

(2015) 01 NCDRC CK 0076

In the National Consumer Disputes Redressal Commission

R.K. Handicraft And Ors.

APPELLANT

Vs

Parmanand Ganda Singh And Co. And Ors.

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Citation : 2015 2 CPJ 13

Hon'ble Judges : AJIT BHARIHOKE J.

Final Decision : Petition dismissed

Judgement

1. THIS revision is directed against the order of the State Commission Haryana dated 29.11.2012 in First Appeal No. 449/2012 whereby the State Commission relying upon the judgment of Hon"ble Supreme Court in the matter of Birla Technologies Ltd. Versus Neutral Glass & Allied Industries Ltd. : 2011 (1) CPR 1 (SC) held that petitioner/complainant cannot be termed as consumer as envisaged under section 2(1)(d) of the Consumer Protection Act, 1986 (in short, the Act) and set aside the order of the District Forum resulting in dismissal of the complaint.

2. BRIEFLY stated facts relevant for the disposal of the revision petition are that petitioner is engaged in the business of handicrafts under the name and style of M/s R.K. Handicraft. The petitioner filed a consumer complaint before the District Forum Panipat alleging that he purchased one diesel generating set from the respondent No. 2 for Rs. 10,40,000/- vide bill No. 1729 dated 05.09.2009. The generator set was found to be defective. The defects were brought to the notice of the opposite parties but the opposite parties failed to remove the defects. The petitioner thus requested the opposite parties to refund the generator set. The opposite parties, however, failed to replace the generator set and this led to the filing of the consumer complaint. The opposite party resisted the complaint. In the written statement, the opposite parties took the preliminary objection that the consumer complaint was not maintainable because the complainant was not a consumer as he had purchased the generator set for commercial purpose. On merits, purchase of generator set by the petitioner was admitted. However, the

opposite parties denied other allegations on merits.

3. THE District Forum Panipat on perusal of the pleadings and the evidence allowed the complaint and directed opposite party No. 2, namely, M/s Parmanand Ganda Singh and Company to take back the generator set and refund the sum of Rs. 5,40,000/- to the petitioner/complainant within 30 days from the date of order failing which it was directed that the awarded amount would carry 8% interest besides litigation cost of Rs. 2200/- was also awarded.

4. OPPOSITE Party No. 2 being aggrieved of the order of the District Forum approached the State Commission in appeal and the State Commission allowed the appeal and set aside the order of the District Forum on the premise that the petitioner was not a consumer as envisaged under section 2(1)(d) of the Act. Learned counsel for the petitioner has assailed the impugned order, firstly on the ground that the State Commission has failed to appreciate that the generator set was not purchased for commercial purpose and actually it was purchased with a view to have power back -up in the event of disruption in the power supply.

5. WE do not find merit in this contention. On perusal of the complaint, it is obvious that complainant is in the business of manufacture and export of handloom goods. Admittedly, as per the averment in para 2 of the complaint, before the purchase of this generator, the complainant was already using four generating sets in his premises. This clearly indicates that the subject generator set was purchased by the petitioner for generating electricity to run the factory for manufacture of handloom products. Our aforesaid conclusion is strengthened from the fact that petitioner in para 5 of the complaint has contended that because of defect in said generator set, the complainant suffered a huge loss in his business as his shipment to the foreign buyer got delayed. From this, it is obvious that the generator set was purchased by the petitioner to promote his commercial interest. As such, we do not find any fault with the conclusion of the foras below that the generator set was purchased for commercial purpose.

6. SECONDLY , it is contended that foras below have committed an error in failing to appreciate that the generator set developed defect during the warranty period. Learned counsel contended that it is well settled that even if the goods are purchased for commercial purpose, the consumer complaint can be maintained if the defects are not removed within the warranty period. In this regard, complainant has relied upon the judgment of this Commission in Jindal Drilling & Industries Ltd. Vs. Indocon Engineers Pvt. Ltd. & Anr. III : (2006) CPJ 264 (NC). The above said judgment is of no help to the petitioner for the reason that same issue came up before the Hon'ble Supreme Court in the matter of Birla Technologies Limited Vs. Neutral Glass and Allied Industries Limited : (2011) 1 SCC 525 wherein Hon'ble Supreme Court has observed thus: "9. Shri U.U. Lalit, learned Senior Counsel appearing on behalf of the appellant pointed out that there is a basic error committed by the National Commission inasmuch as it has proceeded on the basis that the complaint was filed on 1.8.2000, which was prior to the amendment of Section 2(1)(d)(ii) by the Amendment Act, 2002.

Shri Lalit pointed out that the complaint in fact was filed on 26.6.2003 i.e. after the amendment of the said Section, which came on 15.3.2003. The learned Senior Counsel, therefore, submitted that even if there was any service which was hired from the appellant in view of the finding of the National Commission that the goods themselves were purchased from the appellant for commercial purposes, there would be no question of the service being included in Section 2(1)(d)(ii) particularly in view of the amendment. The learned Senior Counsel pointed out that the service offered by the appellant was only for proper working of the Modules which were included in the software and as such was for commercial purpose. He, therefore, pointed out that the order of the National Commission holding the complaint maintainable to the extent of services offered is clearly incorrect, as it proceeds on the wrong assumption that the complaint was filed on 1.8.2000 i.e. before 15.3.2003 when the amendment was made to Section 2(1)(d)(ii).

7. SHRI Sidharth Bhatnagar, learned Counsel appearing on behalf of the respondent could not dispute this proposition and fairly accepted that the complaint was in fact filed on 26.6.2003 i.e. much after the amendment to Section 2(1)(d)(ii), by which the following words were added: - "but does not include a person who avails of such services for any commercial purpose."

8. IN view of the findings of the National Commission that the goods sold by the appellant to the respondent/complainant amounted to "goods" and that such goods were purchased for commercial purpose of earning more profits, there could be no dispute that even the services which were offered had to be for the commercial purpose. Nothing was argued to the contrary. It seems that the whole error has crept in because of the wrong factual observation that the complaint was filed on 1.8.2000. In that view, it has to be held that the complaint itself was not maintainable, firstly, on the count that under Section 2(1)(d)(i), the goods have been purchased for commercial purposes and on the second count that the services were hired or availed of for commercial purposes. The matter does not come even under the Explanation which was introduced on the same day i.e. on 15.3.2003 by way of the amendment by the same Amendment Act, as it is nobody's case that the goods bought and used by the respondent herein and the services availed by the respondent were exclusively for the purpose of earning the respondent's livelihood by means of self - employment. In that view, it will have to be held that the complaint itself was not maintainable in toto." 10. Thirdly, learned counsel for the petitioner has taken us through the definition of the complainant under section 2(1)(d) of the Act and submitted that he had purchased the subject generator set with a view to earn livelihood by way of self employment. Therefore, in view of the explanation to Section 2(1)(d) of the Act, the subject generator set cannot be said to have been purchased for commercial purpose.

11. There is no merit in the above contention. In order to avail benefit to explanation given in section 2(1)(d) of the Act, the petitioner was required to

plead and prove that he purchased the generator set exclusively for earning livelihood by way of self -employment. On perusal of the complaint, we find that there is no such pleading on the part of the petitioner. On the contrary, as per the allegations in the complaint, the business of the petitioner under the name and style of R.K. Handicraft was going on prior to the purchase of the subject generator set, which admittedly was 5th in line. Therefore, it cannot be said that generator set was purchased exclusively for the purpose of earning livelihood byway of self -employment. Thus, in our view, the petitioner is not entitled to the benefit of the explanation.

12. In view of the discussion above, the petitioner has failed to point out any material irregularity or jurisdictional error in the impugned order which may call for any interference in revisional jurisdiction. Revision petition is, therefore, dismissed.