

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 454 OF 2019

(Against the Order dated 27/08/2018 in Appeal No. 2423/2010 of the State Commission
Madhya Pradesh)

1. MOHD. SIDDIQUE KHAN

S/O. GULMOHD. KHAN, R/O. BICHHIA TEHSIL HUZOOR,

DISTRICT-REWA

MADHYA PRADESH

.....Petitioner(s)

Versus

1. FOREST DIVISIONAL OFFICER

(GENERAL)OFFICE OF FOREST DIVISION, JHIRIA

REWA,

DISTRICT-REWA

MADHYA PRADESH

.....Respondent(s)

BEFORE:

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd.),PRESIDING
MEMBER**

FOR THE PETITIONER :

FOR THE PETITIONER : MR. TESSY VARGHESE, ADVOCATE
MR. PRASHANT K., ADVOCATE

FOR THE RESPONDENT :

FOR RESPONDENT : NONE APPEARED (EX-PARTE DT.
23.01.2024)

Dated : 01 May 2024

ORDER

1. The present Revision Petition has been filed by the Petitioner under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against impugned order dated 27.08.2018, passed by the State Consumer Disputes Redressal Commission, Madhya Pradesh ('State Commission') in First Appeal No.2423 of 2010. In this appeal, the Respondent /OP appeal was allowed, thereby set aside the Order dated 31.03.2010, passed by the District Consumer Disputes Redressal Forum, Rewa ("District Forum") in Consumer Complaint No. 180 of 2009, wherein the Complaint filed by the Complainant (Petitioner herein) was allowed.

2. There was a delay of 62 days in filing the present Revision Petition. For the reason stated in the application being IA No. 3814/2019, In the interest of justice, the same is condoned.

3. For convenience, the parties in the present matter are denoted as per their positions in the Consumer Complaint before the District Forum. Mohd. Siddique Khan who is a small timber merchant and engaged in the said business for his livelihood is identified as the Complainant. Meanwhile, "Forest Divisional Officer (General)" is identified as OP (Respondent herein).

4. Brief facts of the case, as per the Complainant, are that on 28.02.2005 he purchased various items such as bamboo, wood, Ballis. flagstone (patiya) etc through an auction from the OP. While some of the materials were handed over to the Complainant, the OP failed to deliver the remaining items despite receiving full payment. He further alleged that upon visiting the Forest Division to collect the purchased material, he was denied access by the Forest Ranger, who acted in a secretive manner. Feeling aggrieved by these circumstances, the Complainant filed a Consumer Complaint No. 180/2009 before the learned District Forum, seeking compensation equivalent to the current value of the purchased material amounting to Rs.4,96,145/-.

5. In reply, OP refuted the allegations presented in the complaint and asserted that the Complainant was required to collect the purchased material within a specified timeframe. However, on 07.05.2004, the Complainant collected only a portion of the material and failed to retrieve the remainder. Consequently, as per terms of sale, the Complainant's payment was deposited in the State Govt Treasury. The OP also argued that the dispute stemmed from the auction process and was consequently time-barred, warranting dismissal of the complaint.

6. The learned District Forum vide order dated 31.03.2010, ruled in favor of the Complainant and directed the OP to furnish the entire quantity of wood, bamboo, and flagstone (patiya) to the Complainant as per the terms of the auction. In the event that the material could not be provided, the Forum instructed the OP to refund the corresponding amount to the Complainant. Being aggrieved by the District Forum order dated 31.10.2010, the OP filed Appeal No. 2423 of 2010 and the State Commission vide order dated 27.08.2018 allowed the Appeal, relying on **Subhash Infra Engineers Pvt Ltd Vs Haryana Urban Development Authority 1(2015) CPJ 41 (NC)**. However, the State Commission directed the OP to refund the amount collected from the Complainant.

7. Being dissatisfied by the State Commission order dated 27.08.2018, the Petitioner/Complainant filed the instant Revision Petition No. 454 of 2019 mainly raising the following grounds:

- a. The State Commission erred in rejecting the evidence of Raj Bahore Dahiya, the driver, and owner of the Tractor Trolley No. CPU 4124, who accompanied the Petitioner for taking delivery of the goods. The conclusion drawn that he did not go to take delivery of the goods within the stipulated time is unfounded and overlooks crucial evidence provided by the Petitioner.
- b. The State Commission did not note the evidence of the forest officials, particularly SN Prajapati, indicating that 548 units of flagstone was utilized for departmental purposes. This brought out their failure to deliver the complete goods to him.
- c. The State Commission's interference in favour of Respondent and the forest department officials is erroneous. The evidence of the forest department officials does not align with the Respondent's position, indicating a lack of credibility.

d. The State Commission erred in determining the applicability of the judgment in Subhash Infra Engineers Pvt. Ltd to the present case as it pertained to a commercial plot purchased in a public auction, whereas the Petitioner purchased forest products for household and agricultural use.

8. Upon notice of the Revision Petition, the Respondent/OP failed to appear on several occasions. Consequently, on 23.01.2024, the Respondent/OP was proceeded *ex-parte*.

9. In his arguments, the learned Counsel for the Petitioner reiterated the grounds of the petition, emphasizing the established facts of the case. He contended that the issue at hand is not related to the auction proceedings or any terms thereof. It is about withholding of goods after conclusion the auction proceedings, with various excuses. There is no dispute pertaining to quality, quantity or price of the products purchased; instead, the issue pertains to misconduct by forest officials after the auction is concluded. He contended that the Respondent was reluctant to deliver the goods, despite demands within the stipulated time. He highlighted alleged misconduct of the Forest Dept officers to the Respondent's attention, but no steps were taken. Following the auction and payment, the Forest Dept becomes the lawful custodian of the goods until delivery is taken by him. However, they did not provide the complete goods and instead directed him to return repeatedly for delivery. Despite sending a legal notice demanding complete goods, they claimed forfeiture to the Govt Treasury showing him as failed to take timely delivery. Notably, the Respondent did provide some goods after the stipulated time had expired, rendering allegations irrelevant.

10. The learned Counsel further argued that while the learned District Forum thoroughly examined the facts and relevant laws and concluded that the petitioner qualifies as a consumer under Section 2(1)(d) of the Consumer Protection Act, 1986, the State Commission failed to properly appreciate these aspects and reversed the judgment. Thus, the intervention of this Commission is deemed necessary. He further highlighted that this case represents only one instance brought before the court of law. The Respondent and subordinate officers are allegedly employing various tactics on auctioneers, compelling them to leave depots without taking delivery of purchased goods within the stipulated time. The Forest Dept officials have purportedly turned depots into hubs of corruption, with auctioneers, including the petitioner, being victims. There is no evidence to suggest that the allegations against the Forest Range officer were false or motivated. He contended that he is entitled to adequate punitive damages from the Respondent under Sections 14(d) and 14(hb) of the Act.

11. I have examined the pleadings and associated documents placed on record, including the orders of both the fora and rendered thoughtful consideration to the arguments advanced by learned Counsels for both the parties.

12. The primary issue in the case revolves around whether the petitioner qualifies as a consumer under the Consumer Protection Act, 1986, and whether the respondent, the Forest Department, has committed deficiency in service by failing to deliver goods purchased by the petitioner through auction within the stipulated time. Additionally, there's the question of

whether the petitioner is entitled to punitive damages for the alleged misconduct and unfair trade practices of forest department officials.

13. Undisputedly, the Complainant purchased certain forest produce from the Respondent/OPs in auction. The entire dispute pertains to the auction purchase. In this regard, Hon'ble Supreme Court in **UT Chandigarh Administration & Anr. Vs. Amarjeet Singh & Ors. (2009) 4 SCC 660**, had held as under:

“14.With reference to a public auction of existing sites (as contrasted from sites to be `formed`), the purchaser/ lessee is not a consumer, the owner is not a `trader` or `service provider` and the grievance does not relate to any matter in regard which a complaint can be filed. Therefore, any grievance by the purchaser/ lessee will not give rise to a complaint or consumer dispute and the fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites.” The National Commission after taking submissions of both sides observed that in view of the settled law in regard to an auction purchaser not being entitled to be treated as a `consumer` under the Act, the lower fora have certainly acted without jurisdiction in entertaining and adjudicating in this matter in the Consumer Complaint and First Appeal respectively. Therefore, the revision petition was found to have merits and was allowed.

14. In view of the admitted position that the Complainant is an auction purchaser, the transaction he entered into with the OPs does not give rise to relationship between them as consumer and service provider. Based on the discussion above, I do not find any merit in the present Revision Petition and the same is dismissed. In addition, the Complaint No. 180 of 2009 filed by the Complainant before the learned District Forum also is dismissed.

15. Keeping in view the facts and circumstances of the present case, there shall be no order as to costs. All pending Applications, if any, also are disposed of accordingly.

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AVM J. RAJENDRA, AVSM VSM (Retd.)
PRESIDING MEMBER