

A THE CHAIRMAN-CUM-MANAGING DIRECTOR,
RAJASTHAN FINANCIAL CORPORATION AND ANR.

v.

COMMANDER S.C. JAIN (RETD.) & ANR.
(Civil Appeal No. 2774 of 2010)

B

MARCH 26, 2010

[P. SATHASIVAM AND H.L. DATTU, JJ.]

CONSUMER PROTECTION ACT, 1986:

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ss. 2(1)(c), (g) and 14 – ‘Complaint’ – ‘Deficiency’ in service – ‘Finding of District Forum’ – Complaint filed alleging deficiency in service of providing loan – Rejected by District Forum holding that the bills produced by complainant, as required in terms of agreement, were fraudulent – State Commission declining to entertain the appeal of complainant – National Commission in revision, holding that there was no deficiency in rendering service to the complainant, but directing the Corporation to pay the complainant compensation amounting to Rs.1,50,000/- along with 12% interest – HELD: National Commission failed to appreciate that the respondent had repeatedly acted fraudulently in providing the bills and receipts to the appellant-Corporation – The Act has provided provision for correcting the shortcomings in the service or goods provided by way of awarding compensation or other means specified only when the Consumer Forum comes to the conclusion that there is ‘deficiency’ in service provided or goods sold – The loss suffered by the complainant for the reason of not being able to start the unit cannot be the basis for awarding the compensation specifically when the complainant was at fault for the non-release of the balance loan amount – Therefore, when there is no deficiency found on the part of the Corporation, it cannot be asked to pay compensation – National Commission, though has held that there is no

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deficiency in service as regards the disbursement of the balance loan amount, has erred in going ahead to award compensation with interest @ 12 per cent – The impugned order cannot be sustained and is accordingly set aside. A
[para 13, 14, 18 and 19]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. B
2774 of 2010.

From the Judgment & Order dated 25.7.2006 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 2372 of 2004. C

S.K. Bhattacharya for the Appellant.

Commander, S.C. Jain (Retd.) Respondent-in-person.

The Order of the Court was delivered by D

ORDER

H.L. DATTU, J. 1. The petitioner has sought leave to appeal against the order passed by the National Consumer Disputes Redressal Commission, New Delhi (for short 'National Commission') wherein and whereunder it has directed the appellant to pay compensation to the tune of Rs.1,50,000/- along with interest at the rate of 12 per cent from the date of filing of petition in favour of the respondent. Leave granted. E
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Facts:

2. The Respondent had applied for loan on 03.03.1990 to the Rajasthan Financial Corporation (in short 'Corporation') for setting up a manufacturing unit of plastic doors, windows etc. The Corporation after considering the request made, had sanctioned term loan of Rs.18,000/- for machinery and also Rs.1,26,000/- as the working capital limit for the said business. As per the sanction letter, the Corporation was to provide only 75 per cent of the purchase price to the respondent and the G
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A remaining share, i.e., 25 per cent was to be contributed by the
respondent. The sanction letter also provided that if the concern
has purchased machinery in accordance with the scheme and
full payment has been made, 90 per cent of the admissible
amount of loan will be released on the basis of the statement
B of account prescribed for the purpose, duly supported by bills
and receipts and balance after valuation of machines. The
period of repayment of the loan was eight years in quarterly
installments. The first installment was to be due on the first day
of 18th month reckoned from the date of first disbursement of
C loan against fixed assets. Further as per the terms of the
sanction letter one of the important terms was that the
machinery should be purchased from authorized dealer and of
Wolf make or from M/s Rally India Ltd.

3. On 29.06.1990, the respondent requested the appellant
D -Corporation for more time to complete the formalities of
submitting the loan documents in order to enable the appellant
to disburse the loan amount. The loan document was, however,
executed in favour of the appellant on 05.07.1990. The appellant
-Corporation requested the respondent to submit bills and
E receipts of plant and machinery as well as raw material so that
the parties could proceed with the loan agreement. Thereafter,
in a short period, the bills were submitted and it was apparent
from the bills submitted that the name of the firm in whose favour
the bills were originally issued was struck off and the
F respondent firm's name was inserted in its place. Thus the
appellant - Corporation asked the respondent to submit correct
bills.

4. Thereafter on 26.07.1990, the respondent again
G submitted the bills in the name of Kailash Udhog and not in
the name of his own business, i.e., Fauji Kutir Udhog. The
appellant - Corporation was forced to dishonor the bills as the
name indicated in them were not as per the requirement and
new bills were asked to be submitted. Later, on 04.05.1991 the
H respondent submitted a bill of Nita Udyogic Vastu Bhandar

Private Limited dated 21.08.1989 for a sum of Rs.10,200/- A
representing the purchase price of drill machine etc., prior to
the date of sanction of the loan and its disbursement. Another
bill of Rs.17,800/- dated 29.12.1989 which represented saw
machines with two HP motors with accessories etc. was also
submitted. Due to repeated submission of wrong bills by the B
respondent, the appellant addressed a letter to the respondent
stating that the bills were unacceptable for two reasons, firstly,
Nita Udyogic Vastu Bhandar Private Limited is a family
concern and the respondent is in gainful employment in the
concern. Secondly, Nita Udyogic Vastu Bhandar Private Limited C
is not an authorized dealer for Wolf make machine or M/s rally
India Ltd. The appellant also informed that the machines were
old as per the internal checkup done by the appellant -
Corporation. The respondent was given another chance as the
appellant informed the respondent that though the loan D
agreement was time barred, his case could be considered
favourably only if he submits the bills from authorized dealer or
manufacturer. The correct and accurate bills were to be
submitted within one month from 31.05.1991. The respondent
submitted bills from the authorized dealer of Wolf portable E
machine, i.e., Heerex Corporation amounting to Rs.19,797.75/
- against which a sum of Rs.2000/-, as advance was paid to
the respondent. The respondent was, therefore, asked to
submit a receipt for Rs.3172.75 denoting his contribution of 25
per cent, in order to avail the sum of Rs.14,625/-. In spite of
such a request the respondent never submitted the receipt. F
The appellant - Corporation sent a cheque of Rs.14,625/- favouring
the authorized dealer Heerex Corporation, to Fauji Kutir Udyog
along with a request to send the receipt to the Corporation for
the amount so paid. An additional request was also made as
regards the receipts showing the respondent's share of G
Rs.3172.75/-. Another correspondence was addressed to the
respondent requesting him to fulfill all other terms and
conditions of the loan agreement, including a condition to create
assets in the ratio of 1:1.10 as stipulated in Clause 5 of the
Special Terms and Conditions annexed with the loan H

A agreement. The respondent thereafter made a representation
 whereby he claimed that the Corporation was under liability to
 pay a sum of Rs.3,375/- as the balance amount of sanctioned
 loan by considering his earlier bill of Nita Udyog Vastu Bhandar
 Private Limited which was rejected by the appellant stating it
 B to be untenable as the Nita Udyog Vastu Bhandar was not an
 authorized dealer.

5. On 19.12.1991, the respondent requested the appellant
 -Corporation for disbursement of the loan against the raw
 materials without submitting any supporting documents showing
 C the details of the expenditure. The appellant - Corporation
 addressed two separate letters dated 26.12.1991 and
 02.11.1992 asking the respondent to submit the details of the
 consumption of quantity of raw materials and the stock position
 update along with sales made.

D **Proceedings before the Consumer Forum:**

6. The respondent moved the District Consumer
 Commission with a complaint of deficiency of service and also
 prayed for the disbursement of Rs.3,375/-. The plea of the
 E respondent was dismissed by the District Consumer
 Commission on the principle that his application is not
 maintainable as the dispute in a loan agreement between the
 debtor and creditor does fall within the jurisdiction of the
 Consumer forum.

7. Due to the repeated failure on part of the respondent to
 submit the details of the material purchased and consumed, the
 appellant finally cancelled the unavailed loan, on 08.09.1992
 and informed the same to respondent. The respondent replied
 G to the said communication stating that he had already initiated
 the proceedings before the State Consumer Commission,
 Jaipur on 15.07.1992.

8. The State Commission allowed the appeal vide order
 H dated 12.12.1994 and remanded the matter back to the District

Forum. The District forum dismissed the complaint on 02.12.1995 holding that the respondent was unable to show the details of the purchased goods from authorized dealer and that M/s Nita Udyog Vastu Bhadar Private Limited is their own concern which was closed much before the issuance of the bill, thus failing to show that he was entitled to the sum of Rs.3,375/- . Further, the appeal was entertained by the State Commission as the respondent sought to file certain documents. The matter was remanded back to the District Forum vide order dated 21.03.2003. The District Consumer Forum dismissed the complaint along with costs vide order date 31.01.2004 stating that there was no deficiency in service as the bills presented by the respondent were of a firm which was non-existent.

9. The respondent being aggrieved by the order of the District forum, preferred appeal before the State Consumer Commission. The State Commission refused to entertain the appeal vide order date 02.09.2004. Thereafter, the review petition filed by the respondent was also rejected by the State Commission vide order dated 09.09.2004.

Revision Petition before the National Consumer Disputes Redressal Commission:

10. The respondent being aggrieved by the decision of the State Consumer Commission preferred a Revision Petition before the National Consumer Disputes Redressal Commission. The National Commission considered revision on two counts. Firstly, as regards the non-release of the balance amount of Rs.3,375/- as against the machinery and secondly, the non-release of the balance amount of Rs.81,000/- from the sanctioned amount of Rs.1,26,000/- for working capital limit. As regards the first point, the National Commission considered the contention of the appellant - Corporation whereby it was stated that the amount of Rs.3,375/- was not released as the respondent did not comply with the terms spelled out in the letter of sanction. However, the National Commission concluded on this point that there was no specific obligation pointed out by

A the appellant -Corporation which is said to be left unfulfilled by
the respondent. As regards the second point, the National
Commission cited a para from the letter dated May 04, 1991
addressed by the appellant - Corporation to the respondent
whereby it is pointed out that the bills submitted were not the
B correct one as they were issued in name of firm Kailash Udyog
and the respondent had fraudulently replaced there name in the
bills. Therefore, the National Commission observed that the
appellant -Corporation “cannot be held to be deficient in
rendering services” in the said loan agreement. Further, it is
C important to note that the National Commission has specifically
pointed out that the prayer in the original complaint was only
for release of Rs. 3,375/- and only at a later stage, i.e., when
the matter was remanded back to the District Forum by the
State Commission vide order dated 21.03.2003, that the
D respondent filed another complaint with regard to the amount
for working capital thereby seeking direction to release the sum
of Rs.81,000/-. Further, the peculiar observation made by the
National Commission is that the respondent have claimed
compensation “without any corresponding profit and loss
statement or any affidavit in support of such a demand”.

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11. However, the National Commission has directed the
appellant - Corporation to pay compensation of Rs.1,50,000/-
with interest at the rate of 12 per cent from the date of filing of
complaint. The cost is also awarded to the tune of Rs 10,000/

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**Appeal from the decision of the National Consumer
Disputes Redressal Commission:**

G 12. The appellant - Corporation has sought appeal on the
ground that the National Commission has erred in awarding the
compensation with interest, inspite of holding that there was no
deficiency in rendering the service to the respondent. It is also
contended by the appellant - Corporation that they have fully
discharged obligation under the loan agreement and there was
H nothing outstanding for which it could be held responsible and,

in fact, it is the respondent who had failed to carry out its obligation as they had repeatedly submitted incorrect and fraudulent receipts. A

13. It is pertinent to mention that the appellant - Corporation had repeatedly requested the respondent to submit the bills of the purchase of the machinery of Wolf make, or from M/s Rally India Ltd. in order to disburse the amount sanctioned for the machinery which in the 'Sanction Letter' dated 3.3.1990 appears to be "Rs.18,000/- against fixed assets" (Annexure P-1). However, it is on record and is observed by the District Commission and State Commission that the respondent has constantly submitted wrong receipts. The District Consumer Forum has observed in the order dated 31.01.2004 that the Nita Udyogic Vastu Bhandar (P) Ltd. from whom the respondent claim to have purchased the machinery and the bills so produced dated 29.12.1989 are clearly fraudulent as this concern stood closed since March 1989. This fact was reiterated by the State Commission in its order dated 02.09.2004. Therefore, we find no hesitation to conclude that National Commission failed to appreciate that the respondent had repeatedly acted fraudulently in providing the bills and receipts to the appellant - Corporation. B
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14. Secondly, the National Commission though has held that there is no deficiency in service as regards the disbursement of the balance loan amount of Rs.81,000/-, have gone ahead to award compensation to the tune of Rs.1,50,000/- with interest of 12 per cent. F

15. For deciding whether the respondent ought to be awarded compensation, it is important to consider the meaning of deficiency as provided under section 1(g) of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'): G

(g) "Deficiency" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be H

A maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

B 16. Further, the Consumer Protection Act also provides that the important component of the complaint by the 'consumer' on the basis of which the compensation is decided, is that there should be 'deficiency' in the service provided or goods sold to the concerned consumer. The definition of 'complaint' is provided under section 1(c) of the Act :

C (c) "Complaint" means any allegation in writing made by a complainant that-

D (i) An unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) The goods bought by him or agreed to be bought by him suffer from one or more defects;

E (iii) *Service hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;*

F (iv) a trader or the service provider, as the case may be, has charged for the goods or for the service mentioned in the complaint, a price in excess of the price in excess of the price-

(a) fixed by or under any law for the time being in force;

(b) displayed on the goods or any package containing such goods;

G (c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

H (v) goods which will be hazardous to life and safety when used are being offered for sale to the public;-

(A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force; A

(B) if the trader could have known with due diligence that the goods so offered are unsafe to the public; B

(vi) service which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety. C

17. It is also important to note the following provision of the Act:

Section 14. FINDING OF THE DISTRICT FORUM. D

(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely :- E

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question; F
(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant; G
(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party; H

- A (e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
- B (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- C (i) to provide for adequate costs to parties.

18. Thus, it is clear that the Act has provided provision for correcting the shortcomings in the service or goods provided by way of awarding compensation or other means specified in the provision above mentioned only when the Consumer Forum comes to the conclusion that there is 'deficiency' in service provided or goods sold. The loss suffered by the respondent for the reason of not being able to start the unit cannot be the basis for awarding the compensation specifically when the respondent was at fault for the non release of the balance loan amount. Therefore, when there is no deficiency found on the part of the appellant - Corporation, it cannot be asked to pay compensation.

19. In the light of the above discussion, the impugned order cannot be sustained. Accordingly, it is set aside. Appeal is allowed. No order as to costs.

R.P.

Appeal allowed.