

Punjab Water Supply & Sewage Board

Vs

Udaipur Cement Works and Another

Civil Appeal No. 3626 of 1995

(Kuldip Singh, S. Saghir Ahmed JJ)

13.11.1995

ORDER

1. Punjab Water Supply and Sewage Board, Chandigarh (the Board) filed a complaint before the Consumer Disputes Redressal Commission, U.T. Chandigarh (Commission) against M/s Udaipur Cement Works, Udaipur, Rajasthan (the cement works), alleging, inter alia, deficiency in service in the supply of cement for which confirmed orders were placed by the Board. The Commission allowed the complaint and awarded 12% interest to the Board for the period during which the amount of deposit remained with the cement works. The National Consumer Disputes Redressal Commission (the National Commission) by order dated 27-9-1994 reversed the order of the Commission and dismissed the complaint of the Board. This appeal by way of special leave is against the order of the National Commission.

2. The Commission noticed the admitted facts, which emerged from the pleadings of the parties, in the following words :

"Certain undisputed facts emerge in this case. The salient ones are that the complainant placed an order for the supply of cement with the respondent firm and for this purpose, an amount of Rs 23,62,900 was remitted to the respondent firm and by means of three Bank Drafts. According to the order as confirmed, 2500 m.t. cement had to be supplied on or before 7-3-1988. There is also no controversy about the fact that the goods in question were delivered to the complainant in November 1990 and that too at the higher rate and not at the original rate as agreed to at the time of placing the order. In the wake of these undisputed facts, the points raised in defence on behalf of the respondent firm may be considered."

3. The National Commission allowed the appeal of the cement works and set aside the order of the Commission by a short order which is reproduced hereunder :

"In our opinion the counsel appearing for the appellant is well-founded in his submission that there was no arrangement of hiring of service at all between the parties in this case since the transaction is one of sale and purchase simpliciter namely the sale and purchase of a specified quantity of cement which was to be supplied by the appellant herein to the respondents. In these circumstances no question of deficiency in service can arise so as to entitle the complainant to invoke the jurisdiction of the Consumer Forum when there was no case at all of any defect in the goods supplied. Unfortunately, this important aspect of the case was lost sight of by the State Commission and it proceeded to grant relief to the complainant on the

ground that delay in the supply of cement constituted deficiency in service. We hold that the said Order of the State Commission is clearly illegal and without jurisdiction and is hereby set aside. The complainant will be at liberty to pursue whatever other remedies are open to him in law."

4. We do not appreciate the blanket observation of the National Commission to the effect that where the transaction is one of sale and purchase simpliciter "no question of deficiency in service can arise so as to entitle the complainant to invoke the jurisdiction of the Consumer Forum when there was no case at all of any defect in the goods supplied". The impugned order of the National Commission is rather mechanical. Learned counsel for the parties have invited our attention to Section 2(1)(c), (d), (f), (g), (o) and various other provisions of the Consumer Protection Act, 1986 (the Act). The National Commission, in our view, should have appreciated the pleadings of the parties in the light of various provisions of the Act.

5. We allow the appeal, set aside the impugned order of the National Commission and remand the case to the National Commission to hear the appeal against the order of the Commission afresh affording opportunity to the parties. It will be open to the parties to raise relevant questions of law and fact before the National Commission. No costs.