
(2007) 12 NCDRC CK 0023

In the National Consumer Disputes Redressal Commission

VIJAY INDUSTRIES AND PROJECT LTD

APPELLANT

Vs

UNITED INDIA INSURANCE CO

RESPONDENT

Date of Decision : 14-12-2007

Acts Referred:

Citation : 2008 1 CPJ 209 : 2008 1 CPR 327

Hon'ble Judges : K.S.Gupta , P.D.Shenoy , Shishir Kumar J.

Final Decision : Appeal dismissed

Judgement

1. -THIS appeal is directed against the order dated 28. 1. 2002 of Consumer Disputes Redressal Commission Punjab, Chandigarh dismissing the complaint on ground of there being no privity of contract between the appellant and respondent No. 1-Insurance Company.

2. FACTS giving rise to this appeal lie in a narrow compass. M/s. Bharat Heavy Electrical Ltd.-respondent No. 2/ opposite party No. 2 was having a contract with Punjab State Electricity Board for the power project at Jalkheri. Appellant/ complaint was having a sub-contract placed on them by respondent No. 2 vide LOI No. PW:pe:epx:rst:e-784 dated 31. 5. 1989. Respondent No. 2 had taken insurance policy bearing No. 040500/ir/37/1/001/88 from respondent No. 1/ opposite party No. 1 for the entire contract work awarded by the Punjab State Electricity Board. Appellant had its store at the site. On the night of 13. 1. 1991, 4 Nos. of 100 NB Deluge Valves were stolen from the store of the appellant and intimation regarding theft was sent to both the respondents by the appellant. Daily report/fir was also lodged by the appellant with P. S. Mullepur, District Patiala. It was alleged that the appellant had been authorised by respondent No. 2 to take up the matter directly with respondent No. 1 for settling the claim arising out of theft in accordance with Clause No. 6. 6. 6 of Volume-I of the General Conditions of the Contract. On receiving intimation of theft, the respondent No. 1-Insurance Company appointed R. K. Bansal, Surveyor to assess the loss. Surveyor submitted his report on 8. 3. 1995. However, the Insurance Company repudiated the claim by the letter dated 21. 7. 1997.

Attributing deficiency in service on part of Insurance Company, direction was sought to be made to respondent No. 1 to pay amount of Rs. 3,47,9407 along with interest @ 18% p. a. from the date of theft as also cost. Both the respondents contested the complaint by filing separate written versions. One of the grounds taken in written version filed by respondent No. 1 was that the complaint was not maintainable as there was no privity of contract between the complainant and the answering respondent. In the written version filed by respondent No. 2, it was stated, that the replying respondent had taken Comprehensive Insurance Policy No. 40500/21/1/0009/88 from respondent No. 1 for transit storage and E and C for equipment, material forming part of the project excluding contractor's own T and P assets, workers compensation and third party liability which was the responsibility of the contractor. It was stated that settlement of claims is to be regulated in accordance of Clause No. 6 of the Purchase Order dated 31. 5. 1989 and not the Clause No. 6. 6. 6 of Volume-I of General Conditions of the Contract. It was further alleged that the appellant had replaced 4 Nos. of Deluge Valves stated to have been stolen from its store and the replying respondent had no objection if payment of claim by respondent No. 1 is made to the appellant if the amount is otherwise due. By the order dated 22. 7. 2002, appellant was directed to file the copy of insurance policy taken by respondent No. 2 from respondent No. 1-Insurance Company. Order dated 14. 2. 2007 also notices the direction made to respondent No. 1-Insurance Company to file the copy of insurance policy, if not already filed. On the strength of the letter dated 24. 8. 2002 sent by respondent No. 2 to the appellant, it was submitted by Mr. Chandan Kumar, Adv. for the appellant that the policy in question was not available with respondent No. 2 as it was destroyed in fire which took place in the office premises of respondent No 2 during. the second week of July, 2002. Mr. A. K. De, Adv. for the respondent No. 1 also stated that the policy in question being old, copy thereof is now not traceable in the office of respondent No. 1-Insurance Company. In absence of policy, we do not know what were the terms and conditions thereof.

In support of appeal on merits on behalf of appellant our attention has been particularly drawn to para No. 10 of. the written version as also response filed to the appeal by respondent No. 2. In para No. 10 of the written version, as already stated, the respondent No. 2 alleged that it has no objection if the payment of claim by the respondent No. 1 is made to the appellant if the amount is otherwise found due. Likewise is the stand taken in para No. 8 of the response filed to the appeal by respondent No. 2. It is admitted case of the parties that the policy was purchased by respondent No. 2. Stand taken in written version and response that respondent No. 2 did not have any objection to the payment of claim arising out of loss of 4 Nos. of 100 NB Deluge Valves due to theft to the appellant, would not make the appellant a beneficiary and entitle it to claim amount from respondent No 1- Insurance Company under the policy. Decision in Regional Provident Fund Commissioner v. Shiv Kumar Joshi, III (1999) CPJ 36 (SC)=x (1999) SLT 395, relied on behalf of appellant has no applicability to the

issue on hand. There is no infirmity in the order of State Commission calling for interference under Section 21 (a) (ii) of the Consumer Protection Act, 1986.

3. ACCORDINGLY, the appeal is dismissed being without any merit. In the facts and circumstances of case, parties are left to bear their own cost. Appeal dismissed.