

(2012) 07 NCDRC CK 0079

In the National Consumer Disputes Redressal Commission

Bastar Jila Upabhokta Sanrakshan Samiti , Savita
Bhattacharya

APPELLANT

Vs

General Manager District Trade And Industries Centre,
Jagdalpur

RESPONDENT

Date of Decision : 27-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 397 : 2012 3 CPJ 494 : 2012 3 CPR 273

Hon'ble Judges : V.B.Gupta , Anupam Dasgupta J.

Advocate : Savita Bhattacharya , Rajendra Shrivastava

Judgement

1. (i) The first revision Petition (no. 2758 of 2010) is directed against the interim order dated 02.03.2010 of the Chhattisgarh State Consumer DisPutes Redressal Commission, RaiPur (in short, "the State Commission") by which the State Commission, while dealing with the aPPeal filed by Ms. Savita Bhattacharya against the orders dated 25.11.2009 and 07.12.2009 of the District Consumer DisPutes Redressal Forum, JagdalPur (in short, "the District Forum"), directed Rajendra Srivastava, claiming to be the President of the Bastar Jila UPabhokta Sanrakshan Samiti (a nongovernmental organisation rePortedly assisting consumers in the locality in enforcement of their rights) not to aPPeal before the State Commission because the State Commission found him to be a "Professional rePresentative", attracting the restraining Provisions of the Consumer Protection Regulations, 2005 (hereafter, "the Regulations"). (ii) On the other hand, the second Petition is against the State Commission's order dated 13.08.2010 finally dismissing the aPPeal of the Petitioner against the orders dated 25.11.2009 and 07.12.2009.

2. (i) It is seen that Savita Bhattacharya (hereafter, "the comPlainant") had filed a comPlainant before the District Forum against the General Manager, District Trade and Industry Centre (DTIC), JagdalPur alleging deficiency in service on the Part of the latter in the allotment of an industrial Plot to her. (ii) On 25.11.2009, the District Forum dismissed the comPlainant for default because of non-aPPEARance of

the complainant. (iii) The complainant filed an application for restoration of her complaint, which was taken up for consideration by the District Forum on 07.12.2009. On that date, the complainant and her so-called authorised representative (Rajendra Shrivastava) were Present before the District Forum. After hearing them, the District Forum dismissed the application for restoration of the complaint on the ground that it did not have the statutory Powers to do so under the Provisions of the Consumer Protection Act, 1986 (in short, "the Act"). It was this order that was challenged in the appeal by the appellant before the State Commission in which Srivastava appeared before the State Commission.

3. IT is useful to reproduce the order dated 02.03.2010 of the State Commission: "Applicant present in person. Shri Shakil Ahmed, Advocate appeared for respondent and filed his vakalatnama, which is taken on record. One Mr. R. P. Shrivastava also appeared in the case for the applicant and said that he is President of Bastar Jila Upbhokta Sanrakshan Samiti and in that capacity; he wants to appear on behalf of the applicant herein. We have noticed that Mr. R. P. Shrivastava used to appear before us in many cases very frequently. Today also he has appeared in two cases. In view of regulation 16 Sub clauses 6, 7 and 8 of the Consumer Protection Regulations, 2005, we find that we are required to guard ourselves from touts and busybodies in the garb of power of attorney holders and authorised agents in the proceedings before us. Mr. R. P. Shrivastava has shown us a Certificate of Registration of Society, issued by Assistant Registrar of Societies and Firms of Government of Madhya Pradesh. This certificate shows that in the year 1998 one Society was registered in the name of Bastar Jila Upbhokta Sanrakshan Samiti through Mr. Rajendra Shrivastava, Nayapara, Jagdalpur under the Societies Act. We find that this Certificate itself is not sufficient to show that Mr. R. P. Shrivastava is President of a voluntary Consumer Organisation or is Member of such organisation as per section 2(b)(ii) of the Consumer Protection Act, 1986. Apart from this, in the certificate of Registration of Society, there appears nothing to show that the organisation was so recognised by the State Government of C.G., Central Government, National Commission or by this Commission. So we refuse to recognise him as recognised Agent or as President of a recognised voluntary Consumer Organisation. He is directed not to appear before us hence force. At this stage, Mr. R. P. Shrivastava has also filed an authorisation letter on behalf of the appellant herein, but as described hereinabove under Regulation 16 Sub clauses 6, 7 and 8, we are not prepared to permit him to appear any more before us in this case as he has used this as a profession. He is hereby debarred. Counsel for the respondent has filed reply which is taken on record. Copy of this reply be provided to the appellant. Copy of the letter, which was previously sent by the respondent by post be also provided to the appellant".

4. LIKEWISE, the order dated 13.08.2010 of the State Commission that has been challenged in the second revision petition reads as under: "This appeal is directed against order dated 07.12.2009 of District Consumer Disputes Redressal Forum, Jagdalpur in M.J.C. no. 09 of 2009, whereby the application filed by the

appellant before the District Forum under Order 9 Rule 9 CPC has been dismissed on the ground that the provisions of Order 9 Rule 4 or 9 of CPC are not applicable in the proceedings under Consumer Protection Act, 1986. The appellant herein had filed complaint case before the District Forum against the respondent under Section 12 of the Consumer Protection Act, 1986 seeking certain relief. The complaint case was listed for hearing before the District Forum on 25.11.2009. On that date neither complainant nor her Advocate appeared before the District Forum, therefore, the complaint was dismissed for want of prosecution and in default of appearance. Thereafter, the appellant herein filed an application for restoration of that complaint under provisions of Order 9 Rule 9 of CPC. That application has been dismissed by the District Forum. The order of dismissal of that application is subject matter of this appeal. In the appeal memo, it has been stated that the appellant failed to appear before the District Forum, on account of personal illness and her advocate also could not appear before the District Forum on account of ill health of his relative and when the complaint was dismissed, then application for restoration of dismissed complaint was filed, which was dismissed by the District Forum illegally without proper application of its judicial mind. In the appeal memo, this ground has also been taken that the matter was required to be decided on the basis of principle of natural justice and the District Forum has failed to appreciate the fact that the provisions of the Consumer Protection Act, 1986 are not mandatory, but merely directive. We have heard arguments of both parties and perused the record. We find that in section 13 (4) of the Consumer Protection Act, 1986, the provisions of the CPC have been enumerated, which are applicable in the proceedings under the Act. So far as other provisions are concerned, it appears that code of Civil Procedure has been applied to the proceedings before Consumer Fora only to a limited extent. The question has also been determined by the Hon''ble Supreme Court, Hon''ble National Commission and by this Commission in many cases and the settled law on this point is that provisions under Order 9 Rule 4 of 9 of CPC are not applicable in the proceedings of Consumer Fora and District Forum was not enjoying the power of restoration of a complaint, which was dismissed in default and in non-appearance. Thus it appears that the District Forum has not committed any illegality or impropriety nor it has acted in excess of its jurisdiction or failed to exercise proper jurisdiction, while passing the impugned order. In view of this, we find that the order passed by the District Forum was perfectly justified and calls for no interference. The appeal has got no substance and is dismissed. No order as to cost."

5. (i) It is thus seen that both these revision Petitions emanate Primarily from the order dated 07.12.2009 of the District Forum by which the District Forum held that it had no Power under the Act to restore the comPlaint which it had dismissed by an earlier order for non-Prosecution by the comPlainant. (ii) As for the two imPugned orders of the State Commission, it is seen that the order dated 07.03.2010 was an interim order by which the aPPeal had not been disPosed of but a direction was issued barring Rajendra Shrivastava from aPPearing any

more before the State Commission because he had used this as a Profession while that dated 13.08.2010 finally disposed of the appeal of the complainant for the reasons stated therein.

6. WHEN revision petition no. 2758 of 2010 came up for consideration this Commission directed, by its order dated 07.02.2011, as under: "Shri Rajendra Shrivastava is present as President of the Society. He has filed an affidavit stating that he is representing 43 cases since 1998. He shall, therefore, file list of all cases with names of the parties and subject matter of litigation, wherein he has appeared as President of Association or in the capacity of authorised representative. He shall file details of the same in the Registry on or before the next date of hearing".

7. AS a result, some more revision petitions (viz., no. 1100 and 1101 of 2010 and 4457 of 2010 against the orders dated 30.05.2008 and 31.08.2010 of the State Commission) were taken up for consideration together with revision petitions no. 2758 and 4058 of 2010 because the petitioners were represented once again by Shri Rajendra Shrivastava as the so-called President of Bastar Jila Upabhokta Sanrakshan Samiti.

8. THEREAFTER, on 10.04.2012, this Commission passed the following order: "On behalf of the petitioners in revision petitions no. 1100-1101 of 2010, 2758 of 2010 and 4457 of 2010, once again Shri Rajendra Prasad Shrivastava, claiming to be authorised representative of the petitioners has sent a fax message requesting adjournment stating his inability to appear as he did/could not get railway reservation for journey. Likewise in revision petition no. 4058 of 2010, the petitioner has sent a fax message on the same lines. Revision Petitions no. 2758 and 4058 of 2010 We have heard Ms. Sakshi Kakkar, Advocate on behalf of the respondent (General Manager, District Trade and Industries Centre, Jagdalpur, Pandri) in revision petitions no. 2758 of 2010 and 4058 of 2010. She makes statements regarding allotment of separate industrial plots to Shri R. P. Shrivastava (in the name of "Jay Keshari Industries") and Smt. Savita Bhattacharya (petitioner in revision petition no. 4058 of 2010 - in the name of "Rajashree Industries"). She further states that the plot of land allotted to Jay Keshari Industries has already been resumed and auctioned and that civil suits have been filed by Shri Rajendra Prasad Shrivastava and Smt. Savita Bhattacharya against each other in respect of the industrial plot allotted to her. In view of the foregoing, revision petitions no. 2758 of 2010 and 4058 of 2010 are linked and will be heard together. These two revision petitions may be listed for admission hearing on 18.07.2012. In the meanwhile, the original records of the District Forum as well as the State Commission pertaining to these two cases may be summoned by the Registry. Further, a detailed affidavit explaining the factual position regarding allotment of industrial plots as aforesaid may be filed by the officers concerned of the District Trade and Industries Centre, Jagdalpur before the next date of hearing. Revision Petitions no. 1100-1101 and 4057 of 2010 As regards revision petitions no. 1100-1101 of 2010 and 4457 of 2010, we

dispense with the presence of Shri R. P. Shrivastava who has been appearing, claiming to be the petitioner's authorised representative in these two cases and appoint Mr. K. Maruthi Rao, Advocate, B - 54 Aditi Apartments, Near Mother Dairy, Patparganj, Delhi - 92 (Mobile no. 09811255229) as Amicus Curiae to assist this Commission on behalf of the petitioners. He may be issued paper books and other documents related to these cases and also disburse Rs.5000/- in each case towards out-of-pocket expenses, half of which may be released along with the paper books and the balance on disposal of these petitions. Adjourned to 30.07.2010 for admission hearing. Copy of this order may be sent to Shri R. P. Shrivastava at the available address."

9. IN accordance with the directions dated 10.04.2012, revision petitions no. 2758 and 4058 of 2010 were heard on 18.07.2012. The same Rajendra Srivastava again appeared as President of the Bastar Jila Upabhokta Sanrakshan Samiti as well as authorised representative of the complainant while the complainant also appeared in person.

10. THE main point urged by Rajendra Shrivastava is that he is the President of the Bastar Jila Upabhokta Sanrakshan Samiti and has been appearing for long before the District Forums and the State Commission in favour of consumers. Moreover, non-government organisations are permitted under the Act and the Regulations framed thereunder to file complaint as a "consumer". In this respect, he has sought to rely on this Commission's judgment dated 02.01.2003 in a batch of revision petitions led by VOICE v Tamil Nadu State Consumer Disputes Redressal Commission [(2003 CTJ 683 (CP) (NCDRC)]. Though, there was no appearance on behalf of the respondent District Trade and Industries Centre (DTIC, Jagdalpur despite specific directions on 10.04.2012, written submissions have been filed on its behalf during the currency of the proceedings before the Commission and have been taken into account.

11. AS directed by this Commission, Rajendra Shrivastava has submitted a list of 43 cases in which he is involved in his capacity as President of Bastar Jila Upbhokta Sanrakshan Samiti and three cases where he has appeared as an authorised representative of the complainant. Therefore, the fact that Rajendra Shrivastava, whether as an individual or as the so-called President of the Bastar Jila Upbhokta Sanrakshan Samiti (a Registered Society under the Madhya Pradesh Society of Registration Act, 1973) has been representing a large number of individuals before Consumer Fora in consumer complaints, etc., is thus an admitted position.

12. IT has been specifically stated on behalf of the DTIC that the Registrar of Societies and Firms of Chhattisgarh has cancelled the registration certificate of Bastar Jila Upbhokta Sanrakshan Samiti by his order dated 13.04.2012. A true translated copy of the said order has also been produced before this Commission on 16.07.2012. It has been further stated that the DTIC had allotted a plot of land (free from all encumbrances) and handed over its possession to the complainant Savita Bhattacharya on lease for 99 years in the year 2007.

However, she filed a complaint before the District Forum alleging that the said plot of land had been allotted to M/s Jay Keshari Industries, the proprietor of which was Rajendra Shrivastava. It was also submitted on behalf of the DTIC that the plot of land allotted to M/s Jay Keshari Industries and that allotted to Savita Bhattacharya were separate and the Debt Recovery Tribunal, Jabalpur had ordered the auction of the plot of land allotted to M/s Jay Keshari Industries for default in payment of loans taken from various Banks. Thus, Rajendra Shrivastava is not only the proprietor of M/s Jay Keshari Industries but has also been claiming to be the President of Bastar Jila Upbhokta Sanrakshan Samiti, a registered non-governmental organisation allegedly working pro bono for the benefit of consumers.

13. EITHER Rajendra Shrivastava or Savita Bhattacharya has not controverted these submissions and documents produced by the General Manager, DTIC under affidavit. Moreover, neither of them has sought to produce any document filed before the District Forum in support of the complainant's contentions.

14. IT is settled law (vide *Rajeev Hitendra Pathak and Others v Achyut Kashinath Karekar and Another* [(2011) 9 SCC 541]) that neither a State Commission nor a District Forum has, under the provisions of the Act, the power to review or recall/modify any order passed by it. Thus, the District Forum has rightly dismissed the application filed by the complainant seeking restoration of her complaint dismissed earlier for non-prosecution. The State Commission has also correctly dismissed the appeal against that order. In the course of the proceedings before us, it has also been submitted on behalf of the respondent DTIC that the complainant has filed a civil suit against Rajendra Shrivastava in respect of the same plot of land allotted to her by the DTIC - this is a position that has not been controverted by the complainant/petitioner. Rajendra Shrivastava has also not challenged the factual position that the registration of the society of which he claims to be the President has been cancelled. The ratio of the judgment of this Commission in the VOICE case cited by him does not help his case at all, because the voluntary/non-governmental organisations involved in those cases were not represented by "busybodies" in the garb of NGOs seeking to assist consumers.

15. THEREFORE, we find no jurisdictional error, illegality or, irregularity in any of the two orders passed by the State Commission. In fact, there is ample evidence to show that Rajendra Shrivastava and Savita Bhattacharya have blatantly abused the beneficial provisions of the Act and filed vexatious complaints, etc., before various Consumer Fora, including this Commission. Accordingly, we dismiss both the revision petitions and affirm the orders of the State Commission. Consequently, Rajendra Prasad Shrivastava shall stand barred from filing or prosecuting any matter under the Consumer Protection Act before any Consumer Forum throughout India. We also direct Rajendra Shrivastava and Savita Bhattacharya to each pay cost of Rs.10,000/- and deposit the amount by way of demand draft in favour of the Consumer Legal Aid Account of this Commission within four weeks from the date of this order. The Registrar shall list

these matters before the Bench on 03.09.2012 with a report on the status of compliance of these directions.