

(2004) 12 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

Union of India

APPELLANT

Vs

RADHA KISHAN KHANNA

RESPONDENT

Date of Decision : 15-12-2004

Acts Referred:

Citation : 2005 2 CPJ 542

Hon'ble Judges : Rachna , Roop Singh J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal under Section 15 of the Consumer Protection Act, 1986 (hereinafter called the "Act") against the judgment and order dated 21.10.1999 passed by District Consumer Forum, Kanpur Nagar in Complaint Case No. 1196 of 1995.

2. THE complaint was filed alleging certain deficiencies committed by the railway administration. In the written statement specific plea with regard to the non-maintainability of the complaint under Section 12 of the Act was taken but that point was not contested either in a preliminary way or on merits.

The learned District Forum after perusing the evidence on record and hearing submissions passed by impugned order.

3. AGGRIEVED against the order of the learned District Forum, the present appeal has been filed. Case was taken up in the revised list. Counsel for respondent had filed Vakalatnama on 30.1.2003. Case was against listed on 9.9.2003.

4. WE have heard the learned Counsel for the appellants Mr. P. Dayal and have perused the materials available on record as also the impugned order. Placing reliance on Sections 13(1)(b) and 15 of the Railway Claims Tribunal Act, 1987 Mr. Khan submitted that since the dispute is relating to the refund of freight, such claims in view of Sections 13(1)(b) and 15 of the Act could only be filed, adjudicated and decided by the Railway Claims Tribunal constituted under the relevant rules and in no way the Consumer Forum was competent enough to

entertain the complaint, much less adjudicate. Section 13, Sub-clause 1(b) of the Act provides that "in respect of claims for refund of fares or part thereof or for refund of any freight, the Claims Tribunal as constituted under the Act shall be deciding". Section 15 clearly bars the jurisdiction. Instead of going into the details or merits of the case, we conclude that the complaint as preferred under Section 12 of the Act by the complainant was not maintainable. ORDER The appeal is allowed. Judgment and order of the learned District Forum are set aside.

5. IT is open to the respondent/complainant to prefer a complaint petition as available within the provisions of Railwa Claims Tribunal, in case the respondent still feel necessary for redressal of his grievance as alleged in the complaint. In the circumstances parties are directed to bear their own costs. Let copy as per rules be made available to the parties. Appeal allowed.