

HARYANA STATE AGRICULTURAL MARKETING BOARD A

v.

BISHAMBER DAYAL GOYAL AND ORS.

(Civil Appeal No. 3122 of 2006)

MARCH 26, 2014 B

**[GYAN SUDHA MISRA AND
PINAKI CHANDRA GHOSE, JJ.]**

Consumer Protection Act, 1986: Deficiency of services. C

Agricultural Marketing Board allotting sites to the respondents for doing business of grain on payment of 25% of price of plots - Failure of Board to notify the Mandi as market Area and develop and provide basic amenities in the said locality - Respondent also stopped the payment of balance instalments - Complaint by respondent before the Consumer Forum - Held: Maintainable - Appellant-board as service provider is obligated to facilitate the utilisation and enjoyment of plots as intended by the allottees - Inaction on the part of Board in providing requisite facilities for more than a decade clearly established deficiency of services as respondents were prevented from carrying out the grain business - In such circumstances, levy of penal charges on respondent would be grossly unfair - However, the respondents were also incorrect in refusing to pay the instalments and violating the terms of the instalment letter - Adequate relief was granted even to respondents by the District forum and State Commission by awarding interest @ 12% p.a on entire deposited amount. D E F

The Area of New grain Mandi, Adampur was notified as market area by notification dated 16.11.1971. In 1980, the State Government notified a sub market yard of New Grain Market, Adampur. The said area was transferred to G

A the appellant board on 24.01.1986.

B The appellant made allotment of the plots to the respondents on deposit of 25% of price of the plots. In the allotment letter dated 25.07.1991, the method of payment and consequences of non-payment were laid down. The respondents failed to make the balance payment. The appellant-board issued a demand notice on the respondents. The respondents did not make the payment and instead filed a complaint before the District Forum alleging deficiency of service on part of appellant-board on the ground of failure of notifying the Adampur Mandi as Market Area and failure to develop and provide basic amenities in the said locality. The District Forum held that it is admitted that due to the omission on part of the appellant, no business could be done in the Mandi and the boundary walls which were essential for the business, were not provided, the complainants/ respondents were deprived of doing the grain business for which the plots were purchased and as the area was not notified as a sub-yard, there was a grave deficiency of service. The Forum awarded the respondents interest at 12% per annum on the entire deposited amount after two years from the date of issuance of allotment letters to the respondents till the development and notification of the area in question was not done. The respondents were directed to deposit the remaining balance amount and the appellant-Board was directed not to levy any charge, penalty or interest on the same. The State Commission and National Commission upheld the order of the District Forum. The instant appeal was filed challenging the order of the National Commission.

C
D
E
F
G

Dismissing the appeal, the Court

H HELD: 1. The Statutory Boards and Development Authorities which are allotting sites with the promise of development, are amenable to the jurisdiction of

consumer forum in case of deficiency of services. [Para 6] [150-H; 151-A] A

2. Though in the instant case providing of amenities is not a condition precedent as per the terms of the allotment letters, however, the allotments were made when the plots were in the development stage on the condition that they be used only for auction and trading of grains, therefore, the present auction is different from a free public auction or an auction on "as is where is basis". In such a scenario the appellatant board as service provider is obligated to facilitate the utilization and enjoyment of the plots as intended by the allottees and set out in the allotment letter. [Para 7] [151-F-G; 152-A] B C

U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors. (2009) 4 SCC 460; Karnataka Industrial Areas and Development Board v. Nandi Cold Storage Pvt. Ltd. (2007) 10 SCC 481; 2007 (8) SCR 270; Name Construction (P) Ltd. v. Union of India (2012) 5 SCC 359; 2012 (4) SCR 574; Lucknow Development Authority v. M.K. Gupta (1994) 1 SCC 243; 1993 (3) Suppl. SCR 615 - relied on. D E

3. The inaction on the part of the appellatant in providing the requisite facilities for more than a decade clearly established deficiency of services as the respondents were prevented from carrying out the grain business. However, the respondents were also incorrect in refusing to pay the instalments and violating the terms of the instalment letter. Thus, considering the surrounding circumstances wherein the appellatant has been unable to develop the area for more than two decades and the resultant loss suffered by the respondents, there is a need for proportionate relief as the levy of penal interest and other charges on the respondents would be grossly unfair. In these circumstances, no grounds have been made out by the appellatant to interfere with the order passed by the H

A National Commission. Adequate relief has been granted even to the respondents/complainants by awarding interest @ 12 per cent per annum on the entire deposited amounts. [Paras 8 and 9] [154-G-H; 155-A-D]

B *Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd. & Ors. (2006) 4 SCC 109: 2006 (2) SCR 768; Haryana State Agricultural Marketing Board v. Raj Pal (2011) 13 SCC 504 - relied on.*

Case Law Reference:

C	(2009) 4 SCC 460	Relied on	Para 6
	2007 (8) SCR 270	Relied on	Para 6
	2012 (4) SCR 574	Relied on	Para 6
D	1993 (3) Suppl. SCR 615	Relied on	Para 6
	2006 (2) SCR 768	Relied on	Para 7
	(2011) 13 SCC 504	Relied on	Para 7

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3122 of 2006.

F From the Judgment and order dated 13.04.2005 of the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition Nos. 534, 535, 536 and 537 of 2005.

F Luv K. Singh, Krishanu Adhikary, Sushil K Singh, Rekha Pandey for the Appellant.

G Parmanand Gaur, N.S. Dalal, J.B. Mudgil, R.K. Gupta, Bankey Bihari Sharma for the Respondent.

The Judgment of the Court was delivered by

H PINAKI CHANDRA GHOSE, J. 1. The present appeal has been filed assailing the order dated April 13, 2005 passed

by the National Consumer Disputes Redressal Commission (hereinafter referred to as "the National Commission") in Revision Petition Nos. 534-537 of 2005, affirming the order dated November 10, 2004 passed by the State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as "the State Commission"), which further confirmed the order dated September 20, 2001 passed by the District Forum.

2. The facts of the case briefly are as follows :

a) By a notification dated November 16, 1971, the Haryana State Government under Section 7 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the said Act'), notified the area of New Grain Mandi, Adampur as Market Area. Subsequently, in the year 1974, the areas/limits were further extended by five kilometers. In 1980, the State Government notified a sub-market yard of New Grain Mandi, Adampur. The Colonization Department of the State by a letter dated January 24, 1986, transferred the said area to the Haryana State Agricultural Marketing Board, the appellant herein.

b) The respondents herein were allotted plots by the appellant, being plot Nos. 17, 7, 16 and 14 upon depositing the 25% of the price of the said plots. The method of payment and the consequences for non-payment of any instalment would appear from the allotment letter dated July 25, 1991. Admittedly, the respondents did not pay the instalments in terms of the allotment letters. The grounds mentioned by the respondents for non-payment of such instalments were the failure on the part of the appellant to provide basic amenities such as sewerage, electricity, roads etc. at the said Adampur Mandi Area.

c) On non-payment of the instalments, the appellant called upon the respondents to make the balance payments, being 75% of the cost with interest and penalty charges as prescribed in the said allotment letter. The respondents did not pay the

A same and filed a complaint before the District Forum alleging
deficiency of services, failure to notify the Adampur Mandi as
Market Area and failure to develop and provide basic amenities
in the said locality. The appellant opposed the complaint on the
ground that the respondents failed to make the payments of the
instalments and further that one of the complainants was not
dealing with the sale and purchase of agricultural produce by
himself and instead had sublet the shop to someone else.

C d) The District Forum appointed a Senior Member of the
Forum as the Local Commissioner to inspect the said area and
to file a report. The Local Commissioner filed a report stating
that the area was developed with civic amenities and platforms
were constructed in front of the shops. However, it is admitted
that the complainant is not in a position to run the business in
the market area as the same has not been notified by a
notification and/or order declaring it as a sub-yard for the
purpose of running the business. The District Forum held by
order dated March 4, 1998 that the notification dated October
31, 1980 is not applicable since the land was auctioned in 1991
and further, the same was not in the ownership of the appellant
and no business was transacted by the complainant at the
Adampur Mandi. The District Forum held that since no
notification was issued declaring the said area as sub-yard, it
amounts to deficiency of service and the appellant was directed
to withdraw the demand notice and further directed not to
charge any interest on the instalments. The appellant filed first
appeal before the State Commission, being First Appeal
No.362 of 1998. The State Commissioner by order dated
March 3, 1998 remanded the matter to the District Forum
holding that the appointment of Local Commissioner, Shri Arya,
being a member of the District Forum vitiated the proceedings.

H e) Thereafter, the District Forum took up the matter and
appointed an Advocate - Mr. G.L. Balhara - as the Local
Commissioner, to make an inspection and to file a report. The
appellant herein on April 20, 2000, once again issued demand

notices to the respondents demanding the payments. The main contention of the respondents being the complainants was that although the area was not notified by the appellant-Board as a market area, they were unable to conduct any grain business in the shops for which they had purchased the said plots; and further alleged that no basic amenities, i.e., sewerage, roads, parao, electricity etc. had been provided by the Board, and that there were no boundary walls and gates of the market area which were a necessity in such Mandi; furthermore, there were heaps of debris lying around the shops. In these circumstances, the plots allotted were redundant.

f) The appellants contended that the complainants are not consumers and there is no deficiency of service. The respondents failed to construct the booths in two years' time even after getting the licences. Furthermore, the respondents are not dealing with the agricultural produce instead they have sublet the plots in question to other persons. According to the appellants, the amenities of sewerage, water supply and electricity were provided and construction of a platform was also done by them. An Additional Mandi was established, according to the appellant, by the Colonization Department and subsequently transferred to them in 1986. The Colonization Department, in 1980, duly notified the same. The District Forum after perusing the report dated April 25, 2000 filed by the Local Commissioner - Mr. Balhara, Advocate -- held that it is admitted by both the parties that the Additional Mandi has no boundary walls and gates and that there has been no notification by the appellant-Board, further no auction has been made by the respondents and the debris are lying around the shops. In these circumstances, the District Forum by order dated September 20, 2001 held that it is admitted that due to the omission of the appellant, no business could be done in the Mandi and the boundary walls which are essential for the business, were not provided. It is further held that the notification dated October 31, 1980 has no manner of application since the land was transferred to the appellant in 1986 and the shops were

A auctioned in 1981. The District Forum further held that due to
 the omission of the appellant, the complainants/respondents
 herein were deprived of doing the grain business for which the
 plots were purchased and in the absence of the notification of
 the area as a sub-yard, the District Forum held that there was
 B a grave deficiency of service. The Forum awarded the
 respondents interest at 12% per annum on the entire deposited
 amount after two years from the date of issuance of allotment
 letters to the respondents till the development and notification
 of the area in question is not done. The respondents were
 C directed to deposit the remaining balance amount and the
 appellant-Board was directed not to levy any charge, penalty
 or interest on the same. However, the Forum refused to allow
 the compensation as prayed by the respondents and directed
 the appellants to develop the area within a month.

D g) Being aggrieved, the appellant went in appeal before
 the State Commission. Cross-appeals were also filed by the
 respondents before the State Commission, seeking
 enhancement of the rate of interest from 12% to 18% per annum
 and further sought compensation. On November 10, 2004, both
 E the appeals were dismissed. The State Commission upheld the
 order of the District Forum holding that the report of the Local
 Commissioner did not raise any objection with regard thereto
 nor placed any notification before the District Forum. In these
 circumstances, the appellant herein filed a revision petition
 F before the National Commission resulting in dismissal, hence,
 the matter has come up in appeal before us.

3. It is the case of the appellant that all the three fora below
 have erred in fact and in law by omitting to take into
 consideration the fact that the payment of instalments towards
 G the cost by the respondents was unconditional. It was further
 contended that it was not subject to fulfilment of any condition
 on the part of the appellant as a pre-requisite. Moreover, all the
 three fora lost sight of the fact that under Section 8 of the Act,
 after creation of a sub-market yard by notification under Section
 H

7(2) of the said Act, no person could be allowed to trade in agricultural produce without licence and they had to apply for the same under Section 9 of the said Act, and further to obtain a licence under Section 10 of the said Act.

A

4. It is not in dispute that the respondents duly applied for licence under Section 9 and which was granted under Section 10 permitting them to trade in agricultural produce in the sub-market yard from their allotted shops under Section 8, which was possible only when there was a notification under Section 7(2) to invoke notifying the sub-market yard, according to the appellants, the same was notified by a Notification dated October 31, 1980 passed by the predecessor-in-interest of the appellants and the same is still subsisting and remained in force after the transfer of the area to the appellants in 1986. Therefore, according to the learned counsel appearing in support of this appeal, all the foras failed to take any note thereof. It was further pointed out that there was no question of any deficiency in service. According to the learned counsel, the area of Adampur Mandi was developed in the year 1992 by the Haryana Public Health Department by providing all basic amenities like sewerage, drainage, electricity, roads etc. in the said area. It was further pointed out that the report of the Local Commissioner would show that all the developmental works except construction of the boundary walls have been carried out by the appellants-Board. It was further submitted that the sanctioning of the business licence under Section 10 of the said Act pre-supposes that the State Government notified the said area as a market area. It is further contended that the respondents are using the plots allotted to them without paying the instalments as ought to have been done by them.

B

C

D

E

F

5. Per contra, it is submitted by Mr. N.S. Dalal, learned counsel for the respondents, that no developed infrastructure has been provided by the appellants and the first two courts below have come to the conclusion on the basis of the facts placed before them. Since there is a concurrent finding on such

G

H

A facts, it is submitted that this appeal should be dismissed.
Learned counsel further submitted that the Local Commissioner
- Mr. Balhara - in the presence of both the parties carried out
the local inspection and the report of the said Commissioner
would show that the facts mentioned therein have been
B approved by both the parties. It was pointed out that the Local
Commissioner had mentioned that no infrastructure has been
provided, there is no platform, no boundary walls and heaps
of debris are lying there, meaning thereby the purpose for which
the Mandi was created could not be carried out or used or even
C started or accomplished. In the absence of basic infrastructure
and amenities to run a grain market the purpose for which the
shops were allotted, is totally frustrated. The report of the Local
Commissioner was not challenged by the appellant at any point
of time. It was further pointed out that the appellant never relied
D on the said notification before the District Forum or before the
State Commission nor even before the National Commission.
Therefore, the grounds tried to be raised by the learned counsel
for the appellant cannot have any bearing on the matter. It is
further contended that the District Forum as well as the State
E Commission have recorded how there could have been
notification by the appellant when the land itself came to the
appellant in the year 1986. Therefore, there cannot be any
reason to believe that the notification was issued earlier under
the ownership of the appellant. It is further stated that no
F explanation has been given by the appellant about the conduct
of non-developing the area in question by them. On the
contrary, the respondents relied on the doctrine of legitimate
expectations to have a proper area to continue with their
business.

G 6. The appellant-Board has contended before us that the
respondents are not consumers but we must keep it on record
that the Board never challenged the jurisdiction of the consumer
forum. We would reiterate that the statutory Boards and
Development Authorities which are allotting sites with the
H promise of development, are amenable to the jurisdiction of

consumer forum in case of deficiency of services as has already been decided in *U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.*¹; *Karnataka Industrial Areas and Development Board v. Nandi Cold Storage Pvt. Ltd.*². This Court in *Name Construction (P) Ltd. v. Union of India*³ referred to its earlier decision in *Lucknow Development Authority v. M.K. Gupta*⁴ and duly discussed the wide connotation of the terms "consumer" and "service" under the consumer protection laws and reiterated the observation of this Court in *Lucknow Development Authority v. M.K. Gupta* (supra) which is provided hereunder :

"5. In the context of the housing construction and building activities carried on by a private or statutory body and whether such activity tantamounts to service within the meaning of clause (o) of Section 2(1) of the Act, the Court observed: (LDA case, SCC pp. 256-57, para 6):

"...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 the 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...."

7. Though in the present case providing of amenities is not a condition precedent as per the terms of the allotment letters. However, the allotments were made when the plots were in the development stage on the condition that they be used only for auction and trading of grains, therefore, the present auction is different from a free public auction or an auction on "as is where is basis". In such a scenario the appellant board as service provider is obligated to facilitate the utilization and enjoyment

1. (2009) 4 SCC 460.
2. (2007) 10 SCC 481.
3. (2012) 5 SCC 359.
4. (1994) 1 SCC 243.

A of the plots as intended by the allottees and set out in the allotment letter. In *Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd. & Ors.*⁵, wherein the allottees refused to pay instalments towards the cost of the allotted plots, this Court while deciding the same held (at para 38) as under:

B "We make it clear that though it was not a condition precedent but there is a obligation on the part of the Administration to provide necessary facilities for full enjoyment of the same by allottees"

C In the aforementioned case, the Court remitted many of the cases back to the High Court for limited adjudication of facts to determine where the basic facilities have not been provided and held that though the allottees were incorrect unilateral action of not paying the instalments yet penal interest and penalty will be levied as per the facts of each case. Thus, the allottees were entitled to proportionate relief. In *Haryana State Agricultural Marketing Board v. Raj Pal*⁶, wherein the appellant was involved and the certain allottees refused to pay instalments towards the allotted plots in the new grain market at Karnal-Pehowa Road at Nighdu in the Karnal District, citing lack of amenities provided by the Board, the Court while dismissing the case of the Board referred to the following decisions in *Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd. and Ors.* (supra) and *UT Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.* (supra) as under :

"13. In *Municipal Corpn., Chandigarh v. Shantikunj Investment (P) Ltd.*, this Court held: (SCC p. 128, para 38)

G "38. ... We make it clear that though it was not a condition precedent but there is obligation on the part of the Administration to provide necessary

5. (2006) 4 SCC 109.

H 6. (2011) 13 SCC 504.

facilities for full enjoyment of the same by the allottees. We therefore, remit the matter to the High Court for a very limited purpose to see that in cases where facilities like kutcha road, drainage, drinking water, sewerage, street lighting have not been provided, then in that case, the High Court may grant the allottees some proportionate relief. Therefore, we direct that all these cases be remitted to the High Court and the High Court may consider that in case where kutcha road, drainage, sewerage, drinking water facilities have been provided, no relief shall be granted but in case any of the facilities had not been provided, then the High Court may examine the same and consider grant of proportionate relief in the matter of payment of penalty under Rule 12(3) and interest for delay in payment of equated installment or ground rent or part thereof under Rule 12(3-A) only. We repeat again that in case the above facilities had not been granted then in that case consider grant of proportionate relief and if the facilities have been provided then it will not be open on the part of the allottees to deny payment of interest and penalty. So far as payment of installment is concerned, this is a part of the contract and therefore, the allottees are under obligation to pay the same. However, so far as the question of payment of penalty and penal interest in concerned, that shall depend on the facts of each case to be examined by the High Court. The High Court shall examine each individual case and consider grant of proportionate relief."

14. Referring to the said decision, this Court in *UT Chandigarh Admn. v. Amarjeet Singh* observed as follows: (SCC pp. 682-83, para 46)

A
B
C
D
E
F
G
H

A *"46. As noticed above, in Shantikunj, the auction*
 was of the year 1989. The lessee had approached
 the High Court in its writ jurisdiction in the year
 1999 seeking amenities. Even in 2006 when this
B *Court heard the matter, it was alleged that the*
 amenities had not been provided. It is in those
 peculiar facts that this Court obviously thought it
 fit to give some reliefs with reference to penal
 interest wherever amenities had not been
 provided at all even after 17 years. In fact, this
C *Court made it clear while remanding to the High*
 Court that wherever facilities/amenities had been
 provided before the date of the judgment (28-2-
 2006), the lessees will not be entitled to any reliefs
 and where the facilities/amenities had not been
 granted even in 2006, the High Court may
D *consider giving some relief by proportionate*
 reduction in [the] penal interest. This direction was
 apparently on the assumption that in case of
 penalty, the court can grant relief in writ
 jurisdictions."

E
 In Haryana State Agricultural Marketing Board v. Raj Pal
 (supra), the Court upheld the principles as laid down in
 Shantikunj Case (supra) and Amarjeet Singh Case (supra)
 and held that allottees cannot postpone the payment of
F *instalments on the grounds that some of the amenities were not*
 provided and the Court setting aside the penal and compound
 interest levied by the Board and in consonance with the
 Allotment Rules of 1997, levied only simple interest.

G 8. In the present case, the inaction on the part of the
 appellant in providing the requisite facilities for more than a
 decade clearly establishes deficiency of services as the
 respondents were prevented from carrying out the grain
 business. However, the respondents were also incorrect in
 refusing to pay the instalments and violating the terms of the
H

instalment letter. Thus, considering the surrounding A
circumstances wherein the appellant has been unable to
develop the area for more than two decades and the resultant
loss suffered by the respondents, we are of the opinion that in
the present situation, there is a need for proportionate relief as
the levy of penal interest and other charges on the respondents B
will be grossly unfair.

9. In these circumstances, we do not find that any grounds
have been made out by the appellant to interfere with the order
passed by the National Commission. We have minutely C
examined the order passed by the District Forum as well as
the State Commission, and we have noticed that adequate relief
has been granted even to the respondents/complainants by
awarding interest @ 12 per cent per annum on the entire
deposited amounts. Hence, we do not find any merit in the D
appeal and the same is accordingly dismissed. There shall,
however, be no order as to costs.

D.G.

Appeal dismissed.