

## **PUNJAB SMALL INDUSTRIES And EXPORT CORPORATION LTD. Vs LT. COL. T.S. BAKSHI**

**Court:** NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

**Date of Decision:** Jan. 14, 2004

**Citation:** 2004 2 CLT 537 : 2004 2 CPJ 681

**Hon'ble Judges:** K.K.Srivastava , Devinderjit Dhatt , MajGenS.P.Kapoor J.

**Final Decision:** Appeals dismissed

### **Judgement**

1. THIS order will dispose of two appeals bearing Nos. 558 and 687 both of 2003 filed against order dated 26.9.2003 passed in Complaint Case

No. 885 of 2000 by District Consumer Disputes Redressal Forum-II [for short hereinafter referred to as the District Forum] which is being passed

in Appeal No. 687 of 2003 filed by the O.P.-Punjab Small Industries and Export Corporation Ltd.

2. THE complaint was filed by Lt. Col. (Retd.) T.S. Bakshi, General Attorney of his son Shri Pradeep Singh Bakshi. THE opposite party of the

complaint case Punjab Small Industries and Export Corporation Ltd. (for short hereinafter referred to as the P.S.I.E.C.) advertised for auction of

commercial sites on 17.7.1997. THE appellant/complainant Lt. Col. T.S. Bakshi (Retd.) participated in the auction aforesaid on behalf of his son

Shri Pradeep Singh Bakshi in his capacity as General Power of Attorney holder and made a bid for Site No. 30, Phase VII, Mohali, which was

eventually concluded in his favour. A sum of Rs. 3,75,000/- was deposited with the authority comprising two amounts of Rs. 3,65,000/- deposited

vide Receipt No. C/96/25460 dated 17.7.1997 and another sum of Rs. 10,000/- deposited in cash before participating in the auction. It is alleged

that the complainant did not receive any letter of acceptance from the O.P-P.S.I.E.C. for which a request was made vide letter dated 6.1.1998

sent under Certificate of Posting (for short hereinafter referred to as UPC). Still no response was received when another letter was sent under

UPC on 18.3.1998 wherein a request was made for refund of the money deposited on 17.7.1998. This was followed by yet another letter dated

15.3.1998. Lt. Col. T.S. Bakshi (Retd.) was proceeding to United States of America where his own Shri Pradeep Singh Bakshi was residing in

August, 1998 and at that time he met the then Managing Director, P.S.I.E.C. Capt. Narinder Singh and handed over a letter to him and then left

for United States of America on 8.8.1998. THE letter dated 13.8.1998 was received in the absence of Lt. Col. T.S. Bakshi (Retd.) which

informed the fact that letter of allotment had been sent on 7.8.1998 but letter of allotment was not received nor its copy was received by the

complainant. THE complainant returned from United States of America and met the Managing Director of P.S.I.E.C. and handed over a letter to

him setting out the entire case and requested for the refund of the money paid by him. THE said letter was dated 24.3.1999. THE complainant

received letter dated 24.5.1999 wherein it was communicated that a letter had been sent to the complainant on 7.8.1997 but the same had not

been received nor its copy was enclosed.

A show-cause notice was issued by the O.P.-P.S.I.E.C., which is dated 12.8.1999 annexing, therewith a letter dated 18.10.1999, which was

replied on 16.11.1999 under registered post. The complainant sent another letter on 7.8.2000 under registered A.D. Post but no reply was

received from the O.P.-P.S.I.E.C., hence the complaint was filed on 20.12.2000 in the District Forum.

Notice was issued by the District Forum to P.S.I.E.C. enclosing therewith a copy of complaint to which written reply was filed wherein certain

preliminary objections were taken. It was contended that Lt. Col. T.S. Bakshi (Retd.) was not a consumer as the plot in question was allotted in

auction and there was no privity of contract or privity of estate between the complainant and P.S.I.E.C. It was further contended that in view of the

law laid down by the Hon'ble National Consumer Disputes Redressal Commission, New Delhi (for short hereinafter referred to as the National

Commission) in the case of Shiela Constructions Pvt. Ltd. and Another v. Nainital Lake Development Authority and Others, III (1996) CPJ 11

(NC), since the plot was auctioned at the auction sale, the purchaser could not be said to be a consumer as defined by Section 2(1)(d) of the

Consumer Protection Act, 1986 [for short hereinafter referred to as the C.P. Act]. The other preliminary objection raised is that the O.P. has not

been properly described because it is a Corporation and it could be impleaded as an O.P. but the complainant has impleaded the Managing

Director, P.S.I.E.C. in his individual capacity. The allegation of deficiency in service on the part of O.P. was also denied.

3. ON merit, it was contended that after acceptance of the bid of Shri Pradeep Singh Bakshi, the allotment letter was sent to the allottee on

7.8.1997 through registered Post at the address mentioned in the bid form by the General Power of Attorney holder i.e., House No. 12, Sector 8-

A, Chandigarh. The said letter was not received back undelivered and a presumption is to be raised that it was duly received by the allottee. This

fact was duly conveyed to the complainant by the O.P. Since the complainant failed to abide by the terms and conditions of the letter of allotment,

hence the allottee was not entitled to any refund. The O.P.-P.S.I.E.C. denied the receipt of any letters from the complainant. It was alleged that

since the allotment letter had already been sent, hence there is no need to sent the same again. It was further contended that since the complainant

failed to take possession of allotted site within thirty days from issuance of the allotment letter, hence the O.P.-P.S.I.E.C. had the right to cancel

the allotment and forfeit the whole or any part of the money paid. The allottee failed to take possession of the plot and also failed to deposit the

outstanding dues, therefore, a show-cause notice dated 12.8.1999 was served by the O.P.-P.S.I.E.C. In this background, the complainant was

not entitled to any refund of the money.

It was also contended that the allottee never applied for duplicate copy of allotment letter, hence, the same was not sent. The show-cause notice

dated 12.8.1999 was received back unclaimed and it was again sent through registered post but again it was received back unclaimed. Thereafter,

show-cause notice was sent at the Delhi address through registered post on 18.10.1999, which was received back undelivered, and as such the

same was presumed to be served. The O.P. contended that the complainant was asked vide letter dated 13.8.1998 to deposit a sum of Rs

6,80,550/- which was due as on 7.8.1998 but since the complainant was not interested in retaining the said plot, the complainant never demanded

for duplicate copy of allotment letter nor offered to make the payment which clearly showed that the complainant was not interested in retaining the

plot. The O.P. vide letter dated 24.5.1999 informed the complainant that he was not entitled for any refund and was directed to deposit a sum of

Rs. 11,23,207/- as due on 31.5.1999 which was not complied with by the complainant.

4. THE O.P.-P.S.I.E.C., however, contended that even today, if the complainant is interested to retain the plot in question, he could do so by

depositing the outstanding dues along with interest. However, the complainant, it appeared, was interested in only getting the refund, to which, as

per the terms of the allotment, he was not entitled and thus he had concocted the present story, which was totally false. THE parties led evidence in

the shape of affidavits and documents, the photocopies of which are placed on record.

The District Forum held that copy of allotment letter dated 7.8.1997, which had been sent under registered post by the O.P.-P.S.I.E.C. is

presumed to have reached the complainant. It was also held that the show-cause notice dated 12.8.1999 directed the complainant to show cause

as to why the allotment made be not cancelled. It was further held that the reasons stated in the show-cause notice were sufficient to deny the

refund of the amount to the complainant and in these circumstances, it could not be held that P.S.I.E.C., the O.P., committed any deficiency in

service in not refunding the amount to the complainant and dismissed this part of the complaint. The District Forum, however, found deficiency in

service committed by the O.P. inasmuch as the O.P. failed to dispose of the show-cause notice in accordance with law within a reasonable period

of time after 16.11.1999.

Keeping in view the totality of the facts and circumstances of the case, the District Forum directed the O.P. to pay Rs. 20,000/- to the complainant

for mental and physical harassment caused to him for non-disposal of the show-cause notice within a reasonable period of time. A direction was

issued to the O.P. to dispose of the show cause notice in accordance with law within a period of two months from the date of receipt of certified

copy of the order. The cost of litigation was quantified at Rs. 2,000/-.

5. AS mentioned above, the complainant as well as the O.P.-P.S.I.E.C. both felt aggrieved by the impugned order passed by the District Forum

and preferred appeals referred to above.

6. IN both the appeals, notices were issued and the respective respondents put in appearance. The record of the complaint case has been

summoned. We have heard the learned Counsel for the P.S.I.E.C. and the complainant Lt. Col. T.S. Bakshi (Retd.) who appeared in person.

The preliminary objections raised in the complaint case by the O.P.-P.S.I.E.C. have been enumerated in the earlier part of our order. The first

preliminary objection raised is about the non-maintainability of the complaint on the ground that in this case, the services of the respondent were

not hired and availed by the auction bidder, as it was a sale out and out. In support of this contention, the learned Counsel for the P.S.I.E.C. relied

on the case of Shiela Constructions Pvt. Ltd. and Another(supra) wherein it has been held by the Hon"ble National Commission that there is no

hiring of service for consideration when it is an outright sale of immovable property in an auction. The case of Shiela Constructions Pvt. Ltd. and

Another (supra) was decided by the Hon"ble National Commission on 21.6.1996. The Hon"ble Supreme Court considered the scope of C.P. Act

in the case of Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC)=1986-94 National Commission and Supreme Court on

Consumer Cases Page 278, decided on 5.11.1993 and held as under:

Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a

builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then, it

would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer.

When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in

respect of immovable property as argued but deficiency in rendering service of particular standard, quality or grade. Such deficiencies or omissions

are defined in Sub-clause (ii) of Clause (r), Section 2 as unfair trade practice.

In the case in hand, the letter of allotment of plot in response to the participation of the complainant at the auction sale, was not a document

amounting to a document of sale out and out inasmuch as the entire amount of the sale price had not been paid at the time of auction but the

balance amount was to be paid in the instalments. It is undisputed that the O.P.-P.S.I.E.C. was required to render service after issuance of the

letter of allotment and in this view of the matter, it could not be said that there was no hiring of service for consideration as it was not a case of

outright sale of immovable property in an auction. Moreover, the Hon"ble Apex Court in the case of Lucknow Development Authority (supra)

considered the definition of ""service"" and laid the guidance for the various statutory bodies who claimed that they were providing land for building

dwelling units and even for setting up commercial units on lease-hold basis only. It was held that the public authority entrusted with the statutory

functions cannot act negligently and the C.P. Act provided for a wider definition of the word ""service"". The law laid down by the Hon"ble Apex

Court in the case of Lucknow Development Authority (surpa), was not considered in the case of Shiela Constructions Pvt. Ltd. & Anr. (supra).

7. WE are thus of the opinion that the District Forum has rightly held the complainant as consumer qua the O.P.-P.S.I.E.C. WE uphold the finding

of the District Forum on this preliminary objection and hold that the O.P.-P.S.I.E.C. rendered service to the complainant, which is duly covered

under the definition provided under the C.P. Act both in Section 2(1)(d) as well Section 2(1)(o) of the C.P. Act.

The other preliminary objection raised is about the complainant not being a person who had any direct interest in the plot inasmuch as the bid was

made on behalf of his son Shri Pradeep Singh Bakshi who was residing in United States of America. It is not specifically denied that Lt. Col. T.S.

Bakshi (Retd.) held a General Power of Attorney of his son Shri Pradeep Singh Bakshi and he was the person who participated in the auction bid

and deposited the instalment of a sum of Rs. 3,75,000/-. This preliminary objection has thus no merit and the same is repelled.

8. THE other preliminary objection raised is about the description of the O.P.-P.S.I.E.C. THE O.P. had been arrayed as under:

Managing Director, P.S.I.E.C., 18, Himalaya Marg, Chandigarh-160017.

This preliminary objection is too technical in nature. The Corporation is very much impleaded as an O.P. The Corporation has to function through

some authorised person, which in the instant case is the Managing Director. The O.P. has been properly impleaded and the same for the purpose

of this case is the P.S.I.E.C. through the Managing Director and the Managing Director, P.S.I.E.C. has nowhere been described in the complaint

to be personally liable individually for the deficiency in service. The objection is thus also repelled.

Now coming to the merit of the case, the first and foremost controversy raised is about the non-receipt of the letter of allotment which according to

the O.P.-P.S.I.E.C. was despatched to the complainant under registered A.D. Post and the same had not been received back unserved. The

District Forum has also adverted to the presumption in favour of service. It may, however, be pointed out that the presumption is rebuttable. In the

instant case, Lt. Col. T.S. Bakshi (Retd.) filed his affidavit dated 14.8.2003 wherein in para 3, he specifically deposed as under: ""3. That I had not

received the letter of allotment alleged to have been sent by the opposite party, nor copy of the same has been sent or supplied by the opposite

party.

9. THE contents of the affidavit filed by Lt. Col. T.S. Bakshi (Retd.) have been verified as true and correct to his knowledge. Not only this, the

complainant moved an application dated 4.9.2003 praying that the concerned file of allotment of the aforesaid site for which the complainant has

successfully made his bid be summoned. Summons were given Dasti to the complainant, which was produced by the learned Counsel for the

P.S.I.E.C. A photocopy of bid-sheet dated 17.7.1997 and photocopy of letter of allotment issued by the O.P. to the complainant were placed on

record in evidence. An oral statement of Lt. Col. T.S. Bakshi (Retd.) was recorded on 12.8.2003. THE order sheet shows that Lt. Col. T.S.

Bakshi (Retd.) made a statement that he was not in possession of any allotment letter. Except the filing of the photocopy of letter of allotment, no

other evidence was led to show that the registered cover under which the letter of allotment was sent was, as a matter of fact, sent and if so, the

despatch register showing an entry about the despatch of the letter of allotment could be placed on record.

10. THE complainant referred to Clause 25 of the Punjab General Clauses Act, 1898 which provides for ""Manner of Service by post"" and it reads

as under:

25. Manner of service by post.-Where any Punjab Act "[ - ]" authorises or requires any document to be served by post whether the expression

service"" or either of the expressions ""give"" or ""send"" or any other expression is used, then, unless a different intention appears, the service shall be

deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and unless the contrary

is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Before a presumption can be raised, it is to be proved as a fact that the letter was sent by properly addressing, pre-paying and posting by

registered post and the same having not been received back undelivered. The concerned official dealing with the despatch of the letters including

the letter of allotment has not been produced nor his affidavit has been filed. The affidavit has been filed which has been sworn by Shri Baldev

Krishan Garg, Senior Assistant, P.S.I.E.C. The contents of the affidavit are more or less the reproduction of the defence taken in the written

statement. The contents of the affidavit have been verified on the knowledge derived from the records of the O.P.-P.S.I.E.C. being maintained in

its day-to-day business and legal advice received and believed to be true and correct. Shri Baldev Krishan Garg, Sr. Assistant has not deposed

that he was in-charge of the matter relating to the despatch of the letters and he had personally despatched the same by observing the conditions

mentioned in Clause 25 of Punjab General Clauses Act, 1898 which has been quoted above and which are applicable to the O.P.-P.S.I.E.C.

In this view of the matter, the District Forum could not validly raise a presumption about the sending of the letter of allotment and more specially

when the complainant has consistently denied about the receipt of the letter of allotment and he had been time and again asking for the copy of the

letter of allotment from the Competent Authority of O.P.-P.S.I.E.C.

11. WE thus enable to uphold the finding of the District Forum regarding the presumption to be raised in favour of due service and we hold that the

complainant Lt. Col. T.S. Bakshi (Retd.) did not receive the letter of allotment. The O.P.-P.S.I.E.C. has also taken a stand that none of the letters

relied by the complainant was received in the office of P.S.I.E.C. Be that as it may, the complainant clearly and specifically expressed his intention

of not opting for the plot for which he made a bid at the auction sale and he prayed for the refund of his amount. The complainant had in the

meantime been served with a show-cause notice where the allotment was threatened to be cancelled though the show-cause notice was not

decided as has been found by the District Forum and the result is that the matter regarding the show-cause notice is still pending with the O.P.-

P.S.I.E.C.

Now, since the matter regarding the show-cause notice has to be brought to its logical conclusion and the same has to be considered and disposed

of according to law, the complainant who has now learnt about the contents of letter of allotment, a photocopy of which has been placed on record

of this case, will be at liberty to make his submissions regarding the show-cause notice and to pursue his case regarding the refund of the amount

which he has been praying for from the O.P.-P.S.I.E.C. Hence, we do not think it appropriate to take up the matter of refund of the amount at this

stage and we think that the O.P.-P.S.I.E.C. would consider the complainant's reply to the show-cause notice and also his prayer for refund in

accordance with terms and conditions of allotment letter and according to law and pass an appropriate order within the timeframe as fixed in the

order of the District Forum. We also find no infirmity in the order of the District Forum in awarding compensation and costs of litigation.

12. RESULTANTLY, both the appeals are dismissed by leaving the parties to bear their own costs and direct the O.P. to comply with the

directions contained in the impugned order of the District Forum. In case, the complainant feels aggrieved with the order passed by the O.P.-

P.S.I.E.C., he will be at liberty to challenge the same by filing an appropriate petition before an appropriate Forum of competent jurisdiction.

Copies of this order be sent to the parties free of charge. Appeals dismissed.