corporation Limited, one of the successors of opposite party No. 2. By the order dated 16. 7. 2003, the complainant was ordered to file Memo of Parties deleting the names of opposite party Nos. 1 and 3 who are the State and Officer of the Government. Amended Memo of Parties has thereafter been filed. In the written version filed by the said contesting opposite party, it was alleged that the complainant had applied for new connection of 90 H. P. for running cold storage on 20. 3. 1997. That load was sanctioned vide Office Memo dated 27/31. 3. 1997 and the connection was released on 20. 4. 1997. One of the terms/conditions of this Officer Memo provided that in view of adverse conditions and emergency rostering the complainant was to instal a generating set of requisite capacity to meet the necessary demand of electricity. However, the complainant did not instal generator which resulted into loss of potatoes for which the complainant itself is liable. It was further alleged that the complainant took the electricity connection from rural feeder because their cold storage was situated in rural area where there were no means for giving electricity from the urban feeder. Complainant knew that electricity was available as per rural schedule of 10-12 hours per day. As per notification issued under Section 22 (B) of Indian Electricity Act, 1910, rural supply of electricity was to be observed for 10-12 hours per day and the same remained available to the complainant. Opposite party maintained the electric supply as far as possible according to the schedule as determined by the State Government for rural area. It was also stated that under Section 23 of the UP Regulation of Cold Storage Act, 1976, it was mandatory on the part of complainant to have got the agriculture produce stored insured against any loss or damage by fire, breakdown (whether mechanical or otherwise) or such like causes. Still no insurance during the year 1997 was obtained by the complainant. It was pleaded that as the complainant did not make payment of electricity dues the supply was disconnected on 22. 6. 1997. Since it was a new connection and the complainant had not taken supply for a minimum period of two years, the charges for minimum consumption were levied. Total outstanding amount against the complainant was Rs. 3,13,335. 40 for recovery whereof proceedings under

Section 3 of the U. P. Government Electrical Undertaking (Recovery of Dues) Act, 1948 was initiated against it on 23. 7. 1999. Challenging the demand the complainant had filed Civil Misc. Writ Petition No. 36828 of 1999 before the High Court of Judicature at Allahabad which was disposed of with the observation that if the complainant sends representation, the opposite party will decide it in accordance with law expeditiously. Complainant sent representation on 6. 9. 1999 which was decided by the order dated 12. 10. 1999 by the answering opposite party. Complainant was held to be liable for the electricity charges which were demanded from it. Against the order dated 12. 10. 1999, the complainant had filed Civil Misc. Writ Petition No. 45796 of 1999 again before said High Court. The Court stayed the recovery on the condition of complainant depositing Rs. 1. 00 lakh with the opposite party. Complainant deposited the amount of Rs. 1. 00 lakh. It was denied that any assurance of continuous supply of electricity was given by the U. P. State Electricity Board as alleged. It was further denied that any damage was caused to the wooden structure of the cold storage or the machinery and fixtures as alleged. Liability to pay the amounts claimed was emphatically denied.

Complainant filed rejoinder to the written version. It was alleged that the complainant had a generator of 15 KVA which was sufficient for day-to-day requirement. Generator cannot run for six days. It was asserted that complainant was given electricity from city feeder. It was stated that the Insurance Company did not insure the potatoes after 31. 3. 1997. Complainant was forced to start cold storage in the 1st week of April, 1997 under instructions of the District Magistrate.

3. IN support of complaint, the complainant filed the affidavit of M. S. Rawat, Karan Singh and V. K. Gupta, Assistant Engineers filed the affidavits on behalf of U. P. Power Corporation Limited. Admittedly, load of 90 HP was sanctioned to the complainant by erstwhile U. P. State Electricity Board vide Office Memo dated 27/31. 3. 1997, (Copy at pages 17 and 18). Terms/condition Nos. 4, 8 and 15 of this Office Memo which are relevant, are re-produced below: "the above load sanction/release will be under following terms/conditions: 1. 4. Because of over-loading of electric system there is every possibility of problem of break-down shedding of power supply or of low voltage. 8. The power supply will be given to the consumer as per UPSEB Electric Supply Rules and there will be time-to-time roasting/emergency posting for supply of electric system. 15. The consumers are advised to instal generators for emergency load shedding, etc. The permission from Board may be obtained separately for use. "

4. AT this juncture, it will be profitable to refer to paras Nos. 13, 14 to 17 of the affidavit of said Karan Singh filed by way of evidence. Those read as under: "13. That the contents of para 13 are wrong hence denied. It is submitted that petitioner's Cold Storage was situated in rural area and was getting supply from the rural feeder, hence the supply remained available as per the criteria for rural

feeder which was 10-12 hours per day. The replying respondent are enclosing log sheet of the supply maintained at their sub-station to show that supply of 10-12 hours was available to the petitioner as annexed to this petition. 14-17. That the contents of paras 14 to 17 are wrong, hence denied. It is submitted that rule as per notification issued under Section 22-B of the Indian Electricity Act, 1910, the rural supply of electricity was to be observed for 12-14 hours per day and the same was remained available with the petitioner. The allegation that answering respondent did not supply electricity is wrong. It is submitted that replying respondent as far as possible maintained the electricity supply according to schedule as determined by the State Government for rural area and this was the reason that the petitioner was informed in advance to instal generating set to avoid any such situation. "

Similar are the paras of the affidavit of V. K. Gupta, Assistant Engineer. To be noted that the affidavit filed by said M. S. Rawat is conspicuously silent that connection given was from the city feeder as alleged in para No. 5 of the preliminary objection of the rejoinder. In absence of evidence of the connection being given from city feeder, there seems to be no reason to disbelieve said para No. 13 of the affidavits of Karan Singh and V. K. Gupta. Since the complainant's Cold Storage was connected to rural feeder the supply of electricity had been as per the notification issued under Section 22 (b) of Indian Electricity Act, 1910 and the time schedule as determined by the State Government for the rural areas. It is claimed that supply of electricity to the rural areas was for 10-12 hours per day and the opposite party, as far as possible, made available the electricity to the complainant's Cold Storage for this period. In view of terms/condition Nos. 8 and 4 and the storage being connected to rural feeder, the complainant was duty bound to have installed generator set of suitable capacity to have continuous supply of power to the cold storage. Assuming that the complainant had a generator of 15 KVA it was totally insufficient to run a cold storage. Complaint, thus, cannot be heard to say that the potatoes stored were destroyed because of lack of continuous supply of electricity by the opposite party. On ground of damage to stored potatoes the complainant cannot claim any compensation from the opposite party. That apart, under Section 23 of the UP Regulation of Cold Storage Act, 1976 the complainant was under a legal obligation to have the stored potatoes insured against loss by fire, breakdown (whether mechanical or otherwise) or such like causes. In the rejoinder though the complainant has not disputed of not obtaining the insurance policy but has alleged that the Insurance Company did not insure potatoes after 31st March. However, the affidavit of M. S. Rawat is silent to that effect nor has the complainant adduced any evidence to prove that insurance cover was not available after 31st March. It may be pointed out that complainant has also not adduced any evidence to show that claimed amount of Rs. 36,99,494 was actually paid by it to the farmers whose potatoes were stored in the cold storage and were rotten. For the foregoing reasons, the complainant is also not entitled to any compensation for loss of storage charges, alleged damage to machinery

and fixtures and profit for the ensuing year.

5. ACCORDINGLY, the complaint is dismissed with cost of Rs. 15,000 to the U. P. Power Corporation Limited. Complaint dismissed.