(2000) 01 NCDRC CK 0030

In the National Consumer Disputes Redressal Commission

SUPERINTENDENT, PROHIBITION AND EXCISE — APPELLANT

Vs

YADAVALLI YASODAMMA — RESPONDENT

Date of Decision : 27-01-2000

Acts Referred:

Citation : 2000 2 CPJ 531 : 2001 1 CLT 114 : 2001 1 CPC 312 : 2001 1 CPR 164

Hon'ble Judges : S.Parvatha Rao , Mamata Lakshmanna J.

Final Decision : Appeal allowed

Judgement

1. WE heard the learned Counsel on both sides. This appeal is preferred by the opposite party in CD No. 74 of 1999 questioning the order of the Guntur District Forum dated 18.8.1999 allowing that CD and directing the opposite party i.e., Superintendent, Prohibition and Excise, Guntur to pay to the complainants Rs. 50,000/- as ex gratia amount with interest thereon @ 12% per annum from the date of rejection of the claim i.e., 18.9.1999 till the date of payment and also Rs. 400/- towards costs of the proceedings. The complainants are the respondents in the appeal.

2. THE very direction of the District Forum described "the payment to be made as ex-gratia amount". This amount was admittedly claimed by the complainants under G.O. Ms. No. 573, Revenue (Excise II) Department, dated 2.11.1995 which provided for ex-gratia payments in case of death of a tapper from Rs. 25,000/- to Rs. 50,000/-. THE operative portion of that G.O. is in paragraphs 3 and 4 which are as follows : "3. Government have considered the suggestion and in supersession of the orders issued in the G.O. read above, hereby sanction ex gratia amount to the families of the Toddy Tappers duly enhancing the existing limits as indicated below : (a) Ex-gratia for death from Rs. 25,000/- to Rs. 50,000/-. (b) Ex-gratia for permanent incapacitation or disability from Rs. 20,000/- to Rs. 25,000/-. (c) Ex-gratia for temporary incapacitation or disability from Rs. 5,000/- to Rs. 10,000/-. 4....Government hereby order to pay 50% of ex-gratia amount immediately in case of death and the balance amount be paid within a period of one month after due verification."

This payment to tappers is stated to be an ex-gratia payment and it does not constitute any service for consideration. Thus the claim of the complainants is not based on any service hired from the Government for consideration.

The learned Counsel contends that the deceased was admittedly a tapper and he died from a fall from a tree while tapping and that the licence fee collected from him in respect of TFT licence granted to him would amount to consideration. We do not find any merit in this contention. Licence fee is collected for TFT licence as a fee and that by itself does not entitle the complainants to any ex gratia payment in case of death because no life insurance or accident insurance for consideration is contemplated under the TFT Scheme. In Indian Medical Association v. V.P. Shantha, III (1995) CPJ 1 (SC), the Supreme Court held that tax or fee collected by the State did not amount to consideration. The Supreme Court was dealing in that case with free services rendered in Government hospitals. In V. Mehar Shravan Kumar v. Regional Passport Officer, Nampally, Hyd., III (1999) CPJ 420, we observed that "fee being an imposition and a form of tax charged under statutory provision, cannot be equated to consideration for services hired".

3. THE ex-gratia payment became payable under the G.O. subject to the satisfaction of the conditions imposed in it. Originally the ex-gratia for death sanctioned by the Government was only Rs. 10,000/-. Under G.O. Ms. No. 852, Revenue (Excise II) Department, dated 24.8.1994 it was enhanced to Rs. 25,000/-. THEn by the present G.O. Ms. No. 573, Revenue (Excise II) Department, dated 2.11.1995 the ex-gratia for death was further enhanced to Rs. 50,000/-. This was as a part of Toddy policy for the year 1995-96. THE Government can also withdraw the ex-gratia at any time. THE amount offered is only a benefit granted ex-gratia by the Government in pursuance of its welfare policy for tappers. No hiring of service for consideration is involved in it. In Himachal Weavers Pvt. Ltd. v. Himachal Pradesh Financial Corporation & Ors., III (1993) CPJ 267 (NC), the National Commission held that the complainant before it had not hired any ''service'' of the Central Government for consideration for providing Central subsidy and that, therefore, the complainant could not be said to be a "consumer" of "service" as defined under the Consumer Protection Act, 1986. We followed this decision in Project Director, DRDA, Cuddapah v. Bommi Reddy Lakshmi Reddy, III (1998) CPJ 492, and held that grants given by Government for unsuccessful borewells were only pursuant to its policy and that such grants did not involve hiring or services for consideration and that non-payment of such grants by the Government could not be agitated by way of consumer disputes. In the result, we set aside the order of the District Forum and dismiss the complaint, C.D. No. 74 of 1999. The appeal is accordingly allowed. No costs.

4. PURSUANT to our orders in FA. IA No. 1279 of 1999 dated 16.11.1999 the appellant deposited a sum of Rs. 57,997/-. It will be open to the appellant to withdraw the said sum by filing a cheque petition. Appeal allowed.

