

(1993) 01 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

SUPERCON

APPELLANT

Vs

EXECUTIVE DIRECTOR, TITAGARH STEEL LTD.

RESPONDENT

Date of Decision : 25-01-1993

Acts Referred:

Citation : 1993 1 CPR 395 : 1993 2 CPJ 777

Hon'ble Judges : Jyotirmoyee Nag , Sunil Kanti Kar J.

Final Decision : Complaint dismissed

Judgement

1. THE fact of the case is that the complainant entered into a contract for performance of a specific job under certain terms and conditions but dispute arose between them for non-payment of the balance amount-on the part of the complainant and non-performance of the contractual job. within stipulated time and as per drawings and specification in other words it was failure on the part of the complainant to perform the specific job as per contract.

2. THE main contention of the opposite party is that the complainant does not come within the meaning of consumer as defined under the Consumer Protection Act and specially in view that when a works contract is of concluded through tender, the tendered does not fail within any part of definition of consumer under "Copra" Act and his complaint is not maintainable before Consumer Forum. The opposite party cited several reported decisions in his objection in this count, such as the case of Sarada Engineering Co. v. Republic Forge Co. Ltd. reported in 1992 (1) CPR page 624 State Commission, AP, Mrs. Vinodini Bajpai v. Rajya Krishak Utpadan Mandir Parisad reported in I (1991) CPJ 169 (NC)=1992 (1) CPR page-10 (NC) and General Co-operative Group Housing Society & Ors. v. J.K. Cement Works & Anr. reported in I (1991) CPJ 550=1992 (1) CPR page 359 (NC).

We also agree to the submission of the opposite party in view that complainant is not a consumer and the relationship between the parties under contract are of commercial nature governed by the Contract Act as per decision of the State Commission of Andhra Pradesh cited above. As per decision of National Commission in the case of Mrs. Vinodui Bajpai (supra), the acceptance of a

tender undoubtedly creates contractual relationship. But the contractor who has undertaken to perform a specified work cannot by any stretch of reasoning be regarded as a person who has entered into an arrangement of hiring of service with the other party merely on the ground that under the contract there is an obligation on the part of the said party to pay contractual amount without looking to the allegation of failure or non-performance of the specific job by the other party. The decision reported in I (1991) CPJ 550=1992 (1) CPR page-359 also supports the case of the opposite parties.

3. FURTHER we are of opinion that the disputes between the parties are highly disputed questions of facts and can not be adjudicated without thorough investigation which is not possible for the Consumer Redressal Forum. FURTHER the complaint petition of the complainant is in the nature of money claim for which he is at liberty to file a money suit for realization of his claim in an appropriate Civil Court adducing proper evidences in support of his claim. In view of the foregoing reasons we reject the petition of Complaint filed by the complainant.

4. THERE will be no order as to the cost. Complaint dismissed.