

(1997) 07 NCDRC CK 0029

In the National Consumer Disputes Redressal Commission

S.K. DHINGRA

APPELLANT

Vs

ANR.

RESPONDENT

Date of Decision : 26-07-1997

Acts Referred:

Citation : 1998 1 CPJ 214

Hon'ble Judges : R.K.Verma , N.K.Vaidya J.

Judgement

1. MR. Justice R.K. Varma, President-This is an original complaint filed by the consumer against the opposite party/M.P. Electricity Board. In this case, the complainant has claimed compensation against the opposite party on the grounds that the opposite party was guilty of unfair trade practice adopted by it and that the complainant suffered harassment, inconvenience and loss due to deficiency in service on the part of the opposite party.

2. THE case of the complainant is that he is doing business of retail sale of electrical goods, electrical appliances etc. since 1.4.1989. For purposes of his business, the complainant took one room on rent for Rs. 600/per month from the owner/landlord Harjeet Singh. THEREafter, he applied for supply of electricity to the opposite party/M.P.E.B. in the prescribed application form meant for supply of electricity to consumer/ prospective consumer. According to the complainant, when he occupied the rented premises, there was a service connection bearing No. 052646. THE meter had been removed by the M.P.E.B. officials on account of non-payment of electric charges by the previous consumer Shri Jasthy. THE opposite party demanded whole arrears of electric charges due in respect of the service connection from the earlier consumer and made such payment of arrears a condition precedent for the supply of electric energy to the complainant. THE complainant disputed imposition of such a condition by the Electricity Board, requiring the complainant to pay the dues which was payable by the earlier occupant of the premises, as illegal, arbitrary and unfair trade practice on the part of the M.P.E.B. THE complainant averred that the M.P.E.B./opposite party is in a position to dominate the Will of a consumer of electricity as the Board was

holding the monopoly business of supply of electric energy to the consumers. It is not disputed that the complainant made an application on 22.2.1989 in the printed form of "Requisition-cum-Agreement for supply of Electrical Energy to Domestic Light and Fan and Domestic Small Power Connection" which is filed as Annexure-2 to the complaint. In the said printed form, at para 4, a statement on behalf of the applicant has been printed to say, inter alia, that the consumer has carefully read and understood the book-let "General Conditions for Supply of Electrical Energy" and that the applicant agrees to be bound by the terms and conditions for supply contained therein.

Condition No. 22-A of the said "General Conditions for supply of Electrical Energy" reads as follows : "On the transfer of any premises, being made by the consumer, voluntarily or otherwise, which is supplied electricity, or on the said premises being allotted or acquired by any other person in any manner, the Board shall have the right to either discontinue the supply and not to recommence supply, as the case may be, unless all the dues outstanding in respect of supply at the said premises prior to such transfer, allotment or acquisition, are paid by any such transferee, allottee or acquiree." The aforesaid Condition No. 22-A gives the Electricity Board the right not to recommence supply unless all the dues outstanding in respect of supply at the premises in question prior to allotment or acquisition are paid by the allottee or acquiree. The complainant being a new tenant at the premises in question, was apparently treated as an allottee or acquiree and as such he was asked by the opposite party/M.P.E.B. to pay all the dues outstanding in respect of supply at the said premises for the period during which the old tenant Shri Jasthy was in occupation of the premises. As such, in reply to the complainant's application dated 22.2.1989 for supply of electrical energy (Annexure-2), the opposite party by letter dated 29.2.1989 (Annexure-4) directed the complainant to deposit the arrears of dues in respect of the earlier service connection.

3. THE complainant by his letter (Annexure 6) dated 16.3.1989 disputed his liability to pay arrears of dues pertaining to the earlier defaulting consumer on the ground that the complainant was not the legal representative of the earlier occupant and requested that his application for supply of electrical energy should be treated as a fresh application and not as a successor to the defaulter. THE complainant also disputed his liability to pay the dues on the ground that the amount due from earlier occupant/consumer to the opposite party/Electricity Board is not a charge on the premises now occupied by the complainant as a new tenant. The opposite party did not accept the contention of the complainant disputing his liability to pay the arrears of dues which was legally payable by the earlier tenant and the complainant was not provided with electric connection for supply of energy to the rented premises.

4. THE complainant filed a writ petition (M.P. No. 2978/89) for issuance of a direction to the opposite party/M.P.E.B. to provide him electric connection without insisting on payment of arrears of dues payable by the earlier occupant/

tenant of the premises in question. THE High Court took the view that as per Condition No. 22A of the General Conditions of Supply of Electrical Energy, electric supply to the complainant cannot be resumed without payment of arrears of dues and as such dismissed the complainant's writ petition. THE High Court, however, observed as follows : "It is only in the event of proceeding to recover the charge or the other sum by a suit, the question of liability of the consumer or his successor may be relevant and may assume importance. In the event of such a suit being filed for the recovery of the dues, the defendant may plead that the premises have not developed on him by acquisition or voluntary transfer and since the dues are not a charge on the premises, he is not liable. Such a question, in our opinion, is, therefore, not germane for consideration where the claim by the occupant of the premises is for restoration of the electric supply without payment of dues for consumption of electricity by the previous occupant through the meter installed in those premises." Subsequent to the dismissal of the writ petition aforesaid, the opposite party-M.P.E.B. by their letter dated 28.1.1991, Annexure 14-C to the complaint, made a demand for payment of Rs. 1,424/- being the arrears of consumption pertaining to the electric connection availed of by the previous occupier of the rented premises which the complainant has come in occupation subsequently and it was also stated in the letter that until payment of Rs. 1,424/- made by the complainant it was not possible to give him electric connection. The fact of dismissal of the writ petition of the complainant of the High Court was also mentioned in the said letter. The complainant ultimately paid the arrears of Rs. 1,424/- on 5.6.1991 as per the demand made by the opposite party vide their bill dated 12.4.1991 (Annexure 14 to the complaint) and thus satisfied the condition imposed by the opposite party for supply of electric energy. But, the opposite party, even then, did not provide a permanent connection for supply of energy to the complainant and instead of giving such supply referred the matter to M.P.E.B. Advocate for advice vide letter dated 6.6.1991, (Annexure 15 to the complaint). The opposite party-M.P.E.B., however, made a temporary connection for supply of energy for period of six months commencing from 19.12.1992 instead of permanent connection, thereby requiring the complainant to pay for energy charge at the excessive rate of Rs. 3.80 prescribed for temporary connection instead of the normal charge at the rate of Rs. 1.55 per unit. This according to the complainant amounts to deficiency in service on the part of the opposite party for which compensation is payable. The complainant has submitted that even though the High Court refused to give relief to the complainant on account of the fact that there existed in the General Conditions of Supply of Electric Energy, to which the complainant has agreed, a Condition No. 22-A on account of which the complainant became liable to pay the dues of the previous consumer for getting supply of energy, the complainant can still make a grievance that the enforcement of the said Condition 22-A for supply of energy to the complainant amounts to unfair trade practice and for which a complaint is maintainable as per the definition of complaint given in Section 2(1)(c)(i) of the Consumer Protection Act. According to the definition of "unfair trade practice" given in Section 2(1)(r), it means a

trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair deceptive practice. It has been submitted that the trade practice for the provision of any service which requires a consumer to pay the dues of another consumer as a condition precedent for providing the service would be an unfair trade practice and as such in the instant case the requirement of payment of the bill pertaining to the previous consumer by the complainant as a condition precedent to supply of energy by the opposite party M.P.E.B. is an unfair trade practice. The General Condition No. 22-A can, therefore, be enforced only at the risk of committing unfair trade practice within the meaning of that expression as defined in Section 2(1)(r) of the Consumer Protection Act, 1986.

5. IT has further been submitted on behalf of the complainant that the opposite party M.P.E.B. has a monopoly right in the distribution of supply of electrical energy and the complainant who in the circumstances of his need for supply of electric energy is naturally dominated by the Will of the opposite party-M.P.E.B., agreed to a condition of payment of illegal demand which is nothing but an unfair trade practice and as such the complainant is entitled to be reimbursed. In our opinion, the submission made on behalf of the complainant has substance and the complainant is entitled to be reimbursed for the reason that what has been recovered from the complainant is essentially an amount due from the previous consumer and not legally due from the complainant. To permit the M.P.E.B. to make such recovery as a condition precedent to supply of energy, would amount to an unfair trade practice, which is a valid ground for making complaint before this Commission.

6. THE complainant has estimated the loss incurred by him due to deficiency in service on the part of the opposite party are enumerated in paragraph 19 of the complaint as under : (i) Amount of dues of the previous consumer recovered by the M.P.E.B. from the complainant. Rs. 1,424/- (ii) Interest @ 18% from June, 1991 to June, 1993 on the illegal recovery of the amount of dues of the previous consumer. Rs. 512/- (iii) Interest @ 10% on the deposit of Rs. 244/- from 5.6.1989 to June, 1993. Rs. 49.60 (iv) Refund of the excess tariff charged Rs. 2.77 for three months. Rs. 1.345/- (v) Loss per day for not being able to carry on the business fully for 3 years @ Rs. 40,000/-. Rs. 1,20,000/- (vi) Specific damages to correspondence for legal advise. General damages of mental agony etc, Rs. 10,000/- (vii) Future interest @ 18% p.a. if compensation not paid in time. Total Rs. 1,33,330.60 According to the complaint, the complainant has claimed compensation for deficiency in service on the part of the opposite party M.P.E.B. and has also prayed for a direction to the M.P.E.B. to give the electric connection to the complainant as per the executed agreement and also to desist from indulging in unfair trade practice.

The learned Counsel for the opposite party-M.P.E.B. has submitted that even though the complainant has paid the amount of arrears due from the previous occupier of the premises in question as demanded by the M.P.E.B. as a condition

precedent for supply of electric energy, the complainant has been guilty of malpractice/ theft of electrical energy/pilferage committed by the complainant in regard to service installation of the opposite party.

7. AFTER hearing the arguments of both the sides, we find that the only condition which was required to be fulfilled by the complainant before supply of electric energy by the opposite party was the payment of arrears of bill of the previous occupier of the premises by the complainant. The complainant having paid the amount of arrears as demanded by the opposite party-M.P.E.B. he was entitled to be given the initial permanent connection for supply of electric energy. The question of inquiring into any alleged pilferage of energy by the complainant would be a matter not linked with the complainant's entitlement to be supplied permanent electric connection in the facts and circumstances of this case. The inquiry regarding malpractice/pilferage could be made by the M.P.E.B. and legal action, if any necessary, against the complainant, could be taken by the opposite party at an appropriate Forum. But, so far as the facts which have been established from the records, go to show, the complainant has a genuine grievance on account of unfair trade practice and deficiency in service on the part of the Opposite party-M.P.E.B. We accordingly direct the following relief's to be given to the complainant as against the opposite party : (i) The opposite party-M.P.E.B. shall pay to the complainant Rs. 1,424/- with interest at the rate of 18% per annum from June, 1991, till payment. The opposite party shall also refund the excess tariff charged at the rate of Rs. 2.77 for three months amounting to Rs. 1.345/- with interest at the rate of 18% per annum, (ii) The opposite party shall further pay to the complainant Rs. 20.000/- as compensation for deficiency in service on the part of the opposite party resulting in mental tension and harassment and loss of business by not providing permanent electric connection so far. The payment of aforesaid compensation shall be made by the opposite party to the complainant within a period of two months from the date of the order and in default thereof interest shall be payable on this amount as compensation at the rate of 18% per annum till payment.

8. ACCORDINGLY, this complaint is partly allowed as above as against the claims made in the complaint. The opposite party shall also pay cost of the proceedings which is fixed at Rs. 2000/- to the complainant. Complaint partly allowed with costs. _____