(2014) 02 NCDRC CK 0048

In the National Consumer Disputes Redressal Commission

Ommissioner, Nagar Nigam APPELLANT

Vs

P.S. Chauhan RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 328 : 2014 1 CPJ 503

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : VIKAS MEHTA

Judgement

1. BOTH these revision petitions arise out of the single order of learned State Commission; hence, decided by common order. These revision petitions have been filed by the petitioners against the order dated 08.1.2008 passed by the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur (in short, ''the State Commission'') in Appeal No. 248 of 2007 - P.S. Chauhan. v. Commissioner, Nagar Nigam by which, while allowing appeal, order of District Forum dismissing complaint was set aside and OP was directed to pay Rs. 35,000/ - along with Rs. 2,000/ - as cost of litigation. Brief facts of the case are that the complainant has a house at Smriti Bhawan, Ward No. 25, Gayatri Mandir ward, Durg which is in the name of his wife and the complainant had paid ''Property Tax'', ''Education Tax'', ''Samekit Kar'' for the year 2006 -07. As per the averments made in the complaint, in view of payment of Samekit Kar, the complainant is entitled to light, power, drinking water and similar other facilities from the Municipal Corporation. It was further stated in the complaint that near the house of the complainant, there was a vacant plot of Sohanlal Patni which was being used as dumping ground for trash and garbage and was also used by the hut dwellers for private purposes. The complainant made repeated requests to the OP for cleaning of the said plot as it was causing nuisance to the nearby residents but the OP - Corporation paid no heed to the complaints made by the complainant. It was further alleged in the complaint that the unhygienic conditions were leading to spread of various diseases. The complainant himself was suffering from allergic bronchitis and fever and had to spend lots of money towards his treatment. It was further stated that due to lack of clearing of

garbage at the aforesaid plot, various persons including the tenants of the complainants as well as his wife had to suffer infection during the period from August, 2006 to October 2006 and all of them had to spend money towards treatment. It was stated in the complaint that since the complainant has paid Samekit Kar to the OP, he was entitled to various services and facilities towards which the Samekit Kar was charged under the Municipal Corporation Act and by not providing the same, the OP was liable for deficiency in service. OP resisted complaint and submitted that the house was in the name of the wife of the complainant and no amount has been charged as consideration, hence, the complainant was not the consumer of the OP. It was stated in the written version that the corporation undertakes the work of cleaning through various contractors but the plot in question was a private property and the corporation was not obliged to undertake cleaning of the said plot. It was further stated that the allegation of complainant suffering from Chronic Recurrent, Allergic, Bronchitis and fever and his wife suffering from Malaria were false. The OP has not committed any deficiency in service and the complaint was not maintainable before the District Forum.

2. LEARNED District Forum after hearing both the parties dismissed complaint on the ground that complainant does not fall within purview of consumer. Appeal filed by the complainant was allowed by learned State Commission vide impugned order against which, these revision petitions have been filed. None appeared for the Petitioner -Commissioner Nagar Nigam.

3. HEARD learned Amicus Curiae appointed for complainant and perused record.

4. PERUSAL of record reveals that learned State Commission allowed complaint holding ''cess'' in the nature of fee charged towards providing the service under Section 132(1) of M.P. Municipal Corporation Act, 1956. Section 132(1)(c) rules as under: 132. Taxes to be imposed under this Act. - - (1) For the purpose of this Act, the Corporation shall, subject to any general or special order which the State Government may make in this behalf, impose in the whole or in any part of the Municipal Area, the following taxes namely. - - (a) a tax payable by the owners of buildings or lands situated within the city with reference to the gross annual letting value of the buildings or lands, called the property tax, subject to the provisions of Sections 135, 136 and 138. (b) a water tax, in respect of lands and building to which a water supply is furnished from or which are connected by means of pipe with municipal water works. (c) a general sanitary cess, for the construction and maintenance of public latrines and for removal and disposal of refuse and general cleanliness of the city. (d) a general lighting tax, where the lighting of public streets and places is undertaken by the corporation. (e) a general fire tax, for the conduct and management of the fire service and for the protection of life and property in the case of fire. This provision clearly reveals that OP imposed tax and cess on the owners of the buildings for the purposes mentioned in Clause (b) to Clause (e) of Section 132. Learned Amicus Curiae for the complainant frankly admitted that tax cannot be equated with fees and

merely by paying tax complainant does not obtain any service from the OP and complainant does not fall with the purview of consumer. We agree with the submissions made by learned Amicus Curiae and hold that tax cannot be equated with fees and as OP has not charged any fees for providing any service as such, complainant does not fall within the purview of consumer and learned State Commission has committed error in holding that complainant falls within the purview of consumer under the C.P. Act.

Complainant himself mentioned in the complaint that house is in the name of his wife and OP has also mentioned in the written statement that no amount has been charged as consideration from the complaint, complaint filed by the complainant is not maintainable. Only the owner of the property could have filed complaint and respondent/complainant had no locus standi to file complaint and on this count also the complaint was liable to be dismissed.

5. AS complaint is liable to be dismissed and Revision Petition No. 933/08 filed by OP is to be allowed, Revision Petition No. 1026/08 filed by the complainant is liable to be dismissed. Consequently, Revision Petition No. 933 of 2008 filed by the petitioner/OP is allowed and impugned order dated 8.1.2008 passed by learned State Commission in Appeal No. 248 of 2007 - P.S. Chauhan. v. Commissioner, Nagar Nigam is set aside and order of District Forum is affirmed. Revision Petition No. 1026 of 2008 filed by the complainant is dismissed with no order as to costs.

