

(2017) 01 NCDRC CK 0077

In the National Consumer Disputes Redressal Commission

Case No : 2667 of 2016

SANJAY AGRAWAL

APPELLANT

Vs

AMBUJA CEMENT LTD. & ANR.

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2017 1 CPR 493

Hon'ble Judges : Rekha Gupta, Prem Narain

Advocate : Kanhaiya Anandani

Judgement

1. Revision Petition no. 2667 of 2016 has been filed against the judgment dated 08.06.2016 of the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur ("the State Commission") in Appeal no. FA/2016/100.

2. The facts of the case as per the petitioner Sanjay Agarwal was that he was a registered contractor of water resources and public work department. The petitioner does the work after obtaining tenders from the above institutions. In order to carry out his work he requires cement which he has been purchasing from various companies apart from the respondent. On 17.01.2011, the petitioner/ complainant gave a purchase order of 1000 metric tonnes (20,000 bag) of cement to the respondents @ Rs.178/- per bag for which he paid an advance of Rs.20 lakh by cheque no. 574884 on 17.01.2011, and the balance amount was to be paid on supply of the cement. The cement was urgently required for his work, the same fact was known to the respondent. The respondent supplied only 4758 bags of cement during the periods between 23.01.2011 to 30.01.2011 in spite of various requests orally and telephonically and the remaining 15,242 bags of cements were not supplied. As he required the cement urgently for his work, in order to complete his work he was compelled to purchase the cement at a higher rate of Rs.230 per bag from some other companies to complete his work due to which he has incurred a loss of Rs.7,92,584/-. The balance amount of Rs.11,52,920/- was returned to the

petitioner vide cheque dated 19.04.2011 on 04.05.2011. He thus alleged deficiency on the part of the respondent in not supplying the cement on time. He has made a prayer that the respondent be directed to pay him Rs.19,62,000/- along with interest @ 12%.

3. The respondent/ opposite party in their written statement has contended that the petitioner/ complainant was not a consumer as he was a registered contractor of Category 5 and he needed the cement for his use in his business of construction. The petitioner was also not self-employed as he was undertaking the work by engaging labourer, mechanic, coolies and women labourer etc. The petitioner was undertaking the construction work at different locations such as Sonpur (Bagbahra) Khatti (Rajim) and Ghumaria (Dongargarh).

4. The District Consumer Disputes Redressal Forum, Raipur ("the District Forum") vide its order dated 05.02.2016 while dismissing the complaint observed as under:

5. Aggrieved by the order of the District Forum, the petitioner filed an appeal before the State Commission. The State Commission while dismissing the appeal has held as under:

6. Hence, the present revision petition.

7. We have heard the learned counsel for the petitioner. Learned counsel for the petitioner has contended that the State Commission had erred in coming to the conclusion that the petitioner was not a consumer because he had undertaken the works for public sector and for public enterprises and the cement was not being bought on sale. We do not agree with the contention of the learned counsel for the petitioner and the fact is that the complainant was a partner of M/s Radheshyam Agrawal, which was undertaking the construction works for public works department and water resources and the procurement of cement was in relation to the work on construction as obtained through tender at various sites. He was also not covered under the exception clause carved out in the Act that he was earning his livelihood for self-employment as he has engaged coolies, labourer and women labourers in his business.

8. The Hon'ble Supreme Court in *Mrs Rubi (Chandra) Dutta vs M/s United India Insurance Co. Ltd.*, 2011 (3) Scale 654 has observed:

"Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the

same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora."

9. Thus, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for our interference under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Thus, the present revision petition is dismissed.