

(2004) 05 NCDRC CK 0043

In the National Consumer Disputes Redressal Commission

SOMADUTTA MOHAPATRA

APPELLANT

Vs

CHIEF EXECUTIVE OFFICER, CESCO OF ORISSA LTD.

RESPONDENT

Date of Decision : 17-05-2004

Acts Referred:

Citation : 2004 3 CPJ 458

Hon'ble Judges : Arati Mohanty , Pramodnath Das J.

Advocate : A.Mohanty

Judgement

1. IMPOSITION of penal bill by the CESCO is the sole grievance of the complainant in the C.D. case.

2. THE facts in nutshell is, the complainant who is an educated unemployed youth owned an ice factory, namely, "M/s. Mohapatra Ice Factory" at Erasama, Jagatsinghpur, after availing loan from O.S.F.C. A computerised meter was installed on 8.6.2001 in his factory premises by opposite party No. 2 and the complainant was paying the electricity dues regularly. On 20.1.2003 the opposite party No. 3 verified the meter of the complainant and found missing of Ypt wire and Rpt wire since 13.10.2001 and 20.3.2002 respectively. THEN the opposite party No. 3 rectified the fault and reported the loss of energy to the opposite party No. 2. After getting the said information, the opposite party No. 2 prepared a final bill calculating on the basis of percentage of loss of energy vide Annexure-4 and slapped a penal bill on complainant amounting to Rs. 2,57,367/- towards loss of energy and by adding the arrear of Rs. 77,632/- on it, the total comes to Rs. 3,34,999/- and threatened the complainant to disconnect the line, if he failed to make payment of the same within 7 days. THE complainant sought intervention of this Commission for Redressal of his grievance by filing this case. Heard Mr. S.K. Mohanty, learned Counsel for the complainant. None appeared on behalf of the opposite parties. We have gone through the record with relevant materials placed.

While perusing the order-sheet we noticed that on 27.2.2003 we admitted the case and directed to issue notice against the opposite parties for appearance and

filing their written version. On the same day we granted interim stay directing the opposite parties not to disconnect the line until further orders. We are surprised that although the opposite parties appeared on 13.3.2002 by filing the Vakalatnama in favour of Mr. P. Acharya and his Associates, which is on record, but they did not file written version till the date of hearing and when the matter was taken up for hearing, no body appeared on behalf of the opposite parties.

3. MR. Mohanty strenuously argued before us that the complainant is not at all responsible for the missing of Ypt and Rpt wires inside the meter which occurred due to technical fault. There is no mention of any tampering or breakage in the inner side or outer side seal of the meter in the verification report. Rather the M.R.T. Officer, Cuttack, in his field testing report stated that all the seals of the meter were O.K. MR. Mohanty also argued before us that the penalty imposed by the opposite party No. 2 under Rule 105 of the OERC Code, 1998 is not at all applicable in this case as it was not a case of theft, bypassing, unauthorised use, dishonest abstract of power and tampering of meter. Hence he prayed for quashing of the penal bill vide Annexures 4 and 5. During his argument MR. Mohanty stated that the complainant never agreed to pay the amount towards loss of energy, as alleged by the opposite parties. Rather the said alleged admission of the complainant was incorporated later on in the report after obtaining his signature. He also draws our attention to the report where it has been mentioned that wires were splitted from the connection and argued that when the wires were splitted due to technical fault, the complainant is in no way responsible for the same and hence not liable to pay the penal bill which is also prepared erroneously without any application of mind. SESCO also failed to prove their deficiencies in service and inordinate delay. After hearing the learned Counsel for the complainant and perusal of Rule 105 of the OERC Code, 1998 we observe that Rule 105 is not applicable in the facts and circumstances of this case. We fully agreed with Mr. Mohanty that Rule 105 is to be applied in case of theft, bypassing, unauthorised use, dishonest abstract of power and tampering of meter etc. and the said rule states the procedure on the basis of which penalty is to be charged. But in the instant case no such thing happened. There is also nothing in the record to show that the complainant had made any theft, bypassing, tampering and illegal hooking of electricity and no criminal prosecution had been lodged by the opposite parties against the complainant. It is a case in which the Ypt and Rpt wires were splitted inside the meter for which the complainant is in no way responsible. It is occurred due to technical fault as all the seals of the meter were intact and in O.K. condition, as revealed from meter testing report of M.R.T. Officer, Cuttack. We also fully agree with the argument advanced by Mr. Mohanty that the alleged admission of the complainant to pay the amount towards loss of energy was incorporated later on in the report after obtaining his signature. In view of our above observations, we hold that the penal bill, as alleged, is arbitrary in the facts and circumstances of the case.

4. BESIDES the above, we also fail to understand as to on which basis the

opposite parties made calculation towards loss of energy. Rule 105 does not speak about the procedure for calculating towards loss of energy. We also do not find any procedure in the OERC Code relating to calculation towards loss of energy. It would have been a great help to us if the opposite parties would have filed their written version. In absence of the written version, we do not find any justifiable ground to hold the penal bill as proper. Rather we hold the penal bill as erroneous. During the course of hearing it came to our notice that during the pendency of the case, the complainant is paying the current bills regularly. In view of the foregoing discussion, both on facts and law, we are constrained to hold that opposite parties have been seriously neglecting to settle the dispute of the complainant with some plea or the other in disposing the matter but persistently pursuing the same unnecessarily upto the level of this Commission. We hereby quash the penal bill vide Annexures 4 and 5 and direct the opposite parties to give a revised bill, if they will choose, to the complainant which should be in conformity with the Rules of the OERC Code, keeping in view that the complainant is no way responsible for the loss of energy which occurred due to a technical fault. We also direct the opposite parties to give opportunity to the complainant to clear up his arrear dues in four equal quarterly instalments, including the current dues. With this observation, the case is disposed of. Complaint disposed of.