
(1990) 05 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

A.SRINIVASAMURTHY

APPELLANT

Vs

Chairman, Bangalore Development Authority

RESPONDENT

Date of Decision : 21-05-1990

Acts Referred:

Citation : 1991 1 CPJ 657

Hon'ble Judges : R.G.Desai , K.R.Ramaswamy Iyengar , Sudha V.Reddy J.

Final Decision : Complaint dismissed

Judgement

1. THE case of the complainant may be briefly stated as follows: -

2. THE Complainant lives at No. 27, Block "A" CIL Layout, Rajmahal Vilas Extension, Bangalore. On 8.11.1989 at about 6.30 p.m. the Complainant and his neighbour Mr. B.K. Raghavan (CW-4) were walking along the D. Rajgopal Road about 200 Mtrs away from the residence of the complainant. At that time the Complainant was bitten by a stray dog. As it was dark, he could not identify or trace the dog to ascertain whether it was a rabid dog or not. After consulting a Doctor the complainant took A.R. Vaccine Injections from 9.11.1989 in the Corporation Maternity Home at Vyalikaval. He completed the full course of 14 painful injections. When he was to take the seventh injection he felt terrible discomfort and so he consulted the Pathologist who prescribed a course of Antibiotics. THE incident happened while he was compiling information as a free lance journalist to write an article on rabies. He got anti body response result from Medinova. He consulted Dr. Gopinathan, Head of the Department of Genetic Engineering IISc, Bangalore and thereafter wrote a letter to Dr. Prasad Rao, Asst. Director, Pasteur Institute as per exhibit C-8 and received reply as per exhibit C-9. THE RMO of the Epidemic Hospital, Bangalore told him that there are quite a few cases of fatalities even after 14 injections. Since the incubation period of the disease is from two week to 10 years, the complainant has to remain in constant fear of impending death till the incubation period is over. Failure on the part of the Bangalore Development Authority in providing clear safe environment is a heinous fact of negligence and indifference. THE BDA was bound to eradicate the

menace of stray dogs and it has failed to do its duty towards the tax-payers including the complainant. Hence he has filed this complaint claiming a compensation of Rs. 2 lakhs ,1 lakh to each of his daughters for their marriage - as he apprehends that he may die due to rabies as the result of stray dog bite. The complaint is resisted by the BDA by contending inter alia that the complaint is liable to be dismissed as no valid notice under Section 64 of the B.D.A. Act has been given to the Respondent by the complainant; that the Complainant has to prove that he was bitten by a stray dog and that it was rabid; that the B.D.A. provides all basic amenities in the layout under its charge till they are handed over to the City Corporation; that it is impossible for any civic body anywhere in the world to guarantee total absence of stray dogs and cases of dog bites in large cities; that there is no consumer dispute that could be entertained in this case by the Commission and that the complainant is not entitled to any compensation.

Cws 1 to 4 have been examined and exhibits C1 to C10 have been produced on behalf of the Complainant. No evidence has been adduced on behalf of the Respondent.

3. WE heard the arguments of Smt. Gayatri Balu for the Complainant and Mr. P. Gopalakrishna for the Respondent. From the arguments addressed, the first and the main point that arises for determination in this case is whether the complainant is a consumer within the meaning of Section 2(1)(d)(ii) of the Consumer Protection Act, hereinafter referred to as the "Act" for the sake of brevity. It is not disputed that the area, namely Rajmahal Vilas IInd Stage, was then within the jurisdiction of the BDA. From the notification the copy of which has been produced by the complainant, it is clear that the powers and functions of the Corporation or a standing Committee shall be exercised and discharged by the Bangalore Development Authority and the powers and the functions of the Commission under the Kamataka Municipal Corporation Act shall be exercised and discharged by the Commissioner of the BDA. From Schedule-2 of the Corporation Act, it is clear that the removal of nuisance is one of the duties to be performed by the Corporation.

4. BEFORE considering the submissions made by the Counsel, it would be advantageous to first notice the relevant clauses contained in the definition Section 2(1)(d) of the Act gives the definition of the word, "Consumer" Sub-clause (1) thereof covers only transaction of purchase of goods for consideration. Hence the said Sub-clause is not relevant for our purpose and it is only Sub-clause (2) with which we are concerned. Under that Sub-clause "Consumer" 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 considera- tion 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; Sub-Clause (o) of Section 2(1) defines "Service" thus: " "any service" means service

of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service".

According to Section 12 of the Act, the Complaint in relation to any goods sold or delivered or any service provided may be filed with a District Forum by - (a) the consumer to whom such goods are sold or delivered or such service provided; (b) any recognised consumer association, whether the consumer to whom the goods sold or delivered or service provided is a member of such association or not; or (c) the Central or the State Government.

The same provision applies to the State Commission also by virtue of Section 18 of the Act. From the definition of the expression "consumer" contained in Section 2(1)(d) of the Act, it is clear that in order that a person may fall within the scope of that definition, it is essential that he should have hired any services for consideration. From the definition of "service", it is clear that while it will take in service of any description which is made available to potential users, any service rendered free of charge is expressly excluded from the scope of the said definition.

5. SMT. Gayatri Balu urged that the Respondent BDA which collects tax from the House owners of the locality over which it has jurisdiction, is obliged to remove the nuisance including the eradication of stray dogs. So the complainant who was paying house tax to the BDA including Health Cess can be said to have hired the services of the BDA for the purpose of eradication of stray dogs and so he will be a consumer.

6. ON the other hand, Mr. Gopalakrishna for the Respondent urged that the tax paid by the house owners is for general purpose and it cannot be a consideration for the specific purpose of eradication of stray dogs and so the complainant cannot be said to have hired the services of BDA for consideration and therefore he is not a "consumer" within the meaning of Section 2(1)(d) of the Act In Consumer Unity & Trust Society, Jaipur v. State of Rajasthan and others (reported at Page 389 of the Book entitled of "Law of Consumer Protection" by Dr. Gurbax Singh) the National Commission interpreted the words "Consumer" and "hiring of services for consideration" within the meaning of the Act. In that case, the complaint was regarding the negligence of a Government Doctor while performing operation for sterilisation and post operation care in a Government Hospital. It was held that tax is levied as part of common burden while a fee is for payment of a specific benefit or a privilege and if the element of revenue for general purpose of the state predominates the levy becomes a tax; that the facility in Government Hospitals is not hired for consideration and that the complainant was not a "consumer" within the meaning of Section 2(1)(d)(ii) of the Act. Relying upon various decisions of Supreme Court, the National

Commission was pleased to hold that there is definite co-relation between the service rendered and the fee imposed and fee is for special purpose and is quid pro quo for that purpose and Tax is for general purpose without special benefit to the tax-payers & without there being any quid pro-quo between the tax-payers and authorities levying the tax.

In Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt 1954 SCR 1005, the Supreme Court was pleased to hold that a tax is a compulsory extraction of money by public authority for public purpose enforceable by law and is not payment for service rendered.

7. IN the light of the said decisions of the National Commission and the Supreme Court, it is clear that unlike a "fee" a "tax" in its true nature is a levy made by the Public Authority for its general purposes and it cannot be regarded as payment for any particular or special service. While it is undoubtedly true that the public authority (BDA) is under a duty to provide various forms of facilities to citizens residing within its area and the expenditure incurred thereon will have to be met from out of its general funds, it cannot be said that a tax levied for the general purpose of the BDA constitutes "consideration" for any specific facility, benefit or service provided by it. Even the person who does not pay any tax is also entitled to the general service of the BDA which includes the removal of nuisance of stray dogs. Therefore, it is clear that there is no quid pro quo between the tax paid and the general duty of the BDA. Hence, we see no force in the contention of Smt. Gayatri Balu tax paid by a resident of the locality is a consideration for the services to be rendered by the BDA. Hence it cannot be said that the complainant by paying house tax which includes health cess has hired the services of the BDA for consideration for the purpose of removing the menace of stray dogs. The result is that the complainant is not a consumer within the meaning of Section 2(1)(d)(ii) of the Act and on that score alone his complaint has to be dismissed. Even then we think it proper to give our findings on other points also in order to avoid a possible remand in case the Appellant authority differs from our view on the said point. The next point that arises for determination in this case is whether the complainant has proved that he was bitten by a stray dog. No doubt, the Complainant (CW-3) has stated that he was bitten by a stray dog. His friend CW-4 has only stated that a dog came from behind and bit the complainant and that it had no chain round its neck. CW-4 has admitted that the dog which bit him ran away immediately and disappeared and that he was unable to spot it out. That is also the case of CW-4. CW-3 has denied the suggestion in the cross- examination to the effect that because there are no stray dogs in his locality, he was unable to spot it out. Therefore, the possibility of the dog which bit the complainant being owned by somebody in the locality cannot be ruled out. There is also no evidence led by the complainant to show that the said dog was rabid and that it has not been treated for rabies. The complainant might have taken a course of 14 A.R. Vaccine injections in order to avoid the risk as advised by the doctors. From that alone, it cannot be said that

there is a possibility of the complainant suffering from rabies in future. The last point that arises for determination in this case is whether the complainant is entitled to any compensation. In exhibit C- 9 produced by the complainant. Dr. Prasad Rao has stated that this vaccine from Belgaum (taken by the complainant) is quite satisfactory from their records as they periodically assist them in evaluating their vaccine; that they have a very strong reason to believe that the complainant would be having a good immunological response; that the Immunoglobulin levels do not indicate the presence of rabies specific antibodies; that even the presence of detectable specific antibodies just serves as one of the indicators of protection against rabies but absence need not mean nonprotection. Therefore, he does not see any need for checking his rabies specific antibody levels and that the complainant need not be unduly apprehensive. This shows that the apprehension of the complainant that he may be affected by rabies in future is baseless and imaginary. There is no evidence lead by the complainant to show that due to the dog bite his health has been affected and that there is any loss of expectancy of life. So the complainant is entitled to a nominal compensation for the pain and suffering undergone by him in taking 14 painful A.R. Vaccine injections. There is no basis for calculating the compensation on this head and it has to be nominal. According to him, he has spent Rs. 250/- for check up by Medinova. He got the A.R. Vaccine injections free in the Municipal Maternity Home. Under the circumstances, we think a compensation of Rs. 2,000/- is reasonable for the pain and suffering undergone by the complainant.

8. BUT in view of our finding on point No. 1 that the complainant is not a consumer, his complaint has to be dismissed. In the result, the complaint is dismissed. Under the peculiar circumstances of the case. We direct the Parties to bear their own costs. Complaint dismissed.