(1993) 03 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

SUPERINTENDENT ENGINEER M.E.D.CIRCLE — APPELLANT

Vs

EASTERN ORE CORPORATION — RESPONDENT

Date of Decision : 18-03-1993

Acts Referred:

Citation : 1993 0 CPC 422 : 1993 1 CLT 689 : 1993 1 CPJ 138 : 1993 1 CPR 704 : 1993 1 CTJ 379 : 1993 2 CLC 314

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN , B.S.YADAV J.

Advocate : R.MOHAN , T.RAJA , M.VAIDYANATHAN

Judgement

1. THEFACTS leading to this appeal against the order dated 8th December, 1991 passed by the State Consumer Disputes Redressal Commission, Tamil Nadu at Madras by which the complaint filed by the present respondent M/s. Eastern Ore Corporation was partly allowed are that the Complainant had filed a complaint before the said Commission claiming a refund of a sum of Rs. 68,133/- levied from the Complainant as electricity charges plus Rs. 807.18 as interest on the above amount from 1.1.1978 till 31st August, 1991. Rs. 5 lacs was also sought to be recovered as compensation.

2. THE opposite parties in the complaint were Superintending Engineer, M.E.D. Circle South, Tamil Nadu Electricity Board and Chairman, Tamil Nadu Electricity Board. According to the complaint, the Complainant is a registered small scale B industry and had commenced its business in 1961 B and had applied for low tension electricity connection and the same was given to it. In 1971 as part of expansion it applied for high tension electricity connection. On 31st December, 1971 the Tamil Nadu Government issued Notification No. G.D. Ms. No. 2695, PW Electricity by which certain concessional tariff was given to new industries with high tension electricity connection for the first five years of commencement of production This Notification was not brought to the notice of the subscribers. The opposite parties did not choose to implement the said Notification in respect of industrial units which earlier had low tension electricity connection and

subsequently obtained thigh tension electricity connection. Some aggrieved subscribers challenged the stand of the Board in the High Court of Madras on the plea that new industries converted from low tension electricity connection to, high tension electricity connection were entitled to pay lower tariff under the said Notification. The High Court of Madras passed an order that the above referred industries were also entitled to the benefit in the tariff under the aforesaid Notification. The Tamil Nadu Government passed an order vide Notification G.O. Ms. No. 1158 dated 31.5.1983 amending the schedule of Tariff regarding high tension industries in the Tamil Nadu Revision of Tariffs and Rates on supply of Electrical Energy Act, 1970 and an explanation was added to the earlier Notification to the effect that "Low Tension Industry converted into High Tension Industry is not eligible for concessions". This amendment was not given retrospective effect.

3. IN 1983, the Electricity Board disconnected the electric connection of the complainant on the ground that the unit had to pay arrears of electricity charges amounting to Rs. 48,748.50. It may be mentioned here that the Complainant unit had become sick in 1977 and thereafter it commenced rehabilitation proceedings with the help of the District Industries Centre, Chingleput. To revive the unit, the Complainant had approached the Board for reconnection of electricity to its unit. The demand for the payment of arrears was reiterated and the connection was not given. In December, 1988 the Complainant came to know of the concessional tariff under the above Notification dated 31.12.1971 and the subsequent proceedings regarding the dispute in the High Court about the applicability of the said Notification to low tension industry converted into high tension industry. Thereafter the Complainant approached the first opposite party to give credit to the amount collected as excess from it during the period 1972-73 to 1976-77. The credit was sought for a sum of Rs. 68,133/- which is, said to have been paid by the Complainant in excess for the aforesaid period. According to the Complainant it was entitled to the concessions in the tariff under the 1971 Notification. The first opposite party i.e. Superintending Engineer, vide his letter dated 23rd May, 1990 rejected the application for refund on the ground that same had been made after a lapse of 17 years. According to the complainant he did not know of the earlier Notification referred to above till the month of December, 1988 and hence the date of knowledge alone can be the criteria to determine whether the claim was time barred or not, according to the Law of Limitation. In view of the decision of the Madras High Court, the second opposite party should have refunded the excess amount collected from the Complainant. The opposite parties after having collected the excess amount from the complainant were bound to refund it and they were also not justified in not giving reconnection of electricity to the complainant unit on the ground that the unit had to clear arrears amounting to Rs. 48,748.50 when the department had already collected a sum of Rs. 68,133/- in excess from the Complainant and they were still holding that amount. The Complainant could not revive the unit for want of reconnection. As the unit could not revive, the complainant claimed

damages amounting to Rs. 5 lacs in addition to the refund of the above amount. Hence the complaint for the above relief''s.

4. THE complaint was contested by the opposite parties on various grounds. The State Commission vide impugned order held that the Notification of 1983 was a prospective one and that in view of the 1971 Notification the Complainant was entitled to the concessional tariff. About the plea of limitation, it was held that the complainant came to know about the 1971 Notification only in December, 1988 and therefore, the period of limitation will not begin to run until the claimant had discovered the mistake and therefore, the Complainant was well with in the time. Accordingly, the State Commission ordered the opposite parties to refund a sum of Rs. 68,133/- being excess amount collected from the complainant with interest thereon at 12 per cent from 1.1.978 till payment. The Complainant was also awarded Rs. 500/- as costs. The Complainant''s claim for compensation was turned down on the ground that there was no evidence, oral or documentary, to substantiate the claim.

5. FEELING aggrieved, the opposite parties have come before this Commission in this appeal.

6. IN the counter filed by the opposite parties it has not been specifically pleaded that the complainant is not a consumer. The only plea that has been taken is that the complainant is taking supply of electricity for commercial purpose and therefore it is not a consumer dispute. The same plea was taken before the State Commission. The State Commission overruled that objection by remarking as follows: "In the instant case, the case of the complainant is that the opposite parties failed to implement the relevant G.D. and give to the complainant the benefit of concession due to him under the G.Os. This amounts to deficiency of service within the meaning of the Section 2(i) (g)of the Consumer Protection Act and the complainant who was hired the services of Electricity Board for consideration is a consumer withinlhemeaningofSection2(i)(g)(ii) of the Act."

After hearing the parties, we have come to the opinion that the present dispute is not a consumer dispute. "Deficiency" in relation to service has been defined in Sec. 2(1) (g) of the Consumer Protection Act, 1986 as follows: "Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."

Therefore, the question that arises is whether there was any fault, imperfection, shortcoming or inadequacy on the part of the opposite parties in the quality, nature and manner of performance of the service. Till the matter was decided by the High Court of Tamil Nadu at Madras in S.A. No. 808/ 1977 (the number of the case has been given in the complaint), the opposite parties were under a bona fide belief that low tension industries converted into high tension industries were not entitled to the concessions in tariff which was allowed to high tension industries under the 1971 Notification. Even the Complainant unit was under the belief that the said Notification did not apply to it. It noticed the mistake only in December, 1988. Therefore, when an act has been done in good faith, we are of the opinion that there is no deficiency in the rendering of service. This is a case about refund of the excess electricity charges by the opposite parties from the complainant. There is no complaint about any deficiency in the supply of electricity till the supply to the Complainant unit was disconnected for non-payment of charges in 1983. By not allowing refund of the excess charges, it cannot be said that the opposite parties (now appellants) have been negligent in the rendering of service to the claimant. The claimant might have his remedy in Civil Court but not under the Consumer Protection Act, 1986.

7. ACCORDINGLY , we accept the present appeal and set aside the impugned order and dismiss the complaint filed by the present respondent. We make no order as to costs.