

(2012) 05 NCDRC CK 0083

In the National Consumer Disputes Redressal Commission

S. P. Rajan Son of V. S. Subramanian

APPELLANT

Vs

CSI Diocesan Council

RESPONDENT

Date of Decision : 28-05-2012

Acts Referred:

Citation : 2012 0 NCDRC 171 : 2012 2 CPR 529 : 2012 3 CPJ 575

Hon'ble Judges : Anupam Dasgupta J.

Advocate : S.K.Giri

Judgement

1. THIS revision petition challenges the order dated 08.04.2011 of Tamil Nadu State Consumer Disputes Redressal Commission, Chennai (in short, "the State Commission") in First Appeal no. 788 of 2008 in which too, the petitioner was the appellant. By this order, the State Commission dismissed the petitioner's appeal and confirmed the order dated 23.09.2008 of the Nilgiris District Consumer Disputes Redressal Forum, Udthagamandalam (in short, "the District Forum").

2. THE petitioner, the complainant before the District Forum, stated in his complaint that he was a professional contractor engaged in felling of trees and trading of timber. He was engaged by the opposite parties (OPs) for felling/cutting, removing and clearing the timber and firewood from 1200 Eucalyptus trees over an area of 5 acres of the OPs after the latter had obtained necessary Government permission and accepted his bid price of Rs.8,75,000/- for the 1200 trees in response to their tender notice. He alleged that the OPs, however, allowed him to cut only 1048 trees against the contracted number of 1200 though he had paid Rs. 7,12,500/-. Alleging "deficiency in service" on the part of the OPs "in illegally retaining the cut logs the value of which on 31.03.2003" was Rs.8,55,000/- because of which "the complainant was not able to do his business (sic of) either selling the timber or selling the firewood", he prayed for an award of Rs.15,55,000/- with interest @ 18% per annum from 31.03.2003. The OPs filed their written version and denied all the allegations while stating at the outset that the complainant did not fall in the category of "consumer".

On appraisal of the pleadings, evidence and documents produced by the parties, the District Forum held the OPs guilty of deficiency in service and unfair trade practice, as a result of which the petitioner/complainant was prevented from performing his part of the contract which caused him mental agony and suffering. However, against his claim of Rs. 5 lakh on this count, the District Forum awarded only Rs.25,000/- to the complainant as compensation and Rs.2000/- by way of cost.

3. AGGRIEVED by this order, the complainant went up in appeal before the State Commission which dismissed the appeal, as already noted above. It is against this order of the State Commission that the complainant has preferred this revision petition. It is seen from the written version of the OPs/respondents before the District Forum that they had specifically opposed the maintainability of the complainant before a Consumer Forum on account of the ground that the complainant/petitioner was not a "consumer" under the provisions of section 2(1) (d) of the Consumer Protection Act, 1986 (hereafter, "the Act"). By some long, convoluted and almost incomprehensible arguments put forth in words that defy understanding, the District Forum, however, held that the complainant was a consumer and that there was "deficiency in service" on the part of the OPs.

4. IN its impugned order, the State Commission also did not come to any finding on the status of the complainant as a "consumer" and merely concluded as under: on perusal of the District Forum's order and other materials from the records and as well as from the submissions made by the appellant, we feel that the District Forum has leniently considered the claim of the complainant instead of dismissing the complaint in toto and thereby we feel this appeal deserved no merits, in view of the facts and circumstances of the case, as discussed above."

I have heard Mr. S. K. Giri Gowda, learned counsel for the petitioner at the stage of admission of the revision petition. (i). Learned counsel for the petitioner was unable to explain as to how the OPs/respondents who, in fact, availed of the services of the petitioner/complainant as a contractor for felling of trees and carrying away the timber/firewood on payment of the agreed sum could themselves be "service" provider and how could they be accused of "deficiency in service". He then argued that this was a case of a "buyer" of "goods" not being delivered the "goods" for which he had paid, inasmuch as the respondents prevented the petitioner from felling the remaining trees and carrying away their timber/firewood to which he was entitled. On a further question whether the "purchase of goods" by the petitioner from the respondents was not, as admitted in the complaint, for "resale" or "commercial purpose", the learned counsel was again unable to give any answer. (ii) In fact, from the complaint itself, it is abundantly clear that the petitioner/complainant was a professional contractor engaged in large scale commercial activities relating to timber/firewood for which he bid and received the order/contract in question from the respondents for the sum of Rs.8,55,000/-. There is thus no question of the respondents/OPs providing any type of "service" to the petitioner/complainant though he alleged

"deficiency" in "service" on the part of the respondents/OPs in his complaint "that would indeed be turning the definitions of "service", service provider and "consumer" on their heads. Likewise, as he had "purchased" the "goods" in the shape of timber/firewood from the respondents/OPs clearly for resale/commercial purpose, he could also not be a consumer under the provisions of section 2(1)(d) (i) of the Act. There was, incidentally, neither any pleading nor any evidence that the petitioner/complainant did his activities for earning his "livelihood" through "self employment".

5. BOTH the Fora below have thus clearly erred in entertaining the complaint/appeal of the petitioner who, by virtue of his own pleadings, cannot be held a "consumer" under the aforesaid provisions of the Act. Accordingly, the revision petition is dismissed in limine after setting aside the impugned order of the State Commission as well as that of the District Forum. The complaint is also dismissed, not being maintainable ab initio. No order as to costs.