

(2014) 02 NCDRC CK 0089

In the National Consumer Disputes Redressal Commission

UTTAR PRADESH POWER CORPORATION LTD.

APPELLANT

Vs

Om Prakash Kohli

RESPONDENT

Date of Decision : 07-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 84

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Advocate : ANURAG KISHORE , P.N.JAIN

Judgement

1. PRESENT revision petition has been filed by the Petitioners/Opposite Parties under Section 21(b) of the Consumer Protection Act, 1986(for short, "Act ") challenging order dated 11.11.2010, passed by State Consumer Disputes Redressal Commission, Lucknow, Uttar Pradesh(for short, "State Commission ") in First Appeal No. 1604 of 2006, vide which appeal of the petitioners against order dated 6.5.2006, passed by District Consumer Protection Forum, Pilibhit(for short, "District Forum ") was partly allowed.

2. BRIEF facts are that Respondent/Complainant was carrying on the cotton and woolen clothes business in his shop in Pilibhit, in which he had taken the electricity connection. Petitioners supplies electricity in the shop and respondent never defaulted in the payment of the electricity bill. On the night of 26.01.2000 at about 1.00 p.m, a short circuit took place in the pole situated near the shop from which connection through cable was given to his shop and the fire broke out in his shop. At that time, clothes worth Rs.3 lakh kept in the shop got burnt due to which respondent suffered loss of about Rs.3 lakh. Respondent immediately gave information of the fire to the petitioners. However, they did not pay any heed nor completed any formality which was required to be done by them. The fire brigade reached there to control the fire in the night itself and the same was controlled. By that time, three other shops along with the shop of the respondent had been burnt. The respondent has prayed for the compensation of Rs.3,00,000/ - for the loss suffered due to the clothes burnt in the fire and Rs.50,000/ - for the reconstruction of the shop and Rs.100/ - per day for the

fulfillment of loss suffered against the petitioners. Petitioners in their written statement have stated that respondent had a small wooden shop. There were other two shops also adjacent to the shop of the respondent. In all these shops, business of clothes was being conducted. It is stated that it is not possible for the shop to catch fire due to short circuit unless there is a load on the connection. In case there was heavy load in the shops then incident could occur any time. Apart from this, if incident has occurred due to the fault in the wiring, then petitioners are not responsible. Further, it is alleged that respondent has not given any information about such incident to the petitioners. Pole is situated far away from the shop of the respondent. By filing a complaint on false facts, respondent wants to recover the compensation from the petitioners.

3. THE District Forum, after hearing the parties and pursuing the record, partly allowed the complaint and directed the petitioners to pay Rs.80,000/- for the clothes destroyed in fire and Rs.10,000/- for reconstruction of the shop and Rs.6,000/- as compensation.

4. BEING aggrieved, petitioners filed an appeal before the State Commission which partly allowed the same. It modified the order of the District Forum and directed the petitioners to pay a sum of Rs.50,000/- for loss of clothes due to fire and another sum of Rs.10,000/- for reconstruction of the shop along with simple interest @ 6% p.a. Not satisfied with the order of the State Commission, petitioners have filed the present revision.

5. WE have heard learned counsel for the parties and gone through the record.

6. DELAY of 19 days is condoned. It has been argued by learned counsel for the petitioners that complaint is not maintainable as short circuit was caused due to fire in the internal wiring in the shop. As such, there was no negligence on the part of the petitioners. In fact, it was the respondent who was negligent in not maintaining the proper wiring in his shop.

7. ON the other hand, it has been argued by learned counsel for the respondent, that short circuit has been taken place in the pole near the shop from which the connection through cable was given to the respondent 's shop and fire broke out. Thus, there was negligence on the part of the petitioners alone. Moreover, there are concurrent finding of facts given by both the Fora below. In these circumstances, present petition is not maintainable.

8. DISTRICT Forum, in its order held; ""It has been admitted in the report certified by Fire Brigade forwarded through Superintendent of Police that the fire broke out due to short circuit and the loss suffered by the complainant has been assessed at Rs.1,50,000/- and as evidence, it is also published in the original copy of Danik Jagran dated 28.01.2000 that loss of lakhs of rupees has taken place due to fire broke out in the shops due to short circuit. Respondents have failed to prove that whether short circuit was the reason behind the breaking out of fire or not and complainant despite of being informed by the complainant and news published in the newspaper on 28.1.2000, respondent did not carry out the

survey. Negligence committed by the Department is clearly appearing. "" The State Commission, while partly allowing the petitioners " appeal observed; ""Junior Engineer on behalf of the appellant has submitted his report dated 01.09.2001 according to which had the incident occurred due to short circuit, some fault must have occurred in the electricity meter. Thus, Department is not responsible for the short circuit. In this context, we have also perused the written statement filed by the appellant/ respondents, which has been produced in February 2002. This report does not find mention anywhere in it. It becomes clear from it that information of the fire broke out in the said shop was given. Police Station informed the Fire Brigade and the fire fighters had controlled the fire. In this regard, we have perused the report of the Fire Brigade in which it has been clearly mentioned that reason behind the breaking out of fire is short circuit. ""

9. ADMITTEDLY , short circuit has taken place on the night intervening 26/27.01.2000. However, learned counsel for petitioners has relied upon the report of its Junior Engineer, dated 1.9.2001. This report was prepared about 19 months after the incident of fire which has taken place in the shop of the respondent. Thus, no reliance can be placed on this much belated report which is clearly an after -thought and has got no bearing on the facts and circumstances of the present case.

10. UNDER section 21 (b) of the Consumer Protection Act, 1986, this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Hon "ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. 2011 (3) Scale 654 has observed; "" Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora. ""

11. SINCE fire has taken place due to short circuit, there is clear cut negligence on the part of the petitioners. Under these circumstances, we do not find any infirmity or illegality in the impugned order passed by the State Commission. The

present revision petition being meritless and without any legal basis is hereby dismissed with cost of Rs.5,000/- (Rupees Five Thousand only).

12. PETITIONERS are directed to deposit cost of by way of demand draft in the name of ""Consumer Legal Aid Account "" of this Commission, within four weeks. In case, petitioners fail to deposit the cost within the prescribed period, then it shall also be liable to pay interest @ 9% p.a., till realization.

13. PENDING applications if any, stand disposed of.

14. LIST on 14.03.2014 for compliance.