

(2003) 12 GAU CK 0058
In the Gauhati High Court
Case No : Civil Rule No. 3526 of 1994

Atul Ch. Sarma

APPELLANT

Vs

President, District Consumer Disputes Redressal Forum and
Others

RESPONDENT

Date of Decision : 22-12-2003

Acts Referred:

Consumer Protection Act, 1986 — Section 2(1)

Citation : (2004) 2 GLR 230

Hon'ble Judges : A.H. Saikia, J

Bench : Single Bench

Advocate : Usha Baruah and A. Sharma, for the Appellant; N.M. Lahiri, for the Respondent

Final Decision : Allowed

Judgement

A.H. Saikia, J.—The legality mid validity of initiation of a proceeding against a practising Advocate by the District Consumer Disputes Redressal Forum on the basis of a complaint lodged against him claiming compensation for deficiency in service to the consumer, has been challenged in this proceeding.

2. The petitioner, an Advocate by profession, has assailed the impugned order dated 15.7.1994 passed in C.P.C. 250/94 by which the learned Member, District Consumer Disputes Redressal Forum Kamrup registered a case against the petitioner on the basis of a complaint filed by the complainant through her authorised representative, stating that the complaint did not disclose any consumer dispute or deficiency in service within the meaning of Sub-section (e), (g) and (o) of Section 2(1) of the Consumer Protection Act, 1986 (for short, "the Act") and as such continuation of the consumer case against him directly amounts to abuse of the process of the Court and accordingly in order to secure the ends of justice, the impugned proceeding as well as the impugned order are liable to be quashed.

3. This Court at the time of issuance of notice on 13.9.1994, granted interim relief to the petitioner by staying the further proceeding of the said consumer case being CPC No. 250/94. Thereafter Rule was issued on 12.8.2003 fixing the matter for hearing in the week commencing from 1.9.2003. Accordingly this writ petition has been pending since 1994. Despite notice and appearance of the respondents through their respective counsel, no counter refuting the averments made in the writ petition has been preferred nor has any application for modification/ alteration or cancellation of the interim order so passed, been filed on behalf of the respondents.

4. I have heard Ms. Usha Baruah, learned counsel for the petitioner and Mr. M.K. Choudhury, learned counsel appearing for the respondent No. 5. None appears for the complainant/Respondent No. 2 as well as the authorised representative of the complainant, i.e., the Respondent Nos. 3 and 4. Considering the importance of the issue involved in this case, this Court by order dated 2.2.1996 sought the assistance of Mr. N. M. Lahiri, learned Sr. counsel by appointing him as Amicus Curiae. I have also heard Mr. Lahiri, the learned Sr. counsel.

5. Before delving upon the merits of the case it would be apt and necessary to refer the definition of the words - "consumer", "consumer dispute", "deficiency" and "service" as defined under Sub-sections (d), (e), (g) and (co) of Section 2(1) of the Act respectively. Those definitions read as under :

"(d) "consumer" means any person who :

(i) buys any goods 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose ; or

(ii) hires or avails of 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 or avails of 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;"

"(e) "consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;"

"(g) "deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise

in relation to any service ;"

"(o) "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, housing construction, 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."

Taking into consideration the meaning of the above referred definitions, the Apex Court in Lucknow Development Authority Vs. M.K. Gupta, especially referring to the word "service", in paragraph-4 held as follows -

"The term has variety of meaning. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory, etc. The concept of service thus is very wide."

In view of the concept of service as enunciated by the Apex Court, the Madras High Court in Srimathi and others Vs. The Union of India, and others, held that the definition of consumer u/s 2(1)(d) does include the services rendered by Advocate. Having regard to the above referred judicial authorities there is no second opinion that Advocates are also included under the provision of the Act. The expression "avails of any service for a consideration" itself occurred in Clause (ii) of Section 2(1)(d) of the Act is very clear and vide. That apart, service of any description will come within the purview of the definition of "service". Those would obviously include the service of a lawyer to his client. Therefore it is to be seen in the instant case as to whether complainant-Respondent No. 1 was a consumer as regards the service of the petitioner and also whether there was any deficiency of service caused by the petitioner to the Respondent No. 2.

6. Upon hearing the learned counsel for the parties including Mr. Lahiri, learned Sr. counsel as Amicus Curie at length as well as on close inspection of the materials available on record including the complaint preferred by the complainant/respondent No. 2 (Annexure-I to the writ petition), it appears that no case for deficiency in service as envisaged in the Act has been made out against the petitioner. For proper appreciation of the point involved in the case in hand, the statements made by the complainant-Respondent No. 2 in paragraphs 6, 8, 10 and 19 of the complaint may be noticed and the same rule as under -

"6. The opposite party No. 1, i.e., petitioner's advocate took up the task of obtaining all the required documents and the opposite party No. 2 was informed accordingly by a letter from the petitioner dated 1.11.1992.
.....

8. All the documents as required by the BRPL's advocate were submitted to the lawyer by the petitioner's lawyer in photostat copies. On being satisfied on this count, the opposite party No. 2 (BRPL) gave the petitioner to understand, vide their letter No. PER: 16.7.2000 dated 10.2.1993 that "we have fixed up

tentatively 23.2.1993 as the date for registration of your said property in our Company's name."

.....
10. The Petitioner's advocate, in the meantime, assisted the petitioner in getting the relevant documents including the following ones that remained to be obtained ;

19. It will be evident from the foregoing that the O.P's. were in league and had entered into a conspiratorial understanding to abort the deal and deprive the petitioner of the opportunity of disposing of a property.

The BRPL's pleas of "non-production" of "some original documents" are value all through, not only for their failure to name the documents but also after their completions of the process to the extent of purchasing of Stamp Papers (Annexure-C) and preparing a draft Sale Deed (Annexure-C) and fixing a date of 22.2.1992 "for registration" of the petitioner's property in the Company's name (Annexure-D.).

All the relevant documents as are necessary for a deal of the nature as in question and also as desired by the intending purchaser were duly collected and possessed by the petitioner's advocate, who was representating the petitioner all along.

The cancellation of the deal, therefore, were the collective handiwork of both the opposite parties causing thereby irreparable damages to the petitioner."

7. A combined reading of those paragraphs would clearly show that the complainant failed to make out a specific case against the petitioner under the Act. In paragraph 19, it was only alleged that the opposite parties had conspired in order to deprive her of making a deal in disposal of her property in question. In the entire complaint petition, there was no whisper as regards any allegation of deficiency of service to the consumer against the petitioner. That being so, this Court is of the considered view that no case has been made out by the Respondent No. 2 for initiation of a proceeding under the Act against the petitioner and as such in my opinion, the impugned proceeding itself is an abuse of the process of the Court and the same deserves quashment. Consequently the impugned proceeding being No. CPC No. 250/94 pending before the District Consumer Disputes Redressal Forum Kamrup Guwahati is hereby quashed.

8. In the result, writ petition succeeds and stands allowed. There shall be no order as to costs.