(1994) 09 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

PRAVAT KUMAR SAHOO — APPELLANT

Vs

COMMISSIONER TRANSPORT — RESPONDENT

Date of Decision : 16-09-1994

Acts Referred:

Citation : 1995 2 CPJ 100 : 1995 2 CPR 624

Hon'ble Judges : P.C.Misra , Biswanath Rath , Mrinalini Padhi J.

Advocate : P.K.Panda , H.P.Mohanty , S.K.Nayak

Judgement

1. -THE complainant, the owner of a bus bearing Registration No. ORY -1100, has filed this application u/Sec. 17 of the Consumer Protection Act, 1986 (hereinafter referred to as the ''Act'') praying for a compensation of Rs. 3,32,345/- the details of which has been worked out in the Schedule of claim alleging deficiency in service while it was in police custody.

2. THE claimant''s bus was seized on 22.9.1990 for non-payment of road tax at O.M.P. Square, Cuttack and was taken to the Chowdwar Police Station where it was kept under the custody of the Officer-in-charge of the Chowdwar Police Station, THE vehicle checking report which was issued while seizing the vehicle has been annexed to the application as Annexure-A. THE petitioner prayed for its release and having failed he approached the Hon''ble High Court of Orissa for a direction to release the vehicle. THE Hon''ble High Court by its order dated 8.9.1990 directed the release of the vehicle on certain terms which among other things required the complainant to deposit certain amount. THE complainant has stated that due to his stringent financial condition he could not comply with the direction of the Court and moved the Court for relaxation. On 12.8.92 the Court considering the financial condition of the complainant reviewed its own order and directed to release the vehicle on depositing a sum of Rs. 15,000/- by 3rd of February, 1992 by the complainant. Pursuant to the said order opposite parties 1 & 2, namely, the Commissioner of Transport representing the Flying Squad and the Additional Commissioner (Enforcement), State Transport Authority, Orissa issued a letter to the Police Station for release of the vehicle. THE petitioner on

reaching the Police Station found that various parts and accessories were missing from the seised vehicle. He, therefore, did not receive the vehicle with that condition and approached opposite parties 1 & 2 to get the vehicle thoroughly checked before its delivery to the complainant THEre after he got the vehicle released on 2.5.1992 and the repairing garage to which the claimant took the vehicle estimated the fittings and repairs at a cost of about Rs. 1,42,345/-. He has annexed the checking report and the estimate as Annexure E & F respectively. He has claimed a sum of Rs. 1,05,000/- (one lakh five thousand) as financial loss during the aforesaid period as the claimant had purchased the vehicle taking a loan, from the Orissa State Financial Corporation. THE dues of Rs. 65,000/- payable to the Corporation has also been claimed by the claimant and a further sum of Rs. 20,000/- has been claimed for loss of goodwill. In the show-cause filed by opp. parties 1 & 2 all the allegations made by the claimant have been denied besides disputing the jurisdiction of this Commission to entertain the dispute. It has been alleged in the show-cause that the claimant is not a consumer vis-a-vis these opposite parties and there has been no deficiency of service. It has been further stated in the show-cause that the claimant''s vehicle was seized by the authorised authority on 22.8.1990 and was kept in the custody of opposite party No. 3 for non-payment of arrears of tax amounting to Rs. 1,40,403/- out of which Rs. 55,000/- was admitted to be in arrears by the claimant himself. For the delay in getting the vehicle released it was the claimant was solely responsible as he did not comply with the direction of the High Court which was condition precedent for release of the vehicle. It has also been indicated that opposite party No. 3 was also not responsible for any Joss of parts and accessories, if any, as it was also the duty of the claimant to guard the vehicle. At any rate, the stand of these opposite parties has been that the claimant is not a consumer as defined in the Act for which reason this proceeding is not maintainable.

The case of the claimant is that the road tax which is compensatory and regulatory in nature is collected in advance and casts an obligation on the authorities to see that the vehicle is safe on the road and specially in custody. He relied on a decision reported in AIR 1975 Supreme Court -17 (M/s. Bolani Ores Ltd. v. State of Orissa and Another) which, in our considered opinion, does not help the claimant. In the said decision their Lordships dealing with the Bihar & Orissa Motor Vehicles Taxation Act observed that the Bihar Taxation Act is a regulatory measure imposing compensatory taxes for the purpose of raising revenue to meet the expenditure for making roads, maintaining them and for facilitating the movement and regulation of traffic. If this be so payment of road tax does not impose a corresponding duty either on the authorities realising the tax or the police in whose charge the seized vehicle was kept to render any service in lieu of the road tax. The next decision relied on is one reported in I (1991) CPJ 666 (K. Neelambaran v. Postmaster, Urukunnu & Others) in which Kerala State Consumer Disputes Redressal Commission was dealing with a question as to whether non-delivery of Dak amounts to negligence on the part of the Postal Authority. In that case it was hold that the Government or the Postal Department can incur statutory liability only under special circumstances. The further question that was decided in the said case was whether a claim of immunity on the basis of Section 6 of the Post Office Act is available and under what circumstances. This case, in our opinion, has no relevance to the question before us. Learned Counsel appearing for the claimant then relied on the decision reported in III (1993) CPJ 1450 (B.K. Chawla v. General Manager, Telecom, Shimla & Another) which dealt with a doctrine of remoteness. In that case the telephone of the claimant was disconnected without notice. His wife was a heart patient and because of the absence of the telephone he could not avail the help of the Doctors when she got heart attack. The Commission in that case held that the fact and circumstance of the case makes the theory of parasitic damages applicable. This case, in our opinion, is beside the point. Admittedly the vehicle was seized for non-payment of road tax. The petitioner did not pay the-tax and other legal dues to get his vehicle released. He approached the Hon''ble High Court for release of the vehicle and the order of the High Court does not indicate that the seizure itself is illegal. The High Court, however, directed release of the vehicle on payment of a part of the arrear tax and directed for payment of the balance in instalments taking a compassionate view in favour of the owner of the vehicle because of his stringent financial position.

3. IN there circumstances, the act of seizure or keeping the vehicle in custody of the police till it was released cannot be said to be illegal action on the part of the authorities. Even if the tax would have been paid regularly by the claimant we do riot think that he is entitled to any corresponding service if the vehicle was legally seized and kept in custody. IN our view, the claimant had not paid for any service to be rendered by him either directly or indirectly and, therefore, the question of deficiency of service does not arise. IN this view of the matter, the compensation claimed by the claimant cannot be said to be a consumer dispute. In the result, we do not find any merit in this application and accordingly the same is dismissed. But in the facts and circumstances of the case, there would be no order as to costs. Complaint dismissed without costs.

