

(2009) 11 DEL CK 0381

In the Delhi High Court

Case No : Writ Petition (C) 7399 of 2008

Agarwal Grain Syndicates and Others

APPELLANT

Vs

National Consumer Disputes Redressal Commission and
Another

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Consumer Protection Act, 1986 — Section 13(3B), 17, 19, 2, 21

Citation : AIR 2010 Delhi 40 : (2009) 7 ILR Delhi 752 : (2010) 7 RCR(Civil) 831

Hon'ble Judges : Veena Birbal, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : Bipin K. Dwivedi and Abrar Ali, for the Appellant; Manisha T. Karia, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—The petitioner is aggrieved by the order dated 15.05.2008 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as the "National Commission"). By virtue of the impugned order, the petitioner has been directed to deposit a further sum of Rs 1 lakh with the District Forum within a period of four weeks from the date of the order so that the interim relief granted to the petitioner by the National Commission on 25.10.2007 would continue to operate. The learned Counsel for the petitioner submitted that once the National Commission, by its order dated 25.10.2007, had admitted the revision petition of the petitioner which was directed against the order dated 12.07.2007 passed by the State Commission of Maharashtra, and the National Commission had directed stay of execution of the said order on condition that the petitioner deposits a sum of Rs 1 lakh with the Registrar of the said Commission, the National Commission ought not to have required the petitioner to deposit a further sum of Rs 1 lakh in order to continue the stay order.

2. The learned Counsel for the petitioner also raised the plea that insofar as the

revision petition is concerned, there is no requirement for making any deposit under the Consumer Protection Act, 1986. He submitted that while, u/s 19 of the said Act, no appeal can be entertained by the National Commission unless the appellant has deposited fifty per cent of the amount ordered by the State Commission or rupees thirty-five thousand, whichever is less, insofar as a revision petition u/s 21(b) of the said Act is concerned, there is no such stipulation whereby the National Commission is precluded from hearing the revision petition unless the petitioner makes a deposit similar to that provided under the second proviso of Section 19 of the said Act. Thus, according to the learned Counsel for the petitioner, the National Commission ought not to have even directed the deposit of the first sum of Rs 1 lakh by virtue of the order dated 25.10.2007 and, in any event, the National Commission should certainly not have required the petitioner to deposit a further sum of Rs 1 lakh by virtue of the impugned order dated 15.05.2008.

3. The learned Counsel appearing on behalf of the respondent No. 2 submitted that the National Commission had required the petitioner to make the said deposit in view of the facts and circumstances of the case. According to her, the respondent No. 2 is a consumer society and its members are the direct consumers of food grains which are to be supplied by the petitioner. The petitioner, in turn, purchased the food grains from Governmental agencies. She submitted that the respondent No. 2 had made payments to the petitioner for purchase of grain which was to be utilized by the members of the respondent No. 2 society but the petitioner had not supplied the same to the said society and had also not made any payment to the Governmental agencies in respect of the said food grains. These facts are, of course, denied by the learned Counsel for the petitioner who also submitted that the revision petition has been filed by the petitioner precisely for the reason that according to the petitioner, it was not a consumer dispute falling within the purview of the Act inasmuch as according to the learned Counsel for the petitioner, the respondent No. 2 did not fall within the definition of "consumer" as given in Section 2(d) of the said Act. According to him, the dispute between the petitioner and the respondent No. 2 was also not a "consumer dispute" as contemplated u/s 2(e) of the said Act. He submitted that these are matters which are pending before the National Commission and would be decided in the course of the revision petition.

4. We have examined the provisions of the said Act and are in agreement with the learned Counsel for the petitioner that unlike the provisions of appeal u/s 19 of the said Act, which requires at least a sum of rupees thirty-five thousand to be deposited by the appellant, there is no such requirement in the case of a revision petition u/s 21(b) of the said Act. Sections 19 and 21 are set out herein below:

19. Appeals. - Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by Sub-clause (i) of Clause (a) of Section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may

be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less.

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.

5. But, this does not help the petitioner in any way. This is so because the requirement under the second proviso of Section 19 vis-a-vis appeals is limited only to the question of the National Commission entertaining an appeal. It does not extend to the powers of the National Commission to pass interim orders including stay of execution of the orders passed by the State Commission. It is nobody's case that the revision petition filed by the petitioner before the National Commission cannot be entertained for want of any deposit because there is no such provision provided u/s 21(b) of the said Act. The question that arises for consideration is whether the National Commission has powers to pass an order requiring the deposit of an amount as a condition for grant of stay. 6. Section 13(3B) which pertains to the procedure that has to be followed by the District Forum specifically stipulates as under:

Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

7. Section 22(1) of the said Act prescribes that the provisions of, inter alia, Section 13 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National

Commission. In other words, the National Commission may also pass interim orders which, according to it, are just and proper in the facts and circumstances of the case. Thus, it is within the powers of the National Commission to grant interim orders which includes stay of execution of the orders passed by the State Commission subject to any condition that it may deem just and proper.

8. A question had arisen in *Dr. Ashutosh Bajpai Vs. Union of India (UOI) and Others*, decided by a Division Bench of this Court on 16.05.2008 with regard to the amount of deposit required by the National Commission at the time of admission of the appeal u/s 19 and grant of stay. In that case, the State Commission had awarded an amount of Rs 22 lakhs as compensation along with interest @ 12 % per annum. The aggrieved party preferred an appeal before the National Commission u/s 19 of the said Act. The National Commission admitted the appeal and also stayed the operation of the impugned order subject to deposit of fifty per cent of the amount awarded by the State Commission. On behalf of the petitioners in that writ petition, it was contended that the National Commission's order requiring a deposit of fifty per cent of the awarded amount was contrary to the provisions of Section 19 of the said Act which had placed a maximum limit of rupees thirty-five thousand. After considering the arguments advanced by the counsel for the parties and examining the provisions of the said Act, this Court, in the said decision, brought out a distinction between the requirement of pre-deposit for entertaining an appeal and the deposit for making an interim order granting stay. The Division Bench held as under:

If the National Commission after hearing the appeal or the parties in its discretion wants to stay the impugned award subject to deposit of some amount out of the awarded amount, there is no bar to the making of an order to that effect. Entertaining of an appeal and the stay of proceedings in pursuance of order impugned in the appeal are two different things. The proviso cannot be read to mean that pre-deposit under second proviso to Section 19 ipso facto operates as stay of operation of order of State Commission without any further order of National Commission to that effect. If that were the intention, the Parliament would have expressly stated so.

9. From the above extract, it is abundantly clear that the question of whether the National Commission can require a party to a proceeding before it to make a deposit as a condition for granting stay of the proceedings or execution of an order, is no longer the subject matter of debate, at least, insofar as this Court is concerned. The said decision clearly indicates that it is well within the powers of the National Commission to grant a stay subject to the making of a deposit by the party claiming the benefit of a stay order.

10. In the present case, although we are in agreement with the learned Counsel for the petitioner that there is no requirement of a deposit to be made by the petitioner before his revision petition is to be entertained by the National Commission, there is also no denying the settled position in law that the National Commission has powers and discretion to grant an interim order subject to

certain conditions being fulfilled which include the requirement of making a deposit. To that extent, the submissions of the learned Counsel for the petitioner that the National Commission could not have required the petitioner to make a deposit is without any merit.

11. This leaves us to consider the second aspect of the matter and, that is, whether the National Commission ought to have directed a further deposit of Rs 1 lakh when it had earlier already directed the petitioner to deposit a sum of Rs 1 lakh, which the petitioner did and which was permitted to be withdrawn by the respondent No. 2. We feel that this is a matter of discretion of the National Commission. Of course, the discretion has to be exercised judiciously. The order must also be just and fair in the facts and circumstances of the case. This Court can certainly interfere if the order passed or conditions placed are unreasonable, unjust, unfair or disproportionate. But in the present case the impugned order is not one which can be regarded as being unreasonable, unjust, unfair or disproportionate or one which shocks the conscience of the court. Furthermore, the order passed by the National Commission is only for a further deposit of Rs 1 lakh with the District Forum and it is not to be handed over to the respondent No. 2 society. The learned Counsel for the respondent No. 2 also submitted that they shall not file any application for withdrawal of the said amount from the District Forum till the disposal of the revision petition.

12. Before we conclude, we would like to draw the attention of the National Commission to our order dated 25.02.2009 whereby we had stayed the requirement of the petitioner to deposit the further sum of Rs 1 lakh in terms of the impugned order dated 15.05.2008 but we had made it clear that the final hearing of the case before the National Commission is not stayed. Unfortunately, no progress has been made in the hearing of the petitioner's revision petition before the National Commission despite our making it clear that the proceedings before the said Commission were not stayed. In the light of the foregoing, we are hopeful and indeed expect the National Commission to dispose of the revision petition as expeditiously as possible.

13. In view of the foregoing, we are not inclined to interfere with the order passed by the National Commission. We make it clear that we have not expressed any opinion on the merits of the matter. The petitioner shall pay costs of Rs 5,000/- to the respondent No. 2.

The writ petition stands disposed of.