

(2011) 10 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

SDO (OP), Industrial Area Sub Division UHBVNL Yamuna
Nagar

APPELLANT

Vs

MOHAN SINGH

RESPONDENT

Date of Decision : 31-10-2011

Acts Referred:

Citation : 2011 0 NCDRC 768

Hon'ble Judges : Anupam Dasgupta J.

Final Decision : petition fails and is accordingly dismissed

Judgement

1. THIS revision petition is directed against the order dated 27.05.2010 of the Haryana State Consumer Disputes Redressal Commission, Panchkula (in short, ? the State Commission?) in First Appeal no. 691 of 2010.

2. IN this case, a penalty Rs.1,10,666/- was imposed on the respondents/complainants by the petitioner/appellant/opposite party on the ground that on 05.03.2009, when the Assistant Executive Engineer, Enforcement Wing of the petitioner Nigam along with some other officials inspected the electricity connection (no. YA-15-3655) in the shop premises of the respondents, the Team found a naked joint in the in-coming PVC wire before the meter (adjacent to the shutter of the shop) and two single core flexible copper wires with 3-pin power plug at one end inside the shop with approximately four meters of yellow and blue wire near the naked joint. The actual electricity load of the respondents was also found to be 4.420 KW against the sanctioned load of 2.9 KW. A case of theft (dishonest abstraction of electricity under section 135 of the Electricity Act, 2003) was made out against the respondents, leading ultimately to imposition of the assessed penalty mentioned above. The respondents deposited the amount with the petitioner under protest and filed a complaint before the District Consumer Disputes Redressal Forum, Yamuna Nagar (in short, ?the District Forum?). By its order dated 26.03.2010, the District Forum held and directed as under: "Resultantly we quash the assessment charges amounting to Rs.1,10,666/- on the basis of the demand factor which was discussed in page no.

6 and 7 of the order and complainant is only liable to pay the assessment amount only Rs.22,133/- along with compounding fee of Rs.50,000/- and the balance amount if any early charged from the complainant be refunded to him along with interest at the rate of 9% per annum from the date of deposition to till its realisation after adjusting the compounding amount already deposited by him. The complaint is decided accordingly".

The petitioner filed the above-mentioned first appeal against the aforesaid order of the District Forum. After considering the matter, the State Commission dismissed the appeal in limine by its impugned order. Aggrieved, the appellant/opposite party has come up with this revision petition.

3. I have heard Mr. Alok Sangwan, learned counsel for the petitioner and Mr. Abhishek Sharma, learned counsel for the respondents. As directed on 30.09.2011, Mr. Sharma has also filed his written submissions though Mr. Sangwan has not done so. Mr. Sharma has pointed out that after the respondents/complainants deposited the amount of the penal assessment levied by the petitioner, the petitioner filed a criminal complaint under section 151 of the Electricity Act, 2003 on the ground of dishonest abstraction of electricity (in terms of section 135 of that Act). However, by his order dated 22.04.2011, the Additional Sessions Judge, Yamuna Nagar (the designated special court under section 153 of the 2003 Act) held that the prosecution had wholly failed to prove the case of theft of electrical energy against the accused and hence acquitted the accused of the charge framed against him. The accused in this case was Harjeet Singh, son of Mohan Singh who was the consumer of the above-mentioned electrical connection. On this basis, Mr. Sharma has argued that the case was no more that of theft of electrical energy and could, therefore, be adjudicated upon by the Consumer Fora. He has further submitted that in accordance with the Sales Manual of the Haryana State Electricity Board (predecessor body of the petitioner, Uttar Haryana Bijali Vitran Nigam Ltd. - UHBVNL), calculation of the penalty was faulty and had been appropriately corrected by the District Forum. Therefore, the impugned order of the State Commission (affirming the order of the District Forum) ought to be upheld and the revision petition dismissed.

4. IN the facts and circumstances of the case, I am inclined to agree with Mr. Sharma because the charge of theft of electrical energy against the respondents/complainants could not be proved before the competent special court and hence the dispute boils down to that relating to assessment of penalty (under section 126 of the Electricity Act) for unauthorised abstraction of electricity on account of the actual load being found in excess of the sanctioned load, a matter within the jurisdiction of the Consumer Fora. This view is in accord with the ratio of the judgment of this Commission in the case of Accounts Officer, Jharkhand State Electricity Board and Another v Anwar Ali [II (2008) CPJ 281 (NC)]. In this view of the matter and considering the instructions contained in the Sales Manual, the calculation of the penalty arrived at by the District Forum would appear to be in order because no contrary calculation based on later instructions, if any, of the

Nigam has been furnished on behalf of the petitioner. As a result, the revision petition fails and is accordingly dismissed, with no order as to cost.