

IN THE STATE COMMISSION : DELHI

Date of Decision : 27.07.2010

Complaint No. 55/05

M/s Bholi Plastic Industry Pvt. Ltd.,
2, S.S.I., Industrial Area,
G.T. Karnal Road,
Delhi-09

..... Complainant.

VS

North Delhi Power Lt.d,
Hudson Lines,
Kigsway Camp,
Delhi-09

..... Opposite Party.



CORAM

Justice B.A. Zaidi, Presiding
M.L. Sahni, Member

1. Whether reporters of local newspaper be allowed to see the judgment?
2. To be referred to the reporter or not?

M.L. Sahni, Member(Judicial)

1. Briefly stated facts of the case as alleged in the complaint are that complainant is a company duly incorporated under the Companies Act and is a registered consumer in respect of K.No.

(Handwritten signature)

Appeal no. 84 of 2009(BSES Rajdhani Pvt. Ltd Vs M/s Saraf Project P. Ltd.) wherein similar question of law had arisen and the Hon'ble National Commission has observed that bare reading of the definition of the consumer as it stands after due amendment does not leave any doubt that any person who hires or avails services for any 'commercial purposes' is not a 'consumer' and, therefore, is not covered under the definition of 'consumer' as it appears in section 2 (1)(d) of the Act. This decision squarely applies to the facts of the present case wherein the complainant is admittedly a Private Ltd. Company as per cause-title and it does appear illogical that the complainant company was availing service of the OP for the purposes of earning "his" livelihood by means of self-employment as stated in para -3 of the complaint . The complainants have failed to clarify to whom the word "his" refers. If it refers to the complainant which is a Private Limited Company, it cannot mean to earn livelihood by means of self-employment to bring it within the ambit of "exception" to the definition of consumer as provided , vide Explanation of appended to clause (d) of section 2(1)(d) of the Act, which provides that for the purpose of clause (d) 'commercial purposes' does not include a person who buys goods or avail services exclusively for the purpose of earning his livelihood by means of self-employment.



451000130311 and was availing the services of the OP for supply of the electricity. The complainant is manufacturing goods allegedly for the purpose of earning (his) livelihood by means of self-employment.

2. It is alleged that the OP raised various bills which were paid in toto on or before due dates. A bill amounting to Rs. 32,110/- was raised payable before 27.12.2004 and the same was accordingly paid; that there was no arrears or any dispute regarding the same as all bills were being issued on the basis of Meter Reading , provided and installed by the OP in the premises of the complainant. The officials of the OP visited the Complainant's premises in October and November, 2004 and allegedly made defamatory remarks against the Complainant, checked the Electric Meter and opened its seals. As per further allegation, officials could not find any defect in the said meter but expecting some favour which the complainant declined and they threatened the complainant of dire consequences ; that business and manufacturing of the Complainant company suffered adversely due to frequent visits of the official of OP.

3. The complainant received a notice dated 12.1.2005 regarding disconnection of his electricity connection under section 56 of Electricity Act, 2003 mentioning that a bill amounting to Rs. 13.63,245/- was due ; that no date of bill or when the amount was payable had been mentioned therein ; that no such bill was ever



8. The term 'consumer' as defined by section 2(1)(d) means the person who buys any goods or hires or avails of any service for consideration but does not include the person who obtains such goods for resale or who avails of service for any "commercial purpose".

9. The term "commercial purpose" has not been defined under the Act. However, Hon'ble Supreme Court in Laxmi Engineering Works Vs P.S.G. Industrial Institute [11 (1995) CPJ 1 = AIR 1995 SC 1428] have defined the word, "commercial purpose" to mean connected with or engaged in business, trade or commerce with main motive to earn profit. In Cheema Engineering Services, Vs Rajan Singh [(1997) 5 CTJ 1 the Apex Court had held that "Self-employment" means the person who buys the goods or avails services or his family alone should use the same without employing any worker for his trade or business.

10. In the instant case the complainant admittedly has been availing services for commercial purposes. It is a Private Ltd., Company having more than one Directors, including Raju Bathla the witness who filed his affidavit as such Director. It is, therefore, unbelievable that a Private Company is availing the services of the OP for earning "his" livelihood by means of self-employment. Complainant, therefore, cannot be termed as "consumer" to maintain a 'consumer-complaint' under C.P. Act, 1986 as amended w.e.f. 15.03.2003. This



raised by the OP against the Complainant Company, while actual bill was only for Rs. 32,113.29, which was payable by 27.12.2004 and the same was accordingly paid, so there could not be any question of disconnection notice or any amount being due. The Senior Officer of the OP being satisfied regarding the claim of the complainant, on 19.1.2005 endorsed on the said Show Cause Notice that "please do not disconnect the supply against this bill as bill is due to wrong billing".

4. According to the complainant there had not been any arrears shown in any of the bills raised by the OP during the last two years i.e. from February, 2002 to December, 2004. The complainant had been paying each and every penny and the amount being billed. So there cannot be any question of any arrears being raised in the month of January, 2005. The complainant approached Senior Officers of the OP who directed the complainant to deposit amount of Rs. 3,14,936/- with the remarks "R/C required the details of arrears done by back office. MF fitted at CCC, please accept current demand of Rs. 3,14,935/- as PP by cheque", which was so deposited by the complainant. The Complainant received another bill calling upon to pay a sum of Rs. 21,47,180/- by 31.03.2005 without giving adjustment of Rs. 3,14,936/- paid by him in January, 2005 though the said amount had been duly reflected in the said bill as last payment detail though date of payment has been wrongly mentioned. The OP had entered



complaint was thus not tenable in law liable to be rejected even at the admission stage u/s 12(3) of the Act. However, complainant reaped the benefit of ex-parte interim order dated 25.05.2005, till date.

11. We find this complaint highly vexatious and frivolous liable to be dismissed u/s 26 of the Act. The same is, therefore, dismissed with cost of Rs. 10,000/- to be paid to the OP who have been dragged in this frivolous litigation for the last more than 5 years.

12. Copy of this order be provided to the parties free of cost and thereafter, file be consigned to record room.

sk

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Reimburse
30/8/10

Sd -
(Justice Barkat Ali Zaidi)
President
Sd -
(M.L. Sonni)
Member

81288 units in its record from 10.7.2004 to 24.07.2004, which not only irrational but illogical too. The complainant had suffered humiliation, tension and harassment due to the illegal and wrongful acts of the OP. Loss and damages has been caused to the complainant company by unfair attitude adopted by the staff of the OP. Complainant confined its claim for damages to the tune of Rs. 2 lakhs only, praying that OP be restrained to recover the demands raised by them from the complainant under threat of disconnection and the demand so raised by the OP be declared as illegal and void ; damages and compensation also be awarded to the complainant for mental agony, humiliation and harassment to the tune of Rs. 2 lakhs ; complainant may also be granted cost of litigation charges for the present proceedings.

5. While admitting the complaint on 25.05.2005, this Commission had passed order restraining the OP from disconnecting the electricity connection till further orders. Notice thereafter of the complaint was sent to the OP whose Legal Executive appeared and accepted the service on 26.10.2005. On their behalf reply was filed raising preliminary objection, inter-alia, that the complainant company was an industrial consumer having been sanctioned 120 H.P. (89.57 K.W.) hence the complainant is not a consumer as defined u/s 2(1)(d) of C.P. Act. They also took the plea that the complainant instead of approaching the



appropriate forum set-up u/s 42 of Electricity Act, 2003 for the redressal of the grievances of the consumer, has wrongly approached this Commission without exhausting remedy provided under Special Law and thus he did not approach this Commission with clean hands. It was alleged on their behalf that the complaint was having electricity connection for the purpose of running industry for manufacturing plastic products and therefore, the complainants can not take plea that the complainant was earning "his" livelihood by means of self-employment. On merits, the OP denied the allegations in entirety by placing reliance on the decision in the case of M/s Swastic Industries Vs Maharashtra Electricity Board 1987 (9) SCC 465. They, accordingly, prayed for dismissal of the complaint with heavy cost.

6. After the complainant filed their replication/Rejoinder, parties filed their evidence by way of affidavits. The complainant filed the affidavit of Shri Raju Bathla, who is one of the Directors of the complainant-company while on behalf of O.P. Shri Shishar Singh, their Manager filed his affidavit in rebuttal.

7. We have heard the parties and perused the material on record. It has been reiterated on behalf of OP that since the complainant is not a 'consumer' as defined under the C.P. Act therefore, complaint is not maintainable. On their behalf reliance is placed on the decision of the Hon'ble National Commission in First

