

(1993) 02 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

PATEL ISHWARBHAI VIRIDAS

APPELLANT

Vs

GUJARAT STATE CO-OPERATIVE MKTG. FEDERATION LTD.

RESPONDENT

Date of Decision : 23-02-1993

Acts Referred:

Citation : 1993 2 CPJ 780 : 1993 2 CPR 31

Hon'ble Judges : S.A.Shah , Leelaben Trivedi J.

Final Decision : Complaint dismissed

Judgement

1. THE complainant No. 1 and 2 are farmers who are purchasing and consuming fertiliser supplied by the opposite party through complainant No. 3. THE Sidhpur Taluka Sahakari Kharid Vechan Sangh Ltd. As alleged, complainant No. 3 is acting for the benefit of a large number of consumers who are purchasing fertiliser supplied by the opposite party and, therefore, they are consumers of goods and services within the meaning of Section 2(d) of the Consumer Protection Act, 1986 (hereinafter referred to as the Act). According to the complainants on account of act and omission of the opposite party, large number of persons/consumers are put in serious hard-ships because though they were ready to pay the price of the fertiliser, same was not made available to them. As alleged, the Opposite Party, Gujarat State Co. op. Marketing Federation Ltd. which is controlled by one Mr. Patel Natwarlal Pitambardas who is Chairman of the Federation had some difference with the President of the Complainant No. 3. THE Sidhpur Taluka Sahakari Kharid Vachan Sangh Limited (hereinafter referred to as Sidhpur Sangh). It has further been alleged that in order to settle their personal scores the Chairman of the Opposite Party has resorted to illegal, arbitrary and malafide approach which has resulted into serious loss and damage to large number of consumers.

2. IT has not been disputed that the opposite party is supplying fertiliser to entire state of Gujarat through well established network. The scheme has been unfolded in the complaint. The order is to be placed with Pradhmik Mandli by putting indent to the Taluka Co. op. Society and the Taluka Co. op. Society would

place indent with District Co. op. Society viz. Mehasana Zilla Sahakari Kharid Vechan Sangh Limited (hereinafter referred to as Mehsana Sangh) and Mehsana Sangh will in turn put the indent with the opposite party. According to complainant No. 2 the complainants have put their indent with complainant No. 3, Sidhpur Sangh and Sidhpur Sangh, as alleged by the complainant has put the indent for purchase of about 40 tonnes of fertilisers with the Mahsana Sangh which was returned. But according to the opposite party Mahsana Sangh did not place any indent with the opposite party on account of the conflict between Mehsana Sangh and Sidhpur Sangh. Therefore the say of the complainant and the opposite party are contradictory. The complainant states that the Sidhpur Sangh placed the indent with Mehsana Sangh and Mehsana Sangh put the indent with opposite party which has been returned by the opposite party whereas the opposite party states that the Mehsana Sangh did not put the indent with them on account of the conflict between Mehsana Sangh and Sidhpur Sangh.

Whatever may be correct position one thing is very certain that no indent has been accepted by the opposite party and opposite party has not supplied any goods to any of the Sanghs. In view of this admitted position the question arises for our consideration is as to whether any of the complainants can be said to be a consumer of the opposite party within the meaning of Section 2(1)(d) of the Act.

3. ASSUMING for the sake of argument that there is a valid contract amongst the parties and that the opposite party is not supplying the goods which it is under legal obligation to supply to the complainant No. 1, 2 and 3, can this Commission direct the opposite party to supply the goods and in the alternative award damages. It has been time and again repeated by the Hon"ble National Commission that the Commission has no power to enforce a contract between the parties regarding sale or purchase of goods. If the goods have been delivered and if there is any defect in the goods, no doubt, the purchaser will be the consumer. But if the goods have not been delivered a potential consumer or a potential purchaser is not a consumer within the meaning of Section 2(1)(d) of the Act. In this case there is no averment that any quantity of goods have actually been supplied to complainant Nos. 1, 2 and 3. Here there is a dispute regarding the obligation under the contract. No valid sale note or a signed contract between complainant No. 3 and opposite party has been placed before us. The opposite party is denying any contract with complainant No. 3. Mehsana Sangh is not joined as a party though Mehsana Sangh has filed an affidavit which, to some extent, is in favour of the opposite party. To our opinion this is a case which can be decided by the Civil Court because the parties are basing their cases on their alleged right under the contract but still they have not become the consumers since the goods have not been delivered and as stated above, in view of the decision of the Hon"ble National Commission in the case of General Coop. Group Housing Society Limited v. J.K. Cements Works &Anr., reported in I (1991) CPJ 550=1992 (1) CPR page 359 wherein the Hon"ble National Commission has observed as under : "this appeal arises out of the decision tendered by the State

Commission, Delhi, dismissing the complaint of the present appellant in regard to the alleged breach of contract committed by the respondent in relation to the supply of a specific quantity of cement that was allegedly agreed upon between the complainant and respondent. The contract was for sale of goods and in respect of any such contract a complaint can be filed under the Consumer Protection Act only if the goods supplied suffer from any defect. It was not a contract for the rendering of any defect. It was not a contract for the rendering of any service so as to attract the concept of deficiency in any service. The State Commission has rightly rejected the complaint though for a different reason." "We are unable to uphold the argument advanced by the Counsel for the petitioner that the contract must be regarded as one for the tendering of a service and hence we should examine whether there was deficiency in the performance of such service. As already mentioned, it was a pure and simple contract for the supply of a specific quantity of cement for a settled price between the parties. No element of hiring of service for consideration was present in the said arrangement."

Now, realising the difficulty the learned advocate for the complainant submitted that there was deficiency in service. Mr. Adesara submits that as the goods were to be distributed to the consumers by the complainant No. 3 the case would fall within the purview of service as defined in Section 2(1)(d)(ii) r.w. (o) of the Act. The argument is that since the goods were for distributing to the consumers there is a deficiency in service. The argument is totally mis-conceived. The opposite party was merely alleged to be bound to supply the goods and nothing more. Therefore, the question of deficiency in service does not arise. The third submission of the learned advocate was that this amounts to unfair trade practice. We are constrained to say that there neither proper averment nor any evidence to show that the opposite party has followed any unfair trade practice. Here the complaint has not been filed by Mehsana Sangh. Neither there is any privity of contract between the complainant and opposite party nor the Mehsana Sangh is supporting the consumer. There is no merit in the matter. The complaint is dismissed. Since Mr. Adesara could not get the affidavit sworn with documents we have permitted him to file unsworn affidavit and have taken into consideration the documents annexed with the unsworn affidavit. We also permit Mr. Adesara to file the sworn affidavit before the judgment is signed.

4. WE feel that Gujarat State Co. op. Mktg. Federation being an institution created for the benefits of the common persons like agriculturists to distribute fertilizer should not stand on formalities since the aim and object of creating such institution is to do service to the smaller consumers. WE, therefore, have no doubt that the opposite party will do its best to see that the benefits of this scheme reach to the agriculturists of this region by taking some positive action. ORDER The complaint is dismissed. Since we dismiss the complaint on a preliminary ground, we are not inclined to pass any order as to costs. WE have not entered into the merits of the complaint. Therefore, the complainants can pursue their remedy in Civil Court, if they so desire. Complaint dismissed.