(1993) 10 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

PREM G.S. INTERNATIONAL APPELLANT

Vs

UNION OF INDIA RESPONDENT

Date of Decision : 21-10-1993

Acts Referred:

Citation : 1993 0 NCDRC 26 : 1994 1 CPJ 177 : 1994 2 CPR 553

Hon'ble Judges : V.BALAKRISHNA ERADI , A.S.VIJAYAKAR , Y.KRISHAN , B.S.YADAV J.

Final Decision : O.P. No. 81/92 and O.P. 86/92 are dismissed

Judgement

1. AS the nature of complaints in O.P. Nos. 81 and 86 is similar, both the complaints have been clubbed together and are disposed of by this order.

2. IN O.P. No. 81 of 1992 the complainant has alleged that he had suffered because of the failure /refusal of the opposite parties especially opposite party No. 2, Appeal Export Promotion Council in providing ''immediate hired service" in the matter of refund earnest money deposited and in not entertaining him claim for loss of US $ 52,000 for aborted exports against export licence obtatined by him. He has claimed a sum of Rs. 26.73 lakhs. The components of the claim are:" (a) (i) Refund of Earnest Money Deposit Rs. 22,820.75 (EMD) for the period ending 31st March, 1985. (ii) Refund of the balance EMD as claimed in 1989. Rs. 15,310.00 (iii) Refund of EMD relating to surrendered quota claimed in 1989 and 1990 Rs. 94,762.00 Total Rs. 1,33,392.00

(b) The claim on account of aborted export to US $ 52,000 or Rs. 17,97,120.00 In addition, he has claimed interest Rs. 1,86,986/- on the above amounts and compensation of Rs. 5.55 lakhs.

3. THE complainant has argued that the Appeal Export Promotion Council allots quotas (export licences) against 5 per cent bank guarantee towards earnest money deposit for ensuring utilisation of full quantity of the export quota allotted and also levies service charges a different rates for different systems of quotas as per the quota policy of the Government According to the complainant, it

renders service for consideration hence he is a consumer via-a-vis the opposite parties.

4. THE opposite party No. 2 Apparel Export Promotion Council in its reply has stated that the petitioner is a chronic professional litigant who has played fraud on the Consumer Forum by making false claims or by suppressing documents or portion of the documents to mislead the Commission. More importantly, it is submitted that the complainant is not a consumer under the Consumer Protection Act, there is no hiring of service and the opposite party No. 2, the Apparel Export Promotion Council is performing sovereign function of regulating exports on behalf of the State. They have further submitted that the claim is also barred by limitation.

5. THE opposite party No. 2 has also pointed out that the complainant had gone in appeal regarding the claims before the Textiles Commissioner and the same was dismissed on the merits. The second appeal also was dismissed. Thereafter he has filed this complaint before the Consumer Forum.

6. THE earnest money deposit/bank guarantee is required to be furnished by an applicant for export licence or quota to ensure that the exporter does export the minimum quantity in accordance with the export policy. Earnest money deposit/ bank guarantee is not a consideration for any service to be rendered but is extended for ensuring fulfillment of the obligation of the licence and quota holder for exports. The service charges levied by the Apparel Export Promotion Council are only for the purposes of certification of the shipping bills to enable entitlement certificates to be issued to the exporters on their application for allotment of quotas.

7. ON a detailed examination of the claim put forward by the complainant the position is found as under: (a) Refund of EMD of Rs. 22,820.00 for the period ending 31st March, 1985. This claim is based on the fact that in the balance sheet of the opposite party No. 2, this amount is being shown in a suspense account (BMD) to the credit of the complainant and the complainant maintains that yearly balance sheets of the opposite party are sufficient acknowledgement of the credit due to the complainant from the opposite party.

The opposite party has pointed out that the suspense account showing credit of EMD in favour of the complainant is only an accounting device for exercising control over EMD and does not constitute an acknowledgement that the amount is due and payable to the complainant.

8. AS regards the other amounts claimed as refund on account of the EMD, the opposite party had denied the claim of the complainant either because no evidence of shipments has been produced or because the amount was liable to be forefeited and not refundable keeping in view the extent of shipment effected. (b) The claim of Rs. 17.97 lakhs on account of the aborted export: The opposite, party has rejected the complaint that he was denied by A.P.C. to export the goods. It points out that the complainant was entirely responsible for the failure

to export the goods and show cause notice for forefeiture of the bank guarantee has been served on the complainant.

From the facts stated above, we are satisfied that the complainant is not a consumer under the Consumer Protection Act. EMD/ bank guarantee and the charges levied for certification do not constitute consideration for any service to be rendered by the Apparel Export Promotion Council. The claim has also not been duly established. We are surprised that the complainant has founded his claim for refund of EMD for the period ending 31st March, 1985 on the suspense account amount appearing in the balance sheet. A suspense Account is only a device for exercising control over one''s transactions and not evidence of debit or liability. The complainant had also gone in appeal before the Textile Commissioner. This Commission is, therefore, not going to sit on judgment in a matter already adjudicated upon by the Excise Commissioner.

9. O .P. No. 86/92. In this Complaint, he has made a claim of Rs. 13.82 lakhs. The main components of this claim are" (i) Refund of EMD for the years....1984, 1985 and in some cases where quotas not released Rs. 1.66 lakhs (ii) Aborted export of rayon blouses to US ....US $ 45920/-or Rs. 14.69 lakhs (iii) Interest on the above amounts ...Rs. 10.96 lacs (iv) Compensation ....Rs. 4.35 lacs

10. THE claim for refund of EMD is based on the suspense account appearing in the balance sheet of opposite party No. 2. AEPC for the year ending 31st March, 1986. The complainant has pleaded that the suspense account in the balance sheet of the opposite party No. 2, AEPC is sufficient acknowledgement of the amount due to the complainant. In regard to the aborted export of rayon blouses, the consignment could not be cleared in USA because of the embargo on the import of this commodity placed by US customs on October, 1991. This consignment could not be cleared in the subsequent year because of the absence of bilateral agreement between Indian and USA.

11. ACCORDING to the Respondent AEPC his first and second appeals before the Textile Commissioner have also been dismissed on merits. We cannot adjudicate further in the matter.

12. WE have already held above that Earnest Money Deposit is not a payment of consideration for rendering services. As such the complainant is not a consumer. We are also at a loss to see how the complainant can maintain a claim against opposite party No. 2 for his failure to export rayon blouses because of the embargo placed by USA customs or in the absence of a bilateral agreement between India and USA. None of these claims is, therefore, maintainable under the Consumer Protection Act. We feel that the complainant has abused the provisions of the Act by filing complaints which are not at all maintainable under the Consumer Protection Act and are devoid of any substance. Both the complaints in O.P. No. 81/92 and O.P. 86/92 are dismissed. The complainant will pay a sum of Rs. 5,000/- in each case as costs.

