

(1993) 04 NCDRC CK 0047

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

KHERA ELECTRONICS

APPELLANT

Vs

BRANCH MANAGER, H.C.L.
LIMITED

RESPONDENT

Date of Decision: April 12, 1993

Citation: 1993 2 CLT 454 : 1993 3 CPJ 1344

Hon'ble Judges: S.S.Dewan , R.L.Gupta , Gurkanwal Kaur J.

Final Decision: Appeal allowed

Judgement

1. AGGRIEVED by the order dated 5.6.1992 of the District Forum, Ludhiana holding that he does not fall within the definition of a "Consumer" as given in Clause (d) of Sub-section (1) of Section 2 of the Consumer Protection Act, 1986 (briefly "the Act"), the complainant has filed the present appeal.

2. THE undisputed factual matrix lies in a narrow compass. THE complainant had filed the complaint, alleging that the opposite-parties had entered into an agreement with him on 26.6.1991, undertaking to repair and maintain the Plain Paper Copier Machine Model Finese 4515 (in short "the machine") of the complainant for a period of one year with effect from 26.6.1991 to 25.6.1992. THE opposite-parties charged a sum of Rs. 7,500/- for maintenance and repair of the machine for the said period. THE complainant had placed on the file Photostat copy of the receipt dated 16.9.1991 vide which the opposite-parties had undertaken to return the machine on or before 23.9.1991. Some defects were brought to the notice of the respondents. THE machine was taken by them for repair on 16.9.1991, but they failed either to return the machine or to carry out the repairs. Hence, the

complaint.

Supporting the order of the District Forum under challenge, Shri S.P. Goyal, learned Counsel, appearing for the Respondents/Opposite Party convassed that the machine was purchased by the complainant for business purposes and as per the allegations made in the complaint and the application vide which the complainant had produced certain documents before the District Forum, it has been categorically admitted by him that the machine is being used for business purpose by the complainant and hence, he is not a "consumer" as defined in Clause (d) of Sub-section (1) of Section 2 of the Act. He has placed reliance upon the Judgments reported in *Synco Textiles Pvt. Limited v. Greaves Cotton & Company Ltd.* I (1991) CPJ 499 (NC); *Assistant Manager, BPL India v. S. R. Tushar & Ors.*, I (1991) CPJ 155; *Consumer Unity and Trust Society, Jaipur v. State of Rajasthan & Ors.* II (1991) CPJ 56 and *Lucky Star Estate (I) v. Laxmi Boilers (North)*, I (1991) CPJ 471. Shri Goyal has fairly conceded that the machine was taken by the opposite-parties for the repair and the amount of Rs. 7,500/- was duly charged for repair for the said period of one year with effect from 26.6.1991 to 25.6.1992. He has advanced some explanation for not carrying out the repairs and for not returning the machine by the Opposite Parties to the complainant.

For deciding the controversy involved in the present case, it would be better to refer to the word "consumer" as defined in Clause (d) of Sub-section (1) of Section 2 of the Act. The same is as under:-

"2. Definitions :(1)In this Act, unless the context otherwise requires, - (d) "Consumer" means any person who, - (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or (ii) hires any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person; -----."

From the bare perusal of the definition quoted above, it is categorically made out that there is a fine distinction between the "consumer" who buys the goods for consideration and who hires any service for consideration. A "consumer" buying the goods for resale and for any commercial purpose, is excluded from being a "consumer", but no such exclusion is made in respect of the "consumer" who hires any service. Hence, the Parliament itself clearly and unambiguously has put the apparent distinction between the "consumer" buying the goods and the "consumer"

hiring the services. The consumer buying the goods for consideration and for resale or for any commercial purpose is debarred from making a complaint under Section 12 of the Act and on the other hand, the "consumer" hiring the service for any commercial purpose has not been debarred from preferring a complaint under the Act.

3. THUS, we are of the considered view that even the "consumer" who hires services for commercial purposes is not debarred from agitating his grievance under the Act and to claim relief thereunder. It is the admitted position that the machine was taken over by the respondents from the appellant for the repair work and for that purpose, he was made to pay the repair charges and till today, the machine has not been returned by the respondents to the appellant. The present case is a case of a "consumer" hiring the services. It is immaterial and irrelevant that to begin with a surge by Mr. Goyal, the machine was purchased for commercial purposes. The stage of purchase is over. We are concerned with the repair and by any stretch of imagination, it cannot be denied that repair is a service. The contention of the opposite-party has no legs to stand. We hold that the complainant in the present case who has handed over the machine for repair and has advanced the consideration for the purpose is a consumer.

The observations made by the Hon"ble National Commission in Synco Textiles Pvt. Ltd's case (supra) rather, supports the complainant and clinch the issue. Paragraphs 8, 9 and 10 thereof help the complainant and the same are quoted below:

"The interpretation and the scope of the expression "commercial purpose" used in the Act raises an issue of great importance for the buyers of goods with far reaching implication. The term "consumer" has been defined in two parts: Sec. 2(1)(d)(i) and (ii). Sec. 2(1)(d)(i) applies to consumer who purchases goods. It is this Sub-section which excludes buyers who obtain goods "for resale or for any commercial purpose". Sec. 2(1)(d)(ii) applies to purchaser (hirer) of any service. Significantly the words "for resale or any commercial purpose" do not occur in this Sub-section."

7. The other judgment in the case of Lucky Star (I) (supra) decided by the Hon"ble Delhi State Commission relates to the purchase of "fired hot water Boiler and one Mixing Tank" for the purpose of hotel business and hence, it does not deal with the services. 8. The case of Consumer Unity and Trust Society, Jaipur decided by the Hon"ble Rajasthan State Commission, concerns with the negligence of the doctor while performing the operation and carelessness in looking after the patient after operation. It has been decided against the complainant therein, holding that no service has been hired for consideration for the purpose of operation. It does not

help the respondents in any way. 9. The case of Assistant Manager, BPL India (supra) decided by the Hon"ble Karnataka State Commission deals with Video Parlour, solely under Section 2(1)(d)(i) relating to goods and does not relate to the services and hence, cannot be of any use for deciding the present controversy. 10. In view of the foregoing discussion, we hold that a "consumer" hiring a service even for commercial purposes, is a "consumer" as defined in the Act and is entitled to invoke the provisions of the Act. We are fortified by the judgment by the Hon"ble Gujarat State Commission, titled as Dr. Parul Uresh Dalai v. M/s Indian Dental Traders, reported as II (1992) CPJ 972. 11. We find there is another angle for deciding the present appeal. For the sake of arguments, we obliterate the difference between the "consumer" buying the goods and the "consumer" hiring the services and treat them at the same par, even then for holding the consumer purchasing the goods for commercial purpose and debarring him from filing a complaint under the Act, the various tests for determining whether the goods have been purchased for commercial purpose as laid down by the Hon"ble National Commission in the case Synco Textiles Pvt. Ltd. (supra) have to be applied. The said tests laid down by the Hon"ble National Commission are as under:-

"(i) the goods are not for immediate final consumption but that there is only transfer of goods i.e. resale. (ii) there should be a direct nexus between the purchase of goods and the profit or loss from their further disposal. Such a direct nexus is absent when the goods or services are converted for producing other goods or services. After conversion there is no direct nexus between the kind of goods purchased and the kind of goods sold. (iii) there is nexus of form and kind between the goods purchased and the goods sold. Such a direct nexus of form and kind ceases when the goods undergo transformation or conversion."

12. The National Commission has further laid down that "immediate purpose" is distinct from the ultimate purpose of purchase, sale in the same form or after conversion and a direct nexus with profit or loss would be the determinants of the character of a transaction whether it is of a "commercial purpose" or not. Thus buyers of goods or commodities for "self consumption" in economic activities in which they are engaged would be consumers as defined in the Act". We find that the learned District Forum has not applied its judicial mind to the tests laid down by the Hon"ble National Commission for determining whether the goods have been purchased for commercial purpose or not. We are of the view that in the case of Plain Paper Copier Machine Model Finese, the test laid down at Sr. Nos. (ii) and (iii) aforementioned as laid down by the Hon"ble National Commission are quite missing. In the case in hand, we do not conceive of any direct nexus between the purchase of goods/services and the profit or loss from their further disposal or any nexus of form and kind between the goods/services purchased and the goods sold. 13. For the reasons recorded above, we accept the present appeal and quash the impugned order of the District Forum vide which it has been held that the complainant is not a "consumer" as given in the Act. As the District Forum has

decided the case only on the preliminary question and has not given any finding on merits and the opposite-parties were proceeded ex- parte by it, we, in the interest of justice, send the case back to the District Forum, Ludhiana to decide it on merits in accordance with law. As the opposite parties were proceeded ex-parte, we do not propose to impose any costs. Appeal allowed.