
(1994) 07 NCDRC CK 0051

In the National Consumer Disputes Redressal Commission

G. ALPHIN

APPELLANT

Vs

Joint Chief Controller of Imports and Exports

RESPONDENT

Date of Decision : 14-07-1994

Acts Referred:

Citation : 1995 1 CLT 438

Hon'ble Judges : David Annoussamy , A.Veerapandian , J.Anjani Dayanand J.

Advocate : R.Subramanian , G.Saravanan , R.Vaidyanathan

Judgement

1. THE case of the Complainant is as follows:- THE Government of India announced its import policy provisions for 1983-84. THE submitted an import application in accordance with those provisions for import of two NSA 7.50 type fish net making machines from Japan for an amount of Rs. 12,58,000/-. He also paid a fee of Rs. 1,260/-. THERE was delay by the third in forwarding the application with his recommendations. He got the bottleneck removed through the High Court order dated 30.1.1984 in W.P. No. 10946 of 1983. THEN his application was rejected arbitrarily by the No. 1 by order dated 15.2.1985. THE then preferred appeal, second appeal and review petition. All the orders went against him and were according to the contrary to the High Court order in the above quoted Writ Petition. THE who rejected the application of the , granted permission to M/s. Vijaya Marine Products to import fish net making machines in Pondicherry. THE has again approached the High Court of Madras in Writ Petition No. 4341/87 and the Hon'ble High Court by its order dated 21.11.90 was pleased to quash the order dated 22.1.87 of the second on its review petition. THE High Court further directed the No. 1 to consider the application in accordance with the Import Policy Provisions for the year 1983-84. THE first has not considered the application nor passed orders. THE , therefore, issued a notice to the 1 to 3 on 1.8.91. He issued another notice on 11.9.93. THE first by letter dated 5.10.93 informed the that the fish net making machine was now a freely importable item and does not require import licence. THE grievance of the is that his application was not processed properly and that there is deficiency in service on the part of the concerned. He estimated his loss to Rs. 22.10 lakhs which he

restricted to Rs. 19.99 lakhs for reasons not disclosed.

2. THE Opposite "Parties raised a preliminary objection to the effect that the Complainant is not a consumer within the meaning of the Act and therefore is not entitled to seek relief before this Commission. The first question which therefore arises is whether this Commission has got jurisdiction to entertain the matter? For being a consumer one should have hired any service. The word "service" has been defined under Section 2(1)(o) as to include service of any description. But what was expected by the Complainant should be by its very nature a service. As per the Shorter Oxford Dictionary, service is an action of serving, helping or benefitting or a conduct tending to the welfare or advantage of another. Therefore, the question which arises is whether the fact of granting an import licence is a service in its ordinary connotation. The grant of licence of import is effected under the Imports & Exports (Control) Act, 1947. Section 3 of the Act provides that the Central Government may, by order make provisions for prohibiting, restricting or otherwise controlling, in all cases or in specified classes of cases, the import of any goods. It is clear from these provisions that while granting or rejecting an application to import, the concerned authority is exercising a sovereign function of the State in the public interest and is not keeping a service counter open which could be availed of by any individual interested in the service. It is not meant to provide any advantage or benefit to the grantee. No doubt the concerned authorities have to exercise their power in conformity with law and according to the procedure prescribed, and, if there is any mistake, the order can be challenged before the proper Forum. The Complainant has already done so twice in challenging the order of the Opposite Parties before the High Court. But it is clear that the fact of granting of a licence is a State function and cannot be considered as a service by any stretch of imagination.

The learned Counsel for the Complainant contended that the grant of licence was very much a service since there was consideration as provided under Section 2(1)(d)(ii) which defined the word "consumer" in as much as he paid a fee alongwith his application as prescribed. This is strongly resisted by the Counsel for the Opposite Parties. This contention of the complainant has no merit, because for being a consumer there should be first service, and secondly that service should be for consideration. The sole existence of consideration does not suffice. Since there is no service as pointed out earlier, the complainant is not a consumer. Further, fee may be of various kinds and all of them do not amount to consideration. The word consideration would carry the idea that what is given by one side is almost equal to what is provided by the other. It is very difficult to quantify in money terms the value of a licence. Further, if there is any consideration the amount of fee should be proportionate to the amount of the goods to be imported. But it is seen from Schedule III to the Imports (Control) Order, 1955, vide Appendix 2 that there is a maximum of Rs. 10,000/- prescribed. It is clear there from that the fee is intended to discourage frivolous applicants and prevent them from flooding the department with applications.

Therefore, the fee levied cannot be assimilated to a consideration. We are very far from the concept of consideration and in fact such concept is repugnant to the exercise of a sovereign function. The contention of the complainant is repelled.

3. THE learned Counsel for the complainant secondly contended that the authorities were expected to process the application and therefore, it will be a service, since the word service has been defined as including "processing" as well. This contention has no merit whatsoever. THE word "processing" indicated under that definition related to a particular service which consists of transforming a material or giving it another shape so as to argument its value and utility. It is akin to other types of services enumerated in the definition. It cannot be made to mean the processing of the application by the State, viz., the succession of actions leading to the decision, because those actions are not meant to bring any benefit to the applicant and would not therefore amount to a service. This contention is also repelled. Lastly, .the learned Counsel for the Complainant relied on a decision of the Supreme Court in Lucknow Development Authority v. M.K. Gupta, AIR 1994 Supreme Court 787 and contended that the Government as well as any Semi-Government body may be sued before the machinery under the Consumer Protection Act and that therefore, this complaint was to be entertained. From the decision two propositions emerge (!) a Government or a Semi-Government body may very well be a party before the machinery under the Consumer Protection Act, and (2) that body should be rendering a service. The second condition is missing here. As found earlier the function of the State in this case is not in the nature of a service. It is well known that in a welfare State the functions of the Government are not confined only to the sovereign ones;the State has embarked upon many other functions of industrial, commercial and social nature. While in the exercise of its functions the State is rendering a service, certainly the concerned Government body can be arrayed as party before the machinery created under the Consumer Protection Act. The Supreme Court has clearly indicated that "the test, therefore is not if a person against whom complaint is made, is a statutory body but whether the nature of the duty and function performed by it is service or even facility". Since there is no service involved here, the decision relied upon does not further in any manner the case of the complainant.

4. IN the result, it is found that the complaint cannot be entertained by this Commission and it is therefore, rejected. Complaint dismissed.