
(2002) 05 NCDRC CK 0061

In the National Consumer Disputes Redressal Commission

I.P.KATYAL, CHIEF EXECUTIVE, ASIM ENGINEERS And
CONSULTANTS

APPELLANT

Vs

POLESERVICE (INDIAN REGION) CAMP-EMBASSY OF POLAND

RESPONDENT

Date of Decision : 21-05-2002

Acts Referred:

Citation : 2002 2 CPJ 470 : 2003 1 CLT 64

Hon'ble Judges : Lokeshwar Prasad , Rumnita Mittal , S.P.Saberwals J.

Final Decision : Complaint disposed of

Judgement

1. SHRI I.P. Katyal, Chief Executive, Asim Engineers and Consultants has filed the present complaint under Section 17 of the Consumer Protection Act, 1986 (herinafter referred to as "the Act") against O.P. Poleservice (Indian Region) praying for direction to the O.P. to pay agreed commission upto 10% of the total amount of \$46080/- (Rs. 16,12,800/- in Indian currency taking one \$=Rs. 35/-). It is stated that complainant was duly authorised by Dr. K. Lastoweicki, Director of the O.P., Poleservice to look after the promotion of their business in the field of crew management for drilling of rigs and allied services vide his letter dated 10.7.1995 (Annexure-II). It is also stated that O.P. had agreed to pay him upto 10% of commission from the received payment vide endorsement dated 16.11.1995 (Copy Annexure II). It is further stated that during the time of issuing him authority letter to look after Poleservice business, a proposal submitted by O.P. directly to M/s. Peerless Shipping and Oilfield Services Ltd., Calcutta had already been rejected by Peerless on account of highest quoted price by O.P. However, on account of his professional skill, the proposal put forward by O.P. was again put in stream along with other bidders for active consideration. Copy of letter from the Peerless is dated 22.8.1995. It is also stated that on account of administrative problems in Assam, the proposal was rejected stating that Peerless would depute the Indian personnels for rig management. In this connection, letter from the Peerless is dated 24.11.1995. Initially O.P. was verbally confirming a smaller commission of 6% for his Company for which he was reluctant to accept. However, visualising

complainant's more involvement and expenditure to arrange a positive order, the agreement to pay the commission upto 10% for Peerless order was endorsed on 19.12.1995 by Dr. K. Lastoweicki, Director of the O.P. While he was pursuing to get the orders for Rig management from the Peerless, O.P. had left all hopes. However fax order to confirm the availability of Polish crew and for their early deputation was placed on him vide Peerless fax dated 28.3.1996 (copy Annexure VIII). It is further stated that in view of his professional capabilities and business strategies, an order for two sets of rig crew was finally placed on O.P. for day rate of \$ 640 plus to and fro air fare for the expatriates from India to Poland and back to avail their 42 off days after every 42 days of work in India. The day rate awarded is much more than O.P.'s earlier offer @ 650 \$ which was rejected by Peerless stating that it was the highest day rate among other bidders. It is also stated that after getting order through complainant, O.P. is offering us a commission 1.5% only instead of 10% as initially agreed to by Dr. K. Lastoweicki, Director, Poleservice. It is also stated that while negotiating the rates and terms and conditions among O.P. and Peerless complainant's commission @ 10% was re-confirmed by Mr. Walczuk, Business Manager of O.P. vide fax message dated 3.4.1996 (copy Annexure X1). It is, therefore, prayed that O.P. be directed to get him due payment for two years crew management order from O.P. commencing from May, 1996 onwards.

2. IN its detailed reply/written version, certain preliminary objections have been taken. It is pleaded that complainant is not a "Consumer" within the meaning of Section 2(1)(d)(ii) of the Act and, therefore, the present complaint is not maintainable. On merits, it is stated that on 30.4.1996, a contract was signed between Peerless Shipping and Oil Field Services Ltd. and the O.P. for drilling operations in Assam. The work had been carried by Polish Crew successfully upto the end of October, 1996. However, in the beginning of November, 1996, drilling services were suspended and the O.P. crew left Assam for Poland. It is stated that suspension of contract was due to worsening law and order situation in Eastern INdia. It is, therefore, stated that payments received by O.P. were actually for the months of August, September November (one working day) and that too had been paid quite late. It is stated that total payment received by O.P. is only 18,144x3\$. It is, therefore, pleaded that the alleged claim raised by the complainant is bogus and frivolous. It is also stated that complainant approached the O.P. and offered his services as agent to protect and promote the business of O.P. in securing the contract. IN its initial meeting, which was in June/July, 1995, complainant was informed about the terms and conditions for negotiating the contract and it was made clear to him that O.P. would not accept the wages below 350 \$ per team per day i.e. 700 \$ for two teams for technical assistance. Complainant was very confident that he would secure even better terms i.e. upwards of 370 \$ per team. IN view of this assurance, O.P. appointed and authorised the complainant to enter into negotiations with the said Company for engaging their crew in the field of drilling oil rigs and allied services. Complainant sought an authority letter from the O.P. for representing their deal before M/s.

Peerless Shipping and Oil Field Services Ltd. and accordingly an authority letter was given on 10.7.1995. However, terms and conditions on which O.P. desired to negotiate were made known to the complainant and it was made clear to him that in case, higher remuneration was negotiated with the Company, the commission would be suitably awarded. Complainant kept on assuring the O.P. of excellent results and successful negotiations and for higher salary for the crew. IN view of this, O.P. made a provisional agreement of 10% commission but the same was subject to signing of the contract. The said view was endorsed on 16.11.1995. Complainant, on the basis of the authority letter started negotiating with the Company and made an offer of 300 \$ per day for two sets of crew i.e. to deal pushers and four drillers whereas O.P. had always informed the complainant that they would not settle for the wages less than 700 \$ per day for two sets of crew. O.P. after being assured by the complainant agreed to recommend 10% commission subject to settlement of minimum acceptable fee of 700 \$ per day for two teams but no response was forthcoming on the terms and conditions set out by the O.P. It is stated that services of the O.P. by the said Company were utilised from 30.4.1996 and in view of deteriorating law and order situation, the said Company decided to dispense with the services of Polish crew and further in view of the safety of foreigners, had advised O.P. to withdraw its crew from site. As such, O.P. had only worked from 30.4.1996 to 30.10.1996 at site. It is stated that O.P. is willing to offer 1.5% commission on receipt between 30.4.1996 and 30.10.1996. It is prayed that the complaint be dismissed. Both the parties have adduced evidence by way of affidavit and supported the pleas taken in their respective pleadings.

We have heard the arguments advanced by the complainant and Ms. Anjana Gosain, learned Counsel for the O.P. and have also carefully perused the material placed on record.

3. MOOT point for consideration in this case is whether the complainant in the present case is a "Consumer" within the meaning of Section 2(1)(d)(ii) of the Act. In order to appreciate the controversy involved in the present case, it is appropriate to refer to the provisions of Section 2(1)(d) of the Act and the same reads as under : 2(1)(d) "Consumer" means any person who- (i) buys any goods 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such rise is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of 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 or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person. For

the purposes of Sub-clause (1), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of carrying his livelihood, by means of self-employment." Grievance of the complainant is that O.P. has not paid him commission upto 10% from the received payments as agreed to by O.P. vide endorsement dated 16.11.1995. According to the complainant, he had applied his skill and 35 years of experience in the oil industry and it took him a year to pursue and secure the order and, therefore, spent his valuable time in his professional services which he rendered to the O.P.

4. COMPLAINT is maintainable under the Act if the goods purchased on consideration suffer from any defect and also if the services hired or availed of for consideration are found to be deficient. The present case does not relate to purchase of any goods for consideration which are found to be defective. In order to become a "consumer" under Section 2(1)(d)(ii) of the Act, a person should have hired services for consideration paid or promised or partly paid or partly promised etc. There are no allegations in the complaint that the complainant had hired or availed of the services of the O.P. on consideration. On the contrary, according to the case set up in the complaint, the allegations of the complainant are that O.P. had utilised his professional services for promotion of their business in the field of management for drilling rigs and allied services and had agreed to pay 10% commission from the received payment for which details were to be agreed mutually upon the signing of a contract. In view of the fact that complainant had not hired or availed of the services of the O.P. for consideration, we have no hesitation in holding that complainant is not a Consumer" within the meaning of Section 2(1)(d)(ii) of the Act, and therefore, the complaint in the given facts is not maintainable before the agency established under the Act. However, the complainant if so advised, may approach the Civil Court for redressal of his grievances being raised in the present complaint as the complainant may be advised. In view of the aforesaid findings, the complaint filed by the complainant is dismissed as not maintainable under the Consumer Protection Act, 1986. In the facts and circumstances of the case, parties are left to bear their own costs. Liberty is however, granted to the complainant to approach the Civil Court for redressal of his grievances, being raised in the present complaint, as the complainant may be advised. Complaint disposed of.