

(2004) 03 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

WATER BASE LTD.

APPELLANT

Vs

DILIP KUMAR JANA

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Citation : 2004 0 NCDRC 45 : 2004 2 CLT 694 : 2004 2 CPC 132 : 2004 2 CPR 29

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

Final Decision : Appeal dismissed.

Judgement

1. APPELLANT was the opposite party before the State Commission, where the respondent/complainant had filed a complaint alleging deficiency in service on the part of the appellant.

2. BRIEF facts of the case are that the respondent had a prawn farm and to feed them, he entered into an agreement with the appellant, the Water Base Ltd. for supply of Hi-tech Prawn feed from Mellore worth Rs. 10 lakhs for which a Bank guarantee was also obtained. The feed was to be supplied between 10.3.1995 and 9.8.1995, it could be further extended for another 3 months, i.e., upto 10.11.1995. It was the case of the respondent/complainant that the appellant never supplied this feed resulting in death of the prawns due to ill-health, in the absence of proper feed. Thus, alleging deficiency in service on the part of the appellant, a complaint was filed before the State Commission, who after hearing the parties allowed the complaint and directed the appellant to pay Rs. 11,74,500/- comprising Rs. 11,62,500/- being the cost of the prawns and Rs. 10,000/- as compensation for harassment and mental agony and Rs. 2,000/- as cost. Aggrieved by this order, the appellant has filed this appeal before us. Learned Counsel for the appellant challenges the order of the State Commission as well as the complaint filed by the complainant on the point of jurisdiction before us for the first time stating that the purchase was of a commercial nature as the complainant is a big prawn farm owner. We see no merit in the question of jurisdiction raised by the learned Counsel for the appellant for the simple reason

that what is involved is deficiency in service and before the amendment to C.P.A. 1980, effective 15.3.2003 the services rendered for commercial purposes were not excluded from the purview of Consumer Protection Act. It is only after the amendment made in 2003 that services rendered for commercial purposes has been excluded. In view of this, this argument lacks merit.

3. IT is also his case that he had supplied the feed through his distributor M/s. Sundarbans Marine Products Pvt. Ltd., Calcutta. Distributor Agreement between appellant and the Sundarbans Marine Products Pvt. Ltd., respondent No. 2, is before us. The State Commission erred in not relying upon this distributor agreement. It is his case even if the Distributor Agreement is not taken into consideration, it is admitted position that the complainant had purchased 1700 kgs. feed from the respondent No. 2, who was the distributor of the appellant. Further supply could not be made as the complainant had filed a civil suit praying for restraining the appellant from encashing the Bank guarantee. On the other hand, it was argued by the first respondent that the State Commission was quite correct in allowing the appeal as the dates of issue of stamp papers and the date of agreement differ. This was done with the intention to perpetrate fraud with respondent/complainant. Whatever material had been purchased by the complainant from the second respondent was purchased by way of open market purchases and not as part of the agreement entered into between the complainant and the appellant. It was on account of non-supply of this material that the prawns died resulting in a huge loss to the complainant. The order passed by the State Commission is quite correct and supported by the material on record and does not call for any interference.

4. AFTER hearing the parties and perusing the material on record, we find that there is no disputing the fact that during the period in question, i.e., in between February and August, 1995, 1700 kgs. to requisite feed was supplied to the complainant by the alleged distributor of the appellant. Even for argument sake, we do not look at the Distributor Agreement, the fact still remains is that 1700 kgs. of feed was available with the complainant. Neither before the State Commission nor before us any material has been produced to substantiate the fact that for purchase of this 1700 kgs. of feed any payment was made by the complainant to the 2nd respondent, viz., Sundarbans Marine Products Pvt. Ltd. When the 2nd respondent was taken as a 2nd O.P. before the State Commission, they filed their written version which is on record and which clearly states in Para 9 of their written version filed before the State Commission, it clearly stated "It is specifically denied that the supply of prawn feed was not made to the complainant as alleged or otherwise or at all. In reply thereof this opposite party states with the arrangements between the complainant and The Water Base Ltd., this opposite party duly supplied and/or delivered the Prawn Feeds to the complainant's Acqua Culture Site at Kolaghat, Dist. Midnapur during the period 17th February, 95 to 30th April, 95 and the complainant duly received the said supplied feeds under his official signature which would appear from the receipted copies of challans bearing No. SMP/February, 95/168 dated 17.2.1995, No. SMP/

Chawl/32 dated 1.4.1995, SMPL/Chaul/40 dated 8.4.1995, No. SMP/Chaul/56 dated 15.4.1995, No. SMP/Chaul 1/66 dated 30.4.1995 and Xerox copies whereof are annexed hereto and marked with letters "A" to "A-5" respectively." This makes it clear that this was supplied as part of the agreement between the complainant and the appellant and this remains unrebutted. The complainant's claim of having purchased this quantity by way of open market purchases remains unsupported by way of any payment having been made by the complainant to the distributor. In the absence of any proof to this effect, we have no hesitation in admitting that this supply was made by the 2nd respondent to the complainant as part of the agreement between complainant and the appellant. The purchase agreement is not on record but it is clear that it was worth Rs. 10 lakhs and when against the supply of 1700 kgs. of feed by the distributor to the complainant, no payment was forthcoming and appellant wanted to invoke the Bank guarantee the complainant approached the Civil Court to obtain a stay where the matter is still pending. The complainant could not expect supply of feed to continue without payment. In view of the above discussion, we find that the complainant completely fail to satisfy us about the deficiency in service by way of non-supply of feed; the record is to the contrary.

5. IN our view, the State Commission erred in arriving at a conclusion it did, which is not supported by any material on record; in fact it is contrary to the facts and material on record. 8. Thus we are unable to sustain this order. Hence the order passed by the State Commission is set aside and the complaint stands dismissed. No order as to costs.