

A KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD

v

NANDI COLD STORAGE PVT. LTD.

JULY 11, 2007

B [DR. ARIJIT PASAYAT, P.K. BALASUBRAMANYAN AND D.K. JAIN, JJ.]

Consumer Protection Act, 1986:

C *Deficiency in service—Compensation—Plot allotted by Industrial Areas Development Board to complainant for opening a cold storage—Loan sanctioned—Later, loan cancelled as complainant could not go ahead with the project due to litigation initiated by owners of lands—Claim for compensation filed against Board—National Consumer Disputes Redressal Commission holding that there was deficiency in service and complainant was entitled to compensation of rupees three lakhs—On appeal, Supreme Court issued notice limited to quantum of compensation only—Held: About deficiency in service, correct approach has been adopted—However, considering peculiar circumstances, compensation fixed to rupees one lakh.*

E The respondent-company filed a complaint before the National Consumer Disputes Redressal Commission, against the appellant-Industrial Areas Development Board complaining deficiency of service, as on the plot allotted to it by the Board, construction activities for opening the proposed cold storage could not be carried out because of the litigation initiated by the owners with regard to acquisition of the said plot and, ultimately, the loan obtained by the complainant was cancelled. The National Commission held that there was deficiency in service and the complainant was entitled to a compensation of rupees three lakhs. On the appeal filed by the Board, the notice issued was limited to the quantum of compensation only.

F Allowing the appeal in part, the Court

G HELD: In the notice it was indicated that the same was limited to the question of compensation. About the deficiency in service the correct approach has been adopted. Considering the peculiar circumstances of the case, the compensation is fixed to rupees one lakh. [Para 10 and 11] [273-D-E]

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CIVIL APPELLATE JURISDICTION

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I.A. No. 1

IN

Civil Appeal No. 5542 of 2004

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From the Final Judgment & Order dated 28.04.2004 of the National Consumer Disputes Redressal Commission at New Delhi in Original Petition No. 42 of 1999.

Kiran Suri and S.J. Amith for the Appellant.

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S. Nanda Kumar, Sathish Kumar. K. Mayil Samy and V.N. Raghupathy for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the order passed by the National Consumer Disputes Redressal Commission at New Delhi (in short the 'National Commission'). Respondent had filed a complaint against the appellant before the National Commission.

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2. Background facts in a nutshell are as follows:

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3. In the complaint respondent inter alia stated as follows:

The complainant company, desirous of opening a cold storage unit in the State of Karnataka, applied for allotment of land to the appellant in August 1991. After meeting all the formalities required from time to time by the appellant, a plot bearing No.2 of Chickballapur Industrial Area, measuring 2.5 acre of land, was allotted for setting up a cold storage. Possession certificate was issued on 26/30.8.93. The complainant also in the meantime obtained a loan of Rs.67 lakh from the Karnataka State Financial Corporation (in short 'KFC'). For the first time in August 1994, a letter was written by appellant to the complainant that "the company could not go ahead with construction activity on the plot allotted as the erstwhile land owner of plot No.2 covered in Sy.No.29 and 30 of Jadalathimmanahally Village has obtained stay order from the High Court of Karnataka in W.P.No.70/88 challenging the acquisition proceedings. The Board initiated action for vacating the stay order granted by the High Court of Karnataka. However, the company could

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A not go ahead with implementation in view of the stay order granted by the High Court. The complainant sought for permission to go ahead with implementation after the litigation in respect of the above land is disposed of by the High Court. The Board should also grant extension of time to the company for implementation of the project after disposal of the litigation.

B 4. Original land holder took back possession forcibly in view of the order of the Karnataka High Court. The writ petition filed by the original land holder was allowed by the High Court leaving the complainant high and dry without land, more so when in September 1994, the KFC cancelled the term loan in view of the fact that no progress was made in the implementation of the project. Since the complainant was keen to go ahead with the project, on collecting some information, it approached the appellant to allot plot No.1-A and 1-B which was lying vacant, which were allotted to the complainant in 1995. But it seems that bad luck had not stopped chasing the complainant. As soon as the allotment in respect of plot no.1-A and 1-B were made on a resumed plot, the original allottees moved the High Court making the complainant a party before it. However, after protracted litigation, the writ petition was dismissed but in the meanwhile the loans had been cancelled and the complainant was left high and dry. It is in these circumstances that a complaint was filed alleging deficiency in service.

E 5. The appellant-Board appeared before the National Commission on issue of notice. It took the stand that there was no deficiency in service and it acted in terms of the procedure laid down in Karnataka Industrial Areas Development Act, 1966 (in short the 'Act') and Rules made thereunder. The State Government had acquired the land and handed over the same to the present appellant for development and allotment for setting up the industries.

F The acquisition was done by the State Government. After the land was handed over, same was developed and allotted to various entrepreneurs. Since the appellant came to know about the pendency of the litigation between the Government and the original landholder of plot No.2 it had given notice to the complainant and all that was required to be done for the complainant was done. There was no deficiency in the service which was attributed by G the government which acquired the land from the appellant after such acquisition.

H 6. After hearing learned counsel for the parties the National Commission held that the appellant was clearly at fault. There was deficiency in service and it was, therefore, held that the complaint was to be allowed. Considering

the facts and circumstances of the case the National Commission held that the complainant was entitled to compensation of Rupees three lakhs. The order of the National Commission is the subject matter of challenge in this appeal.

7. In support of the appeal, it was submitted that there was no deficiency in service in view of what has been stated above. In any event, there was no scope for awarding compensation.

8. Learned counsel for the respondent on the other hand supported the order of the National Commission.

9. While issuing notice on 10.9.2004, the same was limited to the question of compensation. In support of the appeal, learned counsel for the appellant submitted that there is no deficiency in service. All possible steps have been taken at different points of time. In a hypothetical case which was not established, the National Commission erroneously came to hold that it was a case of deficiency in service.

10. In the notice, as noted above, it was indicated that the same was limited to the question of compensation. About the deficiency in service the correct approach has been adopted.

11. The only question however, is with regard to the quantum. Considering the peculiar circumstances of the case, we fix the same to be rupees one lakh. This is to be paid to the appellant by the respondent within 4 weeks from today.

12. The appeal is allowed in the aforesaid circumstances. No order is necessary in the I.A. in view of the disposal of appeal. There will be no order as to costs.

R.P.

Appeal partly allowed.