
(2015) 04 NCDRC CK 0220

In the National Consumer Disputes Redressal Commission

Case No : NO 2694 of 2013

M/S. EXCELLENT TESTING EQUIPMENT & ANR.

APPELLANT

Vs

VIJAYA VITTALA CHARITABLE & EDUCATIONAL TRUST

RESPONDENT

Date of Decision : 16-04-2015

Acts Referred:

Citation : 2015 3 CPJ 304

Hon'ble Judges : V.B. Gupta, Suresh Chandra

Advocate : Ankur S. Kulkarni, Rajesh Mahale

Judgement

1. Petitioners/Opposite Parties aggrieved by order dated 6.6.2013 passed by Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short, "State Commission") have filed present revision petition, vide which their Appeal No.541 of 2013 was dismissed by the State Commission.

2. Brief facts are, that Respondent/Complainant an educational and charitable institution, placed purchase order dt. 29.11.2010 with Petitioners for supply of 8 lathe machines and paid Rs.14,50,000/- as advance and balance payable was Rs.5,01,150/-. Petitioner No.2, is the authorized seller and distributor of Petitioner No.1. The machines in question were installed in the respondent's institution on 4.3.2011. Initially, there were certain problems which petitioner no.2 attended, by changing certain parts. Later on, respondent came to know that petitioners have supplied Model "HIMAC-LX-165" instead of "HIMAC-LX-175/LX3". The same was informed to the petitioners. After due verification, petitioners inspected the same and admitted, that there were certain glitches in the supply, delivery and erection of the machines and machines ordered by the respondent, were supplied to another destination. Thereafter, petitioners sent a regret letter dt. 21.12.2011. Since, petitioners did not set right the wrong committed by them, respondent got issued legal notice dt. 29.2.2012 calling upon the petitioners to take back the machines wrongly supplied and to replace the same with specified HIMAC-LX-175/LX3 machines as per purchase order. However, petitioners did not replace the same. Therefore, respondent filed a

consumer complaint.

3. In its written version, petitioners took the plea that respondent is running an Engineering College and goods purchased are being used for commercial purpose. Hence, respondent is not a consumer within the purview of the Consumer Protection Act, 1986 (for short as, "Act"). According to the petitioners, as per requirements, they booked the materials from its supplier and supplied all geared lathe machines with standard accessories. The total amount of all the goods was Rs.19,51,150/- out of which, respondent paid Rs.14,50,000/- as advance. The balance payable is Rs.5,01,150/-. The said machines with respondent are in good working condition till today. After supply of the machines, when petitioners demanded for payment of balance amount of Rs.5,01,150/-, respondent went on postponing the payment of the amount, on one pretext or the other. After receipt of machines and using the same for more than one year, respondent is contending that petitioners have supplied different model machines. Since, respondent is using the same and has come up with this complaint after a considerable length of time, this act on the part of respondent is not fair. The respondent has not cleared the amount due in spite of issuing demand notice. On the other hand, respondent has filed this complaint as a counter case against them.. Denying all other allegations as false, petitioners prayed for dismissal of the complaint with exemplary costs.

4. District Consumer Disputes Redressal Forum, III Additional Bangalore Urban (for short, "District Forum") allowed the complaint vide its order dated 19.3.2013 and passed the following directions; "The Opposite Parties 1 and 2 are directed to replace the lathe machines in question of the model HIMAC-LX-165 with brand new lathe machine of the model HIMAC-LX-175/LX3, at their own cost, on receipt of balance consideration of Rs.5,01,150/- from the complainant with fresh warranty from the date of replacement, the Opposite Parties 1 and 2 are granted 30 days from the date of this order, for effecting replacement. If for any reason, the same could not be replaced within the said time, the Opposite Parties 1 and 2 shall refund to the complainant the cost of lathe machines of the model HIMAC-LX-175/LX3 at Rs.1,65,000/- each with interest, at 9% p.a. from the date of default, till actual payment, after giving deduction to the balance payment of Rs.5,01,150/-. The Opposite Parties 1 and 2 are also liable to pay Rs.5,000/- (Rupees five thousand) towards cost of this proceedings."

5. Being aggrieved, petitioners filed appeal before the State Commission, which dismissed the same at admission stage, vide the impugned order.

6. Hence, present petition.

7. We have heard the learned counsel for the parties and gone through the record.

8. The short question which arise for consideration is, whether respondent is a consumer as per provision of the Act.

9. Admittedly, respondent is a Charitable and Educational Trust. This Commission in *Pratibha Pratishthan Trust Vs. The Allahabad Bank, Juhu, IV* (2007) CPJ 33 NC, observed; "39. On behalf of the opposite parties, it has been pointed out that the complaint filed by the Trust is not maintainable, and, in any case, the complaints are not filed by all the Trustees.

40. In our view, this submission is required to be accepted because, under the Consumer Protection Act, 1986, complaint can be filed by a consumer. Under Section 2(1)(d) "consumer" is defined to mean "any person" who buys goods or hires or avails of any services for consideration. The word "person" is also defined under Section 2(1)(m), which includes - (i) a firm, whether registered or not; (ii) a Hindu Undivided Family; (iii) a Co-operative society; and (iv) every other association of persons whether registered under the Societies Registration Act, 1860 or not.

41. Further, in support, the learned counsel for the opp.party Bank has rightly pointed out an observation from DJ Hayton, Hayton & Marshall Commentary and Cases on The Law of Trusts and Equitable Remedies, wherein it has been observed that -

"A trust, unlike a company, has no legal personality; thus, it cannot own property for entering into contracts, sue or are sued. It is the trustees who own the trust property, enter into contracts, sued or are sued. A trustee as such has no distinct legal personality in his representative capacity separate from himself in his personal capacity."

42. Considering the aforesaid definition of the word "person", a public trust is not "person" which can be considered to be a "consumer" entitled to file complaint before the consumer forum. The reasons are:

"(i) trust is not included in the definition of the word "person". The Legislature included cooperative society under the definition "person" but not "public trust";

(ii) secondly, trust is not a legal entity.

43. Hence, the complainant, Pratibha Pratishthan Trust, which is registered under the Bombay Public Trust Act, 1950, cannot be considered to be "person" which can file a complaint under the Consumer Protection Act, 1986.

44. Further, the Bombay Public Trust Act, 1950, defines the trustee as a person in whom either alone or in association with other persons, the trust property is vested and includes the Manager.

45. For this, it is to be stated that all the trustees are not made party-complainants. Though the Opposite Party No.4 was the Chairman of the Trust, he is not made a party (i.e. one of the Complainants) on the alleged ground that he had submitted his resignation as a trustee on health grounds. Rest of the trustees are made as Opposite Parties No.5, 6 and 7 on the alleged ground that they were not available at the relevant time.

46. Hence, we hold that the complaints filed by the Trust are not maintainable for the reasons that the Trust is not "person" entitled to file complaint under the Consumer Protection Act, 1986; and, also that both the complaints are filed by Trust without making the all the Trustees as Complainants. Hence, these complaints are not required to be entertained."

10. Thus, in view of the above settled position of law, since respondent/complainant is a charitable and educational trust, it does not fall within the definition of "consumer". Therefore, relying upon the decision of Pratibha Pratisthan Trust (Supra) , we hold that the consumer complaint filed by respondent is not maintainable. Both the fora below have committed grave error in ignoring the basic provisions of the Act. Therefore, orders passed by both the fora below cannot be sustained and same are hereby set aside. Hence, present revision petition stand allowed. Consequently, the complaint filed by the respondent before the District Forum stand dismissed.

11. No order as to costs.