

(2014) 03 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

SAURABH GUPTA

APPELLANT

Vs

Hasti Petro Chemicals And Shipping Ltd.

RESPONDENT

Date of Decision : 13-03-2014

Acts Referred:

Citation : 2014 0 NCDRC 149

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Advocate : SUREKHA RAMAN , MILIND KUMAR

Judgement

1. THIS appeal has been filed under section 19 of the Consumer Protection Act, 1986 against the impugned order dated 07.11.2013 passed by the Rajasthan State Consumer Disputes Redressal Commission (for short "the State Commission ") in Consumer Complaint No. 2/2011, vide which the complaint filed by M/s Hasti Petro Chemicals & Shipping Ltd. against the present petitioners/ OPs was allowed and the OPs were directed to replace the alleged defective truck with a new one within a period of two months. It was also directed that if it was not possible to replace the truck, the OPs shall pay an amount of Rs.13,02,918/- to the complainant alongwith interest @9% p.a. from the date of filing the complaint. The OPs were also directed to pay a consolidated amount of Rs.5 lakh to the complainant as compensation for mental agony and financial loss and Rs.25,000/- as cost of litigation.

2. BRIEF facts of the case are that the complainant M/s Hasti Petro Chemicals and Shipping Ltd., deals in the business of transportation of domestic and exim cargo, warehousing, fuel stations, container repair yard, truck -trailer repair workshop and having its own inland container depots at Jodhpur in Rajasthan and Anand in Gujarat. The complainant placed orders with the OPs for purchasing two Forklift Trucks on 25.06.2010 and made an advance payment of Rs.50,000/-. It has been stated in the complaint that the OPs agreed to deliver the said machines within a period of five weeks, i.e., before 30.07.2010. However, the OPs informed the complainant on 05.08.2010 that the machines were ready for supply and they requested for payment of the balance amount. The complainant

alleged that he had suffered a financial loss of Rs.45,000/- due to delay in supply of the machines. The OPs agreed to provide free annual maintenance (AMC) for the said machines for the first two years as against the normal period of one year for the AMC. The machines were thereafter delivered to the complainant on 18.08.2010 after the complainant had paid balance amount on 13.08.2010. The complainant has alleged that the machines were not suitable for stuffing and de-stuffing of the paper rolls in and out of the normal ISO containers of standard dimensions. The normal forks which were the integral parts of the machine were missing. The deficiencies were pointed out to the Sales Manager of the OP on 18.08.2010 who assured the complainants that the same will be redressed at the earliest. The complainant again requested the OPs through letter on 26.08.2010 to resolve the grievances and they, in their reply dated 2.09.2010, assured to replace the defective attachment. The complainant transported the defective paper roll clamp attachment to the Mumbai factory of the OPs, incurring the expenses of Rs.25,000/- for no fault of his own. The required paper-roll clamps of the paper size were fitted in the two machines on 29.09.2010, i.e., after a period of one and a half month from the date of the supply of the machines. The normal forks of the said machines had not been supplied till date. The complainant sent various complaints on 22.10.2010, 18.11.2010 and 22.12.2010 to the OPs regarding defects in one of the machines, but the same could not be removed permanently, although the mechanics of the OPs visited them and repaired the machine from time to time. The engineer of the OPs informed the complainant verbally on 23.12.2010 that the engine of the said machine was required to be replaced by a new one. The complainant requested the OPs again on 25.1.2011 to do the needful, in reply to which the OP sent an e-mail asking the petitioner to get the repairs done on his own. The complainant also received a letter dated 1.2.2011 from the OPs informing him that they were prepared to replace the defective engine of the said machine but they did not take any action in this regard. The complainant then filed a complaint seeking damages/compensation of Rs.39,18,600/- + interest @ 18% p.a. as compensation for non-operation of the machine for a period of 2792 hours till 30.03.2011 and compensation for value of the machine and mental harassment. The State Commission vide its order ordered to replace the defective forklift truck with a new one within a period of two months or in the alternative, to make payment of Rs.13,02,918/- alongwith interest @ 9% p.a. from the date of filing the complaint and also to pay a sum of Rs.5 lakh as compensation for mental agony & financial loss and Rs.25,000/- as cost of litigation. It is against this order that the present appeal has been filed. On behalf of the respondent, a caveat was filed on 28.11.2013, requesting them that nothing should be done in the matter without intimation to the caveator. Learned counsel for the appellant / OP and the caveator were heard on 22.01.2014.

3. IT was contended by the learned counsel for the appellant that the facts of the case make it amply clear that the transaction between the parties was of a commercial nature. The complainant/respondent could not be termed as

"consumer " in accordance with the provisions of the Consumer Protection Act, 1986. She has drawn our attention to an observation made by the State Commission, quoting judgements passed by the National Commission, saying that ""It is settled law that though the goods might have been purchased for commercial purpose, but if the defects are noticed during the warranty period, then the purchaser becomes a "consumer " and the supplier of the machine has to compensate the purchaser by either repairing the goods or replacing it or refunding the amount. "" The learned counsel argued that the above contention does not hold good, and even if the defects were noted during the warranty period, the complainant does not acquire the status of "consumer ". She has further drawn our attention to an order passed by the Hon "ble Supreme Court in ""Birla Technologies Ltd. versus Neutral Glass and Allied Industries Ltd. "" [Civil Appeal No. 10650 of 2010 decided on 15.12.2010], in which it has been held that if the goods have been purchased for commercial purpose or if the services were hired or availed for commercial purpose, the matter is not covered under the Consumer Protection Act, 1986. Our attention is also drawn to an order passed by the National Commission in the case ""Sanjay D. Ghodawat versus R.R.B. Energy Ltd. and other cases "" as reported in [IV (2010) CPJ 178 (NC)] wherein it was held that if the machine were purchased for commercial purpose, the deficiency in service during warranty period does not bring the complainant within the ambit of "consumer ".

4. LEARNED counsel for the respondent, however, has drawn our attention to a judgement made by the Hon "ble Supreme Court in ""Karnataka Power Transmission Corpn. Ltd. and Anr. versus Ashok Iron Works Pvt. Ltd. "" [as reported in ""2009 (3) Civil Court Cases 336 (SC) ""], saying that a juristic person like a company was also included in the definition of consumer under section 2(1)(m) of the Act. He stated that order passed by the State Commission was in accordance with law and should be upheld. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us. A perusal of the complaint reveals that the complainant is a registered company and deals in the business of transportation of the domestic and exim cargo, warehousing, fuel stations, container repair yard, truck trailer repair workshop, etc. The definition of "consumer " as given in section 2(1)(d) of the Consumer Protection Act, 1986 states as follows: - ""(d) "consumer" means any person who - (i) buys any goods 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 user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires or avails of 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 or avails of 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 but does not include a person who avails of such services for any commercial purposes; Explanation. - For the purposes of this clause, ""commercial purpose "" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self -employment; ""

5. BY virtue of the amendment that was made by Act 62 of 2002, with effect from 15.03.2003, the explanation as stated above was inserted and it was made clear that commercial purpose does not include use by a person of goods bought and used by him and services availed by him exclusively for the purpose of earning his livelihood by means of self -employment.

6. SECTION 2(1)(m) of the Consumer Protection Act, 1986 gives a definition of a "person " as follows: - ""(m) "person" includes, - (i) a firm whether registered or not; (ii) a Hindu undivided family; (iii) a co -operative society; (iv) every other association of persons whether registered under the Societies Registration Act, 1860 (21 of 1860) or not; ""

In the judgement delivered by the Hon "ble Supreme Court, ""Karnataka Power Transmission Corpn. Ltd. and Anr. versus Ashok Iron Works Pvt. Ltd. (supra) "", it has been stated that corporate entity is also covered under the definition of ""person "" as defined under section 2(1)(m) of the Consumer Protection Act, 1986. We, therefore, agree with the plea taken by the respondent that the complainant company in this case cannot be excluded from the definition of ""Consumer "" on the ground that it is registered under the Companies Act.

7. NOW , coming to section 2(1)(d) of the Consumer Protection Act, 1986. It is to be seen whether the complainant has purchased the machinery in question, for commercial purpose and whether it can be excluded from the definition of "consumer " on that ground. The Consumer Protection Act, 1986 was amended with effect from 15.03.2003 and it has been laid down in section 2(1)(d) that if a person buys any good or avails of any services for any commercial purpose, it is not included in the definition of "consumer " unless such goods bought and used by him and services availed by him were exclusively for the purpose of earning his livelihood by means of his employment. In this regard, the learned counsel for the petitioner has drawn our attention to a judgement of this Commission in ""Sanjay D. Ghodawat versus R.R.B. Energy Ltd. "" [Consumer Complaint No. 155 of 2008], ""Radhe Enterprise versus Suzlon Energy Ltd. "" [Consumer Complaint No. 38 of 2009] and ""Neutral Glass and Allied Industries Ltd. versus Birla Technologist Ltd. ""[First Appeal No. 218 of 2004]. All these three cases were decided by one common judgement and reported in [IV (2010) CPJ 178 (NC)]. The judgements were delivered by a three -Member Bench, headed by the then Hon "ble President.

8. A number of cases decided earlier by the Hon "ble Supreme Court and this

Commission have been quoted in this judgement including the ""Karnataka Power Transmission Corpn. Ltd. and Anr. versus Ashok Iron Works Pvt. Ltd. (supra). "" It has been clearly brought out in this judgement that in the first two cases, ""Sanjay D. Ghodawat versus R.R.B. Energy Ltd. "" [supra], ""Radhe Enterprise versus Suzlon Energy Ltd. "", the complainant was not covered under the definition of "consumer " even for the purpose of services during the warranty period in view of section 2(1)(d) of the Act, because the said service was obtained for commercial purpose. However, in the third case, i.e., ""Neutral Glass and Allied Industries Ltd. versus Birla Technologist Ltd. (supra) "", related to the period before coming into force of the amendment from 15.03.2003 and hence in this case, a person was covered under the definition of "consumer " and the complaint was maintainable. In the instant case, the facts of the case given in the complaint state clearly that the transaction of purchase of machines between the parties was done in the year 2010 and hence, it is a case after the amendment made in the year 2003. A perusal of the contents of the complaint bring out clearly that the said machines were obtained for a commercial purpose and there is no mention anywhere that the transaction was done for the purpose of earning livelihood by means of self -employment. The first paragraph of the complaint states that the complainant deals in the business of transportation of domestic and exim cargo, warehousing, fuel stations, container repair yard, truck trailer repair workshops and is having its own inland container depots at Jodhpur at Rajasthan and at Anand in Gujarat. The two forklift trucks were, therefore, to be purchased for commercial purpose only. In the written reply to the complaint filed by the petitioner/OP before the State Commission, it has been stated, ""that the purchase of the forklift was solely for commercial purpose of complainant company; hence, the complainant company does not fall under the purview of the definition of "consumer " under the Consumer Protection Act, 1986 and the complaint deserves to be dismissed on threshold. ""

9. RESPECTFULLY following the judgement given by the three -Member Bench of this Commission, headed by the Hon "ble President in ""Sanjay D. Ghodawat versus R.R.B. Energy Ltd. etc. "" (supra), we have no hesitation to hold that in the instant case, the complainant is not covered under the definition of "consumer " as the purchase of the machines in question was for commercial purpose only. The appeal in question is, therefore, allowed and the order passed by the State Commission is set aside. The complaint in question is ordered to be dismissed with no order as to costs.