

SUPREME COURT OF INDIA

Lilavati Kirtilal Mehta Medical Trust

Vs.

Unique Shanti Developers

C.A.No.12322 of 2016

(Mohan M.Shantanagoudar and Ajay Rastogi,JJ.,)

14.11.2019

JUDGMENT

Mohan M.Shantanagoudar,J.,

1. This appeal arises out of judgment of the National Consumer Disputes Redressal Commission ('National Commission') dated 25.10.2016 dismissing the Appellant's Review Application No. 76/2016 against the order dated 1.3.2016 by which the National Commission dismissed the Appellant's Consumer Complaint No.7/2016.

2. The Appellant's case is that Respondent No. 1/Opposite Party No. 1 had developed two buildings 'Madhuvan' with thirty two '1 BHK' flats in colony 'Shanti Park' in Thane, Maharashtra. Out of these the Appellant/complainant trust took possession of 29 flats for provision of hostel facilities to nurses employed by Lilavati Hospital, which is run by the Appellant trust. 29 agreements to sell were executed in respect of each flat on 25.11.1995, which were registered on 16.3.1996, and entire consideration amount was paid for the same. The architect issued completion certificate in respect of the flats on 17.2.1997. The flats were used for the purpose of hostel facilities till 2002. However, within 2-3 years of completion of the project, because of alleged poor building quality, the structure became dilapidated. The appellant vacated the flats in 2002 and since 2004, the flats are lying unused. In the meanwhile, an interim Board of Trustees was constituted by this Court by order dated 21.5.2014 in SLP No. 3772/2014, which is a separate litigation concerning dispute over control of the appellant trust between different groups of trustees. The aforesaid interim Board of Trustees called for a structural report from M/s Raje Consultants, which submitted their report in September 2015 finding that the cost of repairs would be more than the cost of reconstruction. The appellant also claims that Respondent No. 1 obtained the occupation certificate for the flats by playing fraud upon the local municipal corporation. Hence the appellant filed Consumer Complaint No. 117/2016 before the National Commission claiming Rs 7,65,95,400/- in compensation on account of annual loss of rent from 2002 to 2015, cost of reconstruction of building 'Madhuvan' and future loss of rent of Rs 35,00,000/- per year, along with Rs 5,00,000/- in damages.

Initially, the National Commission by order dated 1.3.2016 dismissed the complaint as barred by limitation on the ground that cause of action for raising the complaint arose in 2004, the year since when the flats are lying unused; however the complaint was filed in 2016. Under Section 24A of the Consumer Protection Act, 1986 ('1986 Act') the period of limitation for filing a complaint is two years, hence the complaint was time-barred. The National Commission further held that the pending litigation between the trustees in SLP No. 3772/2014 (supra) is not sufficient to explain the delay as the dispute concerning constitution of Board of Trustees of the appellant trust arose in 2014 whereas it was not the appellant's case that there was no competent Board of Trustees in 2004 when the cause of action arose. Subsequently the National Commission in the impugned judgment, hearing Review Application No. 76 of 2016 against the order dated 1.3.2016 (supra), found that it had incorrectly recorded in the aforesaid order that 'conveyance deeds' of the 29 flats were registered on 16.3.1996, whereas what was registered by the appellants was actually agreements to sell. Hence on account of this error on the face of the record, the National Commission recalled the order dated 1.3.2016. However the National Commission again proceeded to dismiss the complaint, this time on the ground that the appellant trust was not a 'consumer' within the meaning of Section 2(1)(d) of the 1986 Act as the aforesaid section excludes a person who obtains goods and services for a 'commercial purpose'; that since providing hostel facility to the nurses is directly connected to the commercial purpose of running the hospital, and is consideration for the work done by them in the hospital, the appellant would not be a 'consumer' under the 1986 Act. Hence this appeal.

3. Section 2(1)(d) of the 1986 Act defines 'consumer' as follows:

"(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 or avails of 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 or avails of 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 but does not include a person who avails of such services for any commercial purposes.

Explanation.— For the purposes of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-

employment."

(emphasis supplied)

The above Explanation clause was added to Section 2(1)(d) by way of Ordinance No. 24 of 1993 (subsequently replaced by Amendment Act No. 50 of 1993), with effect from 18.6.1993. Amendment Act No. 50 of 1993 also added 'housing construction' to the definition of 'service' under Section 2(o) of the 1986 Act. In the present case, it is not denied that the Appellant has validly taken possession of the flats constructed by Respondent No. 1 and paid consideration for the same, and can therefore be said to have availed of its housing construction services. This Court has held in *Spring Meadows Hospital v. Harjoi Ahluwalia through K.S. Ah/uwa/ia*, I (1998) CPJ 1 (SC), that the person who hires the service for a beneficiary can also be included in the definition of 'consumer' under Section 2(1)(d)(ii). Though that case was in the context of parents hiring the services of a hospital for their minor child, the same principle may also be extended to a case such as the present one where an employer such as the Appellant trust hires certain services for the welfare of its employees. Hence, though possession of the flats was acquired for the purpose of providing housing facility to the hospital nurses, the Appellant is entitled to claim against Respondent No. 1 as a consumer.

The only issue which arises for our consideration therefore is whether the purchase of flats for the purpose of providing accommodation to nurses employed by the Appellant trust's hospital qualifies as a 'purchase of services for a commercial purpose'; and consequently whether the Appellant is excluded from the definition of 'consumer' under Section 2(1)(d) of the 1986 Act? Learned senior counsel for the Appellant, Mr. Guru Krishna Kumar argued in reliance upon this Court's decisions in *Laxmi Engineering Works v. P.S.G. Industrial Institute*, (1995) 3 SCC 583, and *Paramount Digital Colour Lab v. Agfa India Private Limited*, (2018) 14 SCC 81, that the Court has to look at the dominant purpose for which the purchase is made in order to decide whether it was for a 'commercial purpose.' In this case, the dominant purpose for purchasing the flats was to provide housing to the nurses and was not linked to the commercial operations of the hospital. Per contra, learned senior counsel for the Respondents Ms. Kiran Suri argued that under the Explanation to Section 2(1)(d), only goods and services availed "exclusively for the purpose of earning livelihood by self-employment" are excluded from the ambit of 'commercial purpose'. In the present case, the hostel facilities in the flats constructed by Respondent No. 1 were for the purpose of providing comfortable accommodation to the nurses, which in turn would increase their efficiency and lead to provision of better services to the hospital. Hence the flats were indirectly connected to the commercial purpose of increasing profits for the hospital. Such a purchase would not fall in the category of 'earning livelihood by self-employment'. Learned senior counsel relied on this Court's decisions in *Laxmi Engineering* (supra), *Cheema Engineering Services v. Rajan Singh*, (1997) 1 SCC 131, and *Kaipavruksha Charitable Trust v. Toshniwai Brothers (Bombay) Pvt. Ltd.*, (2000) 1 SCC 512, to buttress her argument.

4. Taking into account the material on record and the relevant jurisprudence on this issue, we are of the considered opinion that the purchase of flats by the Appellant for the purpose of providing hostel facilities to the hospital nurses does not qualify as meant for a 'commercial purpose'. Though the term 'commercial purpose' as referred to under Section 2(1)(d) has nowhere been defined under the provisions of the 1986 Act, this Court has expounded upon it based on its lateral dictionary meaning in various decisions. In *Laxmi Engineering (supra)*, which is one of the leading authorities on this point, a two-Judge Bench of this Court elucidated upon the meaning of 'commercial purpose' as follows:

"10. A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers...The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business- to-business" disputes. This scheme of the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal.

11. Controversy has, however, arisen with respect to meaning of the expression "commercial purpose". It is also not defined in the Act. In the absence of a definition, we have to go by its ordinary meaning. "Commercial" denotes "pertaining to commerce" (Chamber's Twentieth Century Dictionary); it means "connected with, or engaged in commerce; mercantile; having profit as the main aim" (Collins English Dictionary) whereas the word "commerce" means "financial transactions especially buying and selling of merchandise, on a large scale" (Concise Oxford Dictionary). The National Commission appears to have been taking a consistent view that where a person purchases goods "with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit" he will not be a "consumer" within the meaning of Section 2(d)(i) of the Act...

...The explanation reduces the question, what is a "commercial purpose", to a question of fact to be decided in the facts of each case. It is not the value of the goods that matters but the purpose to which the goods bought are put to. The several words employed in the explanation, viz., "uses them by himself", "exclusively for the purpose of earning his livelihood" and "by means of self-employment" make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, by employing himself for earning his livelihood."

(emphasis supplied)

In the aforementioned discussion in *Laxmi Engineering, this Court* relied upon *Synco Textiles Pvt. Ltd. v. Greaves Cotton and Company Limited, (1991) 1 CPJ 499*. In *Synco Textiles, a*

4 Member-Bench of the National Commission headed by V. Balakrishna Eradi J., expounded upon the meaning of the term 'commercial purpose', prior to the insertion of the Explanation clause to Section 2(1)(d) of the 1986 Act:

"3...The words "for any commercial purpose" are wide enough to take in all cases where goods are purchased for being used in any activity directly intended to generate profit.

4. Going by the plain dictionary meaning of the words used in the definition section the intention of Parliament must be understood to be to exclude from the scope of the expression 'consumer' any person who buys goods for the purpose of their being used in any activity engaged on a large scale for the purpose of making profit. It is obvious that Parliament intended to restrict the benefits of the Act to ordinary consumers purchasing goods either for their own consumption or even for use in some small venture which they may have embarked upon in order to make a living as distinct from large scale manufacturing or processing activity carried on for profit. In order that exclusion clause should apply it is however necessary that there should be a close nexus between the transaction of purchase of goods and the large scale activity carried on for earning profit.

6. There is a close and direct nexus between the purpose of purchase of the generating sets and the commercial activity of manufacturing of edible oils for trade carried on by the appellant company, since the generating sets were intended to be used, as and when the need arose, for generating electric current for manufacture of edible oils for the purpose of trade. We do not, therefore, find any reason to interfere with the view taken by the State Commission that the appellant is not a 'consumer'."

Recently, a two-Judge bench of this Court, comprising of one of us, in *Paramount Digital Colour Lab (supra)* has re-emphasized the importance of there being a 'close nexus' between the purpose for which the good or service is availed of and a large-scale profit activity in order to classify such a transaction as commercial in nature, as illustrated below:

"12.It is therefore clear, that despite "commercial activity", whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. Such question of fact ought to be decided in the facts and circumstances of each case.

17. Since there is nothing on record to show that they wanted the machine to be installed for a commercial purpose and not exclusively for the purposes of earning their livelihood by means of self-employment, the National Commission was not justified in concluding that the appellants have utilised the services of an operator or a helper to run a commercial venture. One machine does not need many operators or helpers to complete the work entrusted. Since the appellants were two partners, they must have been doing the work on their own, of course, may be with the aid of a helper or an operator. The machine would not have been used in a large-scale profit-making activity but, on the contrary, the appellants purchased the machine for their own utility, personal handling and for their small venture which they had embarked upon to make a livelihood. The same is distinct from large-scale manufacturing or processing activity carried on for huge profits. There is no close nexus between the transaction of purchase of the machine and the alleged large-scale activity carried on for earning profit. Since the appellants had got no employment and they were unemployed graduates, that too without finances, it is but natural for them to raise a loan to start the business of photography on a small scale for earning their livelihood."

Therefore this Court in *Paramount Digital Colour Lab (supra)* held that the purchase of a machine for appellants' photography business, which was a small-scale business meant for earning their livelihood, would not be interpreted as being for a 'commercial purpose.'

5. It is true that the aforementioned decisions were rendered in the context of deciding whether the goods or services availed of in the facts of those cases were for a commercial purpose or exclusively for the purpose of self-employment. This does not mean, however, that in every case a negative test has to be adopted wherein any activity that does not fall within the ambit of 'earning livelihood by means of self-employment' would necessarily be for a commercial purpose. We reject Respondent No. 1's argument in this regard. The Explanation clause to Section 2(1)(d) of the 1986 Act is only clarificatory in nature, as was highlighted by this Court in *Laxmi Engineering (supra)*:

"14. Yet another clarification; the Explanation, in our opinion is only explanatory: it is more in the nature of a clarification a fact which would become evident if one examines the definition (minus the explanation) in the context and scheme of the enactment. As indicated earlier, the explanation broadly affirms the decisions of the National Commission. It merely makes explicit what was implicit in the Act. It is not as if the law is changed by the said explanation; it has been merely made clearer."

Therefore the Explanation clause only re-affirms the definition of 'consumer' as it already exists. Ultimately, whether or not a person is a consumer or whether an activity is meant for a commercial purpose will depend upon the facts and circumstances of each case. It may be the case that a person who engages in commercial activities has purchased a good or availed of a service for their personal use and consumption, or for the personal use of a

beneficiary, and such purchase is not linked to their ordinary profit-generating activities or for creation of self-employment. Such a person may still claim to be a 'consumer.'

For example, a large corporation may hire the services of a caterer or a 5-star hotel for hosting a function for its employees and their families. If there is any deficiency in service, the service-provider cannot claim that merely because the person availing of the service is a profit-generating entity, and because such transaction does not relate to generation of livelihood through self-employment, they do not fall under the definition of a 'consumer.' A commercial entity may also be a consumer depending upon the facts of the case. It is not the identity of the person but the purpose for which the transaction is made which is relevant.

6. With regard to goods and services availed of by employers for the benefit of their employees, it is particularly important to note that we live in a socialist economy, wherein the ethos dictates that employers are obligated to make provisions for the welfare of their employees. No doubt, welfare measures undertaken by employers may increase workers' health and efficiency, and therefore improve the employing entity's overall productivity. However this is a duty to be shared by all employer organisations and not merely those looking to increase their productivity/profits. This obligation exists irrespective of how much profit or turnover the organization generates in a year, though the degree to which it extends may differ depending upon the financial capacity of the employer. Hence private corporate bodies such as the Appellant trust may engage the services of third parties for the purpose of providing perquisites to their employees. For example, an employer may book flight tickets or train tickets for an employee so as to facilitate their travel in the ordinary course of business. If any negligence occurs resulting in injury to the employee or their property, the airline/railway company cannot disclaim liability on the ground that the activity was carried out for a 'commercial purpose'. As discussed earlier, if in all such cases the third party service-provider disclaims liability before consumer forums on the ground that the hirer of the service is engaged in trade and commerce, it will open a Pandora's box wherein the employer as well as the employees will not have any remedy. This would defeat the object of providing a speedy remedy to consumers, as outlined in the provisions of the 1986 Act. Further, setting such a precedent may discourage employers from undertaking to provide any facilities for their employees. Hence, it is necessary to clarify that the provision of such services would not usually be included in the definition of 'commercial purpose.'

7. To summarize from the above discussion, though a straight-jacket formula cannot be adopted in every case, the following broad principles can be culled out for determining whether an activity or transaction is 'for a commercial purpose':

- (i) The question of whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, 'commercial purpose' is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities.

(ii) The purchase of the good or service should have a close and direct nexus with a profit-generating activity.

(iii) The identity of the person making the purchase or the value of the transaction is not conclusive to the question of whether it is for a commercial purpose. It has to be seen whether the dominant intention or dominant purpose for the transaction was to facilitate some kind of profit generation for the purchaser and/or their beneficiary.

(iv) If it is found that the dominant purpose behind purchasing the good or service was for the personal use and consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, the question of whether such a purchase was for the purpose of 'generating livelihood by means of self-employment' need not be looked into.

8. Applying these principles to the facts of the present case, we find that there is no direct nexus between the purchase of flats by the Appellant trust and its profit generating activities. The flats were not occupied for undertaking any medical/diagnostic facilities within the hospital but for accommodating the nurses employed by the hospital. Moreover, the flats were being provided to the nurses without any rent. It is not the Respondents' case that the Appellant was generating any surplus from occupying the flats or engaging in buying and selling of flats. It may be the case that provision of comfortable hostel facilities to the nurses, generates a feeling of gratitude and loyalty towards their employer and improves their overall efficiency, which indirectly results in the hospital gaining more repute and therefore generating more income. However, this is a matter of conjecture and there is no direct causal chain which can be drawn between provision of accommodation to hospital employees and increase in the Appellant's profits. The decision in *Kaipavruksha Charitable Trust (supra)*, relied upon by the Respondents, does not support them inasmuch as it was on a different set of facts. In that case, this Court held that the purchase of CT scan machines by a diagnostic centre would be included within the meaning of 'commercial purpose'. There is an apparent direct nexus between the purchase of the machines, medical equipment, etc. and the running of a diagnostic centre/hospital. The present case does not involve any such purchase. Further, applying the dominant purpose test, it cannot be said that the provision of such hostel facilities is integral to the Appellant trust's commercial activities. The paramount object of providing such facilities is to cater to the needs of nurses and combat the challenges faced by those who lack permanent accommodation in the city, so as to recompense the nurses for the pivotal role which they play as co-ordinators and custodians of patients' care. Nurses help in the speedy recovery of patients and are a vital resource for hospitals and medical centres inasmuch as they are the only resource available 24/7 for catering to patients' needs. They are directly involved in all aspects of hospital service quality, be it in the form of monitoring patients' recovery, bedside medication management or assistance with surgeries and other major operations. In some situations they are responsible for performing immediate interventions to prevent medical complications. They are on the frontlines of administering and evaluating treatment, and provide invaluable emotional support as they are best placed to understand the complexities and implications of having a serious illness.

Hence the provision of hostel facilities to nurses so as to facilitate better medical care is a positive duty enjoined upon the hospital so as to maintain the beneficial effects of the curative care efforts undertaken by it. Such a duty exists irrespective of the surplus or turnover generated by the hospital, and hence is not even remotely related to the object of earning profits or for any commercial use as envisaged under Section 2(1)(d).

9. Hence we find that the Appellant trust is a 'consumer' under Section 2(1)(d) of the 1986 Act for the present transaction under consideration. In light of the above discussion, we consider it appropriate to remand the matter to the National Commission for consideration in accordance with law. The appeal is allowed and restored before the National Commission, and the impugned judgment is set aside, in the aforesaid terms. The parties are relegated to record their evidence before the National Commission, and the National Commission is requested to hear the matter on merits and decide the same expeditiously, at an early date.