
(1991) 10 NCDRC CK 0017

In the National Consumer Disputes Redressal Commission

MINING ENGINEER, MINES And GEOLOGY DEPTT	APPELLANT
Vs	
SADDAM HUSSAIN	RESPONDENT

Date of Decision : 29-10-1991

Acts Referred:

Citation : 1992 1 CPR 661 : 1994 2 CPJ 411

Hon'ble Judges : S.K.Mal Lodha , Damodar Thanvi , Saria Khan J.

Final Decision : Petition allowed

Judgement

1. THIS revision petition under Sec. 17(1)(b) of the Consumer Protection Act ("the Act" herein) is directed against the interim orders dated 25.2.1991, 6.3.1991 and 6.4.1991 passed by Sarojini Kumari describing herself as President of the District Forum, Jodhpur and Shri Shantimal Jain, Member of the District Forum. On 25.2.1991 the following order was passed:- "Hindi Matter"

2. THE above portion of the order was to restrain Opp. Party No. 1 not to open tenders which were to be opened on 25.2.1991 at 3 p.m. on 6.3.1991 proceedings were recorded stating that the tenders called in question are not free from defects. On 6.4.91 an order was passed that Opp. Parties Nos. 1 & 2 shall comply with the order dated 25.2.1991 and 5.3.1991 until further orders. THE revision petition was registered subject to all just exceptions. THEreafter notice was issued to the complainant-non-petitioner and the operation of the order dated 25.2.1991, 6.3.1991 and 6.4.1991 werestayed. An interim order was also passed that no proceedings for the enforcement of the aforesaid order shall be taken against the petitioners until further orders from the State Commission. THE notice could not be served on the complainant-non-petitioner though it was given "dasti" to the learned Counsel for the Opp. Parties-petitioners. An application was submitted by Shri Murlidhar Harsh, Sr. Surveyor, Mining Department, Jodhpur stating that on extensive enquiries by him and Mohammed Sakir Gauri, L.D.C. it was revealed that no one by name Saddam Hussain resides in Mohalla Vyoparion, Jodhpur, and residents of that Mohalla certified that none byname Saddam Hussain has/had ever resided in that Mohalla. Photostat copy of

the report has been submitted. The petitioners sent notices by post to Shri Akshay Parakh, learned Counsel for the complainant-non-petitioner. Photostat copy of the acknowledgement has also been submitted. It is clear from the report as well as the application and the documents submitted with it that there is no one by name Saddam Hussain residing in Vyoparion-Ka-Mohalla, Jodhpur and no such person ever resided in that Mohalla.

The complainant-non-petitioner was not available at the address given. Mr. M.L. Vyas, learned Counsel for the petitioners has submitted today in writing that the complainant Saddam Hussain is not traceable and that the report of the officer-in-charge which is on record shows that no such person by name is available at the address mentioned. Mr. Vyas further stated that the record summoned has also not been received. He has prayed that the revision petition may be disposed of as the orders dated 25.2.1991, 6.3.91 and 6.4.91 have been passed by the two Members without a judicial Member as President. Sarojini Kumari has described herself as President of the District Forum. The State Government did not appoint her as the President. She is not qualified to be appointed as a President of the District Forum still she has described her self as the President of the District Forum. The other Member, Shri Shantimal Jain as Member has signed it. The aforesaid three orders passed by Sarojini Kumari as President and Shri Shantimal Jain as Member of the District Forum, Jodhpur cannot be sustained in law under the proviso of Sec. 14(2) of the Act as it stands at present inasmuch as the President of the District Forum was not one among the two Members who passed the order. It may be stated that under Sec. 14(2) as amended it is not necessary that all the Members of the District Forum should participate in the hearing and passing the orders. It is required that out of two Members of the District Forum one of them should be the President of the District Forum. The order as passed is without jurisdiction.

3. WE are constrained to set aside the order dated 25.2.1991, 6.3.91 and 6.4.1991. The aforesaid interim orders are accordingly set aside. WE do not approve that Sarojini Kumari, Member appointed by the State Government of the District Forum, Jodhpur should have described herself as a President of the District Forum particularly when she is not qualified to be appointed as President and she was appointed as Member only. The revision petition is allowed and the orders dated 25.2.91, 6.3.91 & 6.4.91 are set aside. Petition allowed.