
(2000) 12 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Gatge Patil Transport Limited

APPELLANT

Vs

COMMISSION

RESPONDENT

Date of Decision : 14-12-2000

Acts Referred:

Citation : 2001 2 CPJ 276

Hon'ble Judges : V.Gopala Gowda J.

Final Decision : Writ Petition dismissed

Judgement

1. THE petitioner has challenged the legality and validity of the order passed by the first respondent. THE Karnataka State Consumer Disputes Redressal Commission (for short "Redressal Commission") urging various legal contentions.

2. CERTAIN undisputed facts necessary for examining and considering the rival contentions of the parties are stated as hereunder : The 2nd respondent herein filed a complaint under Section 17 of the Consumer Protection Act, 1986 (for short "Act of 1986") before the first respondent claiming reimbursement of Rs. 5,25,237.55 towards the value of the consignment together with another sum of Rs. 4 lakhs towards loss of interest and loss of reputation suffered by the Company due to deficiency of service attributable to the petitioner and others who were made as respondents in the complaint. The first respondent-Redressal Commission following the procedure laid down under Section 19 read with the Karnataka Consumer Protection Rules, 1988 served notice upon the petitioner in the complaint, who after engaging a lawyer filed statement of counter and took up a preliminary objection that the first respondent has no jurisdiction to entertain the complaint. According to them, the 2nd respondent-complainant was not a consumer in terms of the definition of Section 2(d) of Act 1996 and sought for rejection of the complaint. Thereafter an enquiry was conducted in accordance with the provisions of the Act and Rules referred to supra. The 2nd respondent filed an affidavit of its Manager and the affidavit of its partner-Srinivas Shenoy S.B. respectively vide Exs. CI to C97 in their evidence. The petitioner neither adduced evidence nor produced documents. Not even an

application filed seeking permission of the Forum to cross-examine the manager and partner of the 2nd respondent Company. The Redressal Commission after examining the evidence on record with reference to the preliminary objection and also the plea of the complainant that there was deficiency in the service rendered by the petitioner, placing reliance upon the judgment of the National Commission in *Synco Textiles Private Limited v. Economic Transport Organisation & Ors.*, I (1991) CPJ 40 (NC), has passed the impugned order directing the petitioner to pay a sum of Rs. 5,75,237.55 towards the value of the goods in 22 consignments with interest @ 18% per annum from 10.7.1992 till the date of its payment to the complainant with costs of Rs. 2,500/- towards the proceedings before the Forum. The legality and validity of the said order is challenged in this writ petition. Mrs. Vaishali Hegde, learned Counsel appearing on behalf of the petitioner placing reliance upon the judgment of the Apex Court reported in AIR 1951 SC 230 contended that enquiry was conducted and arguments were heard by two Members of the Redressal Commission but the impugned order was passed by three Members of the Redressal Commission; that the 3rd Member who has not heard the matter has signed the impugned order and influenced the other two Members. It is contended that validly constituted Members under the provisions of the Act and Rules have not passed the impugned order, and hence the order is void-ab-initio. Learned Counsel for the petitioner prays for quashing of the impugned order.

The reliance placed upon by the learned Counsel for the petitioner on the judgment of the Supreme Court is at paragraph (13). In that case, the contention was that the order impugned therein was passed by a person who was ceased to be the Member of the Tribunal as on the date of passing of the award. The Supreme Court has held that when the service of a Member under Rule 5 of the Industrial Disputes Rules, 1949 ceases to be available to the Tribunal, the jurisdiction of the remaining Members to continue the proceedings would affect the proceedings and as such the award passed by the said Tribunal was held to be invalid in law.

3. THIS Court has examined the correctness of the submission made on behalf of the petitioner keeping in view the provisions of Sections 12, 13, 14 and 18 of the Act and the Rules framed thereunder. Relevant portion of Rule 4 of the Rules which is applicable to the facts of this case is extracted as hereunder : 4. Place of Sitting and Procedure as to Conduct of Meeting Etc. of District Forum : (5) No act or proceedings of the District Forum shall be invalid by reason only of the existence of any vacancy in the office of Members or any defect in its constitution. Section 13 provides for procedure to be followed by the District Forum on receipt of the complaint. Section 16 speaks of the composition of the State Commission comprising a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President and two other Members, one of whom shall be a woman. Section 18 of the Act provides for procedure applicable to State Commissions which clearly states that provisions of Sections 12, 13 and 14 and the rules made thereunder are

applicable for disposal of complaints by the District Forum.

In this case, the learned Counsel for the respondents has pointed out that the rules of 1988 framed by the State Government are the procedure to be followed for the purpose of conducting enquiry proceedings. Learned Counsel for the petitioner did not dispute this. By reading Sub-rule (5) of Rule 4 of the Rules, 1988 extracted above answers the question raised by the learned Counsel for the petitioner.

4. I have examined the judgment of the Supreme Court rendered in the case referred to supra. The Supreme Court has rendered the judgment on the basis of the undisputed facts and with reference to Rule 5 of Central Industrial Disputes Rules, 1949 which is not analogous to Sub-rule (5) of Rule 4 of Rules, 1988. In that case, to constitute a valid Tribunal, three persons were required, which is mandatory under Rule 4 of Industrial Disputes Rules, 1949. In the instant case, in view of Sub-rule (5) of Rule 4, enquiry and proceedings can be conducted by the State Consumer Forum either by the President alone or by the Members and any vacancy in the State Forum shall not render the proceedings void-ab-initio in law. In view of the above said statutory rule, the enquiry and proceedings conducted by the State Commissioner consisting of two Members are not void-ab-initio. Further in the instant case it is an undisputed fact that two members had heard the matter. As on the date of the passing of the order, the 3rd Member was also appointed by the State Government following the procedure contemplated under Section 16 of the Act, 1986, that was not the situation in the Apex Court case cited. In this view of the matter, the reliance placed upon the judgment of the Supreme Court referred to supra, has no application to the facts of this case. Therefore, contention that the 3rd Member who had not heard the matter, has influenced the other two Members by signing the impugned order is without any substance and the said contention is rejected. I have carefully gone through the order of the Redressal Commission with regard to the merits of the case. The said Commission on the basis of the evidence, documents and other material available on record and on proper appreciation of the same has recorded a finding of fact that there was deficiency in the service rendered by the petitioner to the 2nd respondent. The learned Counsel for the petitioner is unable to show that the said finding is erroneous in law either for want of evidence, or on the ground that the said finding was not supported by valid and cogent reasons. The petitioner had neither adduced evidence nor produced documents muchless challenged the evidence adduced on behalf of the 2nd respondent no satisfactory explanation is forthcoming for its absence before the Tribunal.

5. HENCE no relief can be granted to the petitioner. The further contention that the Redressal Commission has no jurisdiction on the ground that the 2nd respondent was not a consumer has been rightly answered by the Redressal Commission with reference to the provisions of the Act and placing reliance upon the judgment of the National Consumer Forum. In my considered view, the findings recorded by the Redressal Commission on the said contentions are legal

and valid and does not call for interference by this Court.

6. FOR the reasons stated supra, the writ petition must fail and accordingly, writ petition is dismissed. Writ Petition dismissed.