

(2010) 07 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

RAJASTHAN STATE INDUSTRIAL DEVELOPMENT And
INVESTMENT CORPORATION LTD.

APPELLANT

Vs

Diksha Enterprises

RESPONDENT

Date of Decision : 09-07-2010

Acts Referred:

Citation : 2010 0 NCDRC 69 : 2010 3 CPJ 333

Hon'ble Judges : B.N.P.Singh , S.K.Naik J.

Advocate : Gautam Gupta , Aditya Madan , K.R.Chawla

Judgement

1. THIS revision petition is by the Rajasthan State Industrial Development and Investment Corporation Ltd., challenging the order dated 14th of August, 2007 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (State Commission for short), by which the State Commission, while dismissing the appeal of the petitioner, held that there was no legal infirmity in the order passed by the District Consumer Disputes Redressal Forum, Alwar (District Forum for short) directing the petitioner to allot the industrial plot at the original rate of Rs.440/- per sq. mt. Admittedly, the respondent-complainant, which is a partnership firm, applied for the allotment of an industrial plot admeasuring 4000 sq. mtrs. in Chopanki, Bhiwadi for the purpose of establishing a factory for the manufacturing of S.O. Dyes on 29th of March, 2004. Without going into the details and the dispute raised with regard to the rate of developmental charges, it may be stated that the petitioner has raised a point of law, contending that the allotment is related to the allocation of an industrial plot for setting up of a factory for the manufacturing of S.O. Dyes. Referring to the definition of a consumer under section 2(d) of the Consumer Protection Act, 1986, learned counsel for the petitioner has contended that after the amendment of the Act during 2002, which came into effect from 15th of March, 2003, any person who hires or avails of any service for a consideration for commercial purpose would not fall within the definition of a consumer. The present case pertains to the allotment of an industrial plot for the purpose of setting up of a factory and, therefore, the learned counsel contends that the dispute is clearly outside the

purview of the consumer fora.

2. LEARNED counsel for the respondent-complainant in response to this objection has submitted that the respondent-complainant is fully covered under the Consumer Protection Act, 1986, as amended, and is also covered by the definition of a consumer as mentioned in the Act because the petitioner had malafidely, deliberately and in illegal manner cancelled the allotment of the plot in question after having received the deposit. He has referred to the judgment of the Honble Supreme Court in the case titled HUDA Vs. Seema Handa reported in Vol. IV (2004) CPJ 6 (SC) in support of his contention. Since a preliminary objection has been raised on the point of law, it would be appropriate to first deal with this objection. Section 2 of the Consumer Protection Act, 1986, dealing with definitions, in sub-clause (d) defines a consumer as under :- (d) "consumer" means any person who (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who "hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person but does not include a person who avails of such services for any commercial purposes; Explanation. For the purposes of this clause, commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment (emphasis added)

It is clear from this provision that after the Amendment Act 62 of 2002, which came into effect from 15th of March, 2003, any person who buys any goods or avails any service for a consideration, if it relates to a commercial purpose, except on the ground of earning his livelihood by means of self employment, would not fall within the definition of a consumer and, therefore, any such dispute would not be a consumer dispute and the consumer fora would have no jurisdiction to entertain any complaint for such dispute.

3. IN the case in hand, the respondent-complainant in his complaint states that he applied for an industrial plot of 4000 square meters for the purpose of setting of a factory for manufacturing S.O. Dyes. For proper adjudication of the matter, it is necessary to refer to the definition of factory, which as per section 2(m) of the Factories Act reads as under:- factory means any premises including the precincts thereof (i) . (ii) whereon twenty or more workers are working, or were

working on any day of the preceding twelve months, and any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on. Further, the manufacturing process is defined under Section 2(k) of the Factories Act, which reads as under :- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal,

A plain reading of these provisions make it clear that the intention of the respondent-complainant is far from earning any livelihood by self-employment but is purely intended to set up a manufacturing unit to earn profit. Thus, it is clear beyond any pale of doubt that the service obtained even for a consideration from the petitioner is for a commercial purpose and the dispute does not fall within the domain of consumer fora.

4. INsofar as the judgment of Honble Supreme Court in the case of HUDA vs Seema Handa (supra) relied upon by the respondent-complainant is concerned, the dispute therein was with reference to the rate at which interest was to be charged and not whether allottee of an industrial plot for setting up of a factory was a consumer under the Consumer Protection Act, 1986. Besides, even on that limited issue the Honble Supreme Court in the concluding para 8 has stated that We clarify that this Order shall not be taken as a precedent in any other matter ... Reliance of the respondent-complainant on this judgment is misplaced. Since the respondent-complainant is not a consumer and the fora below could not have entertained the complaint, it is not necessary for us to consider the other aspects such as the rate of developmental charges and payment etc. Under the circumstances, the revision petition is accepted and the complaint is dismissed, with no order as to cost. However, the respondent-complainant is left with the option to seek his remedy, if so advised, from the appropriate civil court.