

PETITIONER:
RAJEEV METAL WORKS & ORS.

Vs.

RESPONDENT:
THE MINERAL & METAL TRADING CORPN. OF INDIA LTD.

DATE OF JUDGMENT 01/12/1995

BENCH:
RAMASWAMY, K.
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RAMASWAMY, K.
KIRPAL B.N. (J)

CITATION:
1996 AIR 1083 JT 1995 (9) 250
1995 SCALE (7) 342

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

The appellant set up an industry at Unnao in Uttar Pradesh. He put up an application to the District Industry Centre, Unnao on 13.6.1986 for the supply of about 300 M.T. of G.P. Steel Sheets. The Government of India had constituted the respondent as statutory authority to canalise the procurement of the canalised items for imports and for onward delivery to the consumer industries. The General Manager of the District Industry Centre recommended to the respondent of the appellants' requirement of 300 M.T. In furtherance thereof, on 24.8.1987, the respondent had written a letter to the appellants that they could arrange supply of 50 M.T. and directed the appellants to open letters of credit with them and to comply with the requirements mentioned in the letter referred to therein. Relevant terms are as under:

"3. Please note that Margine Insurance is to be arranged by us. For this purpose suppliers will send a cable advice to us immediately after the shipment Suitable provision in this regard has been made in our Purchaser Order.

4. On receipt of documents from the suppliers, our port offices will get in touch with your banker. Please note that the consignment (s) is/are to be cleared by you through customs on receipt of documents from our port office/your bankers to whom documents will be presented against Letter of Credit opened on us. In respect of LC established by you against our authority directly in favour of foreign supplier, you are advised to contract our Regional

Office immediately upon receipt of documents by your banker for arranging payment of our service charges and insurance etc. and also for getting the documents endorsed in your favour.

5. Please note that in the event of any complaint in regard to shortage damage and quality, you should report the matter to us immediately with all supporting documents to enable us to take up the matter with the foreign suppliers. Your claim will be settled on us by foreign suppliers and to the extent settlements are received by us. In case of complaints or short receipts and damage, necessary claim should be lodged by you with the insurance company/steamer company while taking delivery of goods at the port. Any visual defect noticed on materials other than damage in handling should be reported immediately upon receipt. All other complaints should be reported within 30 days from the date of receipt of goods.

In the meanwhile, we request you to kindly go through the Purchase Order and confirm per return that the same is in order."

After pooling the requirements of various industries, the respondent had placed a consolidated indent with a foreign seller for the supply of the total required quantity of the canalised items, in this case G.P. Sheets. The foreign seller appears to have expressed difficulty in supplying the entire quantity due to exigencies mentioned in their reply. In the meanwhile, the appellants admittedly had opened letters of credit with the respondent for 50 M.T. of G.P. Sheets. The respondent in turn had opened letters of credit with the foreign suppliers for bulk supply and the foreign suppliers were unable to supply required quantity. Consequently, the respondent had written a letter to the appellants to receive 20% of the indented requirement but the appellants seem to have not complied with it. The respondent in the counter-affidavit filed in the Tribunal stated thus:

"The supplier i.e. M/s. VOEST ASPINE were not in a position to organise shipment against the subsequent LOI as there was delay in setting up of the galvanizing line. Due to these circumstances, the supplier wanted to invoke the FORCE MAJEURE clause on the plea that conditions prevailing at their end warranted invocation of FORCE MAJEURE and hence inability to fulfill contractual obligations qua the respondent.

The respondent keeping in mind the interest of complainant and other end users in the country persisted in their efforts to secure shipment and after great efforts succeeded in obtaining supply from M/s. MONTON METALS on behalf of M/s. VOEST ALPINE. M/s. Monton Metals agreed to ship 20% of the quantity at

the same price.

The Complainants and other end users in the country were informed by the respondent that in view of the FORCE MAJEURE Conditions operating in the producing countries/the respondent at last could have recovered 2% guarantee money from the supplier towards non-performance of contractual obligations by the supplier. It was in these circumstances that the respondent advised all end users to make necessary financial arrangements and take delivery of 20% of the order placed on their respective behalfs. They were further advised to confirm their acceptance(s).

The complainants did not reply to the correspondences of the respondent. The goods earmarked for them were allowed to be unloaded at the port as the respondent's Bombay Office advised that their L/C was operative. However, the document pertaining to their consignment were returned by the banker who stated that the L/C in respect of the complainants was not valid.

The complainant vide their telegram dated 5.12.1988 agreed to accept the goods in question without prejudice to their right to seek legal remedy by going to Court. The respondent informed them to take delivery of the goods in question by 26.12.88. The complainants failed to respond and did not take delivery. The goods in question became liable for demurrage charges, it was in these circumstances an alternative buyer was asked to take delivery of the goods in question after paying demurrage and other charges. It was only in these circumstances that the goods in question were delivered to another end user. Annexed herewith and marks as Annexure is copy of the Telegram dated 5.12.1988."

Since the respondent had not supplied the required quantity demanded by the appellants, the appellants laid the complaints before the National Consumer Disputes Redressal Commission [for short, "the Commission"] under Section 21 of the Consumer Protection Act, 1986, [for short, "the Act"]. The Commission in the impugned order dated November 12, 1992 dismissed the complaint in the following words:

"... we are clearly of the opinion that the transaction involved in this case is only one of Sale of Goods for commercial purpose and not an agreement for rendering any service for consideration. In these circumstances, the controversy raised in this case cannot be regarded as a Consumer Dispute which can appropriately be brought before this Forum. The Original Petition is dismissed on this limited ground. No costs."

Calling it in question this appeal under s.23 of the Act has

been filed.

Shri G.L. Sanghi, learned senior counsel for the appellants has contended that the respondent had undertaken to render service to the appellants for procuring the required quantity of the G.P. Sheets. The appellants had paid what was demanded from them and had also complied with all the conditions mentioned in the letter. Having had the goods supplied by the foreign sellers, instead of delivering the goods to the appellants diverted them for extraneous consideration to others. Thereby, the appellants had suffered damages quantified to the tune of Rs.17,71,038/- and sought recovery thereof from the respondent for its failure to render services undertaken under the contract. Various letters exchanged between the appellants and the respondent would clearly show that the transaction is one of service contract to be rendered by the respondent to the appellants and due to deficiency in the service, the appellants suffered the above damages. Consequentially, the appellants as consumer under Section 2(1)(d)(ii) of the Act are entitled to redressal from the Commission. The Commission was not right in rejecting the claim of the appellants on the ground that it is a commercial transaction. Shri M.L. Verma, learned senior counsel for the respondent on the other hand, contended that there is no direct relationship of buyer and seller between the appellants and the foreign suppliers. The appellants had opened letters of credit with the respondent and had agreed to take delivery of the goods to be supplied by the respondent after getting them from the foreign suppliers, subject to the terms and conditions mentioned therein. In furtherance thereof, the respondent had opened letters of credit directly with the foreign suppliers within the exclusionary clause of Section 2(1)(d)(i) of the Act which defines 'consumer'. Thereby, the definition excludes such transaction from the purview of the Act. The learned counsel for the appellants elaborated the contention that the word 'commercial' used in the definition requires broader construction in a normal trading sense since it being in the nature of the exception. When it is used in the context of resale, the words transaction of commercial nature must be construed to mean direct sale between the buyer and the seller as consumer goods but not when the goods are intended to be consumed for manufacturing purpose to produce a distinctly identifiable different commercial commodity. Therefore, s.2(1)(d)(i) is not attracted to the facts in this case.

Having given our anxious and very careful consideration to the respective contentions, the question emerges whether the appellant-firm is a consumer. The word 'consumer' has been defined under s.2(1)(d)(i) and (ii) thus:

"(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 or partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person."

Clause (i) provides that one who 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, is a consumer. The admitted case is that this does not apply. The question, therefore, is whether the service of the respondent availed of by the appellants is covered under Section 2(1)(d)(ii)? Whether the transaction is in the nature of buying the goods for a consideration which has been paid or promised? Whether the transaction in question excludes the person who obtains such goods for resale or for any commercial purpose from the purview of the Act? It is true as contended for the appellants that the definition requires to be interpreted broadly so as to give effect to the legislative intention envisaged under the Act. But when the legislature having defined the term 'consumer' in broader terms, sought to exclude certain transactions from the purview of the Act what could be the meaning that would be assigned to the exclusionary clause, viz., "but does not include a person who obtains such goods for resale or for any commercial purpose". The intention appears to be that when the goods are exchanged between a buyer and the seller for commercial purpose or for resale, the object of the Act appears to be to exclude such commercial transactions from the purview of the Act. Instead, legislature intended to confine the redressal to the services contracted or undertaken between the seller and the 'consumer' defined under the Act. It is seen that the appellants admittedly entered their letters of credit with the respondent. The respondent is a statutory authority to act as canalised agency on behalf of the industries to procure required goods on their behalf from the foreign seller and acts in that behalf in terms of the letter of credit and conditions enumerated thereunder. It is seen that the respondent did not undertake any direct responsibility for supply or liability for non-supply of the goods. On the other hand, the appellants had solicited to have the goods supplied to it through the respondent and opened letter of credit in favour of the respondent. After collecting requirements from various industries in the country admittedly a consolidated demand for supply of the required quantity of the G.P. Sheets was indented with foreign sellers so as to procure the required goods for onward supply to the appellant and others. The goods supplied were required for commercial purpose, i.e., for manufacture and resale as finished goods during the course of their commercial business. Under the circumstances, the appellants intended to purchase these goods for commercial purpose, namely, to manufacture the tin

sheets for resale. It is true that the word 'resale' used in the exclusionary clause of Section 2(1)(d)(i) was used in connection with the purchase of goods defined in the Sale of Goods Act for commercial purpose. The ultimate object of the supply of the goods, namely, G.P. Sheets to the appellants was manufacture of finished goods for resale. The goods were intended to be used for commercial purpose. Thus considered, we are of the opinion that the appellants are not consumers by virtue of the exclusionary clause under Section 2(1)(d)(ii). Therefore, they would not come under Section 2(1)(d)(ii) of the Act. Since the object of the supply and purchase of the goods was commercial purpose, it would certainly come within the exclusionary clause of Section 2(1)(d)(ii). Otherwise, if the construction sought to be put up by Mr. Sanghi is given effect to, while foreign sellers are not liable under the Act within the definition of s.2(1)(d)(i) as they get excluded from the purview of the Act, the canalising agency would be fastened with the liability. Thereby, the definition of the word 'consumer' under Section 2(1)(d)(ii) so not attracted.

Consequently, clause (ii) of Section 2(1) (d) does not apply. Considered from this perspective, we are of the opinion that the appellants are not consumer under Section 2(1)(d)(ii) of the Act. Thereby the complaint would be not lie under Section 21 of the Act.

The appeal is accordingly dismissed but, in the circumstances, without costs.