

(2015) 02 NCDRC CK 0071

In the National Consumer Disputes Redressal Commission

Mallika Verma

APPELLANT

Vs

UNION OF INDIA

RESPONDENT

Date of Decision : 17-02-2015

Acts Referred:

Citation : (2015) 02 NCDRC CK 0071

Hon'ble Judges : AJIT BHARIHOKE , Rekha Gupta J.

Advocate : AMIT SWAMI

Judgement

1. MS . Mallika Verma, sole proprietor of M/s D.D.Impex has filed an instant complaint against the Union of India and the Post Master, Kalkaji Post Office, New Delhi alleging deficiency in service committed by the opposite parties in respect of VPP or EVPP articles booked with the post office for delivery to the customers on cash -on -delivery basis.

2. ON perusal of the complaint, it prima facie appears that the complainant is not covered by the definition "consumer" envisaged under section 2 (1) (d) of the Consumer Protection Act, 1986. Thus, we have heard the arguments on the issue of maintainability of complaint.

3. BRIEFLY stated allegations in the complaint are that complainant firm M/s D.D. Impex is engaged in the business of E -sales of goods. The modus operandi of the business as detailed in the complaint is that the complainant after receiving orders from the customers verifies the genuineness of the customer and on confirmation of the genuineness of the customer, the complainant firm used to dispatch the goods ordered by VPP or EVPP on cash -on -delivery basis. For that purpose, complainant used to dispatch the packed consignments to the customers through opposite party Post Office. According to the complainant, the postal department i.e. the opposite party has committed deficiency in service by tampering with the packets sent through VPP and misappropriated the goods, resulting in huge business loss to the complainant. From the above averments in the complaint, it is clear that VPP / EVPP service of the opposite parties, was availed by the complainant for his business i.e. E -sales of goods to various

customers.

Section 2 (1) (d) of the Act defines the term "Consumer" 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 use 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 but does not include a person who avails of such services for any commercial purpose. ;

{Explanation For the purposes of this clause, "Commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self - employment}.

4. ON reading of the above, it is clear that a person is a "consumer" if he buys any goods or hires or avails any service for consideration. However, to this wide definition of consumer, exception has been carved out in the section itself which provides that a person who buys goods or hires or avails of service in connection with commercial purpose is not a consumer.

5. IN the instant case, undisputedly, the complainant has availed the services of the opposite parties to further his e -commerce business, which means that the services of the opposite parties were availed for commercial purpose. Therefore, in view of exception carved out in section 2 (1) (d), the complainant is not a consumer. Thus, he cannot maintain the consumer complaint. The complaint is, therefore, rejected. It is clarified that this order will not come in the way of the complainant for availing her remedy by approaching the appropriate forum.