

(2016) 08 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Case No : 4159 of 2011

AJMER VIDYUT VITRAN NIGAM LTD. & ORS.

APPELLANT

Vs

HAZI SAYYAD MUZZAFAR ALI

RESPONDENT

Date of Decision : 16-08-2016

Acts Referred:

Citation : 2016 3 CPR 408

Hon'ble Judges : Rekha Gupta, ?Anup K Thakur

Advocate : P Acharya, ?Neeraj Gupta, ?Sanjay K Dubey, ?Rakesh Tiwari

Judgement

1. The present revision petition has been filed against the judgment dated 09.06.2011 of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur ("the State Commission") in appeal no. 2460 of 2011.

2. The facts of the case as per the respondent/ complainant are that the respondent had obtained a electricity connection in the name of his father vide Electricity Connection no. 2308/0187/D/L for which he had paid the billed amounts up to December 2009. In spite of that the petitioner/ opposite parties sent a bill of Rs.51,466.20 in December 2009 on the ground that his meter was found faulty whereas his meter was working properly. Due to non-deposit of the amount he was threatened with disconnection of the electricity. Thereafter the respondent made a complaint to the petitioner but when no heed was paid to his representation, on 05.02.2010 he requested for squashing of the bill of December, 2009 and also requested the petitioner not to disconnect the electricity, but no reply to the notice given. The respondent has prayed for quashing of the bill of 14.12.2009 of the petitioner. A sum of Rs.50,000/- towards mental harassment and Rs.5,000/- towards costs besides restraining the petitioner from disconnecting his electricity.

3. In reply to the respondent's complaint, the electricity board stated that due to a technical fault the electric meter of the complainant was running slow between 11/2006 to 03/2008 for a period of 18 months due to which, correct readings of usage and consumption was not being given and in April 2008 the electric meter

of the respondent was replaced and the respondent has sent a demand of the amount for the aforesaid period on average basis. The petitioner has not received any notice from the respondent. If the respondent had any objection with regard to the bill amount then they should have placed the matter before the Settlement Committee, instead, the respondent filed the complaint straight away before the District Consumer Disputes Redressal Commission, Ajmer ("the District Forum") in the end it has been prayed to dismiss the complaint with costs.

4. District Consumer Disputes Redressal Commission, Ajmer ("the District Forum") vide its order dated 30.11.2010 had accepted the complaint and gave the following order: "Consequently, the complaint of the complainant is accepted and the opposite parties are directed not to recover the amount of Rs.51,466.20 mentioned in the bill dated 14.12.2009 and not to disconnect the electricity supply for non-payment of the aforesaid bill and a sum of Rs.5000/- be given by the opposite parties to the complainant and a sum of Rs.1500/- towards cost of litigation within 2 months of the order and / or the ordered amount may be sent through demand draft at the address of the applicant by registered post. If the opposite parties find any amount due from the applicant then the opposite parties are at liberty to recover such amount by complying the legal provisions"

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5. Aggrieved by the order of the District Forum, the petitioner/ opposite party filed an appeal before the State Commission. The State Commission dismissed the appeal and observed as under: "It is not the allegation of the appellants that the respondent has tampered the meter or deliberately made the meter defective. Since, it is duty of the corporation to install correct meter at the premises of the consumers therefore, they have to comply with the relevant rules as prescribed. In view of the facts, no error is found in the order of the District Forum. Therefore, the appeal is dismissed"

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6. Hence, the present revision petition.

7. The revision petition has been filed with a delay of 98 days as per the petitioner and 100 days as per the office report.

8. We have heard the learned counsel for the parties. Counsel for the petitioner has stated that the delay was due to the fact that documents were in Hindi and took time to translate the same in English. We have gone through the application for condonation of delay. Paragraph four of the application for condonation of delay reads as under: "The undersigned sought some clarifications from the petitioners and also sought some documents which were not legible, thereafter, the undersigned prepared a draft which was sent for approval and vetting to the petitioners. It is further stated that all the documents and orders of the District Forum are in Hindi. It took time to get it translated in English. In these

circumstances, a delay of 98 days occurred in filing the same which is totally unintentional and bona fide"

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9. We are of the view that the petitioner has failed to explain the reasons for the day to day delay of 100 days. This view is further supported by the following judgment: In *Anshul Aggarwal v. New Okhla Industrial Development Authority*, IV (2011) CPJ 63 (SC), it has been held that "It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the Consumer Foras". In *R.B. Ramlingam v. R.B. Bhavaneshwari*, I (2009) CLT 188 (SC)= I (2009) SLT 701=2009 (2) Scale 108, it has been observed that "We hold that in each and every case the Court has to examine whether delay in filing the Special Appeal Leave Petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition". In *Ram Lal and Others v. Rewa Coalfields Ltd.*, AIR 1962 Supreme Court 361, it has been observed that "It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by Section 5. If "sufficient cause" is not proved nothing further has to be done; the application for condonation has to be dismissed on that ground alone. If "sufficient cause" is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bonafides may fall for consideration; but the scope of the inquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant."

In *Sow Kamalabai, W/o Narasaiyya Shrimal and Narsaiyya, S/o Sayanna Shrimal Vs. Ganpat Vithalroa Gavare*, 2007 (1) Mh. LJ 807, it was held that "the expression "sufficient cause" cannot be erased from Section 5 of the Limitation Act by adopting excessive liberal approach which would defeat the very purpose of Section 5 of Limitation Act. There must be some cause which can be termed as a sufficient one for the purpose of delay condonation. I do not find any such "sufficient cause" stated in the application and no such interference in the impugned order is called for". In *Balwant Singh Vs. Jagdish Singh & Ors.*, (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010 it was held: "The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court

without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005]".

10. Hon"ble Supreme Court in Post Master General and others vs. Living Media India Ltd. and another (2012) 3 Supreme Court Cases 563 has held ;

" After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under ;

" It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. Public interest undoubtedly is a paramount consideration in exercising the courts" discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation /resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land

but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest." The Court further observed;

" It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us.

Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a

liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government.

In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few.

Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay.

In view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs ".

11. Accordingly, we find that there is no "sufficient cause" to condone the delay of 100 days in filing the present revision petition. The application for condonation of delay is without any merit as well as having no legal basis and is not maintainable. Consequently, the present revision petition being time barred by limitation is dismissed with no order as to cost.