

Kamlesh Gaur Vs. Municipal Corporation of Delhi and Another

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Court : Delhi State Consumer Disputes Redressal Commission SCDRC New Delhi

Decided On : Mar-07-1995

Judge : R.N. Mittal, President & the Honourable Ms. Justice S. Brar, Member

Appeal No. : Case No. A-53 of 1994

Appellant : Kamlesh Gaur

Respondent : Municipal Corporation of Delhi and Another

Judgement :

R.N. Mittal, President:

1. This appeal has been filed against the order of the District Forum dated 4th January 94, by the complainant. Briefly, the facts are that the complainant was running a factory in the name of M/s. Urvashi Machine Parts. The proprietary business was converted by her into a Pvt. Ltd. Company in 1985 and it was named as M/s. Kay Automatics Pvt. Ltd. then applied for amending the licence to the M.C.D. In spite of various applications the licence was not amended by them. Thereafter, it is alleged, she engaged the services of Shri A.S. Girgla and paid him Rs. 2,500/- for getting the needful done. It was agreed between them that if the licence was got amended by him he would be paid Rs. 500/- more. The licence was got amended by Mr. Girgla in the name of M/s. Kay Automatics Pvt. Ltd. and she paid Rs. 500/- more to him.

2. It is further averred that she made the complaint against the respondent to the Anti Corruption Department of Delhi Administration. She was required by them to deposit original licence. Consequently, she deposited the licence vide letter dated 4th Feb., 1991 on 7th Feb., 91 in the office of the Assistant Commissioner, Factory Licencing Mr. K.G. Berman at his instance. It is next pleaded that the licence has not been returned to her by the respondent inspite of repeated requests. On account of delay in not amending the licence and then not returning the same, she remained under tension and suffered actual loss. Hence the complaint.

3. The complaint was contested by the O.P. They inter-alia pleaded that the licence was not deposited by the complainant with the Assistant Commissioner as alleged by her and that it had never been amended by them.

4. The District Forum held that the licence was not deposited by the complainant with the Assistant Commissioner and consequently, there was no deficiency in service. In view of the aforesaid finding it dismissed the complaint. The complainant has come up in appeal against the said order to the Commission.

5. The main question that arises for determination is, whether the complainant deposited original licence with the Assistant Commissioner, Factory Licencing. She in order to prove the said fact filed affidavit of her husband who had gone to deposit the same with the Assistant Commissioner, in addition to her own affidavit. She also file copy of the letter dated 4th Feb., 91, on which the acknowledgement from the office of the Assistant Commissioner had been obtained. The acknowledgement dated 7th Feb., 91 bears the seal and signatures of the official concerned. It also contains the note of the official that the original licence No. 04727 had been deposited.

6. Mr. K.J.R. Berman was the Assistant Commissioner at the relevant time. No affidavits has been filed by Mr. Berman stating that the licence was not handed over by the husband of the appellant to him. Smt. Prabhu Sodhi, Assistant Commissioner filed the affidavit in which she stated that the original licence was not filed , by the complainant. She has not stated in the affidavit where Mr. K.J.R. Berman was at that time. In the verification she stated that the facts were correct to her knowledge. It is not stated by her, how she got personal knowledge of the

facts. The licence had been given at the instance of Mr. K.J.R. Berman to the Assistant. In the written statement and affidavit of Mr. Sodhi the seal and the signatures of the Assistant have not been denied. In the circumstances it cannot be held that the original licence was not handed over on 7th Feb., 91 to the Assistant Commissioner. Therefore, we reverse the said finding of the District Forum. The O.P. is consequently, bound to return the said licence to the complainant. In case, the licence is not traceable they should issue a fresh licence to the complainant in the name of M/s. Kay Automatics Pvt. Ltd.

7. The next question that arises for determination is, whether the complainant-appellant is entitled to damages, if so, to what extent. As already held, the licence was deposited with the M.C.D. in Feb., 1991. However, it has not been returned to the complainant till date. It is but natural that she must have remained under mental tension. However, she has not been able to prove on the record how much actual damage she suffered. It is also established that her agent visited many times the office of the respondent to get the licence. Taking into consideration, the facts and circumstances of the case, we award Rs. 5,000/- as damages to her.

8. For the aforesaid reasons we accept the appeal with costs set-aside the order of the District Forum and direct the O.P. to return the original licence and in case it is not traceable to issue a fresh licence to M/s. Kay Automatics and pay Rs. 5,000/- as damages within a period of 3 months, failing which action shall be taken against them under Section 27 of the Consumer Protection Act. Costs Rs. 1,500/-.

Appeal allowed with costs.

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