

(1997) 02 NCDRC CK 0055

In the National Consumer Disputes Redressal Commission

BHARAT STARCH And CHEMICAL LTD.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 07-02-1997

Acts Referred:

Citation : 1997 1 CPJ 566

Hon'ble Judges : A.P.Chowdhri , Desh Bandhu J.

Final Decision : Complaint dismissed

Judgement

1. M/s. Bharat Starch & Chemical Ltd. now known as M/s. Bharat Starch Industries Limited, hereinafter referred to as the complainant, has been dealing in Maize Starch. A certain buyer of Dubai placed an order for the supply of 5000 MT of yellow maize grains with the complainant. The first lot of 2000 MT was to be made available for shipment at Kandla Port during the period 25th to 30th November '93 and the second lot of 3000 MT was to be made available at the said port during the period 10th to 15th December 1993. If the aforesaid quantity of maize was not made available for shipment the supplier i.e. the complainant was liable to pay demurrage @ USD 2000 per day, for delay in loading the cargo. In order to fulfil the contract, the complainant appointed an agent and directed him to book 40 wagons of maize comprising 555 bags in each wagon from Bellampalli to Kandla Port to reach there by 30.11.93 as the carrier ship "Victoria" was expected to reach the Port by that date. The agent of the complainant arranged for the special train load of maize comprising 40 wagons and booked 2,200 MT of maize from Bellampalli to Kandla Port vide R.R. dated 24.11.93. The Railway officers concerned had assured the said agent regarding the timely arrival of the goods for their onward shipment in terms of the contract entered into by the complainant with the foreign buyer. Out of the wagon booked 34 wagons reached Kandla on 6.12.93. One wagon reached on 3.1.94 and the remaining 5 wagons did not reach the Kandla Port at all. In order to avoid payment of demurrage, the complainant procured another lot of maize and fulfilled his commitment insofar as the foreign buyer was concerned. In the process, the complainant had to spend extra amount. In the present complaint,

the complainant seeks to recover the extra expenditure incurred as well as compensation totalling Rs. 14 lacs with interest @ 24%.

2. ACCORDING to the opposite party, 31 wagons reached Kandla on 6.12.93, 9 wagons reached there in piecemeal i.e. 3 wagons reached on 20th December, 4 wagons on 27th December and one each reached on 31.12.93 and 10.3.94. Learned Counsel for the opposite parties produced for our perusal, record relating to delivery of the various wagons on the dates mentioned above. This fact has not been seriously disputed before us. The net result is that this is not a case of either non-delivery or short delivery of goods. The surviving case is of delay in delivery. The contention of Mr. Astender Kumar is that Section 13(1)(a) (i) read with Section 15 of the Railway Claims Tribunals Act., 1987 confers exclusive jurisdiction on the Railway Claims Tribunal for loss, destruction, damage, deterioration or non-delivery of goods. In other words, the provision does not oust jurisdiction of the Fora insofar as delay in delivery of the goods is concerned. Learned Counsel further contends that Section 3 of the Consumer Protection Act confers an additional remedy on the consumer and, therefore, this Commission had jurisdiction to grant suitable compensation to the complainant.

Mr. P.S. Jha, learned Counsel for the opposite parties contends that if the present cases were taken to be one of non-delivery or short delivery, the case would fall within the jurisdiction of the Railway Claims Tribunal and in case it was held to be a case of delay in delivery, the Railway incurred no liability. He places reliance on Rule 121 of the Coaching Tariff which lays down as under: "121. Despatch of Articles or Animals by any particular train not guaranteed - Railways do not guarantee despatch of articles or animals by any particular train or delivery within any definite time or period."

Mr. Jha further relies on Union of India through General Manager, Southern Railway, Madras & Another v. M. Adailkalam, 1993 (2) CPR 94 (NC) in which the National Commission held that the Railway was not liable for delay in delivery in view of the aforesaid rule.

3. ON a careful consideration of the matter we are unable to accept the plea of the complainant that the officer concerned had verbally assured the complainant's agent about the delivery of the consignment at the destination by a particular date. Normally one would expect an important term of the contract with regard to performance by a particular date to be reduced into writing. Moreover, the plea was vague. Name and designation of the officer, who held out the assurance, were not disclosed. No contemporaneous document was prepared. No note to this effect was given on the RR. ON the contrary, there is enough material on record to show that no such assurance could possibly be given. This is in the form of Rule 121 of the Coaching Tariff set out above. This rule has statutory force and it expressly lays down that the railway do not guarantee despatch or delivery of the goods within any definite time or period. We, therefore, do not accept the complainant's case in this behalf. The Railway Claims Tribunal Act. 1987 is, as it were a special Act as against the Consumer

Protection Act, which is a general law. It was laid down by the Supreme Court in the *Chairman, Thiruvalluvar Transport Corporation v. Consumer Protection Council, I* (1995) CPJ 3 (SC) that since exclusive jurisdiction was conferred upon the Accident Claims Tribunal constituted under the Motor Vehicles Act 1988, the Fora constituted under the C.P. Act had no jurisdiction to adjudicate upon a claim for compensation arising out of a motor accident. The Supreme Court referred to an earlier decision of the National Commission in *Union of India & Another v. M. Adaikalam, II* (1993) CPJ 145 (NC) in which it had been held that the Fora had no jurisdiction to entertain complaints which were expressly placed within the jurisdiction of the Claims Tribunal constituted under the Railway Claims Tribunal Act, 1987. Decision in *Adaikalam's* case (*supra*) directly applies and the ratio of the Supreme Court judgment in *Thiruvalluvar Transport Corporation* completely covers the point before us.

4. IN *Adaikalam's* case the District Forum awarded compensation even as if it was a case of non-delivery of the Church Bell at that point of time. During the pendency of the appeal, the Church Bell was delivered to the consignee. The case became one of late delivery as distinguished from one of non-delivery. The State Commission, therefore, revised the compensation awarded by the District Forum. Before the National Commission, the question debated was, whether in view of the Coaching Tariff, the Railways had any liability for delay in delivery. Relying on Rule 121 set out in the earlier part of this order, the National Commission held that the Railways were not liable in view of the said provision for delay in delivery of the goods. The decision applies to the present case and in view of the said rule of Coaching Tariff, the complaint must fail. The same is, accordingly, dismissed with no order as to costs. A copy of this order be communicated to both the parties. Complaint dismissed.