

(1997) 08 NCDRC CK 0034

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION**Case No:** None

NILAMANI SWAIN

APPELLANT

Vs

Collector, Cuttack

RESPONDENT

Date of Decision: Aug. 12, 1997**Citation:** 1998 3 CPJ 177 : 1999 1 CPR 116**Hon'ble Judges:** P.C.Misra , Mrinalini Padhi J.**Final Decision:** Complaint Petition dismissed

Judgement

1. THE complainant has filed this case praying for compensation for not being granted some certified copies he had applied for. His case is that a Criminal Case No. 242 of 1979 in the Court of the Executive Magistrate, Jagatsinghpur was initiated by one Hadibandhu Dalai and others against the present petitioner. THE Executive Magistrate disposed of the case which was challenged by the complainant in Revision Case No. 67 of 1983 before the Hon''ble Orissa High Court. In the said criminal revision, the High Court had called for the records of the proceedings under Section 145 Cr.P.C. and the revision petition was dismissed on 7.3.1983. THE complainant thereafter applied for certified copies of some of the PWs and OPWs who had deposed before the Executive Magistrate and filed a copy application for the purpose of 9.4.1991 which was registered as Copy Application No. 53 which the complainant claims to be absolutely necessary in pending O.L.R. Cases. THE copies were not given to him on the plea that the records had not been received from the Hon''ble High Court for which the complainant made queries and ascertained from the High Court that the records of the said revision case had already been despatched to the Collector, Cuttack on 8.3.1993 under Memo No. 5865. THEREAFTER the complainant ran to the Collector, Sub-Collector and the Executive Magistrate for obtaining the certified copies of the depositions of the aforesaid witnesses, but ultimately nothing was given to him for which he has prayed for redressal had compensation of Rs. 2,25,000/-.

2. THE Collector, Cuttack who is opposite party No. 1 in this case has taken some essential pleas on the basis of which it is claimed that the complainant has no case to be agitated. THE plea of the Collector is that the complainant is not a consumer inasmuch as there has been no hiring of service of any of the opposite parties for consideration. His second plea is that the records after being received from the Hon"ble High Court are not traceable inspite of best efforts mostly because the clerk who was dealing with the case has since retired. It has also been stated in the show cause that efforts are still being made to trace out the necessary records for grant of certified copies and the same shall be granted as and when the records are available.

The learned Counsel appearing for the opposite parties strenuously contended that the aforesaid points are substantial and the complaint petition is liable to be dismissed if any one of the said points succeeds, so far as the first point is concerned, he relied on a decision of the Hon"ble Supreme Court reported in I (1996) CPJ 11 (SC)=JT 1996 (1) 71 (SC), S.P. Goel v. Collector of Stamps, Delhi in support of the submission that the complainant is not a consumer. The case which was dealt with by the Hon"ble Supreme Court in the aforesaid decision relates to registration of a Will which was executed in favour of the appellant before their Lordships. The Will being presented before the Sub- Registrar, the Sub-Registrar instead of registering the document, impounded it as he was of the opinion that it was not a Will but a Deed of Conveyance which was not duly stamped. He therefore sent the original document to the Collector of Stamps for appropriate action under Section 40 of the Stamps Act with the suggestion that the instrument was chargeable with 3% of the amount of consideration as Stamp Duty and 5% as Transfer Duty. The appellant being noticed appeared before the Collector and insisted that the document in question was a Will whereas the Collector was of the view that it was a deed of conveyance. attd was therefore required to be properly stamped and registered. The appellant however filed a complaint before the District Forum, Delhi constituted under the Consumer Protection Act and prayed for several reliefs including a direction for registration of the Will and also for supply of certified copy thereof besides. compensation for his harassment. Their Lordships of the Supreme Court were therefore called upon to answer as to whether the complainant was a consumer and whether he was entitled to redressal under the Consumer Protection Act. After discussing various provisions of the Consumer Protection Act as well as the Indian Stamp Act and the Registration Act, their Lordships held that the Registration Act as also the Stamp Act are meant primarily to augment the State Revenue by prescribing the stamp duty on various categories of instruments or documents and the procedure for collection of stamp duty through distress or other means including criminal prosecution as non-payment of stamp duty has been

considered as an offence. Payment of registration fee or registration charges including charges for issuing certified copies of the registered documents or fee for the inspection of various registers or documents kept in the office of the Registrar or Sub-Registrar etc. constitute another component of State Revenue. Applying the aforesaid principle decision by their Lordships it was contended by the learned Counsel appearing for the opposite parties that in order to obtain certified copy of any document from the Public Officer, the applicant is required to pay stamp duty as prescribed under the Stamp Act. His contention is that following the view expressed by their Lordships of the Supreme Court, the stamp duty payable on the application for applying for certified copy is for the purpose of augmentation of the revenue of the State and there is no element of service connected therewith. Their Lordships of the Supreme Court also mentioned about the charges for issuing certified copies of registered documents which was in question in that case but the said principle would also apply to wherever an application for certified copy is made as the stamp paid on the application paying for grant of certified copy is governed by the Stamp Act. Their Lordships of the Supreme Court had clear impression that running through the twin Acts, namely, the Registration Act and the Stamp Act, their Lordships could not at any stage reconcile themselves with the idea espoused by the appellant's Counsel that there is an element of commercialism involved in the whole process of registration of instruments or payment of stamp duty and that the executant of an instrument at the time of its presentation of registration, becomes a consumer entitled to service within the ambit of the C.P. Act. Following the view expressed by the Hon"ble Supreme Court, the conclusion in the present case is that the complainant was not a consumer who was entitled to any service or that he has paid any consideration for the alleged service sought for by him. In this view of the matter, the complaint petition is liable to be dismissed.

Coming to the other question which in the present circumstances is unnecessary for consideration, the learned Counsel for the opposite parties relied upon a decision of the National Commission reported in I (1992) CPJ 18 (NC)=1991 (1) C.P.R. Page 263, Consumer Unity and Trust Society, Calcutta v. The Chairman and the Managing Director, Bank of Baroda, in support of his contention that in order to render service due to the reasons wholly beyond the control of the person required to render the service is a case which falls within the well known exception of force majeure and would not be a deficiency in service. We do not intend to discuss this point any further in view of our conclusion that the complainant is not a consumer in the light of the observations made by their Lordships of the Supreme Court in the above mentioned case. The complaint petition is accordingly dismissed. Mrs. Mrinalini Padhi, Member-I agree. Complaint Petition dismissed.