

(2007) 01 DEL CK 0141

In the Delhi High Court

Case No : Writ Petition (Civil) No. 15838 of 2006

National Research Development Corporation

APPELLANT

Vs

National Consumer Disputes Redressal Commission and
Another

RESPONDENT

Date of Decision : 02-01-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 22

Citation : (2007) 01 DEL CK 0141

Hon'ble Judges : Mukul Mudgal, J; J.P. Singh, J

Bench : Division Bench

Advocate : A.K. Matta and Joydeep Sharma, for the Appellant; K.K. Dhawan, for the Respondent

Final Decision : Dismissed

Judgement

Mukul Mudgal, J.—This writ petition challenges the order dated 19th July, 2006 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as the Commission) in Original Petition No. 34 of 1994. A complaint was filed by the respondent M/s Rohit Chemicals & Allied Industries (Pvt) Ltd. and a claim of Rs. 82,25,722.42 with interest was raised against the petitioner National Research & Development Corporation. The matter was referred to arbitration due to the then prevailing practice of the Commission of referring the disputes to an Arbitrator. Justice M.S. Gujral who was the arbitrator could not complete the arbitration due to his deteriorating health.

2. The Hon'ble Supreme Court in fact had an occasion to decry the practice of the Commission in appointing arbitrators in pending disputes, in *Skypak Couriers Ltd. Vs. Tata Chemicals Ltd., and Neeraj Munjal and Ors. v. Atul Grover* 2005 (Supp.) Arb. LR 22 (SC). In *Neeraj Munjal's* case while referring to *Skypak Couriers'* case, the Hon'ble Supreme Court held as follows:

5. Section 22 of the Consumer Protection Act provides that the Commission shall

have the powers of a Court. These powers would include the power to call for documents and take evidence either by itself or on Commission. However, the final adjudication has to be by the Commission. For purposes of this order we will presume, without laying down any law in this behalf, that the Commission may even refer disputes to Arbitration/Conciliation. However, such reference to Arbitration could only be under the provisions of Arbitration Act, 1940 or the Arbitration and Conciliation Act, 1996. There is no provision in law and we consider it an unhealthy practice for Courts/Commission/Tribunal to abdicate their duties and functions and to delegate adjudication of disputes before them to third parties. The adjudication can only be by the concerned Court/Commission/Tribunal. For an effective adjudication the Commission/Court must address itself to the evidence, documents, respective case of the parties including submission on their behalf and then give a finding on that basis....

8. The question then arises as to what is to happen in all these cases. As stated above, we have proceeded on the basis that all parties had consented to their matters being referred to third persons. All parties have participated in the proceedings before the third person. Awards have been passed. In our view, it would be inequitable to now set at naught all the awards and relegate the parties back to the original proceedings. In our view the reference being by consent, must now be treated as reference to Arbitration under the Arbitration Act. The award must be treated as awards of Arbitrators.

3. Consequent to the above position of law laid down by the Hon'ble Supreme Court, the complaint of the respondent against the petitioner was being heard in the Commission and the only issue urged in this Court related to the denial of the cross-examination of one Tilak Ram to the petitioner by the order dated 19th July 2006 impugned in this writ petition. The Commission had observed that the petitioner herein in spite of number of adjournments had failed to cross-examine the said Tilak Ram and the Arbitrator had Therefore closed the cross-examination of the said witness. Accordingly, the Commission held that since 11 years had gone in a protracted proceedings before the Arbitrator and the Commission, the Commission was required to decide the matter on the basis of evidence already recorded and documents produced before the Arbitrator Mr. Justice Gujral. It is this order which has been challenged in the writ petition.

4. The main grievance of the learned Counsel for the petitioner arises from the closure of the right of the petitioner to cross-examine the said witness Tilak Ram. Without prejudice to the rights and contentions of the learned Counsel for the parties, we had asked the learned Counsel for the petitioner and the learned Counsel for the respondent to arrive at a settlement and thereafter the petitioner and the respondent had agreed that upon payment of suitable costs, the cross-examination of Tilak Ram which was the only grievance raised by the learned Counsel for the petitioner in this writ petition, could be permitted. We have gone through the evidence of Tilak Ram which avers as under:

(a) I have given my correct address in the affidavit. I have passed BA first year

in 1972.

(b) I was in service before joining this company, which was formed in November 1982 and produces washing soap and ultra marine blue. I was looking after the production and sales.

(c) None of the directors of the Company had any technical qualification. The application form which was submitted for getting the license was signed by my co-director Mr. B.R. Goel, bears my signatures. In the application I had stated that it was my business to manufacture Ultra Marine .

(d) On 29th July 1983, I bought the land measuring 9 bighas, 9 bids was for a total cost of Rs. 72, 000. The work of the other two companies was not being done from this land.

(e) I visited NRDC for enquiring about the license and I was referred to RRL, Bhubhaneshawar by a letter given to me by Mr. J.P Gupta for Mr. Sant from whom I was expected to get the technical know how about manufacture Red Oxide. We were also told to enter into an agreement if we wanted more details. An agreement was entered into with the NRDC which has been referred to in the letter dated 7th February 1983.

(f) After the agreement with NRDC, the RRL gave us the detailed project report, after which we placed orders for machinery and on receiving the machinery I set up a plant and engaged a firm of consulting engineers for their advice. The technical advisor gave a certificate, the NRDC gave a flow sheet which relates to the layout and a flow chart which relates to the process of the plant and the machinery. Some modifications were made to the flow sheet and the flow chart later.

5. In the light of the above testimony of Tilak Ram which does not run into more than 5 pages, we asked the learned Counsel for the petitioner to confine his cross-examination to about half an hour. However, the learned senior counsel for the petitioner declined to do so. In this view of the matter and taking into account the stand of the petitioner it is clear that the petitioner is not over anxious for the early disposal of the complaint pending against it in the Commission since 1994. We see no reason in view of the evidence of Tilak Ram summarized by us why his cross-examination need be prolonged beyond half an hour keeping in mind the facts of this case. The obdurate and unreasonable stand of the petitioner disentitles it to the discretionary relief under Article 226 of the Constitution. Accordingly, we see no reason to interfere with the order of the Commission dated 19th July 2006. The writ petition is dismissed. The application bearing CM No. 12741/2006 also stands dismissed accordingly.