

(2003) 11 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

WEST BENGAL STATE ELECTRICITY BOARD

APPELLANT

Vs

DHIRENDRA NATH MONDAL

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Citation : 2004 1 CPJ 404

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

Final Decision : Appeal disposed of

Judgement

1. THIS is an appeal against the ex parte order dated 17.9.1998 passed by the District Forum, 24-Parganas, North at Barasat. At the Forum the respondent was the complainant while the appellant was the O.P. The brief facts of the case are as hereunder: The complainant applied to the O.P. for a commercial connection with 2 HP load for running his factory for construction/ manufacture of building mixture machine for which he obtained necessary Trade Licence from the Municipality. After receiving quotations from the O.P. at different times the complainant deposited all the amounts as per the quotations. He also executed an agreement with the OP. But despite repeated requests the O.P. failed to give the service connection. The complainant is a businessman and he suffered enormous financial loss on account of not getting the service connection as sought by him. At the Forum the complainant prayed for direction on the O.P. for giving the service connection as per his application and also compensation to the tune of Rs. 50,000.00.

2. DURING the hearing before the Forum the complainant examined himself as a witness and also produced the relevant documents regarding the payments made by him to the O.P. The O.P. did not contest the case and the matter was heard ex parte. The Forum, relying on the documents as also the sworn testimony of the complainant, allowed the case ex parte directing the O.P. to instal service connection with meter within 10 days of the date of the order, failing which the O.P. was to pay damage @ Rs. 100.00 per day and also a compensation of Rs. 2,000.00. Further a cost of Rs. 250.00 was allowed. Being aggrieved by this

order, the O.P. has come in appeal before the State Commission. During the hearing before the Commission, both the sides were represented by their respective Advocates. The appellant has stated that the complainant applied for a commercial line with 2 HP load and a 3-phase meter. During the initial inquiry by the Board there was no machinery at the premises and quotations were served for commercial line as per the application of the complainant. But at the time of the final inspection carried out by the Board it was found that the complainant installed other machineries such as welding machine, drill, grinding machine, etc., so that the total load came to about 8 HP as against the load of 2 HP for which the original application was made. According to the appellant for a load of 8 HP commercial connection cannot be given and an industrial connection is essential. According to the appellant, they advised the complainant about the compliance of the formalities required for an industrial connection but the complainant failed to comply with those formalities and insisted on a commercial connection with 2 HP load. The appellant has also furnished the copy of the report of the Station Superintendent stating the aforesaid reasons for withholding the connection. Based on the above grounds the appellant has prayed for setting aside the impugned order of the Forum. The respondent has denied that the load is 8 HP and has also stated that no final inspection was made. Accordingly the respondent has prayed for dismissal of the appeal.

On the basis of the foregoing discussion it is quite clear that the dispute basically is in respect of the load that will be connected. While the complainant insists that the load is not exceeding 2 HP, according to the O.P. the load is about 8 HP on the basis of the machineries installed. This is a matter which can be adjudicated only on the basis of detailed inquiry and evidence to be adduced regarding the actual position of the total load. At the Forum the matter was heard ex parte where the OP was not present, primarily due to laches of the concerned lawyer as stated by the appellant. In our opinion the present case requires fresh adjudication on the basis of the documents to be produced and evidence to be adduced by both the parties so that the correct position in regard to the load can be ascertained. In that view of the matter we consider it fit to remit back the case to the Forum on remand for fresh adjudication after affording opportunities to both the parties for being heard and for adducing evidence in support of their respective contentions. However, it is noticed from the impugned order that at the Forum the O.P., despite his receipt of notice and his entering appearance, did not ultimately contest the matter thereby allowing the same to be heard and decided ex parte by the Forum. In such a situation we consider it fit to direct the appellant to pay cost of Rs. 2,000.00 to the complainant.

3. ACCORDINGLY the appeal is allowed and the impugned order is set aside. The matter is remitted back to the Forum on remand with the appellant being directed to pay a cost of Rs. 2,000.00 to the complainant. Both the parties are hereby directed to appear before the Forum on 17.12.2003 for further direction. As this is an old matter, the Forum would make all attempts to dispose of the case as expeditiously as possible. The appeal be disposed of accordingly. Appeal

disposed of.