M/S. Elder Farm Vs. H.P. State Industrial Development Corporation Limited and Others

M/S. Elder Farm Vs. H.P. State Industrial Development Corporation Limited and Others

SooperKanoon Citation : sooperkanoon.com/1148147

Court : Himachal Pradesh State Consumer Disputes Redressal Commission SCDRC Shimla

Decided On : Mar-10-2014

Judge : (Retd.) Surjit Singh, President &Amp; the Honourable Mrs. Prem Chauhan, Member

Appeal No. : First Appeal No. 273 of 2013

Appellant : M/S. Elder Farm

Respondent : H.P. State Industrial Development Corporation Limited and Others

Judgement :

Justice (Retd.) Surjit Singh, President (Oral)

1. Appellant has preferred this appeal against the order dated 17.08.2013, of learned District Consumer Disputes Redressal Forum, Shimla, whereby its complaint, under Section 12 of the Consumer Protection Act, 1986, which it filed against the respondent, has been dismissed.

2. Respondent No.2, with a view to encouraging and promoting commercial horticulture, introduced a scheme, under which the persons covered by the scheme were to be given subsidy of 25% on the loan amount, in case they raised loans from certain named Agencies, for promotion of commercial horticulture.

Appellant submitted a project sometime in the year 1999, that was approved by respondent No.2 and its functionaries, i.e. respondents No.3 and 4. Project was submitted to respondent No.1-H.P. State Industrial Development Corporation Limited, which sanctioned a loan of Rs.35.00 lacs. A Sum of Rs.28.00 lacs, was released in favour of the appellant by respondents No.2 to 4. By way of subsidy, a sum of Rs.6,09,400/- was remitted by respondents No.2 to 4 to respondent No.1. As per scheme, this amount of money was to remain deposited with respondent No.1 and no interest was to be charged from the appellant by respondent No.1 on an amount, equivalent to the aforesaid amount of Rs.6,09,400/-, out of the amount disbursed to him by way of loan.

3. According to the appellant, the project was completed in the year 2003 and a request was made to respondent No.3, a functionary of respondent No.2, to release the subsidy amount of Rs.6,09,400/- that had been remitted to respondent No.1. Instead of releasing the aforesaid amount of money, as also additional amount of subsidy, payable under the scheme, respondents No.2 to 4 recalled the subsidy amount of Rs.6,09,400/- already remitted to respondent No.1 on the plea that on inspection, it had been noticed that the Unit set up by the appellant had been shutdown and the machinery stood disposed of.

4. Further, it was alleged by the appellant that respondent No.1 charged interest on the entire amount of loan, i.e. Rs.28.00 lacs, though as per scheme, no interest was required to be charged on the subsidy amount, i.e. Rs.6,09,400/- deposited by respondents No.2 to 4 with it. It was alleged that respondent No.1 had committed deficiency in service and adopted unfair trade practice by charging interest on the entire loan amount, without excluding the amount of subsidy. Also, it was alleged that respondents No.2 to 4 too committed acts of deficiency in service and unfair trade practice, by not paying the subsidy money and recalling 50% of the subsidy, which had initially been remitted to respondent No.1, who kept the same in deposit, in terms of the scheme.

5. Complaint was contested both by respondent No.1 as also respondents No.2 to 4. Respondent No.1 denied having charged interest on the entire amount of loan disbursed to the appellant. It was stated that amount of subsidy had been taken

into account at the time of one time settlement with the appellant, which was reached in the year 2008, vide writing dated 31.03.2008, copy Annexure P-7 and that as per this writing, interest was charged only on that amount of money, which had been paid to the appellant by way of loan minus the amount of subsidy deposited by respondents No.2 to 4.

6. Learned District Forum, vide impugned order, has concluded that there is no evidence on record indicating that respondent No.1 charged interest on the entire amount of money, advanced to the appellant. As regards respondents No.2 to 4, learned District Forum, has held that the appellant is not a consumer qua the said respondents as no service for consideration was provided/agreed to be provided by the said respondents.

7. We have heard learned counsel for the parties and gone through the record.

8. Annexure P-7, dated 31.03.2008, relied upon by the appellant itself, shows that interest had been charged by respondent No.1, on a sum of Rs.23.31 lacs, out of total disbursed amount of loan, which was admittedly to the tune of Rs.28.00 lacs. And out of this amount of Rs.23.31 lacs, interest on a sum of Rs.5,82,750/- disbursed on 31.03.2009, it seems, had been charged for a very short period, because the amount of interest is shown to be only Rs.7,962/-.

9. The document, further shows that as a matter of fact, a suit for Rs.44,82,138/- had been filed by respondent No.1 against the appellant in the Court of learned District Judge, Mandi, and it was during the pendency of such suit, that one time settlement had been arrived at and it was agreed that a decree for the entire suit amount would be got passed, with interest at the rate of 15.50% per annum, but it (the decree) was to be deemed to be satisfied, in case the appellant paid a total sum of Rs.25,13,409/-, out of which, a sum of Rs.23.31 lacs was on account of principal and a sum of Rs.1,82,409/- on account of interest. The figures are a clear indicator that no interest had been claimed on an amount equal to the subsidy amount of Rs.6,09,400/- deposited by respondents No.2 to 4 with respondent No.1. Therefore, respondent No.1 cannot be said to have committed any deficiency in service.

10. As regards the grievance against respondents No.2 to 4, Honble National Consumer Disputes Redressal Commission, in Chaudhary Ashok Yadav versus The Rewari Central Co-operative Bank and National Horticulture Board, Revision Petition No.4894 of 2012, decided on 08.02.2013, relying upon its earlier decision, reported in III (1993) CPJ 267 (NC) Himachal Weavers Private Limited versus Himachal Pradesh Financial Corporation and Others, has held that a person seeking benefit of subsidy under a scheme of National Horticulture Board (respondent No.2 herein) is not a consumer, as the subsidy is not a service within the meaning of Consumer Protection Act, 1986, and his remedy does not lie under the Consumer Protection Act, 1986, by filing a complaint and that he can seek relief from a Civil Court, or some other forum, as per law.

11. In view of the above stated position, appeal is dismissed.

12. A copy of this order be sent to each of the parties, free of cost, as per Rules.