

(2003) 12 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

ANANDA GHOSH-/

APPELLANT

Vs

DEBSISHU NURSING HOME PVT. LTD.-/

RESPONDENT

Date of Decision : 03-12-2003

Acts Referred:

Citation : 2004 1 CPJ 386

Hon'ble Judges : M.K.Basu , S.Majumder , D.Karformas J.

Judgement

1. THE complainant is present through his learned Advocate. THE O.P. 1 is present through the learned Advocate, Mr. Seal. O.Ps. 5 and 6 are not present. Under such circumstances, when the complainant and the O.P. 1 are present and ready to proceed with the case, let the case be taken up for hearing in the absence of O.P. Nos. 4, 5 and 6. It may be mentioned here that as regards the O.Ps. 2 and 3, the complainant has submitted that since the O.P. 1's learned Counsel has stated (vide the order of the Commission dated 27.5.2002) that as there is no person in the name of O.P. 2 or O.P. 3, he is not willing to proceed against these two O.Ps. and their names may be expunged from the cause list and to this effect he may be allowed to file an amendment petition of the cause list.

2. LATER, the learned Advocate for the O.Ps. 5 and 6 are present. But the O.P. 4 is absent on repeated calls. Heard the arguments of all the learned Advocates with regard to the petition for condonation of delay. The complaint appears to have been filed on 15.9.1999 and the cause of action in respect of the O.P. 1 appears to have arisen on 8.10.1996 while the cause of action in respect of the O.Ps. 5 and 6 appears to have arisen on 2.1.1997 as per the averments in the complaint itself. So far as the O.P. 1 is concerned, the complaint has been filed after two years 11 months approximately and so far as the other O.Ps. are concerned, the complaint has been filed about nine months after expiry of two years from the date on which the cause of action arose. When the hearing commences, the learned Advocates for O.P. Nos. 1, 5 and 6 draws our attention to the fact that they have not been served with any copy of the condonation

petition which was filed about 4 years back. At this stage, the complainant is directed to give a copy of the said petition to each of two learned Advocates for the O.Ps. at once. After perusing this petition both the learned Advocates strongly opposed the prayer for condonation on the ground that in this petition there has been no whisper of explanation of the delay, far less, satisfactory explanation. Secondly, it is contended by them that under the provisions of Section 24A of the C.P. Act which are mandatory in nature there has been a requirement that the Commission or the Forum as the case may be, shall not admit a complaint unless it is filed within two years from the date on which the cause of action arose and under sub-section it has been laid down that notwithstanding anything contained in Sub-section (1) a complaint may be entertained after that period, if the complainant satisfies the Commission or the Forum that he had sufficient cause for not filing the complaint within such period provided that no such complaint shall be entertained unless the Commission or the Forum as the case may be records its reasons for condoning such delay. The learned Lawyers contend that this being the language of the provisions regarding limitation the Commission must ensure that sufficient explanation of the delay has been offered by the complainant while filing the complaint at such a belated period and the provisions should not be allowed to be dealt with lightly.

On a careful perusal of the petition for condonation of the delay filed by the complainant we find that there is not a single line by way of explanation on the above mentioned delay in filing the complaint. The complainant has narrated his case in the condonation petition as he has done in his complaint. But he hardly makes any attempt at giving the reason why he filed the complaint on such a belated date. While arguing on behalf of the complainant-petitioner Mr. Haripada Majumder, learned Counsel for the complainant verbally submits that they filed a petition before the Medical Council of the State over this incident against the Doctors and the time was consumed in waiting for its report to come and that is why the delay took place. But we fail to understand how or under which legal provisions the complainant could claim exemption of the time that was taken in filing such a petition before the Medical Council or in waiting for its result. In the first place, such a petition appears to have been filed after about one year eight months from the date on which the cause of action in respect of the O.Ps. 5 and 6 arose and after about two years from the date on which the cause of action in respect of the O.P. 1 arose. There is no explanation anywhere as to why the complainant filed a petition like this before the Medical Council after the passage of the above mentioned time. No acceptable explanation is offered by the complainant in this regard. Secondly, the complainant also cannot give a satisfactory reply to our question as to if he decided to wait for the result of the enquiry of the Medical Council before filing this complaint, why then he filed this complaint during pendency of that matter before the Medical Council. Thus, the stand taken by the complainant in the matter of giving such an explanation does not appear to be consistent. Besides, this plea which the complainant takes verbally before us does not find place in his petition. There is not a single line in

his condonation petition by way of explanation of the delay which he indulged in filing the complaint before this Commission.

3. CERTAINLY, we are not unmindful of the various rules pronounced by the National Commission or the Apex Court of our country giving a mandate that in respect of the question of condonation of delay the Court should take a reasonably liberal view and not a rigid pedantic approach. But that does not mean that the provisions regarding limitation in the various Acts as well as in the Limitation Act itself should be taken as a total misnomer or non-existent. We have already cited the provisions of the C.P. Act regarding the limitation and we have seen that they are mandatory in nature and the Legislature's intention is to take the matter with all seriousness and upon the Commission or the Forum a duty has been cast to assign adequate reasons when it is admitting a complaint or an appeal filed at a belated period. In our present case, as we have repeatedly pointed out above, the condonation petition has been found to be devoid of any explanation at all. The only explanation which has been canvassed before us has been mentioned above and which has been submitted only verbally by the learned Counsel for the complainant and has not been accepted as a genuine ground to explain away the huge delay that has taken place in filing of the complaint. Considering all the above reasons we are constrained to hold the delay of 11 months in case of the O.P. 1 and the delay of about 7 to 8 months in case of the O.Ps. 4, 5 and 6 beyond the permissible period of two years remain totally unexplained in the condonation petition filed by the complainant and in that view of the matter we are unable to condone such an inordinate delay in the absence of any explanation, whatsoever. In the result, therefore, the complaint cannot be admitted being hopelessly time barred and the same be dismissed without being admitted. Complaint dismissed.