

(2006) 08 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Pardi Industrial Association

APPELLANT

Vs

GUJARAT INDUSTRIAL DEVELOPMENT CORPN.

RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Citation : 2006 2 CPC 684 : 2006 4 CPJ 28 : 2007 1 CLT 26

Hon'ble Judges : K.S.Gupta , Rajyalakshmi Rao J.

Final Decision : Complaint dismissed

Judgement

1. COMPLAINT was filed, inter alia, alleging that complainant is a registered voluntary association of small scale unit holders of opposite party No. 1, Corporation and complaint is being filed on behalf of members whose names are given in Annexure-1 appended to the complaint. Opposite party No. 1 is a Government of Gujarat undertaking and opposite party Nos. 2 to 7 are its officers at Vapi. In order to attract industries the opposite party No. 1 published a booklet on 30.6.1992 with details of facilities and services to be made available to the potential users. It was alleged that after availing of services of opposite party No. 1.-Corporation the unit holders found that the services promised to be rendered were deficient in many respects like non-availability of roads, fire fighting services and inadequate water supply, etc. In the meeting which the complainant had with the opposite parties on 11.4.1986, deficiencies in service were brought to the notice of opposite parties and recorded in the minutes of meeting. Since there has been no improvement in services the complainant appointed Mahohar H. Bhawalkar, Chartered Engineer on 27.3.1995 to visit the site and report about the deficiencies existing in Pardi Industrial Estate at Pardi in the light of said booklet. Shri Bhawalkar gave the report on 25.5.1995 pointing out the deficiencies as set out in detail in para No. 4 of the complaint. It was stated that opposite party No. 1 was not only deficient in providing the promised services but had also indulged in unfair trade practice. It was, therefore, prayed that opposite parties be directed to provide the facilities as promised in the booklet dated 30.6.1982, pay Rs. 85,00,000 to the complainants to remove the deficiencies and further pay to each of unit holder towards compensation the

various amounts as shown in Annexure-4 annexed to the complaint.

2. WRITTEN version filed by the opposite parties was ordered to be treated as written version only on behalf of opposite party No. 1 as per the order dated 27.11.2001. It was denied in the written version filed on the affidavit of T.K. Pandor that there were deficiencies in many respects like non-availability of road, water supply, non-fire fighting service, etc. as alleged. WBM (Water Bound Macadam) which was motorable, was completed at the time of possession. As per policy after the passage of two monsoons, carpeting work was carried out and a chart giving details of roads of Pardi Industrial Estate in March, 1984 is annexed as Annexure "A". Water supply line had been provided at the time of giving possession and connections were given to the parties as and when the parties approached the office of Deputy Executive Engineer at Pardi. A chart giving details of water supply is annexed as Annexure "B". It was further alleged that at the time of giving possession the power line had been laid by Gujarat Electricity Board and power was available. Chart giving details of power supply is annexed as Annexure "F". It was stated that open storm water drain along the road side had been provided. It was claimed that all basis infrastructural facilities were provided at the time of actual possession to the unit holders. Minutes of the meeting dated 11.4.1986 would show that the issues discussed related to power supply, road, quality of shed construction, septic tank, telephone facilities, etc. Power supply in industrial estate is provided by Gujarat Electricity Board. It was alleged that report of Manohar H. Bhawalkar does not give the correct picture. In case the Industrial Units had suffered any losses, it was because of their own making and the Corporation is not liable to pay any compensation. It was denied that the Corporation had indulged in any unfair trade practice and made false representation in the booklet. Orders dated 4.8.2003 and 12.12.2003 notice that the plea of limitation and non-maintainability of complaint were to be treated as preliminary objections. However, arguments were heard on merits in the case.

Submission advanced by Mr. Anil Sachthey for opposite parties was that the grievance with regard to deficiencies in services was discussed in the meeting on 11.4.1986 and since alleged deficiencies in service were rectified by the Corporation, the limitation for the purpose of filing of complaint would start running since, 1986 and the complaint filed in July, 1996 was hopelessly barred by time. In support of the submission, reliance was placed on the decision in Kerala Agro Machinery Corporation Ltd. v. Bijoy Kumar Roy & Ors., II (2002) SLT 267=(2002) 3 SCC 165. On the other hand, it was contended by Mr. Vijay Hansaria for complainant that cause of action was continuing one and the complaint was within time. Reliance was placed on the decision in Lata Construction & Ors. v. Dr. Rameshchandra Ramniklal Shah & Anr., III (1999) CPJ 46 (SC)=X (1999) SLT 77=(2000) 1 SCC 586. Mr. Hansaria invited our attention on plea of limitation as also on merit to Exhibits C-7 dated 6.3.1985, C-8 dated 15.2.1995, C-11 dated 21.9.1985, C-12 dated 15.9.1987, C-13 dated 1.11.1991 and C-18 dated 29.6.1996 filed along with rejoinder to the written version and report dated 25.5.1995 of M.H. Bhawalkar. To be noted that Exhibits C-7 and

C-11 pertain to the period prior to the meeting dated 11.4.1986. Exhibits C-8 by Nirav Engineering Corporation and C-12 by iNDEXTb were written to opposite party No. 1 in regard to charging of interest from them by the Corporation and reference was made therein incidentally about non-availability of roads. In the letter - Exhibit C-13 to M/s. Elevation Ladder Mfg. Ind. the opposite party 1 had explained that per force, it was compelled to curtail the area of the plot allotted to the company. In said report dated 25.5.1995 without giving specific instances bald statement has been made in regard to deficiencies in services. Complainant alleges that amount of Rs. 85 lakh will be required to be spent in providing services which have not been provided by opposite party No. 1. However, details of heads of works and the amount involved have not been indicated in the said report. By way of evidence the opposite party No. 1 has filed the affidavit of Shri Bajrant C. Warli, its Executive Engineer. In this affidavit he has separately dealt with the facilities of road, water supply, power, drainage, etc. at the site. Affidavit also notices that supporting infrastructural facilities like post office, fire brigade, bank, hospital and police station were not covered within the price of plots and Pardi industrial estate is a small estate. With respect to plea of limitation, even if it is taken to be a case of continuing cause of action as contended by Mr. Hansaria, Advocate one would expect that complaint was filed within a reasonable period of non-attending to the deficiencies by opposite party No. 1-Corporation and the complaint filed after about 10 years of the meeting dated 11.4.1986 at any rate cannot be said to be within limitation. Further, in view of the stand referred to above, taken by opposite party No. 1 which is supported by the affidavit of Banjrang C. Warli, Executive Engineer and aforesaid report dated 25.5.1995 as it stands, the complainant in order to prove its case should have moved this Commission for appointing an independent Local Commissioner to visit the site and then report about the alleged deficiencies in service which it did not do. Evidence of the complainant falls short of proving its case and the complaint, therefore, deserves to be dismissed also on merits.

3. ACCORDINGLY, complaint is dismissed leaving the parties to bear their own costs. Complaint dismissed.