(2001) 05 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

G.PALANISWAMY APPELLANT

Vs

STATE OF TAMIL NADU RESPONDENT

Date of Decision : 25-05-2001

Acts Referred:

Citation : 2002 2 CPC 172 : 2002 2 CPJ 46 : 2003 1 CLT 57

Hon'ble Judges : D.P.Wadhwa , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao , B.K.Taimni J.

Final Decision : Appeals disposed of accordingly

Judgement

1. THESE are two cross appeals - one is filed by the complainant aggrieved by insufficient relief granted to him by the State Commission, Tamil Nadu and the other by the Tamil Nadu Industrial Investment Corpn. Ltd. which were originally respondents of the opposite party Nos. 2 and 3 in the complaint. On the facts, there appears to be no dispute and thus, no relief has been given in the impugned judgment of the State Commission, Chennai.

2. THE complainant was interested in the production of Autorickshaws and had invested nearly Rs. 2.00 lakhs in the development of proto type of an Autorickshaw. Such autorickshaws were exempted from the provisions of the Motor Vehicles Act by G.O.Ms. No. 2225, dated 24.10.1993. THE complainant applied to the 1st opposite party State of Tamil Nadu for allotment of land to start the industry and the application was forwarded to the M.M.D.A., which in turn forwarded it to the 4th opposite party i.e. the Tamil Nadu Small Scale Industries Development Corporation. THE 4th opposite party failed to allot the site in the Industrial Estate at Guindy. THE complainant approached the 3rd opposite party i.e. the Tamil Nadu Industrial Investment Corporation and it sanctioned a loan of Rs. 42,000/- on 17.4.1984 for purchasing machineries. THE 4th opposite party originally allotted sites or sheds on merit basis, but, subsequently, it allotted those by draw of lots in the draw of lot held on 6.6.1988 the complainant was not successful but he was included in the waiting list and a shed was allotted finally to the complainant in the Guindy Industrial Estate. He

was subsequently forced to sell the said shed as is noticed hereinafter and was in search of another suitable place. He found that Shed No. L5 at Ambattur Industrial Estate was available on rent and entered into an agreement with Mr. K.P. Srinivasaga Perumal owner of M/s. Union Products, whose name board was found in the above shed at Ambattur Industrial Estate. When disputes arose between the complainant and the said K.P. Srinivasaga Perumal, the complainant came to know that the shed was not allotted to M/s. Union Products that the electricity supply has been given in the name of one M/s. Bhavani Industries and there were also unauthorised constructions. THE 4th opposite party had also allowed another concern by name M/s. R.P.V. Engineering Industries to occupy this shed. This amounted to deficiency in service on the part of the 4th opposite party. THE complainant then applied to the 4th opposite party to allot to him this Shed No. L5 in the Industrial Estate at Ambattur, but in vain. THE 4th opposite party issued notice of eviction whereafter the complainant had filed a W.P. No. 2461/1992 in the High Court of Judicature, Madras for directing the 4th opposite party to dispose of his application for allotment of the shed and injunction restraining the 4th opposite party from interfering with his possession of Shed No. L5 of the Ambattur Industrial Estate. THE said writ petition is still pending. THE complainant also filed a suit in O.S. No. 8222/1991 on the file of the City Civil Court against the aforesaid K.P. Srinivasaga Perumal and the said suit is also pending. THE complainant approached the Indian Bank, Guindy in 1988 for a loan of Rs. 12,00,000/- and the Bank sanctioned a loan of Rs. 4,00,000/- to purchase machineries and for working capital. By letter, dated 6.6.1989, the complainant requested the 2nd opposite party, the Tamil Nadu Industrial Investment Corporation to waive the interest and re-schedule the loan of Rs. 42,000/- sanctioned on 17.4.1984. Instead of taking a decision on his application, the 3rd opposite party threatened legal action against the Complainantfor the recovery of the loan. Repeated requests by the complainant for re-scheduling of the loan were not headed. THE 3rd opposite party issued a notice for foreclosure of the loan, on 29.1.1990 and take possession of the machineries hypothecated. By letter, dated 14.3.1990, the date of taking possession was fixed as 28.3.1990. On that day, the 3rd opposite party sealed the shed in the Industrial Estate, Guindy and took possession of the same with machineries, which included the machineries purchased from out of the loan taken from the Indian Bank. This taking over the possession and ceiling was alleged to be illegal and a Lawyer''s notice was issued by the complainant. THEre was then a personal discussion and the complainant was called upon to remit 25% of the interest due and other charges before considering the request for re-scheduling the loan. THE complainant issued 4 post-dated cheques for Rs. 2,500/- each and the 3rd opposite party agreed to re-schedule the entire loan at the rate of Rs. 2,500/- p.m. THE premises was opened and the shed was handed over to the complainant on 26.7.1990. On opening the premises, it transpired that the shed had been burgled. The inventory of the articles was taken and it was discovered that the goods valued at Rs. 62,375/- as also the machines were missing. Complaint was also ledged with the police. It appears that the 3rd opposite party failed to discharge its duties in insuring and also safeguarding the properties lying inside the shed which was taken over by it. There was also inordinate delay on the part of the 3rd opposite party to re-schedule the loan and since the Indian Bank, Guindy was not prepared to advance any further amount, the complainant had to sell the factory and paid the dues of the Bank. It was thereafter that the complainant shifted the remaining machinery to Shed No. L5 at Ambattur Industrial Estate. It was in these circumstances that the complaint was filed against the opposite party Nos. 2, 3 and 4 on the allegation that the act was not bonafide and there was a deficiency of service on the part of respondents. The complainant-appellant, also sought a direction to respondent Nos. 1 and 2 to give the complainant fresh financial assistance or to pay a sum of Rs. 6.00 lakhs as compensation. He also sought a sum of Rs. 2,10,000/- (from respondent Nos. 2 and 3) towards loss of machineries by theft from the Industrial Estate and loss of income at the rate of Rs. 1,000/- per day.

The State Commission had weighed the pros and cons and found only a sum of Rs. 62,000/- payable. On the question of deficiency of service and on the point whether the complainant is a consumer or not, in our view, the decision of the State Commission is correct. There is deficiency of service and that he is a "consumer" within the meaning of the term as defined under the Consumer Protection Act, 1986. There has been deficiency in not taking care of the goods taken into custody. In fact, the deficiency in service is not only in respect of goods but also in respect of the machinery which was lying therein. Therefore, the State Commission, in our opinion, should have compensated for the loss of machinery from the said premises also. The State Commission has not dealt with any point regarding loss of the machinery which was stolen from the place when those premises wherein the machineries were in the possession of opposite party Nos. 2 and 3. It may be that the estimate of Rs. 2,10,000/- towards the cost of machinery, is on the higher side, but, there is no rebuttal of the evidence regarding value of machinery. For that reason, we are of the view that ends of justice will be met if the opposite party Nos. 2 and 3 be directed to pay to the complainant a sum of Rs. 2.00 lakhs on account of loss of machinery and Rs. 62,375/- on account of loss of goods with interest thereon which in our opinion should be fixed at the rate of 12% and not 18% as has been awarded by the State Commission from 26.7.1990 till payment ordered accordingly. Rest of the claims have been rightly rejected. Therefore, except for and to the extent of modification mentioned above, we confirm the impugned order. Both these first appeals are disposed of, in the above terms. Appeals disposed of accordingly.