
(2002) 05 NCDRC CK 0046

In the National Consumer Disputes Redressal Commission

SECRETARY, KERALA STATE ELECTRICITY BOARD

APPELLANT

Vs

N.A.ABDULLA HAJI

RESPONDENT

Date of Decision : 22-05-2002

Acts Referred:

Citation : 2003 1 CPR 614 : 2003 2 CPJ 525 : 2003 3 CLT 8

Hon'ble Judges : L.Manoharan , R.Vijayakrishnan J.

Final Decision : Appeal allowed

Judgement

1. OPPOSITE parties in O.P. No. 74/1999 on the file of the Consumer Disputes Redressal Commission, Kasaragode are the appellants.

2. COMPLAINANT was served with Exbt. P15 adjustment invoice which he alleged are not correct; neither is he liable to pay the said amount. In the version by the opposite party they justified the invoice stating that on a surprise inspection by the Anti Power Theft Squad on 9.3.1999 they discovered the supply which the complainant availed for agricultural purpose was being used for industrial purpose. Therefore, they maintained that they are entitled to proceed against him under Rule 42(d) of the conditions of supply of Electrical Energy and hence the invoice is proper and valid. Complainant gave evidence as P.W. 1 and produced Exbts. P1 to P15. On behalf of the opposite party the Asstt. Engineer, Electrical Major Section, Uduma was examined as D.W. 1. They produced Exbts. R1 and R2. The complainant took out a commission. He filed Exbt. C1 report. On a consideration of the said material District Forum held that the complainant is not liable to pay as per Exbt. P15 invoice dated 12.3.1999 subject to the observations made in the order.

It is urged by the learned Counsel for the appellant that the view taken by the District Forum that once misuse of energy is discovered the opposite parties are entitled to charge three times the rate applicable to the tariff would not give them to the authority to charge at a higher tariff. Learned Counsel maintained that the said view of the District Forum is opposed to Rule 42(d) of the Condition of Supply of Electrical Energy, for according to the learned Counsel, on a proper

reading of the said rule it could be seen that the tariff mentioned in Rule 42(d) is the commercial tariff when a domestic tariff or a tariff for agricultural purpose is seen utilized for commercial purpose. Therefore, according to the learned Counsel for the appellant the view taken by the District Forum in that regard cannot be supported. On the other hand the learned Counsel for the respondent/complainant pointed out that inasmuch as liberty is given to the first opposite party to issue a fresh invoice there could be no grievance for the appellant to agitate in the appeal, and alternatively it is urged by the learned Counsel, the proper construction and interpretation of Rule 42(d) would not authorize the authority to charge on a higher tariff than the tariff to which the complainant was admitted.

3. DISTRICT Forum in the operative portion of the order though gives right to the first opposite party to prepare and issue a proper bill in accordance with law states that the same should be issued subject to the observations in the impugned order. Therefore, so long as the appellant has a grievance against the finding of the DISTRICT Forum that the tariff shall be the tariff to which the complainant was admitted since the same is against the interest of the appellant as the appellant is entitled to claim the tariff for the commercial use, himself being aggrieved is entitled to have the appeal maintained so as to correct the said observation and finding of the DISTRICT Forum in that regard. For resolving the said rival arguments of the learned Counsels reading of Rule 42(d) of the Condition of Supply of Electricity Energy is necessary. The relevant provision in Rule 42 of the Condition of Supply of Electrical Energy reads : "a.
b. c. d. If the consumer exceeds the contracted load without prior permission of the Board or energy supplied for a specific purpose under a particular tariff is used without the Boards" knowledge and approval for a different purpose not contemplated in the contract for supply and for which higher tariff is applicable coming under misuse of energy within the meaning of the I.E. Act, 1910. Misuse of energy will be billed at three times the rate applicable to the respective tariff for the previous six months from the date of detection of misuse unless there are convincing reasons for adopting different periods and supply disconnected without notice. The imposition of this higher rate will not relieve the consumer from any penalties imposed by law."

Interpretation of a provision of law is to discover the intention of the Legislature. Ordinarily the literal meaning could be treated as the intention of the Legislature. But when on a plain reading there appears to be inconsistency or ambiguity the words would capture meaning and content from the context in which they are used with due regard to the context in which the same are used. Of course Rule 42(d) says that misuse of energy will be billed at three times the "rate applicable to the respective tariff". Whereas the appellant would maintain, tariff applicable is the tariff which would be applicable to the consumption of energy at the time of discovery of the misuse of energy, the respondent would urge, the tariff is, the tariff in which the complainant was admitted.

4. THE last sentence in Rule 42(d) would convey a meaning that the respective tariff is the higher rate it says that the imposition of this higher rate would not relieve the consumer from any penalties imposed by law. When the tariff which is to be charged under Rule 42(d) is understood in the context of the said last sentence in the said provision it will be seen that the respective tariff means the tariff applicable is the tariff applicable to the misuse of energy. Here for agricultural purpose the consumer availed the connection which was discovered to have been used for industrial purpose. With due regard to the aforesaid interpretation on Rule 42(d), the three times tariff must be three times the commercial tariff for the relevant period of six months. To that extent modification is necessary in the order of the District Forum. Now the question is whether Exbt. P15 is liable to be set aside. In page 5 of the order the District Forum says that except that the bill show that the same relates to the period from 8/98 to 1/99 it does not show the energy consumed during the period and it is not clear on what basis the amount was arrived at. At least Rule 42(d) been and the rate of tariff should have been mentioned in the notice so that the consumer could know as to how the amount is arrived at. When the bill Exbt. P15 suffers from the said defect, the view taken by the District Forum that a fresh bill clarifying the same has to be issued cannot be said to be in any way faulty. But as has noted, the finding of the District Forum that the tariff that could be made the basis for calculating three times the charges is only the agricultural tariff, cannot be accepted; that should the commercial tariff and to that extent the impugned order has to be modified. The appeal has to be allowed to that extent we do so. In this appeal there will be no order as to costs. Appeal allowed.