
(1992) 12 NCDRC CK 0090

In the National Consumer Disputes Redressal Commission

NAGPUR IMPROVEMENT TRUST (NIT)

APPELLANT

Vs

T.D. WANKHEDE

RESPONDENT

Date of Decision : 07-12-1992

Acts Referred:

Citation : 1993 0 CPC 187 : 1993 1 CPJ 42 : 1993 1 CPR 119

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate : B.P.Badar

Final Decision : Dismissed

Judgement

1. THE State Commission of Maharashtra in its Order of 19th July, 1991 in Appeal No. 7/91, N.I.T., Nagpur v. Shri T.D. Wankhede and Shastri Gruha Nirman Sahakari Sanstha Ltd. (Sanstha for short) had passed an exparte order upholding the ex-parte order of the District Forum, Nagpur and dismissed the appeal of the N.I.T. THE Revision Petitioner here viz. Nagpur Improvement Trust and the Appellant before the State Commission, had remained absent before the State Commission necessitating the State Commission to proceed ex-parte. In fact, the Revision Petitioner-Nagpur Improvement Trust and the Opposite Party before the District Forum had also remained absent on the dates of the hearings of the District Forum. THE State Commission observed "the Opposite Party remained absent on the dates of the hearings and therefore, the exparte order came to be passed. THE Opposite Party did not put in its appearance at the time of hearing, did not file any document, nor tendered any affidavits except the application dated 1.11.1990 raising the preliminary objection and reply. Thus, we find that the allegations made by the Complainant in his complaint were not controverted on affidavit or by any other evidence by the Opposite Party. THE District Forum Nagpur accepted the evidence of the complainant tendered in the form of affidavit and documents and passed the impugned orde".

2. THE State Commission further observed; "In this appeal also, the Napery Improvement Trust did not appear on appointed date of hearing before this Commission. This Commission had sent a notice on 28.6.1991 by Registered Post

with Acknowledgement Due intimating the Napery Improvement Trust to attend the hearing of the appeal at 1.00 p.m. at Rave Haven, Napery on 15.7.1991. THE notice has been duly received by the Napery Improvement Trust on 11.7.1991. On the date of hearing till 2.45 p.m., no appearance was made on behalf of appellant and therefore, this Commission closed the case for Order" In its Revision Petition, the Revision Petitioner has not adequately explained as to why it remained absent both before the District Forum and the State Commission except to say that the various sections of the Improvement Trust were involved in preparing the reply to the complaint before the District Forum. The Revision Petitioner also did not pursue its appeal before the State Commission as is evident from the fact that it remained absent at the hearings. The explanation given is far from satisfactory. However, on going through the Revision Petition we find that the Orders of the State Commission as well as of the District Forum have been impugned on the ground of error of jurisdiction which deserved consideration.

The Complainant before the District Forum was Shri T.D. Wankhede while the Nagpur Improvement Trust and the Shastri Gruha Nirman Sahakari Sanstha Ltd. were Opposite Parties. The Complainant Shri Wankhede is a member of the Sanstha - Respondent No. 2. It was the Sanstha which had purchased the land and prepared the lay out for the allotment of plots in favour of its members including Shri Wankhede. The Revision Petitioner-N.I.T. has submitted that it is dealing only with Respondent No. 2 viz. the Sanstha and has absolutely no connection with Respondent No. 1 Shri Wankhede who was the complainant before the District Forum.

3. THERE is force in the contention of the Revision Petitioner N.I.T. as would be evident from what is stated hereafter. As pointed out by the Revision Petitioner, the complainant Shri Wankhede had deposited between 1981/1983, the amount for the allotment of a plot with the Sanstha and not with the Revision Petitioner-N.I.T. In other words he had not paid any consideration to the N.I.T. as a quid pro quo for any service to be rendered by N.I.T. to him.

4. THE Revision Petitioner has further submitted that by its Order the District Forum has directed the N.I.T. to allot certain plots to the Complainant through the Sanstha after fixation of the rate in accordance with the N.I.T. Disposal of Land Rules, 1955 as prevailing in the year 1983. THE Revision Petitioner - N.I.T. has pointed out that the plots are to be allotted to the members of the Sanstha @ Rs. 450/- per square metre for the main road plots and Rs. 425/- per square metre for the rest of the plots in accordance with the N.I.T.'s Revised Land Disposal Rules, 1983. But the complainant Shri Wankhede was unwilling to accept these rates and therefore the Sanstha did not include his name in the list of members in whose favour the plots were to be allotted after approval of the same by the N.I.T. THE District Forum, however, directed that the N.I.T. should fix the rate of the plot as prevailing in the year 1983 on the basis of the N.I.T. Disposal of Land Rules, 1955 and make the allotment accordingly. In other

words, the District Forum directed determination of the consideration which was payable for the plot to be allotted to the complainant. Adequacy or inadequacy of consideration for supply of any goods or rendering of any service is not service as such, therefore, cannot give rise to any complaint regarding deficiency in service. In the Order of the State Commission it has been stated that "the respondents Shri T.D. Wankhede and Shastri Gruha Nirman Sahakari Sanstha Ltd. had made complaint before the District Forum, Nagpur alleging deficiency in service of the N.I.T.". This observation of the State Commission appears to be based on some misunderstanding inasmuch as Shri T.D. Wankhede was the sole complainant before the District Forum and the Shastri Gruha Nirman Sahakari Sanstha was one of the Opposite Parties along with the N.I.T. This has relevance because whereas the Shastri Gruha Nirman Sahakari Sanstha has the locus standi of making a complaint before the Consumer Forums viz-a-viz the N.I.T. but Shri T.D. Wankhede as the member of the Sanstha has none.

5. IT would, therefore, be clear that the District Forum as well as the State Commission have exercised jurisdiction not vested in them by law and there has been material irregularity and illegality in the exercise of jurisdiction in adjudicating on a complaint where the complainant has no locus standi to maintain the complaint nor can it be deemed to be a consumer under the Consumer Protection Act. Therefore, we set aside the orders of the State Commission and of the District Forum and direct that the complaint shall stand rejected. There is no order as to costs. Complaint rejected.