
(2001) 05 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

LT.COL.T.S. BAKSHI

APPELLANT

Vs

MANAGING DIRECTOR, PUNJAB SMALL INDUSTRIES AND
EXPORT CORPORATION

RESPONDENT

Date of Decision : 17-05-2001

Acts Referred:

Citation : 2001 3 CLT 410 : 2002 2 CPJ 404

Hon'ble Judges : K.K.Srivastava , P.K.Vasudeva , Devinderjit Dhatt J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is an appeal filed against the order dated 22.12.2000 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh [for short hereinafter referred to as the District Forum-II] in Complaint Case No. 885 of 2000, Lt. Co. T.S. Bakshi, Retd., G.P.A. holder of Shri Pradeep Singh Bakshi v. Managing Director, P.S.I.E.C., 18 Himalaya Marg, Chandigarh, vide which the complaint case was dismissed in-limine. The complainant was, however, left free to avail remedy available to him under general law.

2. THE complaint was filed for the refund of a sum of Rs. 3,75,000/- deposited with the respondent in July, 1997 as th of the bid money at an auction of the commercial site carried out by the respondent. THE grievance of the appellant/complainant was that he made the highest bid on behalf of his son Shri Pradeep Singh Bakshi at the auction of commercial site on 17.7.1997. THE complainant had participated in auction of Site No. 30, Phase-VII, Mohali and deposited a sum of Rs. 10,000/- in cash prior to his participation in the auction and deposited the balance amount of Rs. 3,65,000/- vide Receipt No. 5/96/25460 dated 17.7.1996. THE complainant did not receive any communication from the respondent about the acceptance of his bid despite several reminders sent by him. Consequently, he moved an application seeking refund of the amount paid by him on 17.7.1996 vide letter dated 18.3.1998 which was followed by a reminder on 15.5.1998. In the month of August, 1998 when the complainant was proceeding to U.S.A. he met the Managing Director of the respondent namely Capt. Narinder Singh and

gave a letter dated 5.8.1998. THE complainant left India for U.S.A. on 8.8.1998. It was mentioned in the complaint that in his absence a letter dated 13.8.1998 was received which contained a recital about letter of allotment having been sent to the complainant on 7.8.1998. THE contention of the complainant is that he did not receive the letter of allotment nor copy of the same was sent to him. After his return from U.S.A., he again met the Managing Director of the respondent, and personally handed over a letter explaining the entire case and making a request for refund of the money deposited by him. In response to his letter dated 24.3.1999, he received a letter dated 24.5.1999 wherein it was pointed out that a letter had been sent to him on 7.8.1997 but the respondent did not think it proper to enclose the copy of the said letter to the complainant. A show cause notice dated 12.8.1999 was sent along with letter dated 18.10.1999 which was replied by the complainant on 16.11.1999 under registered post. On 7.8.2000, the complainant again sent a letter under registered cover praying for the refund of the said amount but he did not receive any reply to this letter. Consequently, he approached District Forum-II and filed the complaint on 20.12.2000. The District Forum-II heard the complainant in person and held that the complaint under the Consumer Protection Act, 1986 [for short hereinafter referred to as the C.P. Act] was not maintainable and, therefore, dismissed the complaint in limine with no order as to costs. Feeling aggrieved against the order of the District Forum-II, the complainant has filed this appeal. Notice of the appeal was sent to the respondent who put in appearance through Counsel. The record of the complaint case was summoned. We have heard the appellant Lt. Col. T.S. Bakshi [Retd.] in person and shri H.S. Khanna, Advocate for the respondent - Managing Director, P.S.I.E.C. We have also perused the record of the complaint case and have carefully gone through the order under appeal.

The District Forum-II has mainly relied on the law laid down by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi [for short hereinafter referred to as the National Commission] in the case of Shiela Constructions Pvt. Ltd. & Anr. v. Nainital Lake Development Authority & Ors., III (1996) CPJ 11 (NC), and held that the complainant could not be considered to be a consumer as defined by Section 2(1)(d) of the C.P. Act qua the respondent-opposite party M.D., P.S.I.E.C. because the site in question was purchased by way of open auction.

3. THE complainant - Lt. Col. T.S. Bakshi [Retd.] argued that the complainant was not the purchaser in the sense in which the finding has been recorded by the District Forum-II because till the date of the filing of the complaint case, he was not communicated regarding the fact that the bid made by him at the said auction had been approved and accepted by the respondent. He has drawn our attention to the correspondence that exchanged between him and the respondent to show that he had been persistently inquiring from the respondent about his status regarding the said Site No. 30, Phase - VII, Mohali. He has filed photostat copies of the decisions of this Commission to contend that the complaint case was maintainable and it cannot be dismissed in limine. In the

case of Bhupinder Pal Singh & Ors. v. Chandigarh Administration, Chandigarh & Anr., II (1997) CPJ 58, Commercial Site No. 867 at Manimajra was allotted to one Daly Kumar and others in auction for Rs. 40,10,000/- vide letter dated 23.4.1990. THE complainants got it transferred in their favour as a kind of repurchase and it was approved by the respondents on 16.8.1990. A complaint was filed before this State Commission for the refund of the deposit made on 22.3.1993. THE respondents had put in appearance to contest the complaint case. THE State Commission held that the complainants being allottees of the commercial plot were worst hit and the changes made in the site which were evident from Annexure P-5 amounted to deficiency. THE State Commission thus allowed the refund of the 90% of the earnest money with interest @ 18% from the date of institution of the complaint till realization and held that 10% of the earnest money could be forfeited. THE complainant/appellant urged that the case of Bhupinder Pal Singh (supra), was also a case of auction of plot and the same was allotted on the acceptance of the bid and refund of the amount was claimed which was entertained by the State Commission and refund was allowed to the extent of 90%. In another case Mohan Singh & Ors. v. Chandigarh Administration & Ors., I (2000) CPJ 428, it was held by this Commission that the transaction involved the right of reversion and since the respondent possess the right of reversion, they were also legally bound to ensure that the plots auctioned at a fabulous price in question were fit for occupation and construction. It was held that since there were deficiency, the complainants were held to be consumers having right to seek redressal under the C.P. Act. A perusal of para 2 of the judgment rendered by the State Commission in the case of Mohan Singh & Ors. (supra), deals briefly with the facts of the case and the relevant part thereof is as under : "Mohan Singh, Bhag Singh and Baljinder Singh, all sons of Shri Jagir Singh residents of Chandigarh purchased Plot No. 36(P), Sector 33A, Chandigarh on lease hold basis in an open auction held on 17.12.1997 for a sum of Rs. 26,25,000/-. A sum of Rs. 6,56,250/- being 25% of price was deposited at the time of auction. The remaining price was payable by means of annual instalments. The next instalment was payable on 17.12.1998 and it was to the tune of Rs. 7,91,654/-. It has been alleged that the complainants were unable to raise construction on account of grave deficiencies on the part of respondents."

This State Commission held in para 8 at page 432, column 1, inter alia, as under : "...In the present transaction the right of reversion is there. Since the respondents possessed the right of reversion they were also legally bound to ensure that the plots auctioned at a fabulous price in question were fit for occupation and construction. As seen above, since there are deficiencies and the complainants are held to be consumers, they have the right to seek redressal under the Consumer Protection Act, 1986. We are of the view that the observations made in Lucknow Development Authority v. M.K. Gupta (supra), go in favour of the complainants. At the same time the respondents monopolists themselves had the means, machinery and authority to render the plots fit for occupation by the complainants/consumers. After consi-dering all these facts we

are of the view that the respondents auctioned the plots in question and collected huge sums knowing that these were not at all fit even for delivery of possession much less construction. After going through the replies and affidavits of the respondents there appears to be no doubt that the facts and circumstances are distinguishable from those which came to the notice of the High Court of Punjab and Haryana in Sukhpal Singh Kang and 19 Others instituted in the year of 1992 and decided on 16.10.1998..."

4. THE learned Counsel for the respondents urged that in this case since the complaint was dismissed in limine and notice was not issued to the respondent, no reply was filed by the respondent and the version of the respondent was not before the District Forum-II or for that matter before this Commission. He has, however, supported the order of the District Forum-II relied upon the judgment of the Hon'ble National Commission in the case of Shiela Constructions Pvt. Ltd. v. Nainital Lake Development Authority & Anr., III (1996) CPJ 11 (NC)=NC and SC on Consumer Cases (Part III), 1986-99 Page 4876 (NS). In the case of Shiela Constructions Pvt. Ltd. (supra), auction took place on 17.9.1991 when six group housing plots were sold. M/s. Sheela Construction Pvt. Ltd. purchased a plot of 2000 sq. mtrs. on 17.9.1991 in auction for payment of Rs. 51 lakhs. M/s. Kripalu Construcion Pvt. Ltd. who had also filed complaint being original petition No. 249 of 1993 purchased a plot of 2000 sq. mtrs. for a payment of Rs. 45 lakhs. Each of the complainants had earlier paid at the time of submission of their applications a sum of Rs. 1 lakh. Nainital Lake Development Authority vide its letter dated 19.10.1991 addressed to M/s. Sheela Constructions Pvt. Ltd. confirmed the allotment of group housing plot No. 6 in Nainital (West) Scheme having an area of 2000 sq. mtrs. at the rate of Rs. 2,550/- per sq. mtr. for an amount of Rs. 51.00 lakhs as per the complainant's highest bid in the auction held on 17.9.1991 under the said scheme and the approval accorded by the Chairman/District Magistrate on the terms and conditions mentioned therein. It will appear from perusal of the facts as narrated in para 5 of the judgment that the terms and conditions noticed by the Hon'ble National Commission were as under : "(i) firstly allotment of plot will be made on payment of 10% of the total cost of Rs. 51.00 lakhs i.e. Rs. 5.10 lakhs and the rights will be given for the advertisements and to get the approval of the drawings of group housing.....; (iii) possession of land will be handed over after one month of payment of additional 10% amount of Rs. 5.10 lakhs within next three months.....; (v) after depositing above mentioned 20% amount, balance 80% amount shall have to be paid within - years at 6 months intervals,; (xix) external development work will be done by the Authority according to the layout plan on regular payments by the allottees."

Identical letter was issued to Kripalu Construction Pvt. Ltd. It appears from perusal of para 7 that both the complainants alleged deficiency in service of the opposite party in not carrying out the provision of the link road which was promised and assured by the authority at the time of auction to enable the complainant to start construction work, and a large number of letters,

representations and reminders were sent by the complainants to all authorities concerned. A writ petition was filed in the Allahabad High Court alleging the Nainital Lake Development Authority's failure to fulfil its obligations towards the promoters to make fresh representations with the Authority about its grievance and the authority was called upon to convey its decision on all such points raised in such representations within a specified time. The promoters made representations.

5. AFTER noticing the relevant facts briefly, the Hon"ble National Commission held in para 8 as under : "8. We have purposely noted the above facts briefly as we are not inclined to go into the merits of the complaints for two reasons. Firstly as would be seen from the above facts the complainants have purchased the said plots in an auction held on 17th September, 1991 conducted by the Nainital Lake Development Authority. The allotment of the plots have been made for the amount of highest bid in the auction held on 17.9.1991 on the terms and conditions contained therein. There is no hiring of services for consideration when it is an outright sale of immovable property in an auction. Secondly, this Commission is not inclined to go voluminous documentary and oral evidence within the time bound proceedings before this Commission. The Act does not contemplate the determination of complicated issues of fact involving taking of elaborate oral evidence and adducing the voluminous documentary evidence and detailed scrutiny and assessment of such evidence. The Fora constituted under the Act have no doubt the power to examine witnesses and to take evidence but such power should be exercised in such cases where issues are simple as to any shortcoming or inadequacy in the quality, nature and performance of service which the opposite party had contracted to perform for consideration. The Consumer Fora can decline to exercise jurisdiction in other cases and refer the party to its ordinary remedy by way of suit."

[emphasis supplied]

6. IT may be pointed out that the facts of the complaint case are distinguishable from the case of Shiela Constructions Pvt. Ltd. (supra) inasmuch as the approval of the bid made by the complainant for the purchase of Commercial Site No. 30, Phase-VII, Mohali was not communicated to the complainant. The complainant has categorically averred that despite his writing several letters and personally contacting the Managing Director of P.S.I.E.C., he was not told about the acceptance of the bid. He has categorically stated and made, representations in this regard to the respondent that he did not receive the copy of the letter of allotment which is purported to have been made and issued by the respondent. The learned Counsel for the respondent at this stage contended that he is not in a position to say about the correctness or otherwise of" the averments made in the complaint case till he files reply to the complaint case. We are thus of the considered opinion that unless a categorical finding is recorded by the District Forum-II after hearing both the sides to the effect that the highest bid of the appellant/complainant for the purchase of commercial site No. 30, Phase-VII,

Mohali in an open auction held on 17.7.1997 was approved and accepted by the respondent who thereafter had issued letter of allotment for the said Site No. 30, Phase-VII, Mohali to the complainant, the law laid down by the Hon'ble National Commission in the case of Shiela Constructions Pvt. Ltd. (supra), could not be applied to the facts of the case of the appellant/complainant.

Under these circumstances and keeping in view the submissions made by the learned Counsel for the respondent, we allow the appeal and set aside the order passed by the District Forum-II, U.T., Chandigarh. The complaint case is sent back to the District Forum-II, U.T., Chandigarh with a direction to call for the written statement from the respondent to the complaint case. The learned Counsel for the respondent has accepted the notice of the complaint case and copy of the complaint case be furnished to him. It is after the reply of the respondent has been filed relating to the averment made by the complainant and evidence is placed on record regarding the approval and acceptance of the bid of the complainant and the copy of the letter of allotment issued by the respondent to the complainant is placed on record, the District Forum-II, U.T., Chandigarh shall then proceed to hear both the sides and decide the complaint case according to law. The parties are directed to appear before the District Forum-II, U.T. Chandigarh on 11.6.2001. Appeal allowed.