
(1994) 02 NCDRC CK 0082

In the National Consumer Disputes Redressal Commission

COMMISSIONER, CORPORATION OF THIRUVANANTHAPURAM APPELLANT
Vs
M.KRISHNAN NAIR RESPONDENT

Date of Decision : 07-02-1994

Acts Referred:

Citation : 1995 3 CPJ 468

Hon'ble Judges : P.K.Shamsuddin , C.G.Sethu Lakshmi , K.Balakrishnan Nair J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order passed by the District Forum in O.P. No. 139/90 on the file of the District Forum, Thiruvananthapuram.

2. THE grievance of the petitioner is that the City Corporation represented by its Commissioner, District Medical Health Officer and Chief Secretary to Government of Kerala do not take sufficient steps to eliminate mosquito menace by implementing short term and long term measures. It is alleged that the petitioner and family are residing in T.C. 37/186, Fort Ward. Padma Nagar, within the city limits and the Opposite Parties are bound to look after the health and welfare of the citizens. It is also stated that the Mosquito Control Wing is not taking adequate and timely action for prevention of Mosquito menace, and therefore, the petitioners and others are victims of mosquito bite leading to filarial disease and other complications of health, and they suffer physically, mentally and financially. It is alleged that the Health Officer of the Corporation has not adopted any effective measures to eliminate mosquitoes. It is in these circumstances the complaint was filed claiming compensation of Rs. 10,000/- and also seeking directions to take emergent steps to eliminate the mosquito menace by implementing requisite measures.

The Commissioner of Corporation, the 1st Opposite Party filed versions stating that the complaint is not maintainable as the Complainant is not a consumer as defined in the Consumer Protection Act. It is also averred that there was no lapse on the part of the Corporation in taking effective steps for control of mosquitoes in the city, and there is no negligence on the part of the Commissioner in the

discharge of duties and there is no deficiency in service as alleged by the Complainant. The Health Officer has promptly replied explaining the measures taken by the Corporation in this regard and he also visited the area, took positive steps for abating the nuisance posed by the mosquitos and arrangements made to spray insecticides once in a week to prevent breeding as a result of which the level of breeding was minimised. It is also alleged that the officials of the Corporation inspected the premises and the house of the Complainant and no mosquito breeding spot could be detected. In the circumstances it was alleged that the Complainant is not entitled to any relief.

3. AS regards the maintainability of the petition, the District Forum found that the Complainant is a consumer. It also stated that the Municipal Corporation Act, 1961 contains provisions for collection of water charges, electric charges, scavenging fee etc. and these are considerations for the services to be rendered and that therefore, the Complainant is a consumer. AS regards the claim for compensation made by the Complainant the District Forum held no wilful negligence has been established and therefore the Complainant is not entitled to any relief. It also held that the only direction that can be given is to direct the Corporation to implement the necessary measures more effectively. Ultimately the District Forum directed the 1st Opposite Party to take adequate emergent measures to control and eliminate mosquito menace and implement the programme for elimination of mosquitoes more effectively and assess the progress periodically and see that the grievance of the citizens including the Complainant is redressed to their satisfaction to the maximum extent possible. Feeling aggrieved by the order of the District Forum, this appeal has been preferred by the 1st Opposite Party. Learned Counsel for the appellant submitted that the Complainant is not a consumer. Learned Counsel also argued that the Corporation is not collecting any water charges, electric charges, scavenging fee and no considerations whatsoever have been collected for any such services. The respondent/complainant who appeared in person submitted that the Corporation is collecting various taxes and that would amount to consideration for hiring service. We specifically asked the Complainant to point out any averment in the complaint which would indicate that the Corporation is receiving any consideration for hiring service but he was unable to point out any averment to that effect. Therefore, the Complainant has not succeeded in establishing that the Complainant is a consumer. This does not mean that the Corporation has no obligation to eradicate the mosquitos and protect the health of the citizens. However the question that arises here is whether the matter would fall within the purview of the Consumer Protection Act. To be a consumer one must purchase any goods for consideration which has been paid or promised or partly paid or partly promised or there must be availing of or hiring of service for such consideration paid or promised or partly paid or partly promised. Those elements to bring the matter within the ambit of the Act are wanting in the instant case. The Complainant has come up with a laudable object of eradication of mosquitos, but the question cannot be agitated in a Consumer Forum.

4. WE therefore allow the appeal, set aside the order of the District Forum and dismiss the complaint. This will not preclude the Complainant to approach any other authority for appropriate relief and enforcement of the obligations of the Corporation to control the mosquitos menance. The parties will bear their respective costs. Appeal allowed.