

(1996) 03 NCDRC CK 0041

In the National Consumer Disputes Redressal Commission

Tamil Nadu State Construction Corporation Ltd.

APPELLANT

Vs

Tamil Nadu Mercantile Bank Ltd.

RESPONDENT

Date of Decision : 07-03-1996

Acts Referred:

Citation : 1996 2 CPJ 500 : 1997 1 CPR 1 : 1997 2 CPC 694

Hon'ble Judges : E.J.Bellie , V.S.Kandasamy , Angel Arulraj J.

Final Decision : Complaint allowed with costs

Judgement

1. THE second opposite party took a loan of Rs. 7,50,000/- as mobilisation advance from the complainant Tamil Nadu State Construction Corporation Ltd., in respect of construction of Syphon Cum Regulator across Coovam River for the link canal leading to Chembambakkam Tank. For the said advance the complainant wanted Bank guarantee. At the request of the 2nd opposite party the 1st opposite party gave Bank guarantee for the said amount. THE Bank guarantee was given on 1.9.93. This was to be in force still 1.9.94. As per the conditions in the Bank guarantee, as and when the complainant invoke the Bank guarantee the 1st opposite party shall pay the amount without any demur or protest even if there was dispute between the parties. While so, the complainant found that the work has not been completed as agreed to by the 2nd opposite party. In this situation, the complainant wrote a letter to the 1st opposite party on 30.8.94 invoking the guarantee. THERE was no response. A reminder was sent on 30.1.95 to which a reply was received on 10.2.95 stating that the High Court had granted injunction against the complainant restraining them from invoking the guarantee and, therefore, they cannot make payment. Again the complainant sent a letter dated 17.3.95 stating that the injunction had been vacated; to that also there was no reply. THEREafter the complaint has been filed for relief of payment of the amount due under the guarantee namely Rs. 7,50,000/- and also compensation for Rs. 5,000/- as damages and interest at 24% p.a. from 30.8.94 till date of payment.

2. AS against this, only the 1st opposite party filed a written version, the 2nd

opposite party having remained ex-parte. The contention of the 1st opposite party is that for the bonafide reasons the guarantee amount was not paid and the non-payment was not wilful and there was no deficiency in service on their part and they persuaded the 2nd opposite party to get extension to the Bank guarantee period and as such the complaint against the 1st opposite party cannot be maintained. Now during the pendency of this proceeding the first opposite party has paid the guarantee amount at Rs. 7,50,000/- on 17.7.95. So, the complaint remains only with regard to the compensation amount claimed and also interest claimed.

The point that arises for consideration is : (1) Whether there was deficiency in service on the part of the first opposite party and if so, are they liable to pay any compensation, and interest.

3. POINT :-It is not in dispute that the guarantee period was from 1.9.93 to 1.9.94. It is not seriously disputed that the 2nd opposite party has not completed the work regarding which he required loan from the complainant. There is a term in the guarantee that as and when the Bank guarantee is invoked the 1st opposite party is liable to pay the entire amount without any demur or protest even if there is any dispute between the parties. It is also not in dispute that the complainant has sent a notice dated 30.8.94 invoking the guarantee. For that there was no response. Again the complainants sent a reminder dated 24.12.94 and for that also there was no reply. Finally a notice was sent on 30.1.95 and only then the 1st opposite party has sent a reply stating that there was an injunction by the High Court restraining the complainant from invoking by their guarantee. It is clear from these facts that when the letter dated 30.8.94 the complainants invoked the guarantee the opposite party had become liable to pay the amount immediately. But they have not paid the amount, nor they have sent any reply to that letter. To the subsequent letter also they have not responded. To the complainant's letter dated 30.1.95 only they have replied that there was an injunction against the complainant. May be there was an injunction against the complainant but there was nothing preventing the 1st opposite party from paying the amount as per the terms of the guarantee. Therefore, it is manifest that there was deficiency in service on the part of the 1st opposite party. As stated above the guarantee amount has been paid on 17.7.95. The question now is whether the complainant is entitled for any compensation and interest. As regards the compensation of Rs. 5,000/- we find there is no evidence adduced by the complainant. Coming to the question of payment of interest, as seen above there was clearly deficiency in service on the part of the 1st opposite party. They paid the guarantee amount only on 17.7.95. From the date the guarantee was invoked i.e. on 30.8.94 till the payment on 17.7.95 it would be just and proper that the 1st opposite party shall pay interest. Regarding the rate of interest we are of the view that 15% interest would be reasonable in the circumstances of the case. The result is that the 1st opposite party is directed to pay interest at 15% p.a. from 30.8.94 to 16.7.95. In other respects the complaint is dismissed. The 1st opposite party will also pay a cost of Rs. 1,000/-. Complaint allowed with

costs.