(1992) 02 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

J.C.SURI APPELLANT

Vs

CHAIRMAN, THE NATIONAL SMALL INDUSTRIES CORPORATION LTD. RESPONDENT

Date of Decision : 12-02-1992

Acts Referred:

Citation : 1992 0 CPC 548 : 1992 1 CPJ 393 : 1992 2 CPR 86

Hon'ble Judges : R.N.Mittal , B.L.Anand J.

Final Decision : Complaint dismissed

Judgement

1. BRIEFLY the facts are that the complainant is a manufacturer and is carrying on his business in the name and style M/s. J.C. Mechanical Engineering Works, G.T. Karnal Road, Delhi. He purchased one 80 C.T. Cold Chamber Pressure The Casting Machine from the respondent No. 2 with imported accumulator fitted therein for a total consideration of Rs 6,50,000/-. It was agreed between the parties that the machine would be delivered at the place of works/business of the complainant.

2. IT is alleged that the machine was delivered to the complainant in a damaged condition. At the request of the complainant, technical office of respondent No. 2 inspected the machine and found some technical defect in it. They tried to put the machine into working order, but failed to do so. Consequently it is prayed that the respondents be directed to replace the machine, pay to the complainant a sum of Rs. 5,81,532/- on account of direct losses suffered by him and Rs. 1,87,065/- on account of the cost of repair. The complaint has been contested by the respondents and a preliminary objection has been raised by them that the State Commission has no jurisdiction to entertain the complaint. At the request of the parties, arguments were heard on the preliminary issue.

The learned Counsel for the complainant has argued that the machine has been purchased by the complainant for the purpose of manufacturing thes and not for the purpose of commerce. He referred to the meaning of the word ''produce'' and ''commerce'' as given in Chamber Concise 20th Century Dictionary, reprint 1990.

He submits that the dictionary meanings of word ''Commerce'' is interchange of merchandise on a large scale between nations or individuals and that of ''produce'' is to bring forth or to bring into being. He further submits, the complainant is producing goods and not carrying on business of dies and therefore, he is a consumer as defined in Consumer Protection Act. He also made reference to M/s. Anwar Khan Mahboob Co. v. The State of Bombay, AIR 1961 Supreme Court 213 and The State of Karnataka v. B. Raghurama Shetty, AIR 1981 Supreme Court 1206. ''''

3. WE have duly considered the argument but do not find any substances in it. No doubt the complainant purchased the machine for the purpose of manufacturing dies, but these were being manufactured by him for the purpose of sale. The word ''Consumer'' has been defined in Section 2 (1)(d) as follows: - Consumer means any person who, (i) buys and goods for a consideration... but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) xxx

The Section has been interpreted by the National Commission in various decisions and it has been held that if a machinery has been purchased for commercial purpose by any person, he does not fall within the definition of the word (Consumer). Reference many be made to M/s. Stero Craft v. M/s. Monotype India Ltd., I (1991) CPJ 111 (NC). A similar question arose in mat case. The complainant, was carrying on printing business in New Delhi. They purchased a photo type setting machine which was not properly functioning. They filed a complaint against the respondent. The question arose whether the complainant was a Consumer. It was observed-by the National Commission that as the machine was purchased for a commercial purpose, the complainant cannot be regarded as a Consumer falling within the definition of the expression contained in Section 2(1)(d)(i) of the Act. In M/s. Lohia Starlineer Ltd. v. M/s. Zenith Computer Ltd., I (1991) CPJ 145 (NC), the complainant purchased a computer system for the purpose of business. It was held by me National Commission that the complainant had bought the computer system for the commercial purposes and therefore, they were not a Consumer as defined in the Act. Another case M/s. Oswal Fine Arts v. HMT, Madras, I (1991) CPJ 330 (NC) came up before the National Commission. In that case the complainant had purchased an offset printing Machine from the respondent. It was observed by the Commission that the complainant was not a consumer. We have also dealt with a similar matter in ''Lucky Star Estate'' v. Laxmi Boilers (North), I (1991) CPJ 471. In that case Hotel Vikram had purchased one Oil Fire Head Water Boiler and one mixing tank from the opposite party for the purpose of a Hotel. The boiler was not functioning properly. Consequently a complaint was filed by the complainant for damages before us. It was held by us that the complainant was not a Consumer as defined in the Act.

4. THE cases on which reliance has been placed by the Learned Counsel for the complainant were dealing with the Sales Tax matter. It was observed in Anwar

Khan Case (Supra) that tobacco was delivered in the State of Bombay for the purpose of changing it into a commercially different article viz. Biripatti, the delivery was for the purpose of consumption. This was a case under Sales Tax Act. In our opinion the observations in that case are not relevant in the present case. Sh. B. Raghurama Shetty''s case relates to the sale of paddy to a miller. That case is also of no help to Mr. Monga. For the aforesaid reasons we are of the view that the complainant is not a Consumer as defined in the Act and, therefore, he is not entitled to file the complaint before the Commission. Consequently we dismiss the complaint with cost. Cost Rs. 2,000/-. Complaint dismissed.