

(1992) 12 NCDRC CK 0001

In the National Consumer Disputes Redressal Commission

Ramaseshasya Raw And Boiled Rice Millcomplaina

APPELLANT

Vs

UNITED INDIA INSURANCE COMPANY LTD

RESPONDENT

Date of Decision : 10-12-1992

Acts Referred:

Citation : 1993 0 CPC 193 : 1993 1 CPJ 56

Hon'ble Judges : S.S.SANDHAWALIA , BASANTI DEVI J.

Judgement

1. WHETHER a person who has hired out his services to another is within the ambit of the definition of a consumer under the Act? This is the primal threshold question in this complaint.

2. THE facts merit notice with brevity. On the complainants own showing he is a contractor and supplier of various construction materials to the Government or private business houses at Tohana. The opposite party M/s. Nuchem Plastic Limited is a concerned engaged in various business and trade activities. Opposite party No. 2, the Executive Director of the said concern engaged the services of the complainant vide a purchase order for the filling of the land of their project located at the Hisar -Chandigarh road for a total consideration of Rs. 4,90,450/- . It is the complainants case that he carried out the aforesaid order and thereafter approached the opposite party for the payment of the amount afore -mentioned. However, the allegation is that they used dilatory tactics and despite persistent demands and visits the payment was not made. The present complaint has been preferred for the relief that the opposite parties be directed to pay the sum of Rs. 4,90,450/- for the services rendered alongwith interest @ 18% thereon. Obvious doubts having arisen about the very locus -standi of the complainant in the consumer jurisdiction the matter has been listed on the preliminary issue of maintainability of the complaint. Mr. H.C. Gupta, the learned Counsel for the complainant very fairly took up the stand that on the facts alleged in the complaint itself, the services of transport had been hired out by the complainant to the opposite party. It was argued that the present case was one of the hiring of services and that a person who hires out his services was equally within the

ambit of the definition of a consumer. Since the issue was pressed with some vehemence, the compliment of a rational refutation has to be extended thereto.

3. TO clear the desk for the consideration of what appears to us as a tenuous submission one may first point out that admittedly the present case is not remotely of any purchase of goods. Learned Counsel for the complainant has explicitly confined himself to the stand that this is one of the category of hiring of services alone. That being so one must advert to the relevant part of the definition in 2(1)(d)(ii) of the Act. This may be noticed in extenso : (d): "consumer means any person who," - (ii) hires 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 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:"

4. IT needs no great erudition to say that on the plain reading of the aforesaid provision, it envisages only a person who himself hires the services for another consideration. The wide ranging definition of service in Clause (o) of Section 2 is now too well known to require recapitulation. It suffices to mention that reading the provisions together as they necessarily must be to come within the ambit of this part of the definition of a consumer a person must be a hirer of a service as defined under the Act. Once that is so, it is some - what plain that a person who "hires any services" is patently the antonym of "hiring out any services". To use the language of mathematical exactitude, these are indeed geomatrically opposite terms. It appears to us that the matter is so obvious that it would be somewhat wasteful to further elaborate the same. Inevitably the answer to the question posed at the out -set has to be rendered in the negative and it is helf that a person who has hired out his services is not a consumer under the Act.

5. IN fairness to the learned Counsel, we may also notice his equally untenable alternative argument. It was submitted that even if in the beginning the complainant may not be a consumer after he had rendered the services hired by the opposite party, he becomes one for the purpose of the recovery of the consideration for such services.

6. THE submission has only to be noticed and rejected. It bears repetition that on the complainants own showing and the stand of the learned Counsel, the present case pertains to the services of the nature of transport. The purchase order envisages payment for the quantity of cubic ft. of earth to be carried in each truck trip. In this situation, indeed the opposite parties are the consumers who had hired the complainants services of the nature of a transporting contract. One fails to see how the complainant who being not a consumer at the inception of the transaction would later convert himself to that status by execution of the agreement arrived at betwixt the parties. The alternative submission, therefore, appears to be equally devoid of merit. In view of the afore -mentioned

discussion, it must be held that the complainant is not a consumer and consequently has no locus -standi within this jurisdiction to maintain the present complaint. The same is hereby dismissed without any order as to costs, because no notice was issued to the opposite parties.

7. AS a matter of abundant caution, we may mention that the aforesaid dismissal would obviously not effect any other legal remedies which the complainant may choose to resort to in the regular Courts of law. Complaint dismissed.