

(1998) 05 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

N.A. KAMILI

APPELLANT

Vs

MANAGING DIRECTOR, SICOP, SRINGAR

RESPONDENT

Date of Decision : 28-05-1998

Acts Referred:

Citation : 1998 3 CPJ 384 : 1999 1 CPR 154

Hon'ble Judges : Malik Sharief-Ud-Din , M.Maryum J.

Final Decision : Appeal disposed of

Judgement

1. ON 6th May, 1998 one Abdul Rehman Jr. Assistant for the respondent appeared and represented that there is a cross appeal pending in the Jammu Wing and both these may be decided together.

2. WE, in the absence of any facilities, handed over a letter to him to procure the records from the Office at Jammu and submit the same before us by or before the date fixed. No action has been taken by the respondent and we are left with no option but to dispose of this appeal. One Mr. Irshad Ahmed Parray has appeared today on behalf of the respondent and submits that he is the Standing Counsel for the opposite party. He has produced no such order nor has he produced any authorization from the respondent. Under the rules prescribed the Legislature recognizes only an Agent for purposes of representing a party before us and in the absence of any authority in writing we are unable to hear him.

Now after hearing the appellant and after going through the facts and circumstances of the case we would like to sum up the facts which has generated this litigation.

3. WAY back on 20.2.1988 the appellant entered into the deal with the respondent for supply of 2.200 M.Ts. of G.C. Sheets of 63 mm guage specifications at the rate of Rs. 15,000.00 per M.T. and paid them advance of Rs. 33,000.00 which was received by the respondent against cash receipt No. 4768 not disputed. The respondent, however, supplied only 1.67 M.T. of the material and withheld the remaining G.C. Sheets which have not been delivered to him

despite repeated demands from time-to-time. It is in this state of things that the complainant was forced to knock at our doors. Before the Divisional Forum the opposite party submitted his version of the case and took up the plea that SICOP being a statutory body the Consumer FORA has no jurisdiction. Broad facts of having placed the order and having received the money and not having supplied the material in full are admitted though it is qualified with the plea that the respondent was out of stocks and the complainant never approached for supply of the remaining material or the refund of the money. It was in this situation that the DF passed the impugned order dated 2.12.1997 which is now impugned in this appeal. It is an innocuous order that the respondent will supply the remaining quantity of GC sheets weighing Order 525 M.T. of 63 mm specification to the complainant and the respondent shall be under obligation to inform him about the date and place of delivery of the articles within the date fixed. Keeping in view the facts the rates of the material have gone up and the money has been withheld for the last over a period of decade the D.F. allowed a simple commercial rate of interest of 12% p.a. on a sum of Rs. 7,825.00 worked out as the price of the remaining material. The D.F. guided by the fact that the non-supply of the full material by the opposite party and withholding his money by the respondent for such a long time definitely caused financial strain to the complainant resulting in loss and injury has further allowed a sum of Rs. 5,000.00 as compensation.

4. THE appellant is not still satisfied and hence the appeal. We would make it clear that the Consumer FORA are not money generating industries and it is a known fact that no consumer will ever be satisfied. THE Consumer FORA have to take a reasonable and just view of the case depending upon the facts and circumstances of each individual case. This appeal in our view has been filed simply by way of an attempt to get some additional benefit. This situation we are not prepared to countenance. The DF has rightly allowed 12% interest as even if this money had been invested by the complainant in fixed deposits it could not have earned more. Additionally, the D.F. has rightly taken into consideration the fact that the complainant has undergone loss and injury and after taking into account the nature of the loss and injury it has allowed a sum of Rs. 5,000.00 as compensation which on the facts and circumstances of this case is appropriate and just. This order of the D.F. is only relevant in case the complainant is not prepared to lift the remaining quantity of G.C. Sheets. In our view, therefore, there is nothing wrong with the order nor does it suffer from any factual or legal infirmity but since in our view the order is a little confused and the matter is before us in appeal, we would like to clarify the situation and re-cast the order as under : It is directed that the respondent shall supply to the complainant 0.525 M.T. of 63 mm specifications within the next one month on the same rate at which it was booked in 1988 irrespective of the fact as to what the present prevailing rates are. Alternatively, in the absence of the complainant refusing to lift remaining material the respondent shall refund to the complainant a sum of Rs. 7,825/- with 12% interest PA on this sum from the date it was deposited till

the date it is finally paid. The complainant shall be entitled to Rs. 5,000.00 as compensation. The order shall be satisfied within one month from today. The appeal is disposed of. Certified copy of the order be given to the parties to be collected by them on their own within a week's time. Appeal disposed of.