

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

FIRST APPEAL NO. 712 OF 2020

(Against the Order dated 04/12/2019 in Complaint No. 1/2013 of the State Commission
Karnataka)

1. RANGE GOWDA

S/O LATE SRI BORE GOWDA, PROPRIETOR, M/S
IYANGAR BANGALORE BAKERY, R/O NARSHIA
BHAVAN, SHOP NO.10.ADARSH NAGAR, NEW
SHANGAVI, PUNE MAHARASHTRA-411027

.....Appellant(s)

Versus

1. M/S. FIRE TECH BAKERY EQUIPMENTS
NO. 43/6, 10TH CROSS, TIGALARAPALYA, PEENYA 2ND
STAGE, BANGALORE-560091

.....Respondent(s)

BEFORE:

HON'BLE DR. INDER JIT SINGH,PRESIDING MEMBER

FOR THE APPELLANT : MR. SUDHANSHU PRAKASH, ADVOCATE
MR. AVNISH AGARWAL, ADVOCATE

FOR THE RESPONDENT : MS. PRIYA BALUKRISHNAN, ADVOCATE

Dated : 05 June 2024

ORDER

1. The present First Appeal (FA) has been filed by the Appellant against Respondent as detailed above, under section 51 of Consumer Protection Act 2019, against the order dated 04.12.2019 of the State Consumer Disputes Redressal Commission, Karnataka, Bangalore (hereinafter referred to as the 'State Commission'), in Consumer Complaint (CC) no. 01/2013 inter alia praying to set aside the order passed by the State Commission. The Appellant was the complainant and the respondent was OP in the said CC/01/2013 before the State Commission. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 15.01.2024 (Appellant) and 17.01.2024 (Respondent) respectively.

2. Brief facts of the case, as emerged from the FA, Order of the State Commission and other case records are that:-

The complainant operates a bakery business for his livelihood under the name M/s Iyengar Bangalore Bakery in Pune. To expand his business, he decided to purchase new bakery equipment and approached the OP on 05.06.2011. The OP provided an initial quotation on that day and a revised quotation on 05.11.2011. The complainant secured a loan from Indian Overseas Bank, Aundh Branch, Pune, and on 03.12.2011, the bank issued three

demand drafts totaling Rs.27,81,270/- to the OP. Despite several requests from the complainant, the OP allegedly failed to deliver the equipment. Consequently, the complainant issued a legal notice demanding either the delivery of the equipment or a refund of the amount paid, but received no response. On 10.02.2012, Indian Overseas Bank sent a letter to the OP requesting immediate delivery of the equipment or the return of the demand drafts. The complainant claims that the OP subsequently contacted him, proposing to deposit Rs.15,50,000/- into his Corporation Bank account to avoid higher taxes. The OP requested that the complainant withdraw this amount and hand it over, assuring him that the machines would be delivered thereafter. However, the complainant asserts that despite receiving the amount, the OP neither delivered the machines nor refunded the money, constituting a deficiency in service

3. Vide Order dated 04.12.2019, the State Commission has dismissed the complaint on account of maintainability, treating the appellant not being consumer. Appellant has challenged the Order dated 04.12.2019 of the State Commission mainly on following grounds:
 - i. The State Commission erred in holding that the Appellant/Complainant is not a "consumer" within the meaning of Section 2(d) of the Consumer Protection Act. The State Commission concluded that the complaint is not maintainable without appreciating that the machinery ordered by the complainant was intended to produce bakery items for his shop, which constitutes his source of livelihood. The State Commission failed to appreciate that it is not the value or size of the machinery but the purpose for which it is used that should be considered when deciding the consumer complaint. Furthermore, the State Commission did not consider the judgment of this Commission in **Action Construction Equipment Ltd. & Anr. vs. Bablu Mridha**, RP No. 2079/2012 dated 20.07.2012, which observed that using machines for earning a livelihood does not constitute a commercial activity. The State Commission incorrectly concluded that the complainant's business is commercial merely because the equipment produces bakery items in large quantities.
 - ii. The issue of whether the machinery was used for commercial activity is a matter of evidence, and the burden of proof lies with the OP. However, the OP failed to provide any evidence indicating that the machinery was used for commercial purposes. The State Commission erred in failing to recognize that determining whether the goods were purchased for a 'commercial purpose' is a question of fact that must be decided based on the specific circumstances and evidence of the case. The facts and circumstances clearly indicate that the equipment was intended to earn a livelihood through the bakery business, and the OP failed to provide any contrary evidence. Instead, the State Commission proceeded from a prima facie view to a final conclusion that the Complaint is not maintainable without any discussion of relevant authorities or examination of evidence, rendering the decision unsustainable.

iii. The OP's assertion regarding partial equipment delivery lacks merit. Moreover, the alleged refund to the complainant was facilitated through cash withdrawals after depositing funds into the complainant's account. The State Commission overlooked the fact that the complainant not only paid for the equipment but also obtained a bank loan for this purpose. Given the OP's failure to deliver the equipment, a refund was warranted. The accruing interest on the bank loan impedes the complainant's business expansion, which constitutes his primary source of income. Furthermore, the State Commission overlooked the significance of the letter dated 10.02.2012 issued by the Indian Overseas Bank, which substantiates the payment made by the complainant to the OP. The complainant is enduring substantial financial losses due to the loan procured for acquiring the bakery equipment. The State Commission's conclusion regarding equipment delivery is flawed as the invoice provided by the OP lacks a delivery seal or the complainant's signature. Absence of evidence of machinery delivery, the document presented by the OP is unreliable and unsustainable.

4. In the Reply, OP has stated that the complaint has been filed solely to gain unjust enrichment from the OP without any cause of action. The Appeal against OP is not maintainable in law or on facts and should be dismissed with costs. The Complainant has suppressed material facts and has not approached the consumer commissions with clean hands, thus not entitled to any relief. The State Commission is justified in dismissing the complaint on the ground that the complainant is not a consumer under Section 2(d) of the Consumer Protection Act, 1986, and hence cannot invoke the provisions of the Act. The Complainant purchased the equipment for manufacturing bakery items, engaging in a commercial activity to supply bakery items to a chain of outlets for profit, not for self-employment to earn a livelihood.

5. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the FA, based on their FA/Reply, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

i. The learned counsel for the complainant asserted that the complainant's primary source of livelihood is his bakery business, and he approached the OP to purchase bakery equipment essential for the operation of his shop. In **Paramount Digital Colour Lab and others vs. AGFA India Private Ltd. & Ors.**, (2018) 4 SCC 467, the Hon'ble Supreme Court observed that self-employment inherently involves earning for oneself. The Court emphasized that without earning, self-employment cannot exist. Thus, when an individual purchases and utilizes machinery exclusively to earn a livelihood through self-employment, they fall within the definition of a 'consumer.' Additionally, in **Shrikant G. Mantri vs Punjab National Bank**, (2022) 5 SCC 42, the Hon'ble Supreme Court reiterated that if a person acquires and uses machinery solely for the

purpose of earning their livelihood through self-employment, they qualify as a 'consumer.' The Court emphasized that there is no fixed formula for determining this status, and each case must be evaluated based on the evidence presented. Regarding the non-delivery of equipment, the counsel argued that despite numerous requests made by the complainant, the OP failed to fulfill the delivery of the equipment. Consequently, the complainant was compelled to serve a Legal Notice demanding the delivery of the goods or the refund/return of the amount of Rs. 27,81,270/-.

- ii. The complainant obtained a loan from a bank to facilitate the purchase of machinery from the OP. However, due to the OP's failure to deliver the equipment and the ongoing obligation of the loan, the complainant was unable to enhance his bakery business, which serves as his sole means of livelihood. This situation has resulted in significant losses for the complainant, not only due to the inability to produce bakery items without the machinery but also due to the continued payment of interest on the loan amount. Furthermore, the counsel asserted that the OP initiated contact with the complainant and proposed depositing Rs. 15,50,000/- into the complainant's Corporation Bank account, with the expectation that the complainant would return the same amount in cash. The OP claimed that this maneuver would alleviate the burden of increased income and sales tax resulting from his projected turnover surpassing Rs. 1 crore. Trusting the OP's assurance, the complainant, who has completed education only till the 9th Standard, complied and handed over the specified amount in cash. Additionally, the counsel emphasized that the complainant, driven by goodwill and without any ulterior motives, previously extended trust to M/s Heat Win, Bakery Ovens, and Machineries, believing that engaging with them would enable the enhancement of his bakery business, which is his sole source of livelihood.
- iii. The counsel for the Respondent/OP argued that the OP acknowledges that the complainant approached them to purchase equipment for manufacturing bakery items. However, these are heavy machinery and ancillary equipment capable of manufacturing goods in large quantities, such as a Rotary Diesel Oven, Spiral Machine, Cake Mixing Machine, Hot Case, Bread Slicer, and Panipuri Counter. The total cost of these machines is about Rs. 24,75,000/-. The complainant intended to use these machines to produce bakery items on a large scale and supply them to various sales outlets in Pune. Therefore, the complainant does not qualify as a 'consumer' under Section 2(d) of the Consumer Protection Act, 1986, as the purchase was for commercial purposes and not for earning a livelihood through self-employment. On 22.12.2011, equipment worth Rs. 9,96,000/- and Rs. 1,07,750/- were delivered to the complainant under invoice numbers 756 and 786, respectively. These deliveries were made through the complainant's transporter, witnessed by the OP's employees and crane operators. Later, the complainant requested a refund of Rs. 15,50,000/- for the remaining equipment he did not need. The OP refunded Rs. 8,00,000/- on 28.12.2011 and Rs. 7,50,000/- on 29.12.2011 via RTGS to the complainant's bank account. The claim that the OP asked the complainant to withdraw this amount in cash and return it to them is unfounded and lacks evidence. The letter from Indian Overseas Bank dated 10.02.2012 appears

fabricated by the complainant. The complainant received equipment worth Rs. 11,96,880/- and a refund of Rs. 15,50,000/-, negating any deficiency in service by the OP.

- iv. The State Commission correctly dismissed the complaint, holding that the complainant is not a 'consumer' as defined under the Consumer Protection Act, 1986. The complainant's actions are commercially motivated, aiming for profit rather than self-employment for livelihood. This position is supported by the Supreme Court's judgment in **M/s Laxmi Engineering Works vs. M/s P. S. G. Industrial Institute**, AIR 1995 SC 1428, and the National Commission's judgment in **Needle Industries (India) Private Limited vs. State Bank of India**, 2022 SCC Online NCDRC 424. The counsel further argued that the complainant purchased high-capacity bakery manufacturing machinery, which indicates a commercial venture aimed at substantial profit, not mere self-employment. The equipment includes a Rotary Diesel Oven capable of producing 320 loaves of bread per batch, highlighting the scale of production intended. The complainant supplies bakery items under the brand "Iyengar Bangalore Bakery" to various shops and outlets, including his own. The nature and capacity of the equipment prove that the complainant's operations are commercial, not for self-employment. The complainant has suppressed material facts and approached the consumer forums without clean hands, intending to unjustly enrich himself at the OP's expense. The complaint and appeal lack merit, both legally and factually, and should be dismissed with costs.
- v. The complainant's contention that the creditor bank instructed the machinery supplier to expedite delivery is legally questionable. According to prevailing legal principles, a bank's claim is strictly against the loan recipient and does not extend to directing third-party suppliers. Thus, the letter from the bank appears to be a collusive document, potentially written in the interest of the complainant or by the complainant himself. Furthermore, the OP's response dated 23.02.2012 to the bank's letter has remained unaddressed for over a year, indicating possible fraudulent activity by the complainant, who may have manipulated the bank to obtain funds under false pretenses. The counsel further argued that the OP has provided evidence of the complainant's similar dishonest activities with other suppliers. The complainant has previously engaged in fraudulent practices with another bakery equipment supplier, M/s Heat Win, owned by Mr. Vasudevan Nair. Legal proceedings initiated by the complainant against M/s Heat Win, which were dismissed by the court (OS No. 75/2015), demonstrate a pattern of unethical behavior. These instances reveal the complainant's strategy to harass suppliers and make easy money through fraudulent means.
- vi. The State Commission correctly found that the value and size of the machinery ordered by the complainant indicate a commercial purpose. This Hon'ble Commission, in **Punjab Agricultural University Ludhiana Vs UTI of India & Anr**, 2009 SCC

Online NCDRC 57, after considering the term 'commercial purpose' in Section 2(1)(d) (i), concluded that 'commercial purpose' covers undertakings with the objective of making a profit. The high-cost machinery ordered by the complainant was intended for expanding a commercial venture by supplying bakery items to multiple bakeries and shops for profit. The nature and capacity of the equipment, capable of producing hundreds of loaves of bread a day and other baked items in bulk, affirm its commercial use. The OP, known for ethical business practices, has suffered reputational and financial losses due to the complainant's actions. The complainant's fraudulent behavior includes colluding with bank officials to obtain funds and misusing the legal process to harass suppliers.

6. We have carefully gone through the orders of the State Commission, other relevant records, and the rival contentions of the parties. The primary issue to be decided in this case is whether the goods purchased by the complainant were for commercial purposes or for his livelihood. The complainant placed an order worth Rs. 27,81,270/- for equipment intended for manufacturing bakery items.

Reliance is placed on **Shrikant G. Mantri Vs. Punjab National Bank**, (2022) 5 SCC 42 held

“42. ...this Court observed that the National Commission was taking a consistent view that where a person purchases goods “with a view to using such goods for carrying on any activity on a large scale for the purpose of earning profit” he will not be a “consumer” within the meaning of Section 2(d)(i) of the Act. This Court observed that in order to obviate any confusion that the expression “large scale” was not a very precise expression, Parliament stepped in and added the Explanation to Section 2(d)(i) by Ordinance/Amendment Act, 1993. It has been held that the Explanation excludes certain purposes from the purview of the expression “commercial purpose”....

43. ...This Court held that the question as to whether the transaction is for the “commercial purpose” or for “earning his livelihood by means of self-employment” is a question of fact that has to be decided in the facts of each case. It has been held that it is not the value of the goods that matters but the purpose to which the goods so bought, are put to. It has been held that several words used in the Explanation viz. “uses them by himself”, “exclusively for the purpose of earning his livelihood” and “by means of self-employment” make the intention of Parliament abundantly clear, that the goods bought must be used by the buyer himself, for earning his livelihood.”

In Paramount Digital Colour Lab v. AGFA India (P) Ltd., (2018) 14 SCC 81, the Hon'ble Supreme Court held that:-

12. ...The Explanation supplied to Section 2(1)(d) clarifies that "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of "self-employment". If both these provisions are read together, it leads to the conclusion that if a person purchased the goods for consideration not for any commercial purpose, but exclusively for the purposes of earning his livelihood by means of "self-employment", such purchaser will come within the definition of "consumer". If a person purchases the goods for a "commercial purpose" and not for the purposes of earning his livelihood by means of "self-employment", such purchaser will not come within the definition of "consumer". It is therefore clear, that despite "commercial activity", whether a person would fall within the definition of "consumer" or not would be a question of fact in every case. Such question of fact ought to be decided in the facts and circumstances of each case.

13. "Self-employment" necessarily includes earning for self....

It is clear from the above judgements that using goods for carrying on any activity for the purpose of earning livelihood would fall under the definition of consumer. Scale of such activity may differ from cases to case. Hence, we do not concur with the decision of State Commission that the complaint is not maintainable.

7. In this case, the complainant alleged that the OP initiated contact and proposed depositing a sum of Rs. 15,50,000/- into the complainant's Corporation Bank account, with the expectation of receiving the same amount in cash. According to the complainant, they purportedly returned the amount in cash. During the hearing on 29.02.2024 counsel for the complainant admits that he has received refund of Rs. 15.50 lakh from the OP which was deposited from the account of OP on two dates i.e. 27.12.2022 (Rs. 8 Lakh) and 29.12.2011 (Rs. 7.50 Lakh). However, he adds that after receiving this amount in their bank account they repaid the same Rs. 15.50 Lakh to the OP in cash to enable the OP to take care of some of their internal issues related to Income Tax. However, the complainant has not placed on record any concrete evidence in support of such pleadings, even their bank account statement has not been placed on record which will show whether, immediately after receipt of this amount, they have withdrawn this amount in cash although it itself may not be evidence that the said amount withdrawn in cash was actually paid back to the OP. However, there is a lack of evidence or documentation to substantiate this claim. On the contrary, the OP has provided a bank statement clearly demonstrating a transaction wherein the specified

amount was withdrawn in the complainant's name and transferred to the account of complainant. Hence, the complainant has failed to prove that OP has not refunded the amount to him; rather OP has proved that said amount of Rs. 15.50 lakh has been duly refunded. Therefore, the FA is dismissed.

8. The pending IAs in the case, if any, also stand disposed off.

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DR. INDER JIT SINGH
PRESIDING MEMBER