
(1993) 05 NCDRC CK 0028

In the National Consumer Disputes Redressal Commission

BEE ESS PEE CONSTRUCTION (P) LTD.

APPELLANT

Vs

MUNICIPAL CORPORATION, JALANDHAR

RESPONDENT

Date of Decision : 06-05-1993

Acts Referred:

Citation : 1993 3 CPJ 1376 : 1994 1 CPC 209

Hon'ble Judges : S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.

Final Decision : Complaint dismissed

Judgement

1. M/s. Bee Ess Pee Construction (P) Ltd., Manimajra, Chandigarh has filed this complaint under Sec. 12 read with Sec. 17(a)(i) of the Consumer Protection Act, 1986 (for short "the Act") against Municipal Corporation, Jalandhar, claiming Rs. 5,10,630/- (as detailed in paragraph 7 of the complaint) due to its inaction in not releasing of the amount to the complainant in due time and thereby causing financial loss and mental agony to it.

2. THE facts in the complaint reveal that the respondent-Municipal Corporation, Jalandhar invited tenders for the construction of works to be carried out in village Salempur Musalmana and other areas. THE complainant-company submitted the offer of item No. 4 in the tender notice for "Reconditioning of roads, drains, in Salempur Musalmana and laying 20 mm thick prernix carpet on road from Baldev Nagar Kiln to Lamba Pind, Bypass". THE respondent accepted the offer of the complainant and the above said work was allotted to it by the respondent. THE case of the complainant was that the total estimated costs of completion of the project was Rs. 6,26,000/-. THE grouse of the complainant is that he completed the work in the month of May 1990 with respect to the reconditioning of the roads and drains in village Salempur Musalmana and submitted the bill for Rs. 1,00,317/- to the respondent for payment, but the same was not paid to it despite its repeated requests and reminders sent to the respondent. Hence, the complaint. On notice being issued, the respondent stoutly resisted the complaint and raised a preliminary objection that the complaint does not come within the meaning of "consumer", as defined in the Act and especially in view that when a

works contract is concluded through tender, the tendered does not fall within any part of definition of "consumer" under the Act and its complaint is not maintainable before the Commission.

We have heard the learned Counsel for the parties and considered the record with requisite care. Shri Deepak Arora, learned Counsel for the complainant has strenuously urged that by reason of acceptance of the complainant's tender, a contract had been concluded under which there were mutual obligations on the part of both parties to render service to each other and that hence the complainant must be regarded as a "consumer" who had hired a service. We are unable to find any modicum of merit in this submission. Having regard to the facts, referred to above, the complainant cannot be described as a "consumer" within the meaning of the Act. Relationship between the complainant and the respondent is commercial in nature and it is governed by a contract entered into between them for commercial purpose. The National Commission in case *Mrs. Vinodini Bajpai v. Rajya Krishak Utpadan Mandir Parisad*, 1993 (1) CPR 395 has observed as under:- "...the acceptance of a tender undoubtedly creates contractual relationship. But the contractor who has undertaken to perform a specified work cannot by any stretch of reasoning be regarded as a person who has entered into an arrangement of hiring of service with the other party merely on the ground that under the contract there is an obligation on the part of the said party to pay contractual amount without looking to the allegation of failure or non-performance of specific job by the other party"

3. FURTHER we are of the opinion that the disputes between the parties are wholly disputed questions of fact and cannot be adjudicated without thorough investigation which is not possible for the Consumer Redressal Forums. FURTHER the complaint of the complainant is in the nature of money claim for which he is at liberty to file a money suit for the realisation of his claim in appropriate Civil Court. For the foregoing reasons, we dismiss the complaint as not maintainable. There will be no order as to costs. Complaint dismissed. _____