(2004) 11 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

UNION OF INDIA — APPELLANT

Vs

SATINDER NATH VERMA (HUF) — RESPONDENT

Date of Decision : 03-11-2004

Acts Referred:

Citation : 2004 0 NCDRC 22 : 2005 0 ACJ 130 : 2005 1 CLT 669 : 2005 1 CPC 561 : 2005 1 CPJ 76

Hon'ble Judges : S.N.KAPOOR , B.K.TAIMNI J.

Final Decision : petition dismissed

Judgement

1. HEARD learned Counsel for the petitioners.

2. THE grievance of the petitioners is that Kisan Vikas Patras could not have been issued to the complainant Dr. Satinder Nath Verma-Karta (HUF). They have been issued irregularly and wrongly in contravention of the Rules as per notification dated 23rd March, 1988 of the Government of India. There may be some force in the submission of the learned Counsel for the petitioners that HUF could not have been taken Kian Vikas Patra. However, there is no doubt about the fact that the respondent-complainant had purchased Kisan Vikas Patra as a Karta of HUF of respondent No. 6 for a sum of Rs, 42,000/- and the same have been matured on Rs. 84,000/-. An amount of Rs. 42,000/-remained deposited with the petitioners after issuance of Kisan Vikas Patras. A sum of Rs. 53,728/- appears to have been paid, that shall stand deposited towards the said amount. In some cases, such deposit shall be regularised by the petitioners themselves and their number of Kisan Vikas Paras have been regularised vide office memorandum No. F.3/1/2004/ NS-II, Government of India, Ministry of Finance, Department of Economic Affairs, Budget Division (NS-II Section) and a copy of that office memorandum.

3. TWO questions arise for our consideration, (i) "What shall be the effect of acceptance of the amount and keeping in deposit ?" and (ii) Whether the petitioners acting through its employees could take advantage of its own wrong"?

4. AS regards the first point, if the employees have accepted the amount and

issued Kisan Vikas Patra technically speaking in terms of the rules pointed out, there would not be a contract but it would resemble a contract covered by the provisions of second part of Section 73 of the Contract Act. It would be mentioned that the deposit was not gratuitous. It may be further mentioned that Section 72 of the Contract Act further provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it. It would be worthwhile to quote the second part of the consequences in such like matters. ''Compensation for failure to discharge obligation resembling those created by contractï¿½When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge, it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract. Explanationï¿½In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account. If any stretch of imagination, it is not a contract at least, retaining amount issuing Kisan Vikas Patra would amount to a tort. In such circumstances, the complainant would be entitled to return the principal amount under Section 72 of the Contract Act and as regards the interest, the explanation to second part of Section 73 would cover it.

5. SUPPOSING for the sake of argument, it is assumed that Section 73 also does not apply, could there be a wrong without a remedy. We cannot imagine any such situation and in such a matter, loss has to be estimated and should be estimated in terms of the explanation to the second part of Section 73. In this case, the District Forum has passed an order directing the petitioners to pay an amount of Rs. 86,000/- i.e., matured amount of the Kisan Vikas Patras and interest ï¿½ 9% per annum till the payment of the amount. This order has been confirmed by the State Commission.

6. WE do not think in aforesaid circumstances that there is any substantial reason for us to interfere with the impugned order in exercise of power under Clause (b) of Section 21 of Consumer Protection Act. Accordingly, the revision petition dismissed.

