

(1996) 01 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

JAIN BRICK FIELD

APPELLANT

Vs

COOP. ELECTRIC SUPPLY SOCIETY LTD.

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Citation : 1996 2 CPJ 195

Hon'ble Judges : V.K.Mehrotra , Banarsi Das J.

Final Decision : Appeals allowed

Judgement

1. BOTH these appeals raise a common question of law and arise on similar facts. They were heard together and are being decided by a common order.

2. BOTH the appeals are by complainants who had instituted complaints before District Forum, Lucknow seeking redressal against the Cooperative Electricity Supply Company, Vikas Nagar, Lucknow. The District Forum has taken the view that since the complainant was a Member of the Cooperative Society his only remedy was to seek redressal by recourse to arbitration proceedings u/Section 70 of the U.P. Cooperative Societies Act, 1975. In coming to this conclusion the District Forum followed the decision of the National Commission in Dilip Bapat and Another v. Panchwati Cooperative Housing Society Ltd. reported in I (1993) CPJ 68 (NC)= 1993 Consumer Protection Cases page 73. In that decision the National Commission had observed (in para 11) that: "truly speaking it is not a case of consumer dispute under the Consumer Protection Act. The right Forum for a member of a Cooperative Society to agitate his grievance is the Cooperative Court under the Maharashtra Cooperative Societies Act." The case before the National Commission related to a dispute between the appellants before it, who were the members of the Cooperative Society and the Society itself about payment of some amount said to be due to the Society from the appellants in respect of a construction work undertaken by the Co-operative Society regarding flats allotted to the appellants.

In these appeals it has been urged by Mr. S.K. Effendi, learned Counsel for the appellants, that mere existence of an arbitration clause or a provision under

Section 70 of the U.P Cooperative Societies Act did not deprive the District Forum of jurisdiction to go into the merits of the dispute which essentially was a consumer dispute. He has urged that the complainant was a partnership concern and fell within the meaning of the term "consumer" as defined in the Consumer Protection Act, 1986 (for short, the Act) while the Cooperative Society (Respondent) which was making electric supply to the complainant was amenable to the jurisdiction of the District Forum both as a trader as a person offering goods for sale as also services for consideration. He relied upon the observations made by the Supreme Court in the case of Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC)=I (1994) C.R.C. page 202, to the effect that being a beneficial piece of legislation, its provisions should receive a construction favourable to the consumers.

3. MR. Effendi has brought to the notice of Commission the decision of the Allahabad High Court in Triveni Karmachari Sahkari Avas Samiti Ltd., and Others v. National Consumer Disputes Redressal Commission, New Delhi and Others, 1995 (II) Lucknow Civil decisions, in which a learned Single Judge of the Allahabad High Court has taken the view that the decision of the National Commission in Dilip Bapat's case does not oust the jurisdiction of the Redressal Agencies constituted under the Act in Consumer Disputes between a member of a Society and the Society itself. Mr. Ram Raj, Advocate appearing for the respondent Cooperative Societies, has stressed that under Section 24 of the Act the decision given by the National Commission was final and as such was binding upon the State Commission as well as the District Forum and further that the Allahabad High Court in the case of Triveni Karmachari Satniti eventually dismissed the writ petition and had made reference to Bapat's case in the passing. He urged that in view of the clear provisions in Section 70 of the U.P. Cooperative Societies Act which required that a dispute between a member and Society "shall be referred to arbitration" and it was clear that the only remedy which was available to the complainants in both these cases was that under Section 70 and the view taken in this regard by the District Forum was sound in law.

4. WE find ourselves unable to accept the submission made by Mr. Ram Raj. The submission founded upon Section 24 of the Act appears to be misconceived because all that is contemplated by that provision is that finality attaches thereunder to a decision between the parties to the dispute before the Redressal Agency and no more. The binding nature of a decision recorded by the National Commission, in relation to the State Commissions and the District FORA constituted under the Act, rests on the principle of precedents and hierarchy of Tribunals. Moreover, it is obvious that the decision of a State High Court is binding, subject to a decision to the contrary by the Supreme Court, upon all the Tribunals constituted under any enactment exercising jurisdiction within that State. The law declared by the Allahabad High Court is therefore, binding upon the State Commission and also the various District FORA exercising jurisdiction within the State of Uttar Pradesh in preference to a decision on the same

question of law by the National Commission. When we come to examine the decision of the Allahabad High Court in the case of Triveni Karmachari Samiti we find the question for determination stated by the Court (in paragraph 34) thus: "Learned Counsel for the petitioner has further urged that petitioner No. 1 is a Cooperative Society and respondents No. 4 to 14 were its members. In the circumstances, it is urged that the dispute raised by them was not a consumer dispute as envisaged under the Consumer Protection Act, 1986. The contention is that the remedy for resolving such type of dispute stands provided under Section 70 of the U.P. Cooperative Societies Act, 1975." Immediately thereafter it has been observed in paragraph 35 thus : "In support of the aforesaid submission the learned Counsel for the petitioner has heavily relied upon a decision of the National Commission Disputes Redressal Commission in the case of Dilip Bapat & Another v. Panchwati Cooperative Housing Society Ltd., reported in I (1993) CPJ 68 (NC) =1993, Consumer Protection cases page 73 .."

And, then in paragraph 39, that ".It is obvious that remedies provided to the consumers for the redressal of their grievances under the provisions of the Consumer Protection Act are in additio to any remedy provided elsewhere under any other Statute .. such jurisdiction, it seems to me has been specifically conferred since on the Consumer Redressal Forums irrespective of any other law for the time being in force as provided is Section 3 of the Act."

The Court proceeded to say, in paragraph 40, that "In the circumstances, therefore, the decision relied upon by the learned Counsel for petitioners in the case Dilip Bapat (supra) cannot come to their rescue especially when absolutely no reasons have been given in support of the passing observation occurring in the said judgment to the effect that the dispute raised by the complainant in that case was not a case of consumer dispute under the Consumer Protection Act and the right for a member of a Cooperative Society to agitate his grievance is the Cooperative Court under the Co-operative Societies Act."

There is another aspect of the matter which merits mention at this stage. Section 70 of the U.P. Cooperative Societies Act refers to Regular Courts and not to other special authorities or Tribunals constituted by enactment for adjudicating rights of settling disputes or differences. This has been clearly ruled by a Division Bench of the Allahabad High Court in District Cooperative Federation v. Rafiq & Others, Civil Revision No. 2131 of 1969 decided on April 8,1971, (1971 A.L.J. 874). In view of the aforesaid legal postition it is clear that the decision of the District Forum in both these appeals cannot be upheld. It is set aside. However, since the District Forum has not gone into the merits of the dispute between the parties and has dismissed the complaint on the sole ground that it had no jurisdiction to go into the matter, we direct that the case shall be heard and decided on merits by the District Forum, after notice to the parties.

5. THE appeals shall stand allowed as aforesaid. Parties are left to bear their own costs in them. This judgment shall be kept in file of Appeal No. 886 while its copy shall be kept on the file of Appeal No. 887.

6. LET copies of the order be made available to the parties as per rules and also sent to the District Forum so as to be available to it by 6.3.96 when the parties shall appear before it. The District Forum shall fix a date in the cases having regard to its docket, and try to dispose them of expeditiously. Appeals allowed.