



BEFORE THE DISTRICT CONSUMER REDRESSAL FORUM
(DISTRICT FORUM)
NORTH TRIPURA : KAILASHAHAR

CASE NO. C. C. 16/02

THE CHAIRMAN
Fanindranagar Tea Estate
(Sri Kanai Dasgupta)
Samrurpar, Kailashahar,
Unakoti District.

COMPLAINANT
VERSUS

1. The Senior Manager,
Electrical Sub-Division-II, Kailashahar,
Tripura State Electricity Corporation Ltd.,
Unakoti District, P.O. Kailashahar.
2. The Deputy General Manager,
Electrical Division, Kailashahar,
Tripura State Electricity Corporation Ltd.,
Unakoti District, P.O. Kailashahar.
3. Tripura State Electricity Corporation Ltd.,
Represented by the Chairman-Cum-Managing
Director,
Bidyut Bhavan, Banamalipur,
Agartala, Tripura.

OPPOSITE PARTIES

P R E S E N T

SHRI P.K. DUTTA
PRESIDENT
DISTRICT CONSUMER REDRESSAL FORUM
UNAKOTI DISTRICT::KAILASHAHAR
A N D

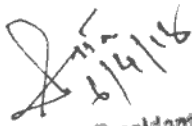
SHRI KISHORE KUMAR GHOSH, MEMBER
SMT. S. DEY, MEMBER

C O U N S E L

For the complainant : Shri H. Bhowmik, Advocate.
For the OPs : Heard ex-parte.

ORIGINAL DATE OF INSTITUTION :27-01-2016

JUDGMENT DELIVERED ON :06-04-2018

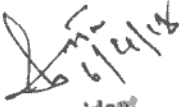

6/4/18
President
DISTRICT FORUM
Unakoti, Tripura, Kailashahar.



JUDGMENT

This is a complaint preferred by the complainant U/S 11 read with Section 12 of the Consumer Protection Act, 1986 against the opposite parties for making payment of Rs.1,58,400/ along with interest as realized by the opposite parties from him for non-consumption, disallowing the so-called big amount of the opposite parties by way of arrear with interest having the complainant at the tune of Rs.,3,27,944.27/- or Rs.3,32,134/- as claimed by the certificate Officer and also for awarding a sum of Rs.2,00,000/- in favour of the complainant for intentionally harassment and mental agony meted to the complainant.

2. The factual backdrop of this complaint is that complainant is the Chairman and co-owner of Fanindranagar Tea Estate, Samrurpar, Kailashahar, Unakoti District. He owns a factory within the said garden area for manufacturing Tea and during the year 2005 on payment of Rs.2,32,655,50/ as per estimate of the electricity bill department and on payment of security in favour of the opposite parties/corporation a transformer was installed at his garden premises with three phase line for supplying electricity in the tea manufacturing factory for operating its machineries Vide ID No.04773. But unfortunately from the year 2009 the said three phase line was not required and utilized by the complainant as the tea factory machine was not in operation due to sudden mechanical defect which is still inactive and as such, the complainant had no scope to consume electricity through the said three phase line or through the said transformer installed at the own cost of the complainant at his garden premises. It is further stated in the complaint that the meter box installed out side the door of the said factory by the opposite party for recording unit of consumption of electricity was also not working and this fact was brought to the knowledge of the opposite party No.1 repeatedly, but the opposite parties took no step for repairing the defect of the meter. However, the meter was useless as the consumption of electricity was not required by the complainant as the machine could not be repaired. It is further stated in the complaint that the opposite parties have been raising bills


6/4/18
President
DISTRICT FORUM
Unakoti, Kailashahar




doing door close falsely with fixed meter rent of Rs.400/ and fixed charge of Rs.4,000/ i.e. in total @ Rs.4400/ with interest per month for no consumption and also with penalty for non-payment in time. The complainant in good faith continue to pay the bill amount as raised by the opposite parties to the extent of Rs.1,58,400 plus interest (approx) for about four years though he consumed no electricity from 2009, but thereafter no bill was raised by the opposite parties when being objected by the complainant. The opposite party No.1 recently issuing notice dated 29/09/2014 together with an arrear bill from the period 12/09/2011 to 08/09/2014 all on a sudden claim payment of Rs.1,86,400/ by the complainant within 07 days though the complainant is not liable to pay any amount to the opposite parties nor he consumed any electricity. Opposite party No.1 also issued notice dated 15/09/2015 most illegally and negligently with malafide intention claiming payment of Rs.3,27,944,07/ informing disconnection of bulk supply of electricity though infact the electric line was disconnected long ago beyond the knowledge of the complainant. It is also mentioned in the complaint that at the instance of the opposite parties a certificate case bearing No.122/CERT/SDM/KLS/15 was also started most illegally against the complainant for realization of the said amount with interest of Rs.3,32,134/ and the complainant thereafter submitted representation on 22/12/2015 before the OP No.1 for settlement of his so-called claim, but to know good and thus, it is the negligence of the opposite parties and deficiency in service on their part for raising bills for zero unit consumption or average bills for non-consumption of electricity by the complainant raising false bills creating the mental agony of the complainant and as such, by preferring the instant complaint the complainant sought for redress, as claimed above.

3. Notice was issued to the OPs, in response of which OP No.1 and OP No.2 appeared through learned Advocate Mr. Ashim Bhattacharjee and submitted written statement stating, inter-alia, that the claim of the complainant is false, fabulous, vexatious and is nothing but trafficking/gambling in litigations; that the complainant has/had no basis or foundation to stand on his own legs and as such, he has got no locus-standee to claim any amount against the opposite parties; that


President
DISTRICT FORUM
Unakoti, Tripura, Kailashahar.



the claim suffers from concealment and suppression of material facts as the complainant has not come before the learned District Forum with clean hands for equitable relief; that the electricity supply connection was provided to the Chairman Fanindranagar Tea Estate and factory Vide I.D No.04773 under Electrical Sub-Division, Kailashahar, Unakoti District and the service connection has been provided to the Chairman, Fanindranagar Tea Estate Vide I.D No.04733 under Electrical Sub-Division, Kailashahar; that as per records of billing units, the factory was running up to March, 2010, last unit bill dated 09/03/2010 for the period from 04/02/2010 to 08/03/2010 unit billed 404 KWH (Provisional) billed amount was Rs.5854/ and date of payment was 12/11/2013 and paid amount was Rs.10728.55/ and no information had been received from the authority of Fanindranagar Tea Factory regarding non-operation of factories and temporary/permanent disconnection of said consumer; that the meter box was installed inside the factory and as per record the meter was defected (stop meter) since January, 2008 and bills had been served as per average consumption of electricity and the complainant had paid all billed amount against average consumption of electricity up to March, 2010 and no complaint was made from the side of the complainant regarding the machine; that as per records it was found that probably the factory was actually closed from December, 2010 and from that period the OPs had served bill zero unit consumption and as per tariff only fixed charge and meter band had been claimed. It is further contended in the written statement that in their tariff there is no difference in billed amount at door close and the billed amount in stop meter. No written information had been received by the ESD-I and ESD-II from the authority of tea factory for the disconnection of service connection and their office had served zero unit bills to the consumer up to March, 2015 and as per EBS records it was found that they have been served zero unit bill from March, 2015 and the complainant paid dues up to 12th September, 2011 and last date of payment was on 23/08/2011. Total outstanding amount till date was Rs.3,59,320/, out of which fixed charge and meter band from March, 2010 to March, 2015 was Rs.2,77,600/ and the rest amount of Rs.81,720/ was as penalty


6/4/18.
President
DISTRICT FORUM
Unakoti, Tripura, Kailashahar.



and rebate. It is further contents that in the WS filed by the opposite parties that as per TSECL amounts they had served the notice to all the defaulty consumers time to time for outstanding payments within the period of 07 days and the opposite party also served notice to the complainant number of occasion for payment the outstanding bill, but no outstanding bill was paid by the complainant and ultimately as per decision of higher authority they lodged certificate case against all the defaulty consumer who did not pay outstanding amount beyond the period of six months after disconnection of the service line. Similarly, certificate case was also lodged against the complainant and, therefore, no negligence has been made on their part and as such ultimately it is prayed by the OP to dismiss the complaint preferred by the complainant out rightly.


4. Vide order dated 15/06/2016 on the petition of the complainant it was ordered to amend the complaint petition impleading TSECL as OP in this case and the claim was accordingly amended and TSECL, represented by the Chairman-Cum-Managing Director was added as OP No.3 in this case.

5. On receipt of the notice opposite party No.3 also appeared through GM (Technical) and submitted written statement recapitulating the same as echoed by the OP No.1 and OP No.2 and as such, in order to avoid repetition it is not discussed.

6. To determine the case, 15 issues have been framed, which are as follows:-

ISSUES

1. Whether the claim of the complainant is maintainable?
2. Whether there is any cause of action for filing the case?
3. Whether any power supply was availed by the complainant after 2009 and if not, whether it was obligatory on the part of the OPs to disconnect the line for non-payment of bill?
4. What were the terms and conditions in writing for extension of H/T line and 100 KVA Sub-Station at Phanindra Nagar Tea Estate at the cost of the complainant?


6/14/18
President
DISTRICT FORUM
West Bengal, Durgamohar.



5. Whether the OPs could continue to raise bill for unlimited period for any purpose knowing fully that there is no consumption of power by the complainant and knowing fully that the meter is defective or not working?
6. Whether there was any deficiency of service on the part of the OPs?
7. Whether the bill amount claimed by the OPs is legal and valid and according to terms and conditions of supply?
8. Whether the OPs could claim bill from the period 12.09.2011 to 08.09.2014 at a time without supplying power and without any maintenance of line?
9. Whether there was any provision of the consumer/complainant to apply for disconnection of his line drawn at his own cost while it was informed that the factory was closed?
10. Whether the complainant is entitled to refund of Rs.1,58,400/- as realized for non-consumption of power and for no maintenance of electric line?
11. Whether the OPs are entitled to realize the alleged bill amount of Rs.3,32,134/- at a time without any hearing and notice to the complainant?
12. Whether the complainant is entitled to compensation, as claimed?
13. Whether the complainant is bound to pay fixed charge, meter rent, if consumption is zero?
14. Whether notice was served by TSECL for payment of outstanding to the complainant?
15. Whether the opposite party lodged certificate case against the complainant before Certificate Officer (SDM), Kailashahar for recovery of outstanding electric bills?

Signature
6/4/18
President
DISTRICT FORUM
Kailashahar.

7. The complainant submitted his examination in chief on affidavit. The deposition shows that he had a factory within the said garden area for manufacturing tea and during the period of 2005 on payment of Rs. 2,32,655.50 as per estimate of the Department and on payment of security in favour of the opposite parties/Corporation a transformer



was installed at his garden premises with 3 phase line for supplying electricity in the tea manufacturing factory for operating its machines vide Id. No. 04773. It is further stated in the evidence that unfortunately from the year 2009 the said 3 phase line was not required and utilized by him as the tea factory machine was not in operation due to sudden mechanical defect and as such, they had no scope to consume electricity through the said 3 phase line or through the said transformer installed at their own cost at the garden premises nor electric line or transformer was required to be maintained by the Department for any purpose. It is also stated in the evidence that the meter box installed outside the door of the said factory by the opposite party for recording unit of consumption of electricity was also not working and this fact was brought to the knowledge of the opposite party No.1 repeatedly, but the opposite parties took no steps for repairing the defect of the meter. However, the meter was useless as the consumption of electricity was not required by the complainant as the machine could not be repaired and no electricity was consumed by them after breaking down of machine. The complainant further stated in the evidence that the opposite parties claiming their rules continued to raise bills showing door closed falsely with fixed meter rent of Rs. 400/- and fixed charge of Rs. 4,000/-, i.e., in total Rs. 4,400/- with interest per month for no consumption and also with penalty for non-payment in time. It is further stated in the evidence that they in good faith continued to pay the bill amount as raised by the opposite parties to the extent of Rs. 1,58,400/- plus interest (approx) for about four years though they consumed no electricity from 2009, but thereafter, no bill was raised by the opposite parties while objected to by them and the opposite parties also disconnected the line beyond their knowledge. The complainant also stated in his evidence that recently the OP No.1 by issuing notice dated 29-09-2014 together with an arrears bill from the period 12-09-2011 to 08-09-2014 all on a sudden claimed payment of Rs. 1,86,400/- by them within seven days though they are not liable to pay any amount to the opposite parties nor they consumed any electricity. The OP No.1 also issued notice dated 15-09-2015 most illegally and negligently with malafide intention claiming payment of Rs. 3,27,944.07 informing

132
6/14/18
President
DISTRICT FORUM
Unakoti, Tripura, Kailashahar.



disconnection of bulk supply of electricity though in fact the electric line was disconnected long ago beyond their knowledge. The opposite parties also brought a Certificate case bearing No.122/cert/SDM/KLS/15 against the complainant most illegally for realization of the said amount with interest of Rs. 3,32,134.00 and against it they submitted representation on 22-12-2015 before the OP No.1 for settlement of so called claim, but with no effect. Thus, it is the negligence of the opposite parties and deficiency in their service for raising bills for zero unit consumption or average bills for non-consumption of electricity by them raising false bills creating mental agony of the complainant and the opposite parties did not act as per terms and conditions of the Pass Book. Ultimately, the complainant claimed to get a compensation of Rs. 6,90,534/- from the opposite parties for deficiency in service on the part of the opposite parties.

DECISION AND REASONS FOR DECISION

8. To decide the fate of the case I taken up all the issues at a time which were framed by my predecessor.

In the written statement OP No. 2 represented by GM(Technical) for CMD, TSECL stated that factory of the complainant was closed from December, 2010. The complainant in his evidence stated that from the year 2009 the said three phase line was not required and utilized by them as the tea Factory machine was not in operation due to sudden mechanical defect and as such, they have no scope to consume electricity through the three phase line or through the said transformer installed at their own costs at the garden premises nor electric line or transformer was required to be maintained by the Department for any purpose. There is no denial that on the application submitted by the complainant estimate for installation of Rs. 2,32,655,50 was not paid by the complainant, which included construction of 11 KV line, construction of LT line three phase, construction of sub-station and cost of 100 KVA transformer and on payment of estimated amount by the complainant the work was executed in the garden premises of the complainant. It is clearly


21/4/16
President
DISTRICT FORUM
KAILASHAHAR, TRIPURA



admitted by the OP that the factory of the complainant was actually closed on December, 2010. The complainant has exhibited original electric bills. Bill No. 30550811031452 dated 12.08.11 shows energy charge zero, diesel charge zero, fuel surcharge zero. Again, bill No. 30550611020780 dated 10.06.11, bill No. 30550411011865 dated 07.04.11, Bill no 30550511017387 dated 13.05.11, bill No. 30550111000046 dated 05.06.11, bill No. 30550211005108 dated 10.02.11, bill No. 30550311010170 dated 14.03.11, bill No. 30551210066441 dated 09.12.10, bill No. 30550312014650 dated 28.03.12 – all show energy charges, diesel charges, fuel surcharge as zero, but an amount of Rs. 4400/- was raised against each of the bills. The OPs stated that as per tariff only fixed charge and meter rant had been claimed. In their tariff there is no difference in billed amount at door close and the billed amount in stop meter. It is further stated by the OPs that no written information had been received by the ESD-I and II from the authority of the factory for the disconnection of service connection and office had served minimum (zero unit) bills to the consumer up to March, 2010. According to the OPs, they raised the bills on the remark 'door closed'. The complainant in his complaint petition and also in the evidence stated that their meter box was installed out side the door of the said factory by the OPs for recording unit of consumption of electricity. The OPs did not adduce any evidence in this case and so it can be safely presumed that the meter box was installed outside the door of the factory and as such, the plea of the OPs that when their agent/men went for collecting the meter reading the door was found closed, appears to be not true. The complainant in his petition and evidence stated that he prayed for several times to get his defective meter repaired, but no action was taken from the side of the OPs for curing the defect of the meter of the complainant. Though the complainant has not submitted any document in support of his contention that he informed the OPs for curing of his defective meter and as the OPs could not rebut this assertion by presenting evidence and as such, it can also be presumed that the complainant also informed the OPs for curing his defective meter. From the bills it is found that from January 2011 energy charge, diesel

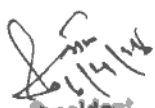
[Handwritten Signature]
24/11/18
President
DISTRICT FORUM
Unakoti, Tripura

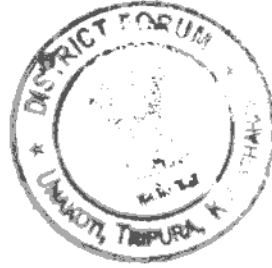


charge, fuel surcharge all are zero, meaning thereby the complainant did not consume any electricity, but Rs. 4400/- was billed as meter rent and other charges. From the assertion of the OPs it is found that from January, 2011 no electricity was consumed by the complainant and bill was raised as against zero consumption. It is also settled law that if the meter was found defective, bill can be drawn for a period of maximum six months, but in the present case bills are being raised uninterruptedly, though the OP in their written statement admitted that as per record the meter was defective(stop meter) since January 2008 and bills have been served as per consumption of electricity. Though the OPs spelt out that as per tariff rules they have claimed bill, but no documentary or oral evidence has been led by the OPs in this regard and as such, mere mentioning that they are raising the bills as per tariff rules is found to be not based on documents. It is on record that the transformer and three phase line was installed in the tea garden of the complainant at his own costs and it is admitted by the OPs that the factory was actually closed from December, 2010. After such date the bills were raised mentioning other charges and meter rant. Meter was defective and the OPs have to bear no service charge for the transformer or three phase line installed at the factory of the complainant and as such, raising of any bill after December, 2010 is not legally correct. The complainant has also exhibited consumer's pass book issued in his name and it is marked exhibit 7. From No. 5 of Note appears in the pass book it is stipulated as follows:-

“ failure to pay exact amount by the due date will render the consumer liable for disconnection and the supply will be reconnected only after payment of arrears as well as reconnection of charges as per rules”.

The OPs admitted that the complainant after December 2011 made no payment. As such, it is not understood to this Forum as to why the connection of the complainant was not disconnected and from the record (Notice issued by the OP to the complainant) it is found that after September, 2014 the electric line from the garden premises of the complainant was disconnected.


 President
 DISTRICT FORUM
 Chakoti, Mysore



In a case law reported in **(1992)1 CPR 12, Karnataka State Electricity Board V. Escon Pvt. Limited**, it is observed by NCDRC as follows: "as pointed out by the State Commission, no electricity had been supplied to the complainant after 4th December, 1985. Consequently the bill of 21st September, 1987 is not for consideration of sale of goods but consideration for the maintenance of the service line. The charge levied after the 5th of June 1986, though computed on the basis of minimum charge as per the consumer tariff are in the nature of consideration for maintaining the facilities in connection with the supplying electricity energy which was not required to be maintained and hence, were not recoverable".

In the present case after December, 2010 no electricity had been supplied to the complainant since the factory was closed and as such, supply of electrical energy was not required to be maintained and as such, the amount of bills raised after that period are not recoverable.

9. In view of the above discussion, it can be held that after the year 2010 when the factory was closed and the meter was defective, the OPs can not raise any bill and if any bill is raised beyond this period, the complainant is not bound to pay the same and as such, the amount of Rs. 1,86,400/- for the period from 12.09.11 to 13.08.14, which was raised and presented to the complainant and for which he was served notice to made payment, is not permissible to be realized from the complainant, consequently, total outstanding amount bill of Rs. 3,59,320/-, including fixed meter charge, meter rent from March, 2010 to March, 2015 to the tune of Rs. 2,77,600/- and Rs. 81,720/- as penalty and rebate, is not recoverable by the OPs from the complainant.

All the issues are decided accordingly.

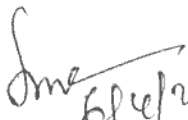

6/4/18
President
DISTRICT FORUM
Unakoti, Tripura, K.

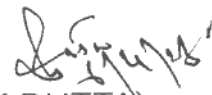



ORDER

10. In the result, it is ordered that the complainant is not required to pay an amount of Rs. 3,59,320/- (rupees three lakh fifty nine thousand three hundred twenty) as claimed by the Ops.
11. The case stands disposed of.
12. Furnish copy of this judgment to the complainant. Communicate copy of this judgment to the O.P. through postal department.

ANNOUNCED


6/11/2018
(KISHORE KR. GHOSH)
MEMBER
Member
DISTRICT FORUM
Unakoti, Tripura, Kailashahar.


(P.K.DUTTA)
PRESIDENT
DISTRICT FORUM
Unakoti, Tripura, Kailashahar.

(SMTI. S. DEY)
MEMBER
Member
DISTRICT FORUM
Unakoti, Tripura, Kailashahar.