

(2003) 01 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

SPECIAL OFFICER, CHEYYAR CO-OPERATIVE SUGAR MILLS
LTD.

APPELLANT

Vs

A.KANAGASABAI

RESPONDENT

Date of Decision : 30-01-2003

Acts Referred:

Citation : 2003 4 CPJ 115

Hon'ble Judges : M.S.Janarthanam , R.Vanaroja J.

Final Decision : Appeal allowed

Judgement

1. THIS appeal is directed against the order dated 27th day of May, 1999 in O.P. No. 59/1996 on the file of the District Consumer Disputes Redressal Forum, Thiruvannamalai.

2. THE appellants are the opposite parties while the respondent is the complainant. Short fact may be related in order to understand the crux of the issue arising for consideration in this action.

One A. Kanagasabai, resident of Karamedu village, Cheyyar taluk is an agriculturist. He is a member of Cheyyar Co-operative Sugar Mills, Cheyyar of which the Special Officer and Cane Officer, Pernamallur Division are respectively first and second opposite parties.

3. HE cultivated sugarcane crops in his fields measuring 2 acres. HE entered into an agreement with the said Sugar Mill on 1.3.1995 for the supply of sugarcane raised in his fields for a specified price. The sugarcane he raised in his fields got matured for cutting by the end of January, 1996. There was a delay in issuing the cutting order of the sugarcane crops he had cultivated in his fields. The cutting order as a matter of fact was issued to him in a belated fashion only on 23.5.1996 although the order is dated 15.5.1996. By the issue of the belated cutting order, the sugarcane crops got affected with the red rot disease and huge damage has been caused to the crops. As a consequence, he sustained mental agony and torture. In such a backdrop and setting, he knocked at the doors of

the Forum below for certain reliefs as prayed for in the complaint alleging deficiency in service on the part of the opposite parties in the sense of the cutting order not having been issued by them at the proper and the appropriate time and the delay so caused in issuing the cutting order resulted in great damage being caused to the sugarcane crops he had cultivated as the crops were affected with red rot disease.

4. THE opposite parties in pith and substance would contend that the complainant on the facts and in the circumstances of the case cannot at all be construed as a consumer as defined in the Consumer Protection Act, 1986 [for short, "the Act, 1986"] and, therefore, the complaint as filed deserves to be dismissed in limine with costs. THERE was no condition in the agreement that the cutting order should be issued before the end of January, 1996. THE allegations regarding loss of money are all imaginary and only to harass the opposite parties. THE complaint as such is liable to be dismissed. The Forum below after taking into consideration the materials placed on record, recorded a finding that the complainant must have to be construed as a consumer on the facts and in the circumstances of the case. The further finding that was recorded by the Forum below was that there was deficiency in service on the part of the opposite parties in issuing the cutting order in a belated fashion. It is on those two findings, the Forum below directed the opposite parties to pay to the complainant a sum of Rs. 50,000/- as compensation with interest at the rate of 18% per annum from 1.2.1996 till realisation for the loss, mental agony and shock besides award of costs quantified in a sum of Rs. 1,000/-. The Forum below issued a further direction that the award as made by it must have to be complied with within a period of 30 days from the date of receipt of its order. Aggrieved by the order as above, the opposite parties resorted to the present action by engaging a Counsel of their choice, namely learned Counsel Mr. R. Subramanian and learned Counsel Mrs. Nandiniram.

5. ON service of process, the respondent/complainant also entered appearance through a Counsel of his choice, namely learned Counsel Mr. S. Palanivelayutham.

6. WE heard the arguments of learned Counsel Mrs. Nandiniram appearing for the appellants/opposite parties and learned Counsel Mr. S. Palanivelayutham appearing for the respondent/complainant. From the pith and submission of arguments of respective learned Counsel appearing for the parties, the points as below emerge for consideration : (1) Whether the complainant/agriculturist/sugarcane grower can ever be construed as consumer falling within the definition of Section 2(1)(d)(i) or 2(1)(d)(ii) of the Act, 1986 on the facts and in the circumstances of the case ? (2) To what relief, the complainant/agriculturist/sugarcane grower is entitled to on the facts and in the circumstances of the case ?

Point No. 1 : There is no pale of controversy that the complainant/agriculturist/sugarcane grower in his fields measuring about 2 acres within the sugar mill area. Yet another fact about which there is no controversy is that he entered into

an agreement with the sugar mill for the supply of sugarcane at a specified price to the said mill. It is the positive case of the complainant that the sugarcane he had cultivated in his fields became ripe for cutting by the end of January, 1996 and despite that the opposite parties did not issue the cutting order for cutting the sugarcane crops he had raised in his fields though the crops became ready to ripe by the end of January, 1996. It is his further case that the cutting order had been issued after an inordinate delay, namely, in the month of May, 1996 and consequently the sugarcane crops he had cultivated in his fields got affected with red rot disease and he sustained lot of damages. According to him, this sort of an act on the part of the opposite parties would constitute deficiency in service on their part.

7. IT is the case of the opposite parties that the complainant/agriculturist/sugarcane grower cannot at all be construed as a consumer falling within the definition of Section 2(1)(d)(i) or 2(1)(d)(ii) of Act, 1986 and if he is not falling within the definition of "consumer" as stated above, the question of deficiency in service will not at all arise for consideration. The projection of hues of views of the parties may now fall for consideration in the arena of discussion to be ensued hereinafter in the light of the admitted factual matrix of the case and the salient legal provisions as adumbrated under Section 2(1)(d)(i) or 2(1)(d)(ii) of Act, 1986. Complainant/agriculturist/sugarcane grower by the agreement he had entered into with the sugar mill has to be construed as a seller of sugarcane grown by him to the sugar mill/opposite parties who happened to purchase the sugarcane sold for a specified price as agreed to between the parties. Under Section 2(1)(d)(i) of the Act, 1986, a buyer alone who purchases the goods for consideration which has been paid or promised or partly paid and partly promised, or under any deferred system of payment can ever be called as a "consumer". The said definition also takes within its fold 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. Such being the case, the complainant/agriculturist/sugarcane grower can by no stretch of imagination be construed as consumer as falling under the definition of "consumer" as adumbrated under Section 2(1)(d)(i) of the Act, 1986.

8. THE other part of the definition of "consumer" is traceable to Section 2(1)(d)(ii) of the Act, 1986. Under this part, "consumer" means any person who hires or avails of any services for consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment. What is further included in this part of the definition is 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. The moot question that arises for consideration herein is as to whether the complainant/agriculturist/sugarcane grower can ever be construed as consumer falling under the second part of the definition as adumbrated under

Section 2(1)(d)(ii) of the Act, 1986. The agreement that had admittedly come into existence between the complainant/agriculturist/sugarcane grower and the opposite party sugar mill as already indicated is for the sale of the sugarcane cultivated by him at a specified price. There is no agreement at all between the complainant/agriculturist/sugarcane grower and the opposite party sugar mill as respects the complainant/agriculturist/sugarcane grower availing the services of the opposite party sugar mill for consideration for crushing the sugarcane supplied by him and converting the sugarcane so crushed into sugar.

9. PERTINENT it is to refer to at this juncture the decision emerging from the National Consumer Disputes Redressal Commission, New Delhi in the case of Purna Sahakari Shakar Karkhana Pravheni v. Tatyrao Ramarao Kate Parvheni, II (1994) CPJ 107 (NC). The order rendered by the National Commission in the said case is so crisp and sharp and, therefore, it is the order as a whole may be reproduced here and it runs as under : "ORDER Mr. Justice V. Balakrishna Eradi, President-Counsel appearing for the Revision Petitioner, Shri T. Raja, is well founded in his contention that the grievance put forward by the complainant before the District Forum was not a consumer dispute at all as defined in the Act. There was no arrangement of hiring of service for consideration as between the respondent and petitioner Society. The mere fact that the petitioner Society had assured the respondent that they would purchase for their factory the sugarcane crop grown by the respondent on his lands does not make the respondent a consumer as defined in the Act and the complaint preferred by him on the ground of failure on the part of the Society in honouring their promise cannot be regarded as consumer dispute. The orders passed by the State Commission and the District Forum are wholly without jurisdiction. They are hereby set aside and the complaint petition is dismissed. The revision petition is allowed as above. No costs."

10. WE are called upon at this juncture to refer to a decision emerging from the Supreme Court of India in the case of Punjab Water Supply & Sewage Board v. M/s. Udaipur Cement Works & Anr., 1995 (3) CPR 451 (SC), upon which implicit reliance had been placed by the Forum below for the purpose of recording a finding that the complainant/agriculturist/sugarcane grower must have to be construed as a consumer for availing or hiring the services of the opposite party sugar mill for consideration. WE have to say even at the outset that the Forum below misread, misconstrued and misinterpreted the decision of the Supreme Court. Had the Forum below been taken a little bit of care, caution and circumspection in reading the entirety of the judgment of the Supreme Court, cock sure it is the Forum below could have been in a position to understand the context in which the dictum had been laid down in the decision so rendered by the Supreme Court. WE will now demonstrate as to how the Forum below wrongly construed the said decision. This sort of a fear or exercise can very well be done by us by adverting to the factual matrix of the case and the legal fitment given thereto by the Supreme Court therefor. In that case, Punjab Water Supply and Sewage Board, Chandigarh (the Board) filed a complaint before the

Consumer Disputes Redressal Commission, U.T. Chandigarh (Commission) against M/s. Udaipur Cement Works, Udaipur, Rajasthan (the cement works), alleging, inter alia deficiency in service in the supply of cement for which confirmed orders were placed by the Board. The salient features of the undisputed facts are that the complainant placed an order for the supply of cement with the respondent firm and for this purpose an amount of Rs. 23,62,900/- was remitted to the respondent firm by means of three bank drafts. According to the order as confirmed, 2500 M.T. cement had to be supplied on or before 7.3.1988. There is also no controversy about the fact that the goods in question were delivered to the complainant in November, 1990 and that too at the higher rate and not at the original rate as agreed to at the time of placing the order. The Commission allowed the complaint and awarded 12% interest to the Board for the period during which the amount of deposit remained with the cement works. The National Commission by the order dated September 27, 1994 reversed the order of the State Commission and dismissed the complaint of the Board. The rationale provided by the National Commission for passing such an order is getting reflected as below : "In our opinion the Counsel appearing for the appellant is well founded in his submission that there was no arrangement of hiring of service at all between the parties in this case since the transaction is one of sale and purchase of a specified quantity of cement which was to be supplied by the appellant herein to the respondent. In these circumstances, no question of deficiency in service can arise so as to entitle the complainant to invoke the jurisdiction of the Consumer Forum when there was no case at all of any defect in the goods supplied. Unfortunately, this important aspect of the case was lost sight of by the State Commission and it proceeded to grant relief to the complainant on the ground that delay in the supply of cement constituted deficiency in service. We hold that the said order of the State Commission is clearly illegal and without jurisdiction and is hereby set aside. The complainant will be at liberty to pursue whatever other remedies are open to him in law."

The matter was further agitated by way of a Special Leave Petition as against the order of the National Commission. What the Supreme Court said in paragraphs 4 and 5 is relevant for the present purpose and they read as under : "4. We do not appreciate the blanket observation of the National Commission to the effect that where the transaction is one of sale and purchase simplicitor "no question of deficiency in service can arise so as to entitle the complainant to invoke the jurisdiction of the Consumer Forum when there was no case at all of any defect in the goods supplied". The impugned order of the National Commission is rather mechanical. Learned Counsel for the parties have invited our attention to Section 2(c),(d),(f),(g),(o) and various other provisions of the Consumer Protection Act, 1986 (the Act). The National Commission, in our view, should have appreciated the pleadings of the parties in the light of various provisions of the Act.

5. We allow the appeal, set aside the impugned order of the National Commission and remand the case to the National Commission to hear the appeal against the order of the Commission afresh affording opportunity to the parties. It will be

open to the parties to raise relevant questions of law and fact before the National Commission. No costs."

11. IN the case of Punjab Water Supply & Sewage Board (supra), the Board as a buyer of goods, namely cement came forward with the complaint against the opposite parties M/s. Udaipur Cement Works and another for the delay caused in supplying the cement at a price higher than the agreed price stating that such sort of delay would tantamount to deficiency in service on the part of the opposite parties. We may reiterate and state that the signal factor to be taken into consideration is in Punjab Water Supply & Sewage Board, the complainant Board as a buyer of goods came forward with the complaint alleging deficiency in service on the part of the opposite parties-seller. But in the case on hand, the complainant unfortunately happens to be a seller of goods and not a buyer. A seller cannot at all figure as a consumer either under Section 2(1)(d)(i) or 2(1)(d)(ii) of Act, 1986. This sort of a little bit of a subtle distinction had not been taken into account by the Forum below and that perhaps was the reason, the Forum below wrongly construed the judgment of the Supreme Court in the case of Punjab Water Supply & Sewage Board which resulted in the miscarriage of justice in the sense of the Forum below construing the complainant, a seller of goods viz., sugarcane, as a consumer falling under Section 2(1)(d)(i) or 2(1)(d)(ii) of the Act, 1986 and there was deficiency in service on the part of the opposite parties sugar mill in the sense of issuing the cutting order in a belated fashion which caused a huge damage to the complainant, a sugarcane grower, by his crops getting affected with the red rot disease. The decision of the Supreme Court, as such, we are of the view, cannot at all be expected to render any sort of a helping hand in advancing the case of the complainant to any extent whatever. Thus, this point is answered against the respondent/complainant and in favour of the appellants/opposite parties. Point No. 2 : In view of the finding in Point No. 1, it goes without saying that the respondent/complainant/agriculturist/sugarcane grower is not entitled to any relief. This Point is answered accordingly.

12. IN view of the answers given on Point Nos. 1 and 2, it goes without saying that this appeal deserves to be allowed. In fine, the appeal is allowed; the order of the Forum below is set aside and the complaint itself is dismissed. We, however, make no order as to costs on the facts and in the circumstances of the case. Appeal allowed.