

(1993) 03 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

PUNJAB STATE ELECTRICITY BOARD

APPELLANT

Vs

KAPURTHALA FLOUR OIL And GENERAL MILLS

RESPONDENT

Date of Decision : 31-03-1993

Acts Referred:

Citation : 1993 0 CPC 449 : 1993 2 CLT 510 : 1993 2 CPJ 894 : 1993 2 CPR 165

Hon'ble Judges : S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.

Final Decision : Complaint withdrawn

Judgement

1. THE respondent, S.D.O., Punjab State Electricity Board, Division No. 1, Kapurthala before the District Forum Kapurthala in Complaint No. 1 of 1992 has moved a petition under Section 17(b) of the Consumer Protection Act, 1986 (for short the "Act"), praying that the complaint filed by M/s Kapurthala Flour Oil and General Mills, Kapurthala be transferred from District Forum, Kapurthala to another District Forum. It has been averred in the petition that the Flying Squad of the Punjab State Electricity Board checked the electric connection/equipment installed in the Mills premises of the complainant and found that they were indulging in theft of electricity. As a result, notice was issued to the complainant and their electric connection was disconnected. THEir connection was however, restored by the Electricity Board on the deposit of Rs. 50,000/-. It is alleged that the District Forum Kapurthala consists of the District & Sessions Judge, Kapurthala, Shri R.K. Dhirand, Mrs. Gurjit Kaur, Shri R.K. Dhir is running a rice sheller/solvex plant and the petitioner had already proceeded against this rice sheller for indulging in theft of electricity and a penalty of about 20 lacs had been imposed. It is further alleged that Shri Dhir is the President of Managing Committee of S.D. College, Sultanpur Lodhi, District Kapurthala and the other Member, Mrs. Gurjit Kaur is a Lecturer in the said college and that Mohinder Kumar Aggarwal, who is a partner of the complainant-firm, is the President of Municipal Committee, Kapurthala. Under the circumstances, the petitioner apprehends that justice would not be done by the District Forum, Kapurthala and that the case pending before the District Forum, Kapurthala be transferred to some other District Forum in the Slate. On being served, Mohinder Kumar

Aggarwal appeared on behalf of the complainant-firm and he has not opposed transfer of his complaint to another District. Mr. Aggarwal has not specifically denied the allegations made by the petitioner in paras 3 and 7 of the petition, but denied the other allegations of the petition.

2. WHEN it was pointedly asked to Shri S.S. Shergill, learned Counsel for the petitioner as to how the Revision Petition lies for the transfer of a complaint from one District Forum to another, Shri Shergill contended that wide ranging revision power under Section 17(b) of the Act would include within its ambit a power to transfer complaint from one District Forum to another. Though, no precedent could be cited by him, Shri Shergill then contended that even if it is held that such petition for transfer cannot be moved under Section 17(b) of the Act, the Administrative powers of the Commission entitle it to grant the necessary relief of transfer of a case in a situation where there is no option but to grant such a relief. There appears to be *modi-cum* of merit in this submission. It is no doubt clear to us that the very concise thirty one Sections of the Act do not either interms or by necessary implication confer power to transfer a case from one Forum to another and in the Punjab Rules framed under the Act, no express or implied power has been conferred on the State Commission to do so. It may be said that in the vacuum created by a legislative lacuna in the Act and the Punjab Rules, the Administrative power may well be invoked to grant relief where the situation is irremediable except by the exercise of power of transfer. In the light of the above, it is held that the State Commission has the power to transfer a complaint from one District Forum to another or to themselves, wherever the exigencies of the situation so require. Now the question is whether the circumstances stated above by the petitioner taken together justify the case to be transferred to another Forum as prayed for by the petitioner. It is well known that reasonable apprehension on the part of litigant should receive consideration but at the same time, the apprehension must be such as a reasonable man might reasonably be expected to have. Therefore, if there are circumstances in a case which raised a reasonable apprehension in the mind of person applying for transfer that he would not receive fair dealings at his trial or in other words that he may not have a fair or impartial trial and may not get justice in the Forum where the case is pending, the case should be transferred. Bearing the above principle in mind in the present case, what we find is although the facts mentioned by the petitioner may not be sufficient grounds to raise a reasonable apprehension in the mind of the petitioner but in our opinion, there is no doubt that the cumulative effect of all the circumstances and facts stated above are certainly such that even a reasonable man might reasonably be expected to have a reasonable apprehension that he will not have a fair trial before the Forum concerned.

Considering the peculiar circumstances of this case, we are of the opinion that the interests of justice would best be served if the complaint is transferred to another District Forum. We must however, make it clear that this order does not mean or imply doubts about the integrity and impartiality of the learned

Members of the District Forum, Kapurthala and it should not be construed to cause any adverse reflection on them in this respect. It is peculiar and special circumstance disclosed on this record, which have induced us to feel that the cause of justice would be better served on the whole if the complaint is transferred to another District Forum.

3. IN the result, the complaint No. 1 of 1992 is hereby withdrawn from the file of District Forum, Kapurthala and the same is transferred to the District Forum, Jalandhar for disposal in accordance with law. The parties are accordingly directed through their Counsel to appear before the District Forum, Jalandhar on 3.5.1993 when another suitable date would be given to the parties for further proceedings. It is hoped that the case would now be disposed of without any undue delay. IN the circumstances of the case, there would be no order as to costs. Complaint withdrawn.