

(2004) 03 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

W.B.S.E.B.

APPELLANT

Vs

D.P. SASMAL, HIMGHAR PVT. LTD.

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Citation : 2004 2 CPJ 475

Hon'ble Judges : S.Majumder , D.Karformas J.

Final Decision : Appeal dismissed

Judgement

1. THIS is an appeal against the order passed by the Forum date 2.5.2002. The present appellants were the O.Ps. before the Forum whereas the respondent in the appeal matter was the complainant. The facts of the matter are briefly stated hereunder.

2. THE complainant is the successor company of Rashmohan Cold Storage and they are looking after the business of that cold storage since 1996. For the complainant's factory bulk power supply was required. Initially 125 K.V.A. power was supplied to the complainant. Subsequently when it was found that more bulk power was required, the complainant requested the O.P. for enhancement of bulk power supply up to 250 K.V.A. from 125 K.V.A. by a letter dated 4.3.1999. On the basis of this request a joint inspection was held on 16.3.1999 and being fully satisfied, the O.P. sanctioned the bulk power supply as requested on 23.3.1999 and advised the complainant to deposit service connection charges of Rs. 3,95,206/- and also to pay additional security deposit of Rs. 2,45,240/-. THE complainant deposited the stipulated service connection charge on 22.6.1999 and also furnished a Bank guarantee towards the security deposit. In the meantime the complainant requested the O.P. on 15.6.1999 for further requirement of 50 K.V.A. in addition to 250 K.V.A. as previously requested. THE O.P. has agreed to the request of the complainant for enhancing the load to 300 K.V.A. and accordingly an agreement was entered into between the complainant and the O.P. on 30.12.1999. However, despite writing several letters addressed to the O.Ps. they did not take any step for enhancement of the load nor did they

change the name of the consumer from Rashmohan Cold Storage to D.P. Sasmal Himghar Pvt. Ltd. Being frustrated. In their efforts, the complainant company filed a case before the Forum on 11.6.2001. The W.B.S.E.B. contested the case by filing a written version. They contended that the case was not maintainable and the complaint is not covered by the Consumer Protection Act. The O.Ps. however did not deny the agreement that was executed between the complainant and the O.Ps. The O.Ps. also took the stand that they are not in a position to enhance the load or to change the name until and unless the appeal filed by them (Appeal No. 423/A/2001) against an order of the same Forum in another matter is decided.

The Forum on hearing the parties came to the finding that there was no disagreement between the parties on the points on which the complainants approached the O.Ps. viz. enhancement of the load to 300 K.V.A. and change of the name from Rashmohan Cold Storage to D.P. Sasmal Himghar Pvt. Ltd.

3. AS a matter of fact both the parties admitted about the agreement having been executed between the parties on 30.12.1999. It was also found by the Forum that the complainant paid all the demands made by the O.Ps. and also gave an undertaking to the effect that the complainant assumed responsibility to pay all the outstanding dues of Rashmohan Cold Storage which might be detected in future. The Forum came to the conclusion that the O.Ps. have recognised by all necessary implications that D.P. Sasmal Himghar Pvt. Ltd. is the successor company of Rashmohan Cold Storage. Ultimately it was found by the Forum that the only hindrance standing in the way of meeting the requests of the complainant was the payment of the supplementary bill of Rs. 96,937/- raised by the O.Ps. upon the complainant. It may be mentioned here that in another matter (HDF Case No. 151 of 2000) the District Forum quashed the supplementary bill and the O.Ps. came in appeal against that order of the Forum, vide Appeal No. 423/A/2001. It was also noted by the Forum that the agreement was executed on 30.12.1999 while the said supplementary bill was raised on 6.4.2000. In view of this the Forum concluded that the O.Ps. cannot make a demand for payment of the supplementary bill as a pre-condition for increasing the load and for changing the name. Accordingly the Forum passed an order directing the O.Ps. to increase the load to 300 K.V.A. as per the agreement dated 30.12.1999 and to change the name of the consumer from Rashmohan Cold Storage to D.P. Sasmal Himghar Pvt. Ltd., as per the same agreement. The Forum, however, ordered that both the parties would abide by the decision of the State Commission in the appeal 423/A/2001 regarding the quashing of the supplementary bill. The O.Ps. were also directed to pay to the complainant a sum of Rs. 10,000/- as cost. In the Memo of appeal the appellants have not really disputed the facts of the matter. They have challenged the impugned order mainly on the following grounds: (1) The case is not maintainable and the complaint is not covered by the Consumer Protection Act. (2) The Forum does not have any power to direct the Board to supply bulk power of 300 K.V.A. to the complainant. (3) The Forum has no power to direct the appellants to change the

name of the consumer as prayed for. (4) The appellants are not in a position to effect the change of name and to enhance the load to 300 K.V.A. till the Appeal No. 42/A/2001 relating to the payment of a supplementary bill of Rs. 96,937/- is disposed of.

4. FROM the above it is clear that the appellants have raised a technical objection about the applicability of the Consumer Protection Act to the complaint and have taken the stand that till a decision is obtained in the matter of payment of the supplementary bill for Rs. 96,937/- they are not in a position to take any step for changing the name or for enhancing the load. In the Memo of Appeal the appellants have also questioned the order of the Forum directing the appellant to pay Rs. 10,000/- as cost. Let us first take up the technical objection raised by the appellant. We find that the appellants have not disputed the fact that the complainant is the successor company of the erstwhile consumer viz, Rashmohan Cold Storage and that the complainant is running the business since 1996 and are also paying regularly the electricity bills of course raised in the name of Rashmohan Cold Storage. The appellants have also not denied that there was an agreement dated 30.12.1999 between the complainant and the appellants for enhancing the load to 300 K.V.A. This being the position, we are unable to accept the contention of the appellant that the complainant is not a consumer. The complainant is the successor company of the erstwhile consumer Rashmohan Cold Storage (this has not been disputed by the appellants) and hence is definitely a beneficiary of the service being provided by the appellant (vide Section 2(d)(ii) of the C.P. Act). In that view of the matter the complainant is certainly a consumer under the C.P. Act and hence is quite competent to lodge a complaint under this Act. Moreover, the appellants have not denied that there was an agreement between the complainant and the O.Ps. executed on 30.12.1999 for enhancement of the load to 300 K.V.A. and the complainant paid all the charges as per the terms of the agreement. All these undoubtedly go to show that the appellants did recognise the complainant as a consumer. That being the position the appellants cannot now take a stand that the complainant is not a consumer. In view of the foregoing discussion, we reject the technical objection raised by the appellants regarding non-applicability of the C.P. Act to the present matter and we hold that the complainant is a consumer and hence his complaint is quite maintainable under the C.P. Act. In regard to the other point taken by the appellants that they are not in a position to change the name or to enhance the load until and unless the matter of payment of the supplementary bill of Rs. 96,937/- is decided, we observe that the agreement was executed on 30.12.1999 while the supplementary bill was raised on 6.4.2000 though the bill related to the period from March, 1997 to July, 1997. It is quite surprising to note that at the time of executing the agreement, on 30.12.1999 the appellants did not raise the question of payment of any supplementary bill despite the fact that testing of the meter was done way back on 6.5.1997 and the supplementary bill covered the period from March, 1997 to July, 1997. Had the supplementary bill been really the bone of contention, the

question should have been raised by the appellants at the time of execution of the agreement on 30.12.1999. On the basis of the above reasoning, we are unable to agree with the contention of the appellant that change of name or enhancement of load was withheld due to non-payment of the supplementary bill which saw the light of the day at least three months after the agreement was executed. Moreover, in regard to the aforesaid supplementary bill which was quashed by the Forum the appellants came in appeal before this Commission (Appeal No. 423/A/2001) and that appeal also has since been disposed of with certain directions viz. the appellants would raise a provisional bill for 50% of the amount of the supplementary bill and on receipt of this provisional bill the complainants would pay the same to the appellants. Thereafter, the matter would be referred to the CEI for adjudication. In view of the fact that the appeal regarding the supplementary bill now stands disposed of as stated above, that plea of the appellants for not changing the name or for not enhancing the load is no longer tenable. Immediately on payment of 50% of the supplementary bill by the complainant, the appellants should take steps for changing the name of the consumer from Rashmohan Cold Storage to D.P. Sasmal Himghar Private Ltd. and for enhancing the load to 300 K.V.A as per the agreement between the parties dated 30.12.1999. The complainant would comply with the usual formalities that may be required in this regard. Be it clarified that once the provisional bill for 50% of the supplementary bill is paid by the complainant, the appellants would take necessary steps for change of name and enhancement of load, without waiting for reference of the matter to CEI and adjudication of the matter by the CEI. In regard to the cost of Rs. 10,000/- awarded by the Forum to be paid by the appellants to the complainant we are not inclined to interfere with the same. As discussed above, after the agreement was executed on 30.12.1999 the appellants had no reason whatsoever for not taking any steps for changing the name or for enhancing the load as per the agreement. The bogey of the so-called supplementary bill was raised at least three months after the agreement. As the appellants did not take any step for enhancing the load the complainant's business was being seriously hampered and he made several correspondences with the O.Ps., but with no result. Finding no other alternative the complainant had to approach the Forum for redressal of his grievances. In view of this, we do not find any reason why the cost of Rs. 10,000/- (Rupees ten thousand) as awarded by the Forum should be interfered with. Thus, the appeal fails and is dismissed and the impugned order of the Forum is affirmed subject to the observation that the parties will abide by the decision of this Commission in the Appeal No. 423/A/2001 regarding the supplementary bill raised by the appellants. The appeal stands disposed of, accordingly. Appeal dismissed.