(2012) 04 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Agarwal Grain Syndicate APPELLANT

Vs

Shaskiya Vasahat Grahak RESPONDENT

Date of Decision : 19-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 783 : 2012 2 CPJ 659

Hon'ble Judges : ASHOK BHAN , VINEETA RAI J.

Final Decision : Petition dismissed

Judgement

1. PETITIONERS which were the Opposite Parties before the District Forum have filed this Revision Petition against the order and judgment dated 12.7.2007 passed by the State Consumer Disputes Redressal Commission, Maharashtra (in short, ''the State Commission '') in appeal No. 979/2000 whereby the State Commission upholding the order of the District Forum has dismissed the appeal filed by the Petitioners.

2. BRIEFLY stated the facts of the case are that the Complainant/Respondent (hereinafter referred to as "Respondent ") is a Co-operative Consumer Society for the Government Colony, Bandra. It is running four ration shops approved by the Government of Maharashtra in the Government colony at Bandra. Petitioner is a partnership firm and in September, 1987 it was appointed as authorized agent by the Government of Maharasthra for supply of ration articles under Maharashtra Food Grains Rationing (Second) Order, 1966 (for short, "Order, 1966 "). Government of Maharashtra appointed the Petitioner firm (hereinafter to be referred as "Petitioner ") as its agent under 10(A) of Maharasthra Food Grains Rationing (Second) Regulations, 1966 for the purpose of procuring indent, food grain and sugar from the Controller of Rationing and for transportation from Government ''s godowns to the four shops being run by the Respondent. Petitioner was to purchase the articles from the Government godowns and then deliver the same to the Respondent after taking the payment. However, despite receiving Rs. 2,98,060.44 from the Respondent, Petitioner did not supply ration articles with the contention that the said articles were not available at

Government godowns. When office bearers of the Respondent approached the partners of the Petitioner firm they informed them that due to financial difficulties the firm could not indent and procure ration articles as per requisition of the Respondent. Respondent then approached the Controller of Rationing, Mumbai who after due enquiry informed the Respondent that the Petitioner after taking delivery orders on the basis of requisition of four shops of the Respondent, collected certain ration articles but misappropriated the ration articles by selling them to somebody else instead of supplying them to ration shops of the Respondent. Controller of Rationing, Mumbai cancelled the authorization issued to the Petitioner which was later on confirmed by the concerned Minister. Aggrieved by this, Respondent filed the complaint before the District Forum seeking refund of Rs. 2,98,060.44 along with interest @ 21% in addition to compensation and costs. Petitioner, on being served, entered appearance and pleaded that the Respondent was not a ''consumer '' within the meaning of Section 2(1)(d) of Consumer Protection Act, 1986. That the complaint suffered from mis-joinder of parties as the Controller of Rationing which was a necessary party was not impleaded as a party Respondent. It was admitted that the Petitioner was the authorized agent of the State of Maharasthra. It used to collect the payments from the fair price shops and hand it over to the Controller of Rationing who in turn used to issue delivery orders in respect of the grains and other articles to be supplied to the fair price shops. That the Petitioner was simply a handling agent and had not given any service to the Respondent ''s shops. It was further pleaded that the authorization was arbitrarily cancelled by the Controller of Rationing at the behest of the Respondent. That it had filed the appeal before the Hon ''ble Minister, Food Civil Supplies but its authorization was not restored back. That the complaint filed by the Respondent was without any substance as the prosecution was pending in Session Court. It was submitted that the Petitioner firm had been dissolved. That the Petitioner was not guilty of any deficiency in service and the complaint deserves to be dismissed.

3. DISTRICT Forum allowed the complaint and directed the Petitioner to refund the sum of Rs. 2,98,060.44 to the Respondent along with interest @ 18% p.a.w.e.f. 1.1.1995 till realization. Rs. 22,327.50 were awarded as compensation and Rs. 2,000 as costs. Petitioner, being aggrieved, filed the appeal before the State Commission which has been dismissed by the impugned order. Mr. S.K. Sharma, learned Counsel appearing for the Petitioner strenuously submits that there was no relationship of a ''consumer '' and ''service provider '' between the Petitioner and the Respondent. That the Respondent had not hired the services of the Petitioner for a consideration. That the complaint filed by the Respondent was not maintainable as it was not a ''consumer '' within the meaning of Section 2(1)(d) of the Act inasmuch as it was running the fair price shops on commercial basis for earning profit. That the interest @ 18% p.a. awarded by the Fora below was on the higher side. As against this, learned Counsel for the Respondent supports the orders passed by the fora below.

4. WE have perused the impugned orders passed by the Fora below and the

documents placed on record. Respondent Society is of Government employees residing in Bandra Government Colony. Respondent is running four food grain shops for the benefit of the Government employees residing in Government Colony at Bandra. State of Maharashtra appointed the Petitioner as its authorized agent. Duty of the Petitioner was to collect the food grain from the Government godowns after obtaining the delivery memos and supply them to the fair price shops. There is no dispute about this relationship and statutory duty cast on authorized agent on this behalf. From time-to-time, Petitioner used to collect certain monies and used to or was expected to supply food grain to the four shops of the Respondent Society. In the course of these dealings, it was found that the Petitioner had not supplied food grain worth Rs. 2,98,060.44 to the Respondent. Since the Petitioner did not supply the ration to the Respondent in spite of collecting the sum of Rs. 2,98,060.44, Respondent made a complaint to the Controller of Rationing Mumbai who after hearing the parties passed an order directing the Petitioner to deposit certain amount with the Government failing which the Department was directed to institute prosecution under the Essential Commodities Act against the Petitioner. Petitioner filed the appeal against the said order which was rejected by the Minister In-charge Food and Civil Supplies. Since the Petitioner had neither returned the sum of Rs. 2,98,060.44 received from the Respondent for supply of ration nor supplied the ration, Respondent filed the complaint before the District Forum. Fact that the Petitioner had received the sum of Rs. 2,98,060.44 from the Respondent is evident from Exhibit-9 i.e., account statement maintained by Petitioner which shows that amount of Rs. 2,98,060.44 was deposited by the Respondent with the Petitioner against which no ration was supplied by the Petitioner to the Respondent. Exhibit 10 is another such document supporting the case of the Respondent.

5. WE do not find any substance in the submission made by the learned Counsel for the Petitioner that the complaint filed by the Respondent was not maintainable as the Respondent was running the shops for commercial purpose to earn profit. Respondent Society is being run by the Government employees for the benefit of its own members, residing in the Government Colony at Bandra. Society was formed for the benefit of the Government employees and four fair price shops were sanctioned to the Society by the Government to provide ration articles to its members. No commercial purpose was involved as the Society was of the Government employees residing in the Government colony and the shops were being run on "no profit and no loss basis ". It cannot be said by any stretch of imagination that the Respondent was running the shops on commercial lines to earn the profits. Learned Counsel for the Petitioner with reference to certain documents which were not placed before the District Forum tried to contend that the Respondent was making profit. Since the said documents were not produced before the District Forum, we decline to take them into consideration. Petitioner cannot be permitted to put on record the additional documents at this stage as it will deprive the Respondent to rebut or contest the same.

6. LEARNED Counsel for the Petitioner contends that since the licence was

cancelled on a complaint made by the Respondent awarding of amount by the Fora below amounted to double jeopardy, i.e., cancellation of licence as well as refund of the amount received from the Respondent. We do not find any substance in this submission. The licence of the Petitioner was cancelled for its acts of omission and commission in misappropriating the ration articles whereas in the complaint filed by the Respondent the Fora below directed the Petitioner to refund the amount received for supply of the ration articles which it did not do. Both the proceedings emanated from different situational facts and can proceed simultaneously. One was the administrative action taken by the authorities against the Petitioner for not discharging the duties in accordance with law enjoined upon the Petitioner whereas the other was the Court proceeding initiated by an individual for redressal of his grievance. Learned Counsel appearing for the Petitioner submits that there was no relationship of a ''consumer '' and ''service provider '' between the Respondent and the Petitioner as the Respondent had not paid any amount of consideration to the Petitioner. That the Petitioner was getting the commission as an agent from the State of Maharashtra and not from the Respondent. Since no consideration was paid by the Respondent, no relationship of a '' consumer '' and ''service provider '' existed between the Petitioner and the Respondent. We do not find any substance in this submission. Petitioner was appointed as an agent under 10(A) of Maharasthra Food Grains Rationing (Second) Regulations, 1966 for the purpose of procuring indent, food grain and sugar from the Controller of Rationing and for transportation from Government godowns to the four fair price shops being run by the Respondent. Respondent Society used to make the payments from time-to-time and the Petitioner was supposed to purchase food grain from the Government godowns and to deliver the same to the shops of the Respondent. Petitioner after collecting Rs. 2,98,060.44 in December, 1994 did not supply the ration articles to the Respondent in spite of having taken the ration articles from the Government godowns. The Government of Maharasthra framed an integrated scheme. Under the scheme, Government of Maharasthra used to pay commission to the Petitioner. Petitioner was acting as a middle man for taking the supply of the goods from the Government godowns and to deliver it to the persons running the ration shops. This was a service being rendered by the Petitioner. The definition of ''consumer '' under the Act includes not only the person who hires the ''services '' for consideration but also the beneficiary, for whose benefit such services are hired. Even if it is held that administrative charges were paid by the State of Maharasthra and no part of it was paid by the Respondent, the services of the Petitioner (agent) would be deemed to have been made available for consideration by the State of Maharashtra for the benefit of the employees of the Respondent who would be treated as beneficiary within the meaning of that word used in the definition of consumer. Supreme Court in similar situation in the case of Regional Provident Fund Commissioner v. Shiv Kumar Joshi, III (1999) CPJ 36 (SC)=X (1999) SLT 395=(2000) 1 SCC 98, has held that the word "Consideration " used in the definition of "consumer " in Section 2(1)(d) has not been defined either under the Scheme or the Act. Since the word "consideration " has not been defined, the dictionary meaning of the word "consideration " has to be taken. It has held that "there is a sufficient consideration for a promise if there is any benefit to the promisor or any loss to the detriment of the promise. " The facts before the Supreme Court in the aforesaid case were that the Respondent who was a Member of the Provident Fund Scheme filed the complaint seeking compensation for alleged deficiency in service on the part of the Provident Fund Commissioner for delayed payment of the provident fund. Provident Fund Commissioner raised the preliminary objection regarding the jurisdiction of the District Forum to entertain the complaint on the ground that the Member of the Provident Fund Scheme was not a ''consumer '' and the facilities provided under the scheme were not "service ". District Forum allowed the complaint and directed the Provident Fund Commissioner to pay the interest @ 18% p.a. on the delayed payment and costs of Rs. 1,000. Order passed by the District Forum was upheld by the State Consumer Disputes Redressal Commission as well as National Commission. On these facts, the question which came up for decision before the Supreme Court was as to whether the provisions of the Consumer Protection Act, 1986 can be invoked against the Provident Fund Commissioner by a Member employee of the Provident Fund Scheme and whether such Member is a ''consumer '' and the duties performed by the Provident Fund Commissioner under the relevant scheme was a ''service '' within the meaning of the Act. Overruling the plea raised by the Provident Fund Commissioner that he was not a ''service provider '' vis-a-vis the Member of the Scheme and that the Consumer Protection Act, 1986 was not applicable, the Hon ''ble Supreme Court held as under: "12. We cannot accept the argument that the Regional Provident Fund Commissioner, being Central Government, cannot be held to be rendering ''service '' within the meaning and scheme of the Act The Regional Provident Fund Commissioner, under the Act and the scheme discharges statutory functions for running the scheme. It has not in any way, been delegated with the sovereign powers of the State so as to hold it as a Central Government, being not the authority rendering the ''service '' under the Act. The Commissioner is a separate and distinct entity. It cannot legally claim that the facilities provided by the ''scheme '' were not "service " or that the benefits under the scheme being provided were free of charge. The definition of "consumer " under the Act includes not only the person who hires the ''services '' for consideration but also the beneficiary, for whose benefit such services are hired. Even if it is held that administrative charges are paid by the Central Government and no part of it is paid by the employee, the services of the Provident Fund Commissioner in running the scheme shall be deemed to have been availed of for consideration by the Central Government for the benefit of employees who would be treated as beneficiary within the meaning of that word used in the definition of consumer. This Court in Spring Meadow Hospital and Another v. Harjol Ahluwalia through K.S. Ahluwalia and Another, MANU/SC/1014/1998, to which one of us (Saghir Ahmad, J.) was a party has already held that the "consumer " means a person who hires or avails of any services and includes any beneficiary of such service other than the person who hires or avails the services. The Act gives comprehensive definition of ''consumer '' who is the principal beneficiary of the legislation but at the same time in view of the comprehensive definition of the term "consumer " even a member of the family of such ''consumer '' was held to be having the status of ''consumer ''. In an action by any such member of the family of beneficiary of the service it will not be open for a trader to take a stand that there was no privity of contract. In this regard this Court specifically held: In the present case we are concerned with Clause (ii) of Section 2(1)(d). In the said clause a consumer would mean a person who hires or avails of any services and includes any beneficiary of such services other than the person who hires or avails of the services. When a young child is taken to a hospital by his parents and the child is treated by the doctor, the parents would come within the definition of consumer having hired the services and the young child would also become a consumer under the inclusive definition being a beneficiary of such services. The definition clause being wide enough to include not only the person who hires the services but also the beneficiary of such services which beneficiary is other than the person who hires the services, the conclusion is irresistible that both the parents of the child as well as the child would be consumer within the meaning of Section 2(1)(d)(ii) of the Act and as such can claim compensation under the Act. 13. A perusal of the scheme clearly and unambiguously indicate that it is a ''service '' within the meaning of Section 2(1)(o) and the member a ''consumer '' within the meaning of Section 2(1)(d) of the Act It is, therefore, without any substance to urge that the services under the scheme are rendered free of charge and, therefore, the scheme is not a ''service '' under the Act. Both the State as well as National Commission have dealt with this aspect in detail and rightly came to the conclusion that the Act was applicable in the case of the scheme on the ground that its member was a '' consumer '' under Section 2(1)(d) and the scheme was a ''service '' under Section 2(1)(o). " (Emphasis supplied)

7. IT was held that the definition of the ''consumer '' under the Act includes not only the person who hired the ''services '' for consideration but also the beneficiary, for whose benefit such services were hired. That the administrative charges paid by the Central Government to the Provident Fund Commissioner for running the scheme shall be deemed to have been availed of for consideration by the Central Government for the benefit of employees who will be treated as beneficiary within the meaning of that word used in the definition of consumer.

8. PETITIONER in the present case was appointed as an authorized agent by the Government of Maharashtra. The duty of the authorized agent, inter alia, was to collect the payments and transport charges from the fair price shops and to deposit the same in the Government treasury. Further duty of the Petitioner was to collect the food grain from the Government godowns on the basis of delivery memos obtained by it and supply them to the fair price shop. Since the duty of the Petitioner was to collect the payments and transport charges from the Respondent Society and to deposit the same with the Government Treasury, to collect the delivery memos and supply the ration article to the Respondent, the

Petitioner was rendering the services to the Respondent. Commission paid by the Government to the Petitioner was and on behalf of the beneficiaries under the Scheme. Commission paid to the Petitioner would be deemed to have been availed of for consideration by the State of Maharasthra for the benefit of the Respondent who would be treated as beneficiary within the meaning of word used in the definition of ''consumer ''. Government of Maharashtra had framed the integrated scheme under which the State of Maharashtra appointed the Petitioner as an agent to supply the ration to the Respondent for which it was paid the commission. The commission would be deemed to have been paid as consideration for the benefit of the Respondent. Learned Counsel for the Petitioner has cited certain judgments which are not germane to the controversy involved in this case but since they have been cited we shall notice them lest to be taken that we did not consider them. Counsel for the Petitioner has cited the judgment of the Kerala High Court in the case of Fon Ess India (P) Ltd. v. Kerala State Consumer Disputes Redressal Commission, I (2007) CPJ 460=2007 CTJ 8, wherein it was held that the admission of a complaint before the District Forum/ State Commission/National Commission was not automatic and the Forum or the Commission has to consider its maintainability before admitting it and issuing notice to the opposite party. This judgment has no relevance to the present case. The point raised in that case is totally different from the point involved in the present case. Question regarding the maintainability of present complaint has been exhaustively dealt with by the State Commission as well as in this order.

9. ANOTHER judgment in the case of Citibank N.A. v. Geekay Aqropack (P) Ltd. & Anr., I (2009) CPJ 16 (SC)=2008 CTJ 561 (SC), relied upon by the Counsel for the Petitioner also has no relevance to the facts of the present case. In the said case, Complainant as well as the Opposite Party had filed the cross-appeals. Supreme Court while dealing with the appeal of the complainant seeking total amount of loss instead of compensation awarded by the Fora below has held that the Fora below under the Act can award compensation for deficiency in service and for the recovery of the total loss, it would be open to the complainant to file the suit before the appropriate authority.

10. COUNSEL for the Petitioner then cited the judgment in the case of Maharshi Dayanand University v. Surjeet Kaur, III (2010) CPJ 19 (SC)=V (2010) SLT 545=2010 CTJ 985 (CP). In this judgment, it was held that the examinations conducted by the Examination Board or the University are in exercise of its statutory authority and the services offered or rendered by them would not fall within the meaning of ''service '' under the Consumer Protection Act, 1986 and the complaint filed under the Act is not maintainable. Lastly, learned Counsel for the Petitioner contends that the interest @ 18% awarded by the Fora below is on the higher side. We find substance in this submission. Rate of interest has been varying from time-to-time. Keeping in view the variation of the rate of interest from 6% to 18% for the last 15 years we reduce the rate of interest to an average of 12% from 18%. Subject to the reduction of rate of interest from 18% to 12%, the Revision Petition is dismissed with costs which are assessed at Rs.

10,000. Revision Petition dismissed.

