

Lourdes Sty.Snehanjali Girls ... vs M/S H & R Jhonson(I) Ltd.& Ors on 2 August, 2016

Equivalent citations: AIR 2016 SUPREME COURT 3572, 2016 (5) ABR 298, 2016 (5) ADR 352, AIR 2016 SC (CIVIL) 2480, 2016 (8) SCC 286, (2016) 3 UC 1737, (2016) 5 ANDHLD 107, (2016) 3 RECCIVR 991, (2017) 1 CIVLJ 774, (2016) 2 WLC(SC)CVL 542, (2016) 4 JCR 284 (SC), (2016) 165 ALLINDCAS 244 (SC), (2016) 10 ADJ 28 (SC), (2016) 3 CURCC 284, (2016) 7 SCALE 546, (2016) 2 CLR 505 (SC), (2016) 118 ALL LR 222, (2016) 5 BOM CR 30

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Bench: R. Banumathi, V. Gopala Gowda, T.S. Thakur

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 7223 OF 2016
(ARISING OUT OF SLP(C) NO. 36918 OF 2013)

LOURDES SOCIETY SNEHANJALI GIRLS
HOSTEL AND ANR.

.....APPELLANTS

Vs.

M/S H & R JOHNSON (INDIA) LTD. & ORS.RESPONDENTS

J U D G M E N T

V.GOPALA GOWDA, J.

Leave granted.

This civil appeal by special leave is directed against the impugned judgment and order dated 23.09.2013 passed by the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 4047 of 2006 whereby it has allowed the revision petition filed by respondent nos. 1-4 and set aside the order dated 12.10.2006 passed by the Gujarat State Consumer Disputes Redressal Commission, Ahemdabad in Appeal No. 741 of 2006.

The brief facts of the case in nutshell are as under:-

The appellant no.1-Lourdes Society Snehanjali Girls Hostel is a society registered under the Societies Registration Act vide society registration no.Guj/525/Surat and also a trust registered, vide its Trust registration no. F/430/Surat. The appellant-Society is a charitable institution running a girls hostel at Surat for the benefit of Adiwasi children. On 02.02.2000, the appellant-Society purchased vitrified glazed floor tiles from respondent no.5 (since deleted from the array of parties vide Court's order dated 01.04.2015) who was a local agent of respondent no.1-Company for a sum of Rs.4,69,579/-. The said tiles, after its fixation in the premises of the hostel, gradually developed black and white spots. The appellant no.1 wrote several letters to respondent no.4 i.e., Sales Executive of respondent no.1-company, informing about the inferior and defective quality of the tiles. Thereafter, the respondent no.5-local agent visited the spot but failed to solve the issue.

An architect J.M. Vimawala was appointed by the appellant-Society to assess the damage caused due to defective tiles. The architect assessed the loss to the tune of Rs.4,27,712.37 which included price of the tiles, labour charges, octroi and transportation charges. Thereafter, the appellant- Society served a legal notice dated 12.08.2002 to the respondents making a demand of the said amount but no response was shown by the respondents. The said inaction on the part of the respondents made the appellant-Society to file a Consumer Complaint No. 743 of 2002 against the respondents before the District Consumer Disputes Redressal Forum at Surat (for short "the District Forum") for claim of the said amount.

The District Forum appointed a Court Commissioner to examine and find out the manufacturing defects in the tiles as claimed by the appellant-Society. After examination, the Court Commissioner submitted a report dated 21.09.2004 stating therein that the tiles were having manufacturing defect.

The District Forum vide its order dated 31.12.2005 held that the tiles supplied by the respondents had manufacturing defect. The respondents committed an unfair trade practice by supplying such defective tiles. By holding the respondents jointly and severally liable, the District Forum directed the respondents to pay to the appellants a sum of Rs.2,00,000/- along with interest @9% p.a. from the date of complaint i.e., 31.10.2002 till its recovery. The respondent no.1 was directed to pay the above amount to the appellant within a period of 30 days from the date of order of the District Forum.

Being Aggrieved, the respondents filed First Appeal No. 741 of 2006 before Gujarat State Consumer Dispute Redressal Commission, Ahmedabad (for short "the State Commission") challenging the said order of District Forum urging various grounds.

The State Commission dismissed the said First Appeal of the respondents by its order dated 12.10.2006 and confirmed the order passed by the District Forum.

Having become unsuccessful before the State Commission, the respondents filed Revision Petition No. 4047 of 2006 before the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as “the National Commission”) questioning the validity and correctness of the order passed by the District Forum and the State Commission. On 12.03.2012, the appellant-Society also made an application being I.A. No.1847 of 2013 in Revision Petition No. 4047 of 2006 to the National Commission for invoking the powers under Sections 14(d) and 14(hb) of the Consumer Protection Act, 1986 and for awarding sufficient amount of compensation in addition to amount already awarded by the District Forum. The National Commission vide its order dated 23.09.2013 reversed the findings of the District Forum and the State Commission holding that the appellant-Society has failed to establish that it is a consumer within the meaning of Section 2(d) of the Consumer Protection Act, 1986. In support of their case, the learned counsel appearing on behalf of both the parties made the following submissions.

Mr. Ashok Panigrahi, the learned counsel on behalf of the appellant-Society contended that the National Commission has erred in coming to the conclusion that the appellant-Society is a commercial establishment and thus, not covered by the definition of the term ‘consumer’ under Section 2(d) of the Consumer Protection Act, 1986. It was further submitted by him that it is unjustified on the part of the National Commission to hold that the Memorandum of Association and byelaws of the appellant-society which show that it is a charitable institution and not any commercial establishment were not filed before the District Forum but filed at the stage of Revision before the National Commission. It was further submitted by the learned counsel that the District Forum and the State Commission have gone through the registration certificate and Memorandum of Association of the appellant-Society.

He further submitted that the National Commission has erred in holding that the case M/s Kusumam Hotels Pvt. Ltd. v. M/s Neycer India Ltd.[1] is applicable to the facts and circumstances of the present case. It was further contended by him that both the District Forum as well as the State Commission have held that the appellant-Society cannot be regarded as a commercial establishment. It is completely unjustified on the part of the National Commission to hold that the appellant-Society being a commercial establishment is not a consumer within the meaning of the term ‘consumer’ under Section 2(d) of the Consumer Protection Act, 1986 in complete ignorance of the Memorandum of Association and the byelaws of the appellant- Society.

On the contrary, Mr. Sudhir K. Makkar, the learned counsel on behalf of the respondents sought to justify the impugned judgment and order of the National Commission contending that the same is based on sound reasoning without error and therefore, the same need not be interfered with by this Court.

It is further contended by him that the District Forum and the State Commission have erred in relying on the report dated 21.09.2004 given by the Court Commissioner as his qualification was not stated in the report. The report was based on visual inspection. Further, both the District Forum as well as the State Commission have erred in not considering the test certificate produced by respondent no.1 as the same was based on modern tile testing technology in its laboratory. In the absence of expert evidence, it was wrong on the part of the District Forum as well as the State

Commission to hold that tiles had manufacturing defect. After hearing the learned counsel for both the parties we come to the following conclusion:

The National Commission has exceeded its jurisdiction in exercising its revisional power under Section 21(b) of the Consumer Protection Act, 1986 by setting aside the concurrent finding of fact recorded by the State Commission in First Appeal No. 741 of 2006 vide its judgment dated 12.10.2006 wherein the finding of fact recorded by the District Forum was affirmed.

The facts of the instant case clearly reveal that the National Commission has erred in observing that the appellant-Society is a commercial establishment by completely ignoring the Memorandum of Association and byelaws of the appellant-Society. Both the District Forum as well as the State Commission have rightly held that the appellant-Society is a charitable institution and not a commercial entity. The relevant portion of the order passed by the District Forum reads thus:

“6.It is not in dispute that complainants are running girls hostel in the name of Complainant no.1. Commercial purpose is also explained under the provisions of the Act. So far as activities of the complainants are concerned, they are running girls hostel and receive fees from the students. The complainants are not carrying out commercial activities. Purchase of goods namely tiles are for the purpose of their hostel and it cannot be said that tiles is subject matter of their business. Whenever any person purchases goods for carrying out business for commercial or for livelihood then only question regarding purchase of goods or availing any activities from trader or professional arises. The complainants are not carrying on business of purchase from opponents. Otherwise also hostel premises can be constructed and there is no direct relation between commercial activity. Therefore, the defence of opponents that complainants are carrying on business activities and thereby complainants are not consumer is not acceptable. Hence, we hold that complainants are consumer of opponents and defence of opponents is rejected.” (emphasis supplied) The National Commission has erred by applying the decision in M/s Kusumam Hotels Pvt. Ltd. case (supra) in holding that the appellant-Society is not a consumer in terms of the definition under Section 2(d) of the Consumer Protection Act, 1986 as the purchase of tiles and laying in the same in the rooms of the girl's hostel run by the appellant-Society is clearly not for any commercial purpose. The decision in M/s Kusumam Hotels Pvt. Ltd. case (supra) has no application to the present fact situation for the reason that in the said case complainant was a hotel and the tiles purchased by the hotel were for commercial purpose as the hotel business involves the act of profit making, whereas in the instant case the girl's hostel in question is run by the appellant-Society as one among its various charitable activities for the benefit of adivasi students. The appellant-

Society is supporting adivasi/tribal girls to pursue their education by providing hostel facilities. The expenses for the food and electricity are being paid by the inmates of the hostel. The appellant-Society is maintaining the hostel free of cost and no charges in the form of rent, repairs

and maintenance are collected from the inmates. Thus, the appellant- Society cannot be considered as any commercial establishment striving for profit.

Further, the National Commission while passing the impugned order has ignored certain facts which throws light on callous attitude on the part of the respondents viz., when the defect in the tiles were brought to the notice of the respondents by sending various letters, there was no action on their part. Later a local agent on behalf of the respondent no.1-Company visited the premises of the girl's hostel and verified that the said tiles were defective and damaged. However, no proper attention was paid by the respondents towards the issue. Further, to assess the damage caused to the appellant-Society by the use of the said defective tiles, a registered architect and interior designer, J.M. Vimawala was hired by the appellant- Society, who in his report declared the tiles to be defective and assessed the damage to the appellant-Society to the tune of Rs.4,27,712.37. Thereafter, the appellant-Society made a demand of the said amount as damages from the respondents vide legal notice dated 12.08.2002. But the respondents did not pay any heed to the said notice as well. Because of such irresponsible and indifferent attitude on the part of the respondents, the appellant-Society was compelled to file Consumer Complaint No. 743 of 2002 before the District Forum.

The District Forum, after appreciating the pleadings and evidence on record has rightly awarded Rs. 2 lakhs as damages to the appellant-Society towards defective tiles supplied by the respondents along with compensation towards mental harassment and cost of present proceedings with interest @9% p.a. from the date of complaint till its recovery. In concurring with the findings of the District Forum, the State Commission, after proper re- appreciation of the facts and evidence on record has rightly exercised its jurisdiction by dismissing the appeal of the respondents. The National Commission should not have interfered with the concurrent findings of fact recorded in the judgment impugned before it particularly having regard to the nature of the jurisdiction conferred upon it by Section 21 of the Consumer Protection Act, 1986. Section 21 of the aforesaid Act reads thus:

“21. Jurisdiction of the National Commission.—Subject to the other provisions of this Act, the National Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees one crore; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.” The National

Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons. The National Commission has reversed the order passed by the State Commission by wrongly applying the decision of M/s Kusumam Hotels Pvt. Ltd. case (supra) to the set of facts in the present case. In the said case, the complainant was a hotel, it was considered to be a commercial entity and therefore, it was kept out of the purview of the definition of 'consumer' under Section 2(d) of the Consumer Protection Act, 1986. However, the National Commission has failed to appreciate the fact that in the present case, the appellant-Society is not a commercial establishment rather a registered society helping the adivasi students in their education by providing hostel facilities. The charges, if any, for accommodation in the hostel are for maintaining the hostel and not for making profit. Thus, the appellant-Society is consumer within the meaning of the term 'consumer' under Section 2(d) of the Consumer Protection Act, 1986. The National Commission has erroneously accepted the contention urged on behalf of the respondents in the revisional proceedings that supply of tiles to the appellant-Society by respondent no. 1 through its local agent is for commercial purpose. The said finding is based on the decision in M/s Kusumam Hotels Pvt. Ltd. case (supra), which case absolutely has no application to the fact situation.

Therefore, the concurrent finding of fact recorded by the District and the State Commission has been erroneously interfered with by the National Commission by passing the impugned order, which is liable to be set aside. For the aforesaid reasons, the appeal of the appellant-Society must succeed.

For the reasons stated supra this appeal is allowed, the impugned order of the National Commission is hereby set aside and we restore the order of the District Forum which is affirmed by the State Commission. The matter has been under litigation for the last fourteen years, we direct the respondents to pay or deposit the amount so awarded by the District Forum along with interest @9% p.a. within six weeks from the date of receipt of the copy of this judgment. The costs of Rs.50,000/- of these proceedings are also awarded in favour of the appellant-Society.

... .. C J I [T . S . T H A K U R]
 J . [V . G O P A L A G O W D A]
J. [R. BANUMATHI] New Delhi, 2nd August, 2016

[1] III (1993) CPJ 333 (NC)