

(1994) 01 RAJ CK 0041

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7505 of 1992

Arajpatrit Rajya Karmachari Bhawan Nirman Sahkari Samiti
Ltd.

APPELLANT

Vs

The Registrar Co-operative Societies and Others

RESPONDENT

Date of Decision : 11-01-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 11, 17, 2, 21, 3

Citation : (1994) 1 RLW 456 : (1994) 1 WLC 461 : (1994) 1 WLN 34

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—The present writ petition has been filed with the prayer that the Consumer Protection Forum, District Ajmer, which has passed the impugned order dated 21.10.92 has no jurisdiction to entertain the complaint of a member of co-operative society with regard to cancellation of his membership and consequently non-allotment of land.

2. The Consumer Protection Act, 1986 provides u/s 3 that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. The jurisdiction of the District Forum has been prescribed u/s 11 which provides to entertain complaints where the value of goods or services and the compensation, if any, claimed, does not exceed rupees one lakh then a complaint can be instituted in a district forum. u/s 17 the jurisdiction of the State Commission was to entertain complaints where the value of the goods or services and the compensation, if any, claimed exceeds rupees one lakh but, does not exceed rupees ten lakh. The order passed by the district forum are subject to appeal before the State Commission.

3. The jurisdiction of National Commission u/s 21 is to entertain complaints where the value of goods or services and compensation, if any, claimed exceeds

rupees ten lakh and appeals against the order of any State Commission.

4. From the above provisions it would be evident that, after any order has been passed by the district forum the appeal lies to the State Commission. The petitioner in the present case instead of availing the right of appeal has filed this writ petition. The petitioner is registered under the Rajasthan Co- operative Societies Act 1965 and rules made therein and since there is no Board of Director, the Administrator was appointed. The respondent No. 2 Kamal Kishore Garg filed a complaint against the then Chairman Badrilal Sharma and Secretary Chandmal Saraswat that he was a member of the society and paid a sum of Rs. 5/- as admission fee and purchased the are of Rs. 250/-. Thereafter the Secretary directed him to file an affidavit within a period of ten days, which was complied with and by letter dated 5th July, 1987 he was asked to deposit Rs. 4,500/- towards the price of the plot which was also deposited, but, the plot was not allotted to him. During the pendency of the complaint the Board of Directors of the Society was dissolved and the Administrator was appointed. Before the Consumer Protection Forum an objection was taken that Shri. Kamal Kishore Garg had filed a complaint to the Registrar Co-operative Societies and it was directed by the Assistant Registrar on 2nd August 1991 that he should file the petition u/s 75. Instead of taken the action u/s 75 of the Rajasthan Co- operative Societies Act, 1965 the complaint before the Consumer District Forum was filed. The Consumer Forum found that in accordance with sub rule-13 the membership has to be approved by the general body and therefore the managing committee has no power to cancel the membership of any member. Since the petitioner was the member of the society, he was held to be falling within the definition of Consumer. The petitioner was directed to allot the land and making a payment of Rs. 1500/- as expenses and compensation.

5. Arguments of both the learned Counsel have been heard. The Consumer Protection Act 1986 provide the relief to a consumer. The consumer has been defined under Clause 2(i)(d) means any person who hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. A consumer is a complainant per Clause 2(i) b. The complaint could be in respect of services suffer from any deficiency in any respect. Without going more into detail the petitioner could have filed an appeal before the State Council that the District Forum has no jurisdiction to entertain the complaint rather than approaching this Court. The State Commission is fully competent to adjudicated upon the jurisdiction which has been exercised by the District Forum. A further right of appeal is available even against the order of State Commission u/s 21 where the order of State Commission could be challenged. Since the Consumer Protection Act 1986 provides sufficient machinery it is not proper for this Court to exercise extra ordinary jurisdiction

under Article 226 more particularly when the validity of any provision of Act is not in dispute. Besides this facts of the present case can not be considered to be undisputed or admitted one.

6. Even on merit the provisions of Section 75 of Rajasthan Co-operative Societies Act, 1965, the dispute regarding constitution, management or the business of a Co-operative Society could be referred to the Registrar for decision. No court has the jurisdiction to entertain any suit or other proceedings in respect of such dispute. But this provision does not exclude the jurisdiction of the Consumer Forum which has been created as an extra remedy available to a consumer. The services which are rendered by the petitioner society are commercial in nature and a contractual liability also arises on the basis of which, a complaint could be filed by a member being consumer to the consumer forum. The expression "services" which has been defined u/s 2(1)(o) of the Consumer Protection Act will have within its ambit, all types of services which can be made available to the potential users and the definition has been used in its widest amplitude. In the case of U.P. Avas Evam Vikas Parishad v. Garima Shukla First Appeal No. 5/86 the National Commission has held that the Housing and Development Board which is engaged in serving the public in matter of providing housing by acquisition of land, development of sites, construction of houses thereon and allotment of plots, houses to the public is clearly engaged in rendering "service" for a consideration to the public and therefore, those who are allotted plots/houses from the Board are clearly "consumers" falling within the definition in Section 2(d)(ii) of Consumer Protection Act, 1986.

7. The State Commission in the case of Dilip Bapat v. Panchwati Co-operative Housing Society Ltd., where such preliminary objection with regard to the jurisdiction was raised, observed that the consumer can have a complaint as regards the services rendered by the society for consideration under the Consumer Protection Act and the Co-operative Society is a person. If the complainant suffers from any deficiency, he has a right to file the complaint. u/s 91 of the Co-operative Societies Act, the dispute could have been raised in that case under the Co-operative Societies Act, but, still it was found that the complainant is a consumer and has a right to file the complaint under consumer protection act, 1986. Thus, prima-facie I am of the view that a member of a Co-operative Society is a consumer and if there is any deficiency in providing any services by the Co-operative Society he can file the complaint under the Consumer Protection Act, 1986. The writ petition has no force and is dismissed accordingly.