

Executive Engineer, Irrigation Department Vs. Shrikrushna Deorao Wakode

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Court : Maharashtra State Consumer Disputes Redressal Commission SCDRC
Nagpur

Decided On : Apr-07-2014

Judge : The Honourable Mr. B.a. Shaikh, Presiding Member & the Honourable Mrs. Jayshree Yengal, Member

Appeal No. : First Appeal No. A/1307 of 2002

Appellant : Executive Engineer, Irrigation Department

Respondent : Shrikrushna Deorao Wakode

Judgement :

B.A. Shaikh, Presiding Member:

1. This appeal is preferred against the order dated 08/07/2002 passed in Consumer Complaint bearing CC No. 297/2001 by the District Consumer Forum, Akola by which the complaint has been partly allowed.

2. The case of the complainant as set out in the complaint in brief is that he is an agriculturist, holding agricultural land in gut No. 19 of village Bahirkhed. The said land falls under the water supply scheme of the opposite party (for short O.P.). He has got right to irrigate his land by taking water from Bahirkhed water distribution system. Therefore he made application to the O.P. As per the direction of the O.P., he had furnished to the O.P. map showing availability of the water canal to his land. He then sowed wheat and Tur seeds in his two acres of land. However, the

O.P. did not supply water to his land. The complainants two neighbours namely Pravin Gawande and Suresh Gawande closed the water canal passing through his land. The O.P. did not repair the same though complainant had brought the same to its notice. It was the responsibility of O.P. only to repair the canal. Therefore, the complainant could not irrigate its wheat crop and hence he sustained loss of Rs. 30,000/-. He therefore served notice to O.P., which gave its false reply and rejected his application made for supply of water. He therefore claimed Rs. 30,000/- towards loss sustained by him, Rs. 5,000/- towards mental harassment and Rs. 2000/- towards cost of the complaint from the O.P.

3. The O.P. resisted the said complaint by filing its written version. It submitted that the complainant is not a consumer and it has not provided service to him and therefore complaint is not maintainable. It submitted that the complainant had made an application to it to supply water through canal and it was granted. However his neighbours Shri Pravin Gawande and Suresh Gawande objected for the same. The O.P. had shown the water canal to the complainant for irrigation of his land. The complainant did not repair that water canal and therefore he is responsible for non supply of water to his land. He did not repair it and therefore, the permission granted to him has been cancelled by the O.P. It is therefore prayed that complaint has been dismissed.

4. The Forum below heard Advocates of both the parties and considered evidence brought on record. The Forum below came to the conclusion that the complainant is a consumer and the O.P. is a service provider as the condition required to establish said relationship is existing in the present case. It is further held by the District Consumer Forum that it was the responsibility of the O.P. to serve notice to the complainant to carry out the repairing of the water canal and that permission granted for supply of water to the complainant has been cancelled without giving opportunity of hearing to the complainant and that it amounts to deficiency in the service on the part of the O.P. The Forum below granted compensation of Rs. 4000/- towards loss of wheat crops sustained by the complainant and Rs. 500/- towards mental harassment. The Forum below also directed that said amount be paid to the complainant within two months of receipt of that order and in case of default the O.P. shall pay said amount with interest at the rate of 12% p.a. to the

complainant. It is also directed the O.P. shall pay cost of Rs. 500/- to the complainant.

5. Feeling aggrieved by that order the original O.P. has preferred this appeal. We have heard learned Advocate of the appellant. The appeal is proceeded ex parte against the respondent as he failed to appear though dully served with notice. We have also perused the documents produced by the appellant.

6. The learned Advocate of the appellant submitted that the Forum below erroneously held that the respondent herein is a Consumer and the appellant provided deficient service to the respondent. He relied upon provisions Sections 27 and 31 of the Maharashtra Irrigation Act, 1976 in support of his submission that it was sole responsibility of the respondent to maintain the water canal and to clear its obstructions and appellant therefore cannot be held responsible for not carrying out repair of that canal by the respondent.

7. The perusal of the Sections 27 and 31 of the Maharashtra Irrigation Act 1976 shows that the owner of the agricultural land to whose land water canal is connected, is bound to maintain the same as to keep it in good condition and that if he fails to do so, the canal officer can give him notice of 15 days to carry out the repairing work and if he fails to do so, the canal officer can get canal repaired and recover repairing charges from the land owner..

8. Thus it was the sole responsibility of the respondent herein to maintain properly water canal of his land and to keep it in good condition for irrigation of his land. The respondent cannot shift his said responsibility to the appellant. It is not explained by the respondent as to why he did not get that canal repaired when it was blocked. He cannot take benefit out of his wrong.

9. The Forum below has not properly considered the aforesaid provisions of the Maharashtra Irrigation Act, 1976. We find that the appellant has not rendered the deficient service to the respondent herein. Hence, without entering into the contention raised by the learned Advocate of the appellant on the point of maintainability of the complaint we hold for the aforesaid reason that the impugned order deserves to be set aside.

ORDER

- i. The appeal is allowed.
- ii. The impugned order dated 08/07/2002 passed in Consumer Complaint bearing CC No. 297/2001 by the District Consumer Forum, Akola is set aside.
- iii. The complaint is dismissed.
- iv. No order as to cost in appeal.
- v. Copy of this order be furnished to both parties free of costs.

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