(1999) 03 NCDRC CK 0064

In the National Consumer Disputes Redressal Commission

ROLEX RUBBER FOAM INDUSTRIES — APPELLANT

Vs

ANDHRA PRADESH INDUSTRIAL INFRASTRUCTURE CORPORATION LIMITED — RESPONDENT

Date of Decision : 12-03-1999

Acts Referred:

Citation : 1999 2 CPJ 563 : 1999 3 CPR 339

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao , Mamata Lakshmanna J.

Final Decision : Complaint dismissed

Judgement

1. THIS complaint is filed before this Commission on 1.2.1991 under Section 17(a)(1) of the Consumer Protection Act, 1986 praying for a direction to the opposite parties namely, Andhra Pradesh Industrial Infrastructure Corporation Limited represented by its Regional Manager at Guntur (opposite party No. 1); The District Industries Centre, represented by its General Manager at Guntur (opposite party No. 2), and The Vice Chairman and Managing Director, Andhra Pradesh Industrial Infrastructure Corporation Limited, Hyderabad (opposite party No. 3) to direct the 1st opposite party to provide the water facility to the complainant''s firm forthwith; to declare that the 1st opposite party is not entitled to claim interest till it provides the water facility to the complainant''s firm and to pay compensation of Rs. 2,00,000/- and costs. The case of the complainant as unfolded by the averments made in the complaint is as follows :

2. THE complainant is a Partnership Firm carrying on business in manufacture and sale of rubber foam goods and ancillary products and is a Small Scale Industry (Rural Unit) registered with the Department of Industries, Guntur. THE 1st opposite party allotted a shed bearing No. 3 in Industrial Estate, Nowluru, Guntur District to the complainant firm for setting up industrial unit for the manufacture of rubber foam beds on lease-cum-sale basis on certain terms and conditions by an allotment order dated 28.3.1984 at a cost of Rs. 1,86,468.90 paise and possession of the said shed was given on 4.2.1985. THE complainant got electricity connection to the shed by getting conductors drawn from a

distance of about one kilometre from the main lines of the industrial area. It also got the well deepened, pipe lines laid with the help of the centrifugal pump and motors. THE 1st opposite party should supply the required water for smooth running of the industry and the complainant has to pay water charges according to the terms and conditions of the agreement. THE Lease-cum- Sale Agreement was executed between the parties on 16.3.1985. THE 1st opposite party informed the complainant that the final cost of the shed was fixed at Rs. 1,41,100/- apart from the cost of the land and the total cost of the shed was Rs. 2,21,579.65 paise. For running the foam industry water is the basic requirement and the complainant''s unit required water between 3,000 to 5,000 litres per day but the 1st opposite party failed to supply the required water inspite of repeated requests made by the complainant. Consequently the unit was kept idle for a long time and worked partially for some time and the production process was completely affected resulting in heavy financial loss. THE raw material was spoiled for want of sufficient water. THE complainant requested the 1st opposite party to sell the well located in the allotted area so that the complainant could deepen the same and draw the water after covering it since the water in that well was polluted with the chemicals of cement industry located adjacent to the complainant''s unit and as the said water is not suitable for the production of foam material, but the officials of the 1st opposite party did not agree for the said proposal. THE complainant procured unpolluted water with the help of tankers for some time and during that period the product was of standard quality as the water was not polluted. On 30.5.1988 the 1st opposite party wrote a letter to the complainant informing that the common facilities like roads, lighting, water supply etc. etc., were handed over to the Gram Panchayat of Errabalem on 27.5.1998 and therefore, advised the complainant to apply to the Gram Panchayat for supply of water. When the complainant approached the Gram Panchayat, the Executive Officer informed in his letter dated 15.7.1988 that the pumps were not working and unless the pumps were repaired they cannot consider giving water connection to the complainant. THEn the complainant approached the 3rd opposite party for giving necessary instructions in the matter. THE Deputy General Manager wrote a letter dated 31.5.1988 asking the complainant to contact the 1st opposite party for release of water saying every arrangement was made in that regard. Even on 14.2.1989 the Executive Officer of the Errabalem Gram Panchayat wrote a letter stating that he was not able to supply water to the industrial estate. On 13.2.1990 the 1st opposite party wrote a letter asking the complainant whether it was interested to own the well. THE complainant informed the 1st opposite party in the affirmative. But the matter was not finalised. THE 1st opposite party started pressing the complainant for payment of the dues. THE complainant approached the 2nd opposite party and explained its difficulties to him. THE 2nd opposite party requested the 1st opposite party to collect the dues on easy instalments. THE complainant''s firm sustained heavy losses in May, 1990 due to cyclones. THE shed was collapsed. THE complainant requested the 1st opposite party to waive interest in view of the fact that there was no production due to non- upply of water by the 1st opposite party. THE 1st opposite party in the letter dated 5.5.1989 directed the complainant to pay the entire arrears treating the said letter as final notice. THE 1st opposite party finally directed the complainant to pay the dues on or before 31.1.1991. THE 1st opposite party failed to make necessary arrangements to supply the required quantum of water to the complainant''s unit. THE complainant''s industry suffered serious loss due to non-availability of water. THE banks and financial institutions have not released the financial assistance on the ground that the production in the complainant''s unit was not at the required level. If adequate water was supplied by the 1st opposite party the complainant would have run the industry at the required level and would have earned a minimum profit of one lakh rupees per year during the last five and half years. THE 1st opposite party is liable for this loss for not supplying the adequate water. THE 1st opposite party has no right to claim interest on the dues. He is threatening to take possession of the unit if the complainant failed to pay the dues with interest. Hence the complainant is constrained to approach this Commission for redressal and for the reliefs mentioned above. The 1st opposite party filed a counter admitting the allotment of shed No. 3 in the Industrial Estate, Nowluru in Guntur District to the complainant for setting up a unit for the manufacture of "latex rubber foam bed" stating that one M.A. Shukur was the proprietor of the unit. The said Shukur took his father M.A. Hye as a partner and a partnership deed was executed on 3.3.1984 and the change in the constitution was approved by the opposite parties on 21.2.1985. The complainant took possession of the shed on 4.2.1985 even before the lease-cum- sale agreement was executed on 16.3.1985 and registered on 3.4.1985. At the time of allotment of the shed to the complainant, developmental works like roads, water supply system, street lighting etc., were started but not completed and after the said works were completed in the year 1988 it was decided to hand over all the facilities to the Gram Panchayat of Errabalem for maintenance. The opposite parties dug a well in the South-East corner of the shed allotted to the complainant and the complainant drew water from the said well through a pipe line by installing a motor and pump with a capacity of 5,000 gallons per day. The complainant in its letter dated 2.5.1986 asked the opposite parties to inform the cost of the well so that they might purchase the same and the matter is under correspondence with the Engineering Wing of the opposite parties. As there was increase in the cost of the land from Rs. 14/- per square metre to Rs. 25/- per square metre, the cost of the shed was raised to Rs. 2,21,589.65 paise and the complainant was asked to pay the said amount. Subsequently the cost was reduced to Rs. 1,94,969 / - due to reduction in the cost of the land and the complainant was informed of the same. The complainant never applied to the opposite parties for supply of 3,000 to 5,000 litres of water per day. The complainant stated in the application for allotment of shed that the daily requirement of water was 200 gallons. In its letter dated 26.6.1987 the complainant informed that it required water between 2,000 to 5,000 litres per day. Therefore, it follows that the complainant did not know what quantum of water was required by it. The Engineering Wing of the opposite parties assessed the capacity of the well of 40 depth and 6 diameter in the shed allotted to the complainant at 5,000 gallons per day and the complainant has been drawing the required water from the said well and carrying on production. The complainant never applied to the opposite parties for any water connection though expressed his desire to purchase the well. According to the permanent Registration Certificate No. 01 /07-5180-Part-SSI-Rural dated 7.5.1985 of the General Manager, District Industries Centre, Guntur the complainant''s unit started production from 6.4.1985. Subsequently in its letter dated 20.12.1986 the complainant informed the opposite parties that .the raw material called as Latex required by their unit was in short supply and the unit could not work continuously and that they suffered heavy loss due to manufacturing difficulties like lack of right type of technicians and want of continuous power supply, etc. The complainant has not complained at any time that its product was spoiled by pollution of water drawn from the well located in the premises or that there was short supply of water for carrying on their business. The grievance of the complainant always was that the production was affected due to short supply of raw material, short supply of electricity and upward trend in the cost of raw material. As the opposite parties handed over water supply system, roads and street lights to the Errabalem Gram Panchayat in good working condition and a certificate was obtained to that effect on 27.5.1988 it is the responsibility of the said Gram Panchayat to maintain them in good working condition and supply water to the industrial units situated in the Industrial Estate. The opposite parties constructed the pump house installed pumps and motors, constructed overhead tank of capacity of 40 thousand gallons, obtained power supply to the pump sets and then handed over them to the Gram Panchayat. The complainant was also informed of the same. The complainant approached the Gram Panchayat for supply of water but the Gram Panchayat expressed its inability to supply water to the industrial units. When the opposite parties enquired from the complainant whether it was willing to purchase the well, the complainant did not respond positively. The Gram Panchayat expressed its readiness to hand over the common facilities and the matter is under consideration of the opposite parties. The opposite parties are now in a position to supply water to the industrial units. The complainant has to pay balance sum of Rs. 1,57,669/- towards the cost of the shed and Rs. 1,37,451.50 paise towards interest as on 19.4.1990 and failed to pay the said amounts inspite of several demand notices issued by the opposite parties. The opposite parties are planning to connect the well to the supply line of OHT from where distribution to all other industrial units is contemplated. The complainant was drawing the required water from the well and he was running the business without any objection from the opposite parties though the well is the property of the opposite parties. At the request of the complainant the opposite parties allowed the complainant to pay the balance cost of the shed and the interest in instalments, but the complainant has not paid the instalments. The opposite parties are not liable for the damage of the shed of the complainant due to cyclone in May, 1990. The complainant should have got the shed insured with any Nationalised Insurance Company. There is no truth in the allegation of the complainant that his Unit''s production suffered setback due to shortage of water because the complainant was utilising the water drawn from the well dug by the opposite parties in the complainant''s premises. The opposite parties in their letter dated 18.7.1990 informed the complainant that the water supply to the industrial estate was restored and the complainant should take water from the opposite parties. The Gram Panchayat handed over back the common facilities to the opposite parties in May, 1990 and the opposite parties are supplying water to the industrial units as usual. According to the terms and conditions of the lease-cum-sale agreement, the complainant has to pay penal interest on the balance cost of the shed and the opposite parties are entitled to cancel the allotment, and resume possession of the shed. The claim of the complainant for damages is unjust, unsustainable and there is no basis for it This complaint is filed as a counter blast to the demands made by the opposite parties for payment of the balance cost of the shed. There is absolutely no merit in the complaint and the complaint has to be dismissed.

At the time of enquiry the complainant filed his affidavit and got Exs. A-1 to A-34 documents marked in support of his claim. The opposite parties have not filed affidavits or documents. No oral evidence was adduced by either party.

3. THE point for consideration is whether there is any deficiency in service on the part of the opposite parties and whether the complainant is entitled to any compensation and if so to what amount ? The case of the complainant is that a shed was allotted to it by the opposite parties in Nowluru, Industrial Estate in Guntur District under a Lease-cum-Sale Agreement for carrying on business in the production and sale of rubber foam beds, that the basic requirement for production of foam beds is adequate water, that according to the terms and conditions of the Lease-cum-Sale Agreement the opposite parties have to supply 3,000 to 5,000 litres of water per day and that since the opposite parties failed to supply required water the industry suffered loss inasmuch as the production was stopped. The contention of the opposite parties is that there is no stipulation in the Lease-cum-Sale Agreement to the effect that the opposite parties have to supply 3,000 to 5,000 litres of water every day to the complainant, that the terms and conditions of the Lease-cum-Sale Agreement entered, into between the parties do not indicate that the opposite parties have to supply a particular quantity of water every day either free of charge or on payment of charges. The complainant filed xerox copy of the Lease-cum-Sale Agreement which is marked as Ex. A-4. Condition No. 16(s) in the said Agreement is as follows : "The Party of the SECOND PART shall bear the charges for water supplied by the Party of the FIRST PART / its nominee from time to time."

This Clause in the Agreement does not show that the opposite parties undertook to supply a particular quantity of water to the complainant''s firm for carrying on its business. It only mentions that whenever water is supplied to it, the complainant has to bear the charges for the water supplied by the opposite parties. There is also no indication in this Clause that there is an obligation on the part of the opposite parties to supply particular quantity of water to the complainant as part of service to be rendered by the opposite parties to the complainant. It is true that there is no dispute by the opposite parties that the Gram Panchayat to which the common facilities like supply of water, street lighting, etc. were entrusted for maintenance purpose has not supplied the required water to the complainant. As there is no material to show that the opposite parties have undertaken in the Lease-cum-Sale Agreement to supply the required water to the complainant on payment of charges, the mere failure on the concerned Gram Panchayat to supply the required water to the complainant cannot be made a ground to conclude that the opposite parties have committed deficiency in service in the matter of supply of water. It is also not the case of the complainant that the opposite parties have determined the charges for supply of water at a particular rate and agreed to supply the required water to the complainant on payment basis. It cannot, therefore, be said that the complainant hired the service of the opposite parties in regard to the supply of the required water for consideration and that the opposite parties have failed to render the said service. In the circumstances, we hold that there is no deficiency in service on the part of the opposite parties and that for any loss sustained by the complainant on account of non-availability of the required water for running its industry the opposite parties are not responsible and that the complainant cannot lay a claim against the opposite parties for the loss said to have been sustained by him for want of the required water. As the complainant stated in Ex. A-5 letter dated 27.6.1987 addressed to the Managing Director, A.P.I.I.C. Limited, Hyderabad (3rd opposite party) that the production in his unit suffered set back on account of short supply of raw-material and short supply of electricity it is doubtful whether the loss suffered by the complainant is solely on account of non-availability of the required water. In the circumstances, we are of the opinion that there is no deficiency in service on the part of the opposite parties and that the complainant is not entitled to claim any compensation against the opposite parties.

4. IN the result, the complaint fails and is therefore, dismissed without costs. Complaint dismissed.

