(1993) 07 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

HIMACHAL WEAVERS PVT. LTD. APPELLANT

Vs

HIMACHAL PRADESH FINANCIAL CORPN. RESPONDENT

Date of Decision : 26-07-1993

Acts Referred:

Citation : 1993 0 NCDRC 98 : 1993 2 CLT 36 : 1993 3 CPJ 267 : 1993 3 CPR 285

Hon'ble Judges : V.BALAKRISHNA ERADI , Y.KRISHAN , B.S.YADAV J.

Advocate : PRADEEP GUPTA , J.S.ATTRI

Judgement

1. THIS is a complaint tiled under Section 12 read with Section 21 of the Consumer Protection Act, 1986 (for short the Act). According to the allegations contained in the complaint, the Government of Himachal Pradesh had brought out a booklet/brochure containing various facilities which were assured to the New Industrial Units which were to be set up in the Himachal Pradesh. These facilities included various types of loans from Himachal Pradesh Financial Corporation (for short H.P.F.C.) on liberal and attractive terms and central subsidy to the extent of 25% on the capital cost upto a maximum of Rs. 25 lacs. After studying the various facilities/subsidies being provided to the new industrial units in the State of Himachal Pradesh and the said facilities/incentives had been assured by the State Govt. of Himachal Pradesh in writing to the Comlainant Company, M/s. Himachal Pradesh Weavers Pvt. Ltd., V & P.O. Deoli, Tehsil Amb. Dist. UNA, H.P., it got registered with the Registrar of Companies, and also as Small Scale Industry (Dept. of Industries), State of Himachal Pradesh. The Company also obtained a No Objection Certificate from the Himachal Pradesh State Board Prevention and Control of Water Pollution and also purchased land at village Deoli, Teshsil Amb, Distt. UNA (H.P.). On 19th October, 1987, the Company applied for loan from H.P.F.C. The H.P.F.C. charged Rs. 3,150/- as processing fee from the Complainant Company. On 2nd January, 1988 the Advisory Committee cleared the Loan proposal. Vide letter dated 14th March, 1988 the H.P.F.C. informed the Complainant Company that the Board of Directors had sanctioned a Term Loan of Rs. 37.80 lacs for setting up the said industrial unit. Vide letter dated i4th June, 1988 the H.P.F.C. sanctioned the above said

Term Loan to the Company. Vide letter dated 31st March, 1988 the Director of Industry Himachal Pradesh sanctioned subsidy of Rs. 13,24,500/- to the Complainant Company. Vide letter dated 18th January, 1990 the Certificate of Registration of Mortgage/Charge was registered between the Company and the H.P.F.C. for the purpose of grand of Subsidiesalready sanctioned By the State of Himachal Pradesh. On 15th July, 1989 the Complainant Company catered into two agreements with the Opposite Parties, one for grant of Central Subsidy and another of Loan Rate. On 2nd September 1989 for the first time the first instalment of Term Loan and Subsidy of Rs. 4.76 lacs (i. e. Rs. 3.44 lacs as a Term Loan plus Rs.l,321acs as a Subsidy)was released to the Company. Though the Term Loan was sanctioned in March, 1988 the disbursement of the sanctioned loan was delayed because there was shortage of funds in H.P.F.C. The balance part of sanctioned subsidy um Rs. 11,92,500/- has not been released to the Complainanat Company in spite of repeated requests, Vide letter date 31st March, 1991 the H.P.F.C. sanctioned additional term loan of Rs. 8.33 lacs and soft loan of Rs. 2 lacs.

2. THE grievance of the Company is that if the balance subsidy i.e. Rs. 11,92,500/- had been released to the Company then there was no necessity for taking additional Term Loan as well as Investing additional Promoters, contribution to the tune of Rs. 3.58 lacs. Thus the Company has been burdened with the Additional Term Loan as well as Promoters, contribution. H.P.F.C. is charging the interest @ 14.5% on the said amount which is higher by 1 % as compared to the original term loan. Due to the non-grant/release of balance Subsidy the two machines, i.e. (i) High Speed Gill Box, (ii) Intersecting Gill Box purchased by the complainant in the month of May/June 1990 costing Rs. 5.55 lacs are lying idle on the premises of the Company because H.P.F.C. pressurised to forego the planning of purchase of Carding machine. Neither the H.P.F.C is giving permission to sell the above two machines nor allowing the purchase of Carding Machine (without which these machines are useless) from the soft loan. Hence the Company has been burdened with the sum of Rs. 5.55 lacs because of the non-grant of Subsidy and the company is paying interest @ 13.5% on the said amount of Rs. 5.55 lacs to H.P.F.C. The company is entitled to the refund of the same. The company has installed all the machinery and the Factory is in Running condition now. It is further the case of the Complainant Company that it is entitled to 100% Central Subsidy because the delay in disbursement of the same was on the part of the Opposite Party and not on the Complainant Company. Since the Complainant Company was assured by the Opposite Party that they will get Central Subsidy to the tune of Rs. 13,24,500/- much prior to 30th September, 1988 i.e. the date when the Scheme of Central Subsidy was withdrawn for industrialisation of backward areas, hence prior to 30th September, 1988, valuable legal right had accrued to the Complainant Company against the Opposite Parties and so on the principles of promissory as well as of equitable estoppel the Oppsite Parties a re bound by its commitments as the Complainant Company has changed its position by way of purchasing the land for

industry in Himachal Pradesh as well as investing 100% Promoters'' contribution. Hence the claim for the following amount. (i) Balance Subsidy as on 1st April 1992 Rs. 11,92,500.00 (ii) Interest (a) 18% on the balance Subsidy calculated upto 1st April 1992 Rs. 2,14,000.00 (iii) Extra interest already paid to H.P.F.C. for 18 months m delay in disbursement of additional Term Loan Rs. 3,87,000.00 (iv) Interest already charged on Rs. 5.5 lacs @ 13.5% (of two machines which are lying idle upto 1st April 1992) Rs. 1,50,000.00 (v) The cost of two machines which are lying idle Rs. 5,55,000.00 (vi) Damages Rs. 1,00,000.00 Total as on 1st April, 1992 Rs. 25,92,000.00 The Opposite Parties are: (i) Himachal Pradesh Financial Corporation, (ii) Director of Industries, Govt. of Himachal Pradesh (iii) State of Himachal Pradesh through its Secretary, Ministry of Industries, (iv) Union of India through its Secretary, Ministry of Industries.

3. THE Opposite Party No. 1, H.P.F.C. filed a detailed counter contesting the claim of the complainant. Opposite Parties Nos. 2 and 3, namely, Director of Industries, Govt. of Himachal Pradesh and State of Himachal Pradesh filed a joint counter.

4. IT is not necessary to reproduce in detail the averments of H.P.F.C. Suffice it to say that their case is that delay in disbursement of Central Subsidy was mostly to the non-fulfilment of certain formalities by the Complainant Company. After hearing the learned Counsel for both the parties, we are of the opinion that in the present case the dispute which is the subject matter is not a ''consumer dispute'' of the complaint as defined in the Act. The main grievance of the Complainant Company is that H.P.F.C. has not disbursed the sanctioned amount of Central Subsidy and that the Central Government is estopped from withdrawing the Central Subsidy as the Complainant Company has acted upon the promises extended by that Government. "Consumer,, qua "Service,, has been defined under Clause (ii) of Section 2(l)(d) of the Act as follows: "Consumer means any person who," (ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, while such services are availed of with the approval of the above mentioned person; "Service,, under the Act has been defined under Clause (o) of Section 2(1) as follows: "Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying a news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;'',

The Complainant Company has not hired any ''service, of the Central Government for consideration for providing Central Subsidy to it. As far as Himachal Pradesh Government is concerned, it was only disbursing the Subsidy as and when it received it from the Central Government. Therefore, in such circumstances, the complainant cannot be said to be a "consumer", of "service" as defined under the Act. Consequently, we dismiss the present petition with no order as to costs.

