
1991 2 CPR 121 : 1992 1 CPJ 30 : 1993 1 CLT 152

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

BIDYUT KUMAR
DUTTA

APPELLANT

Vs

Ramesh Sharma

RESPONDENT

Date of Decision: April 4, 1991

Citation: 1991 2 CPR 121 : 1992 1 CPJ 30 : 1993 1 CLT 152

Hon'ble Judges: S.S.Ganguly J.

Final Decision: Application allowed

Judgement

1. THE petitioners" case as per their application under Article 227 of the Constitution are the following: - THE opposite party/his father are tenants

in respect of two tenancies with regard to two different portions of the self-sme house under a religious trust of which the trustees are the

petitioners no. 1 to 3. Under the terms of two written agreements for the two tenancies the tenants were allowed to use only the municipal taps,

served by municipal main line via underground and overhead reservoirs. THERE is a well within the area of the house the water of which has been

used all throughout exclusively for the seva puja of the deities of the trust and for no other purpose. THE well has all along been under lock and

key, the key lying with the priest, the petitioner No. 4.

2. ON 5.5.91 the petitioner No.1 received by registered post copies of an application filed by the opposite party before the learned President,

Calcutta District Forum, Bhawani Bhavan, Alipore dated 22.1.91 along with a show cause notice issued on the same date in case No. CDF 1234

of 1991 whereby the petitioner was directed to appear before the said District Forum under the Consumer Protection Act, 1936 on 5.2.91 with a

warning that in case of disobedience the application would be disposed of ex-parte. Along with them were enclosed two orders passed by Sri S.S.

Gupta, learned President, Calcutta District Forum on 22.1.91 and 5.2.91. By both these orders the petitioners were directed to allow the opposite

party to draw water from the well through the existing pump-set and the O.C., Baranagore P.S. was directed to assist the opposite party to draw

water from the well. The petitioners contend that the opposite party falsely stated in his application before the Forum that the terms of the

agreements of tenancy permitted him to draw water from the tank and that the petitioners mischievously prevented him from drawing water from

the well. The Forum's jurisdiction to entertain the application of the opposite party has also been challenged.

We take up the question of jurisdiction first. The Consumer Protection Act, 1986 (the Act henceforward) as its preamble shows, was enacted for

the better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other

authorities for the settlement of consumers' disputes and for matters connected therewith. Who is a consumer and what is a consumers' dispute?

A "Consumer" as per Section 2(1)(d) is (a) a buyer of goods for consideration or a user(thereof with the consent of the buyer or (b) a hirer of any

services also for consideration, or a beneficiary of such services with the approval of the hirer. Goods is as defined in the Sale of Goods Act

[Section 2(1)(i)], Section 2(7) of which defines "goods" as every kind of moveable property. Service on the other hand means "service of any

description including the provisions of facilities in connection with banking, financing, insurance transport, processing, supply of electrical or other

energy, board or lodging or both, entertainment, amusement or the purveying a news or other information but excluding any service-free of charge

or under a contract of personal service [Section 2(1)(o).] Any consumer may lodge a complaint i.e. any allegation in writing that-

(i) as a result of any unfair trade practice adopted by any trader, the complaint has suffered loss or damage; (ii) the goods mentioned in the

complaint suffer from one or more defects; (iii) the services mentioned in the complaint suffer from deficiency in any respect; (iv) a trader has

charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed

on the goods or any package containing such goods, [Sec. 2(1) (c)].

3. A ""Consumer dispute"" means a dispute where the person against whom a complaint has been made denies or disputes the allegations

complained in the complaint. The Act also contemplates establishing Central and State Consumer Protection Councils with the object to promote

and protect the rights of the consumers, such as: -

(a) the right to be protected against the marketing of goods which are hazardous to life and property; (b) the right to be informed about the quality,

quantity, potency, purity standard and price of goods so as to protect the consumers against unfair trade practices; (c) the right to be assured,

wherever possible, access to a variety of goods at competitive prices; (d) the right to be heard and to be assured that consumer's interest will

receive due consideration at approximate formus; (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of

consumers; and (f) the right to consumer education. -(Secs. 4, 6, 7, 8).

From the above it becomes quite clear that the goods contemplated by the Act are not goods of every kind but only such goods or moveable

properties which are marketable, which are actually sold and bought in the market in the course of regular commercial transactions. ""Service

contemplated by the Act are also such services which are rendered and accepted as objects of regular commercial transaction but services

rendered under a contract of personal service being specifically excluded. Services rendered by institution including Govt, institutions such as

Banks, Insurance Companies, transport agencies, etc., against payment of money would be services under the Act, but not the services rendered

by the Government and Public servants, doctors, lawyers, etc.

4. THUS "service" under Section 2(1)(o) does not mean and include every kind of services as argued by the learned Advocate for the opposite

party. It means and includes only such services which are commercial in nature and are rendered against payment of money.

In the case at hand the relationship between the parties is that of landlord and tenant. That the opposite party is the tenant's son does not create

any difficulty since the definition of "consumer" in Section 2(1)(d) includes any beneficiary. But I do not think that the complaint made in this case

would come under the purview of the Act and this for two reasons. Agreement to supply water, if any, was part of the contract of tenancy which

(1) apart from being a contract of personal service, (2) was not in the nature of a commercial transaction. This aspect of the Act escaped the

notice of the President of the District Forum and the proceeding started and the order passed by him cannot, therefore, be supported.

In view of all that has been stated above the impugned orders passed by the learned President of the District Forum are hereby set aside and the

proceeding in which the said orders have been passed is hereby quashed. The application is disposed of accordingly. Application allowed.