

(1996) 11 NCDRC CK 0060

In the National Consumer Disputes Redressal Commission

INDRANI MUKHERJEE

APPELLANT

Vs

INDIAN OIL CORPORATION

RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Citation : 1997 1 CPJ 154

Hon'ble Judges : A.K.Bhattacharyya , Sunil Kanti Kar , S.Dutta J.

Final Decision : Complaint disposed of

Judgement

1. THE instant complaint has been filed against the opposite party, Indian Oil Corporation, the opposite party No. 1 alleging deficiency in service and claiming Rs. 19,04,608/- as damages and/or compensation suffered by the complainant together with interest at the rate of 25% and for other reliefs and the complainant has further claimed the refund of Rs. 57,000/- which was kept as security and Rs. 10,000/- paid earnest money with the opposite party against mounting up of a tanker on the chassis supplied by the complainant.

2. THE case of the complainant is that she took loan a sum of Rs. 4,20,000/- from West Bengal Financial Corporation-the opposite party No. 2 at the rate of interest @ 19% per annum and other sources for purchasing a chassis of a truck for starting her business of carrying bulk LPG to different places on behalf of the opposite party No. 1. THE opposite party No. 1 failed and/or neglected to supply and mount up the tanker on the chassis of the truck and made enormous delay since 29.4.91 in supplying the tanker and lastly supplied on 23.7.91 and that the complainant stated in her petition that during the said period she could not do her business and suffered a lot and could not earn anything due to negligence in rendering service by the opposite/ party to the complainant as per contract. It was settled that the complainant would get carrying charges at the rate of 66.69 paise per kilometer per ton and the complainant was supposed to run her truck atleast 400 kilometers per day and taking 25 working days in a month, she would carry atleast 10 tons of LPG in a tanker and thus total income for 3 months would fetch Rs. 1,99,800/- (approx). After leaving the incidental and

expenses on account of fuel etc. she could have earned Rs 1,40,000/-, during that period from 29.4.91 to 24-7.91. It is further the case of the complainant that although the tanker was supplied on 24.7.91 by the opposite party No. 1 the said tanker was found to be defective and old one and it was repaired at the cost of the complainant. THE complainant had to incur expenses of Rs. 40,000/- for repairing of the tanker and mounting it on the chassis for which the opposite party No. 1 remitted Rs. 27,739/- leaving balance of Rs. 12,261 /- yet to be paid by the opposite party No. 1. During the repairing of the tanker, it was laid idle upto 12.11.91 thus causing damages and loss of business to the extent of Rs. 1,79,289/- to the complainant. The complainant has further claimed Rs. 16,116/- on account of negligence of the opposite party No. 1 for not providing with purging certificate for which the complainant's truck had to return from Barouni without any business and in such a manner the complainant has claimed damages and compensation on account of alleged loss of damages and deficiency in service on the part of the opposite party on so many heads and has claimed an aggregated amount of Rs. 19,04,608/- together with interest at the rate of 25% on the amount from the date of filing of this case until recovery.

The opposite party No. 1 did not contest the complaint by filing written statement, the opposite party No. 2, West Bengal Financial Corporation did not contest the case. But the opposite party No. 1 challenged the maintainability of this complaint whereby this Commission by its order dated 9.8.95 held that the complaint petition is maintainable. The opposite party No. 1 after having found the complaint petition is being maintainable filed another application under Section 34 of the Arbitration Act, 1940 involving Clause 35 that as per agreement dated 26th June, 1991, the said clause provides for arbitration in case of any dispute or difference of any nature whatsoever between the parties any claim, cross claim or set off the Corporation against the contractor's or regarding any right liability, act, omission on account of any of the opposite parties hereto arising out or in relation to this agreement would be referred to the sole Arbitrator of the Director, Marketing of the Corporation or some officials of the Corporation who may be nominated by the Director, Marketing and prayed for stay of the proceeding.

3. TO our humble views that the said Section 34 of the Arbitration Act is applicable where any party to arbitration agreement or any person claiming under him commences a legal proceeding against any other party to the agreement or any person claiming under him in respect of any matter agreed to be referred, any party to such legal proceeding may at any time before filing written statement or taking any other steps in the proceeding apply to the judicial authority before which the proceedings are pending to stay the proceeding; and if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was at the time when the proceedings were commenced and until remains, ready and willing to do all things necessary to the proper conduct of the arbitration, such authority may make an order staying the proceeding. The

provisions of the said section provides that where the proceeding is pending before the Judicial Authority then the provisions of Section 34 could be invoked but the proceeding for adjudication of the complaint before the Consumer Forum, though is a legal proceeding but Consumer Forum is not a judicial authority as contemplated under Section 34 of the Arbitration Act, hence Section 34 of the Act has no applicability to the proceeding before Forum. The said view has been held by the National Commission in the case of N.K. Modi v. Fair Air Engineers Ltd. and Another, in I (1993) CPJ 5 (NC)=1993 (1) CPR 468. As per settled law, the application under Section 34 of the Arbitration Act is hereby rejected. Before parting with our discussion, we may point out that the claim of the complainant is extremely hyperbole and not properly justified.

4. HOWEVER, we find that the loan of Rs. 4,20,000/- taken by the complainant from the opposite party No. 2 and the interest payable on that loan at the rate of 19% per annum has put the complainant in a very precarious condition. The complainant under Additional Employment Scheme had taken the said loan of Rs.4,20,000/- from the opposite party No. 2 and also secured loan from other sources for deposit of Rs. 10,000/- as earnest money and Rs. 57,000/- as security deposit to the opposite party No. 1 for supplying the tanker and mounting it on the chassis supplied by the complainant. The complainant as it appears has not earned so far any substantial income by plying the said truck after mounting up the tanker to be supplied by the opposite party No. 1. In view of purchasing the chassis by taking loan from West Bengal Financial Corporation under additional employment scheme it cannot be said that the truck was purchased for commercial purpose on the other hand, the factum proves that the truck was purchased for self employment solely with the aim to earn the petitioner's livelihood. Therefore, the decision of National Commission in the case of Pawan Kumar v. Spacotech Equipments and Structural (P) Ltd., reported in I (1994) CPJ 190 (NC) is not applicable. Moreover the decision of Supreme Court in the case of Laxmi Engineering Works v. P.S.G. Industrial Institute, reported in II (1995) CPJ 1 (SC)=JT 1995 (3) S.C. 433 has broaden the scope of definition of "Consumer" very largely.

5. ANOTHER decision cited by the opposite party No. 1 in the case of Mrs. Vinodin Bajpai v. Rajya Krishi Utpadan Mandi Parisad, reported in I (1991) CPJ 169 (NC)=1991 (1) CPR 137 (NC) pronounced by the National Commission is not applicable because that was case of construction of a drain and non-settlement of accounts and non-payment of the amount has no application in the instant case where due to deficiency in service of the opposite party No. 1 and for not supplying the proper tanker the petitioner has suffered loss.

6. CONSIDERING all the aspects, it would be just and fair to award compensation and loss of Rs. 4,20,000/- on different heads the value of chassis purchased by the complainant out of loan together with interest at the rate of 19% per annum effective from January, 1994 until payment of the said sum of Rs. 4,20,000/-. We, further award to return the security deposit of Rs. 57,000/- and outstanding

bill amount of Rs. 20,252/- (Twenty thousand two hundred fifty two) to the complainant against supply of a tanker fitted with the chassis supplied by the complainant.

Considering the facts and circumstances of this case, we do not award any cost for this proceeding. Mr. Justice A.K. Bhattacharya, President- I agree. 15. As regards the question whether a proceeding before the State Commission or the District Forum is a legal proceeding, the point has been made clear by a recent decision of the Supreme Court in *Fair Air Engineers Private Ltd. v. N.K. Modi*, reported in III (1996) CPJ 1 (SC)=1996 (4) CTJ 749 (SC). It has been held therein that the proceedings before the District Forum, the State Commission and the National Commission are legal proceedings and the District Forum, the State Commission and the National Commission are Judicial Authorities falling under Section 34 of the Arbitration Act, 1940. It has been further held that in spite of the above legal position, in view of the object of the Consumer Protection Act, 1986 and by operation of Section 3 thereof it would be appropriate that these FORA and the Commissions created under the Act are at liberty to proceed with the matter in accordance with the provisions of the Act rather than relegating the parties to an arbitration proceedings pursuant to the contract between them. This is for the reason that the Consumer Protection Act intends to relieve the consumers of the cumbersome arbitration proceedings or civil actions unless the FORA on their own and in the peculiar facts and circumstances of the particular case come to the conclusion that the appropriate Forum for adjudication of the disputes would be otherwise than those given in the Act. 16. In this case the Commission is, therefore, entitled to choose its own procedure for disposing of the matter in dispute although the proceeding before the Commission is actually a judicial proceeding sufficient to attract the Arbitration Act. I, therefore, agree that the matter may be disposed of by the Commission in the best interest of the parties. 17. From the facts of the case, it is clear that the complainant had to suffer financial loss to a very substantial extent because of the deficiency of the opposite party-Indian Oil Corporation. I, therefore, support the order proposed by the learned Members above. Complaint disposed of.