
(1996) 04 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

K.SUBBALAKSHMI

APPELLANT

Vs

OWNERS ASSOCIATION SECRETARY, SARVAMANGALA
COLONY FLAT

RESPONDENT

Date of Decision : 26-04-1996

Acts Referred:

Citation : 1996 2 CPC 213 : 1996 2 CPR 105 : 1996 3 CPJ 47 : 1997 1 CLT 121

Hon'ble Judges : E.J.Bellie , V.S.Kandasamy J.

Final Decision : Appeal dismissed

Judgement

1. THE complainant who has lost his case in the District Forum has filed this appeal.

2. THE complainant is a owner of a flat No. L30 in Sarvamangala Colony in Ashok Nagar, Madras, and he is also a member of the Flat Owners" Association of that colony of which the opposite party is the Secretary. According to the complainant the opposite party disconnected the water supply for her flat on 27.9.92 for nonpayment of Rs. 500 / demanded for some special work in addition to the monthly municipal charges and a resolution was also passed that she has been expelled from the Association but that was without proper notice to her and she challenged the same. THE said Rs. 500/- was demanded inspite of protest by her and without giving notice to her. On account of this she suffered hardship, inconvenience, insult and indignation. With no other alternative she paid the sum of Rs. 500/- with re-admission fee, penalty etc. totalling Rs. 596/- and the water supply was restored by the opposite party on 29.9.92. On these grounds the complaint has been filed for refund of Rs. 511/- paid to the opposite party and also for compensation. The opposite party contended that the Association was not hired by the complainant to render any service for consideration. In view of the urgency, the Extra Ordinary General Body Meeting was convened, and a Resolution was passed that every member of the Association shall contribute a sum of Rs. 500/- for some urgent special work like installation of jet pump, financing and cattle guard. The expulsion of the complainant was on the basis of

the Resolution of the Executive Committee of the Association. On payment of the charges the water supply was restored. The opposite party is not therefore liable to pay any compensation.

It appears the District Forum dismissed the complaint on the ground that the complainant is not a consumer. Against that an appeal was preferred and this Commission, holding that the complainant is a consumer, remitted the matter back to the District Forum for re-consideration of the matter on merits. The District Forum on reconsideration of the matter on merits again dismissed the complaint. It is against this order the complainant has filed this appeal.

3. THE main grievance of the complainant appears to be that without giving him notice which as per the by law must be 21 clear days notice, the General Body Meeting has been held. In that meeting it has been decided by the Association that every Member shall pay Rs. 500/- as special charge and this being the case and Resolution is not binding on him and hence he was not liable to pay the said sum of Rs. 500/-. But inspite of it, the Association disconnected the water supply to his flat. This is a clear case of deficiency in service on the part of the opposite party. THE question whether the Member has not been given notice as per the by-laws is not a matter which can be decided by this Commission and this can be decided only by a Civil Court. According to the complainant she is still a Member of the Association of which the opposite party is a Secretary. That means he is a part of that Association. A consumer if he is an individual person as such he or she can file a complaint before the Consumer Forum. As per Clause (e) of Section 2(1) of the Consumer Protection Act a consumer dispute means "a dispute where the person against whom a complaint has been made denies or disputes the allegation contained in the complaint. So the opposite party is also a person. Now the person who is the opposite party in this case is the Secretary of the Association. THE Secretary represents the Association only. THEREfore, virtually, it is the Association which is the opposite party. This is indisputable. In fact in the appeal grounds the complainant himself has described the respondent (opposite party) as Sarvamangala Colony Flat Owners" Association represented by K. Balasubramanian, Secretary. As stated above the complainant, being a member of that Association, he is a party of the Association, i.e., he is a part of the opposite party. This means the complaint is by the person against himself he being as stated above a part of the Association. Such a complaint is not contemplated under the Consumer Protection Act. In our view, the dispute is essentially an internal one i.e., among the members of the Association. That being the case the dispute has to be resolved by a Civil Court and not a consumer Forum. In this view of ours we do not think that we can interfere with the order of the District Forum in this appeal.

4. ACCORDINGLY therefore the appeal is dismissed. There will be no order as to costs. Appeal dismissed.