

(1993) 10 NCDRC CK 0058

In the National Consumer Disputes Redressal Commission

SRINATH B.MUGALI

APPELLANT

Vs

HUBLI DHARWAD MUNICIPAL CORPN.

RESPONDENT

Date of Decision : 23-10-1993

Acts Referred:

Citation : 1994 1 CPJ 239

Hon'ble Judges : D.R.Vithal Rao , Susheela Cheluvaraju J.

Final Decision : Appeal dismissed without costs

Judgement

1. THE respondent Hubli Dharwad Municipal Corporation invited the public at large to take part in the public auction of stalls constructed by it in the first floor of Swimming Pool Complex, Hubli, on annual rental basis. THE auction was held on 10.9.1990. THE complainants participated in the said auction and stall No. 2 was allotted in favour of them in the said auction, we they were successful in getting the said stall No. 2 in auction at Rs. 50,000/- on stallage for a year.

2. IT is the further case of the complainants that though they complied with the requirements of conditions of auction by making deposit of the amount, they did not get the possession of the stall from the opposite party. So they filed the complaint for refund of the stallage amount of Rs. 50,000/- with interest thereon. The District Forum, Dharwad, heard the parties on the question of maintainability of the complaint and held that the complainants cannot be classified as "consumers" as they had not hired the services of the opposite party in consideration and in that view dismissed the complaint.

We have called for the records and received. We have also heard the learned Counsel for the parties and perused the averments made in the complaint.

3. IT is clear from the averments that the complainants had taken a stall in an auction held by the opposite party at Rs. 50,000/- stallage per annum. The word "consumer" has been defined under Section 2(1)(d), which reads as under :- "2(1)(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 : Explanation: - For the purposes of Sub-clause (i) "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;"

It is clear from the reading of this provision that complainants would be classified as "consumer", if they were to hire the services of the opposite party for consideration. In the present case, as referred above, they had taken a stall in an auction at Rs. 50,000/- stallage amount per annum. This Commission, considering such a question, in N.S. Nayak v. B.D.A. reported in II (1991) CPJ 537, wherein it was held as under :- " In view of the facts and the circumstances of this case, it is a case of out-right sale of immovable property for a particular period. Therefore, there is no question of hiring any services by the complainant for consideration."

So the complainants cannot be classified as "consumers" under the provisions of the C.P Act. Having regard to these facts and in the circumstances of the case, we do not find any good ground to interfere in the order dated 22.3.1993, recorded by the District Forum, Dharwad, in complaint. ORDER In the result, therefore, this appeal fails and it is dismissed. The parties are directed to bear and pay their own costs in this appeal. Appeal dismissed without costs.