

(2017) 02 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Case No : 1007 of 2007

M/S CHIRANJI LAL CHAUDHARY AND SONS

APPELLANT

Vs

PRAKASH INTERNATIONAL CARRIER PVT. LTD.

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2017 1 CPR 698

Hon'ble Judges : M. Shreesha

Advocate : DEEP DHAMIJA

Judgement

1. Challenge in these Revision Petitions under section 21(b) of the Consumer Protection Act, 1986 (in short the Act), is to the orders dated 27.10.2006 in Appeal Nos. A/945/1998 and A/957/1998 passed by the Delhi State Consumer Disputes Redressal Commission (in short the State Commission). Vide impugned order, partly allowing the Appeals to the extent that quantum of 18,563 meters would be read as proportionate quantum of 12 bales, i.e., 9,685 meters, at the rate of 29.02 meters, to return the bales to the Respondent at this stage as sufficient time has elapsed would be of no value to the Respondent, a lump sum compensation of Rs.25,000/- in lieu of the 12 bales of cotton was awarded.

2. Since both these Revision Petitions deal with common facts, they are being disposed of by this common order.

3. The brief facts stated in the Complaint are that the Complainant firm is a wholesale cloth merchant, Indenting Agents and Exporters, carrying on this activity under the name and style of M/s. Chiranji Lal Chaudhary and Sons. The first Opposite Party is a transport company and is engaged in rendering services to public at large for transportation of goods from Delhi and Kathmandu through the second Opposite Party which is a sister concern of the first Opposite Party. The Complainant firm contacted the first Opposite Party for transportation of 23 bales of fabric, viz., one hundred percent cotton printed fabrics from Delhi to

Kathmandu on 16.07.1992 and paid Rs.5,750/- as freight charges to the first Opposite Party. The value of the consignment was Rs.5,55,405/- and the same was mentioned in the consignment note dated 16.07.1992. The partner of the Complainant firm personally visited the office of the second Opposite Party at Kathmandu 4 to 5 times for taking the delivery of the consignment and requested them to release 18,563 meters of fabric in 23 bales. But despite repeated requests the delivery was not made. On 10.12.1993, on the assurance of the director of the second Opposite Party, that the balance fabric was not available with them and the Complainant firm will receive Rs.3,07,742.16/- towards shortfall payment (i.e., 10285.50 meters at the rate of Rs.29.92 per meter,) with interest @ 24%, and freight charges of Rs.5,750/-, the Complainant took short delivery of 8,277.50 meters out of the said 18,563 meters.

4. Even after repeated requests, when the delivery was not made, the Complainant firm sent a registered letter on 11.02.1994 to the first Opposite Party with the copy to the second Opposite Party, for which the second Opposite party replied vide letter dated 11.02.1994 claiming Rs.49,727.92/- in respect of custom clearance expenses along with godown rent and asked the Complainant firm to take delivery of the Complainant's consignment. The Complainant averred that the consignment was dispatched on 16.07.1992, but the entire goods was not available with the second Opposite Party even up to 10.12.199 and there was a short delivery of 8,277.50 meters, for which shortfall, the Complainant was not compensated. Though the complainant tendered the amount of Rs.49,727.92/- against the payment made to the respective departments, the original receipts were not made available to the Complainant firm. The Complainant pleaded that the Opposite Parties neither delivered the balance consignment nor paid the cost of the balance consignment amounting to Rs.3,07,742.16/- with interest at 24% and freight charges. It was only on account of the negligence of the Opposite Parties in rendering prompt services that the Complainant suffered loss of reputation and set back in the business. Hence the Complainant firm approached the District forum seeking direction to the Opposite Parties to pay the cost of the balance consignment of Rs.3,07,742.16/- with interest at 24% per annum from 16.07.1992 till the date of realization and freight charges of Rs.5,750/- along with compensation and cost.

5. The first Opposite Party filed their Written Version admitting that 23 bales were booked on 16.07.1992 vide receipt No. 012-6768 and that the freight amount of Rs.5,750/- was paid. It was denied that the goods were 100% printed cotton fabric containing 18,563 meters or that the same was for delivery to self in any manner on the demand of the Opposite Party or otherwise. It was averred that the delivery was through bank and that the goods were sent at "owner's risk". It was denied that the value of goods was Rs.5,55,405/-. The Opposite Parties pleaded that on arrival of the said 23 bales at Kathmandu, the second Opposite Party duly notified the bank as well as M/s. Stitcher of the arrival of the goods and requested them to obtain the goods receipt from the Nepal Arab Bank

and take delivery. It was stated that the Complainant's bankers refused to accept the goods receipt unless it was accompanied with the quality inspection report and there was some dispute between the Complainant and the Bank and the goods receipt remained with the Complainant itself. The Complainant choose to personally go to Kathmandu and negotiated with the second Opposite Party to give delivery of the goods without surrendering the goods receipt as the same was said to have been left behind by the Complainant at Delhi. With the intervention of the local dealers, who prevailed upon the second Opposite Party, the complainant took part delivery of the goods and the balance goods were agreed to be released when the goods receipt was surrendered and the sum of Rs.49,527.92/- was paid to them.

6. The first Opposite Party subsequently pleaded that after delivery of the goods, the consignee found the quality of the goods inferior to the one which has been ordered by him and he therefore rejected the goods and the Complainant had to sell the same in the open market in Kathmandu, where he did not procure even Rs.8 per meter. It is only for this reason that the Complainant, in spite of various requests made by the second Opposite Party, did not take care to take delivery of the balance goods and is abusing the process of law by making a false Complaint. Vide letter dated 22.02.1994, it was informed by the second Opposite Party that the goods were still lying with them and the Complainant was asked to arrange to lift the same against payment of the dues and surrender the goods receipt. Even as on date, the balance goods are lying in the godown of the Second Opposite Party. It was denied that the cost of the balance goods was Rs.3,07,742.16/- and it was averred that the Complainant was not entitled to claim any interest at any rate for any period and the question of refund of freight charges does not arise at all. It was submitted that there was no deficiency of service on their behalf and sought dismissal of the Complaint with costs.

7. The District Forum allowed the Complainant in part directing the second Opposite Party to return the 12 packed bales of cotton cloth containing 18,563 meters after receipt of an amount of Rs.62,155.92/- or the Complainant shall receive the price of 18,563 meters of cloth at Rs.29.92 per meter after deducting the amount of Rs.62,155.92/-.

8. While allowing the Complaint, District Forum observed as follows:- "Undisputedly on 10.12.93, part delivery of 8277.50 mtrs. Of fabric was taken by partner of complaint firm. Letter of said partner dt. 10.12.93 confirms that part delivery was taken because complainant didn't have with him either consignee copy of the G. R. or Rs.49,727.92 on account of custom duty, clearance expenses and panchayat chanda etc. We accept story of respondent no. 1&2 in that regard as correct and we also accept their contention that to maintain goodwill in local market, part delivery of 8277.50 mtrs. fabric contained in 11 bales was given to partner of complainant firm by respondent no.2 on 10.12.93 and therefore upto that time, there was no deficiency of service either on the part of respondent no. 1 or that of respondent no. 2. 12) The present complaint was filed by the

complainant on 8.4.94 Order sheet of the case file dt. 18.7.95 read as follows:-

"Present : Sh. J.K. Seth, Adv. for complainant Sh. A.L. Aneja, Adv. for respondent no.I S. Inderjit Adv. for respondent no. II

The booking of consignment, at Delhi through respondent no. 1 is admitted, it is further admitted that delivery of 8277.50 meters of fabrics has already been taken by the complainant from respondent no. II in Kathmandu. It is further admitted to respondent no.II that the remaining fabrics measuring 10285.50 meters of fabrics is still lying at godown of respondent no. II at Kathmandu (Nepal) and the complainant can obtain delivery of the same on payment of necessary charges amounting to Rs.62,155.92 as claimed by respondent no. II. However, complainant's allegation is that the goods are not lying at the godown at is being claimed by respondent no. II. There is no evidence on record that the complainant ever approached the respondent at Kathmandu for the delivery of the remaining goods. The complainant's learned advocate has however drawn our attention to the affidavit filed by the complainant, wherein he deposed that he did contact the Director of respondent no. II, but the delivery of the remaining cloth was not given, as it was not available there. Without entering into any controversy, we direct the complainant to produce the goods receipt to respondent no. II at Kathmandu, obtain the delivery of the remaining fabrics on payment of the necessary charges mentioned above and in case goods are not delivered as per the directions of this forum. The goods receipts which have been placed on record shall be returned to the complainant for obtaining the delivery of the goods at Kathmandu."

9. Aggrieved by the said order, the Opposite Party preferred Appeals A-945/1998 and A-957/1998 before the State Commission. The State Commission while concurring with the finding of the District Forum, regarding deficiency of service, modified the order on the ground that, to return the bales to the Complainant after sufficient time has elapsed, and also as the bales would not be of value to the Complainant, awarded a lump sum compensation of Rs.25,000/- in lieu of the 12 bales of cotton.

10. Dissatisfied by the said order the Complainant preferred these two Revision Petitions.

11. The brief perusal of the proceedings before this Commission shows that the Revision Petitions were admitted on 11.04.2007 and notice was issued returnable on 21.02.2008. As none appeared for the Respondents, fresh notice was issued which was returned with the postal remark " premises found locked on frequent visits ". The Learned Counsel for the Petitioner requested that he would affect dasti service on the second Respondent and the case was listed for directions. On 21.05.2008, it was submitted by the Learned Counsel for the Petitioner that notices of Respondent No. 1 & 2 was sent by registered post on 24.09.2008 and 30.04.2008 respectively. An affidavit was subsequently filed by the Petitioner that that the notices were "refused" by the Opposite Parties. Once again the

Petitioner was directed to file fresh address of the first Opposite Party and the Registry was directed to issue notice but the same was returned that the "firm does not exist". Thereafter a request was made for permission to affect the substituted service on second Opposite Party through publication. The proof of publication for second Opposite Party was filed on 03.02.2010. Thereafter the case was listed for final hearing and once again a fresh notice was issued to the first Respondent i.e., Prakash Transport at Delhi by the Registry as well as by dasti. Vide order dated 11.05.2015 this commission observed that despite best efforts the first Respondent also could not be served and therefore, the application seeking substituted means of publication of notice was allowed. Vide order dated 30.07.2015 this commission after having been satisfied that the Respondents have been served by the publication and since despite service, no one has put in appearance on behalf of the Respondents, they were proceeded against ex-parte.

12. Learned Counsel for the Petitioner also filed his written arguments. The brief point that falls for consideration is whether the State Commission was justified in reducing the amount of compensation awarded by the District Forum and modifying the order to the extent of Rs.25,000/- only. It was submitted by the Learned Counsel for the Petitioner that the Respondents had sent a bank draft of Rs.25,000/- which was accepted without prejudice to their rights. It is the main case of the Revision Petitioner that, the State Commission, having held that they do not see any reason to defer with the order of the District Forum who has scanned all the documents closely, has modified the order as hereunder:- "That limited grievance of the appellant is with regard to the observation of the district forum as to the quantity of cloth contained in the bales booked by the respondent/consumer with the appellant for the transportation to Kathmandu. According to respondent no. 1, he booked 23 bales of 100% cotton printed fabric containing 18563mtrs. From Delhi to Kathmandu vide GR/ Consignment No. 012-6768 dated 16.07.92 against payment of Rs.5750/- as freight charges. However, holding the appellant guilty for deficiency in service, the District Forum inadvertently mentioned the quantity of 12 bales of cotton cloth which was short supplied as 18563 mtrs. The error is apparent on the face as 12 bales of cotton not be of the quantity of 18,563 mtrs. because this quantity was in respect of entire 23 bales booked by the respondent. The appeals are partly allowe to the extent that the quantity of 18563 mtrs. Would be read as proportionate quantity of 12 bales i.e. 9685 mtrs. At the rate of Rs.29.02 mtr.. However, after perusing the impugned order, we do not find any reason to defer with the District forum who has scanned all the documents closely and also held the appellant guilty for deficiency in service. To return the bales to the respondent at this stage as sufficient time has elapsed and the bales may not be of any value to the respondent. We award lumpsum compensation of Rs.25,000/- in lieu of 12 bales of cotton. This payment shall be made within one month. FDR if any, deposited by the appellant be returned to the appellant forthwith under proper receipt."

13. There is force in the contention of the Learned Counsel for the Revision

Petitioner that the State Commission having come to the conclusion that returning the remaining bales of cloth at this stage as sufficient time has elapsed, directed for payment of Rs.25,000/-, ought to have directed the Respondents to pay the price of the remaining cloth of 10285.50 meters at Rs.29.92 per meter after deducting an amount of Rs.62,155.92/-. It is observed from the records that the District Forum directed the Respondent either to return the bales lying with them or in the alternative pay the equivalent amount of Rs.3,07,742.16/- in respect of 10.285.50 meters of cloth comprising in the said 12 bales. The finding of deficiency of service is final as the State Commission has concurred with the finding of fact with the District forum and it is pertinent to note that the Respondent did not prefer any Revision Petition before this commission. For the Reasons noted in para 11 of this order the Respondents were also said ex-parte. In the absence of any evidence on record that the balance bales were returned to the Complainant, the Respondents are directed to pay the equivalent amount of Rs.3,07,742.16/- within four weeks from the date of receipt of this order, failing which the amount shall attract interest @ 9% per annum from the date of filing of the Complaint till the date of realization together with cost of Rs.10,000/-. Needless to add, any amount already paid shall be adjusted in the above mentioned amount.

14. In the result these Revision Petitions are partly allowed and the order of the lower fora is modified and the amount of compensation is enhanced to the extent indicated above.