(2013) 03 NCDRC CK 0019

In the National Consumer Disputes Redressal Commission

Canadian 4 Ur Immigration Services and Anr. APPELLANT

Vs

LAKHWINDER SINGH RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Citation : 2013 2 CPJ 267

Hon'ble Judges : J.

Final Decision : Petition dismissed

Judgement

1. BEING aggrieved by order dated 19.11.2008, passed by State Consumer Disputes Redressal Commission, Chandigarh, (for short, ''State Commission'') petitioners/opposite parties have filed the present revision petition. Brief facts are that respondent/complainant along with his family planned to migrate to British Columbia province of Canada and for this purpose he contacted petitioners in November, 2006. An agreement as executed between Petitioner No. 2 and respondent on 6.12.2006. He deposited retainer fee as demanded in the account of petitioners on 9.12.2006 and also deposited more than Rs. 6 lacs in the bank in his account in the first half of March, 2007, but nothing happened. Ultimately, petitioners refunded the amount of Rs. 30,000 paid by respondent on 23.1.2008. However, petitioners did not deposit the requisite fee with the firm in Canada nor provided any service to the respondent. Alleging deficiency in service, complaint was filed.

2. PETITIONERS admitted execution of the agreement but denied other allegations. They further stated that they had contract with Overseas Immigration Services Inc. Canada but Overseas Immigration Company had started correspondence directly with their clients to mislead them. So, their relationship became strained and as such they stopped dealing through the said Overseas Migration Company. It is further stated that it was respondent who abandoned the petitioners and demanded money back, which was given back to him vide cheque. As such, there was no deficiency on their part and prayed that the complaint be dismissed. District Consumer Disputes Redressal Forum -1,

Chandigarh (for short, ''District Forum'') vide order dated 23.10.2008, allowed the complaint and passed the following directions: The OPs are directed to pay Rs. 1,00,000 as compensation to the complainant within 30 days from the date of receipt of the copy of the order, failing which, they would be liable to pay the same along with interest at the rate of 12% per annum since the filing of the present complaint i.e. 19.5.2008, till realization. The OPs shall also pay Rs. 5,000 as costs of litigation.

3. BEING aggrieved by the order of District Forum, petitioner filed appeal before the State Commission which dismissed the same in limine, vide impugned order.

4. PETITIONERS challenged the impugned order of the State Commission before this Commission. This Commission, dismissed revision petition of the petitioners, vide order dated 23.1.2009, observing as under: There is concurrent findings of two Fora below. In view of the findings of the State Commission in paras 9 and 10 of the impugned order, we do not find that any case has been made out for interference in the revisional jurisdiction of this Commission. Hence, the revision is dismissed with no order as to costs.

Petitioners challenged order of 23.1.2009 of this Commission, by filing Special Leave of Appeal (Civil) No. 1993 of 2011. Hon''ble Supreme Court, vide order dated 21.2.2012, accepted Special Leave to Appeal and remanded the matter back to this Commission to decide it afresh in accordance with law after hearing the parties concerned by giving reasons.

5. WE have heard the learned Counsel for the parties and have also gone through the record.

6. IT has been contended by learned Counsel for petitioner that it is well settled that Consumer Fora cannot give relief for damages in excess of the limits prescribed under the contract. Moreover, as soon as petitioner came to know about the fact that their Associate Company in Canada is indulging in unfair practices, they took immediate steps and snapped all ties with that company. Petitioners also brought this fact to the notice of respondent. Moreover, circumstances created by the Associate Company were beyond the petitioners'' control. As such, a sum of Rs. 30,000 was returned to the respondent. Thus, respondent had no case to file complaint before the District Forum. In support, learned Counsel for petitioner relied upon following judgments; (i) Godfrey Phillips India Ltd. v. Ajay Kumar, : II (2008) CPJ 5 (SC) : IV (2008) SLT 62;

(ii) Laxmi Villas Bank Ltd. & Another v. P.R. Krishnan and Another,, I (1995) CPJ 43 (NC); and

(iii) Bharati Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd., : II (1996) CPJ 25 (SC).

7. ON the other hand, it is argued by learned Counsel for the respondent that there are concurrent findings of facts given by two fora below and there is no ambiguity in the order passed by the Fora below. Thus, present revision petition

is not maintainable. Learned Counsel has relied upon a decision of Supreme Court, Canadian 4 UR Immigration Services v. Jayender Singh, Special Leave to Appeal (Civil) No. 29366/2010, decided on 25.10.2010.

8. DISTRICT Forum in its order held: In the present case, the complainant never demanded back his amount of Rs. 30,000. The OP could not produce a single request sent by the complainant in this respect. The amount was sent by the OP unilaterally, without any demand from the complainant and the question of full and final settlement of the claim between the parties did not arise. Further, there is no receipt obtained by the OP that the amount has been received in full and final settlement, as was the case in both the authorities mentioned above. The payment made by the OP, therefore, cannot be considered as full and final settlement.

The OP had retained the amount of Rs. 30,000 for 14 months. The OP undertook to procure a job letter and visa for the complainant, which it has failed to procure. Clause No. 11 of the Agreement (Annexure C -2) provides that processing time of the Canadian High Commission is about 12 -14 months in finally issuing a visa. The said period was almost over when the amount was refunded by the OP. The OP got enrichment at the cost of the complainant and after using the said amount for 14 months, he returned the same to the complainant without doing anything in the matter. Needless to mention that the complainant had been waiting for 14 months that he would be called for interview and visa would be granted to him for immigration to Canada. It is argued by the learned Counsel for the complainant that the complainant could not work during this period. He procured the amount of Rs. 6.00 lacs and deposited the same with the Banks for keeping the money ready for payment to the OP and the entire career of the complainant has been ruined. It was a cruel joke played by the OP with the complainant to dash all his hopes. Besides paying interest on the amount of Rs. 30,000 for 14 months, the OP is also liable to pay compensation for deficiency in service and causing mental and physical harassment to the complainant and paying with his sentiments.

In view of the above discussion, we are of the opinion that the present complaint must succeed. The same is accordingly, allowed.

State Commission, while dismissing the appeal in limine observed: 9. It is an admitted fact that respondent had deposited Rs. 30,000 with the appellants vide agreement dated 6.12.2006 which was entered between parties and he had received back amount from the appellants on 18.1.2008 through cheque whose copy is Annexure R -17. There is no evidence that the respondent had received that amount in full and final settlement of the claim. Even the respondent had not asked for the refund of the amount because the appellants had failed to produce any letter signed by the respondent asking for the refund of the amount. The appellants had kept the amount of respondent for 12 -14 months without providing any service to the respondent in getting him immigration. Clause -11 of the agreement Annexure C -2 shows that processing time of the Canadian

High Commission is about 12 -14 months for issuing a visa. If the appellants had provided proper service then at least Canadian Embassy would have issued visa to the respondent. The appellants did not start any process to get visa and immigration for the respondent. The respondent had been waiting for all these 13 -14 months that he would be called for interview and visa would be granted to him for immigration to Canada. Since, he was under suspense, so, he could not work properly for the said period. Even he deposited Rs. 6.00 lacs in his bank account for getting money ready for payment to appellants as and when he received call for payment of the same. He had done so, in order to make his career but his career had been ruined by the appellants which had played with the life of respondent. The appellants had caused him much pain, agony and physical harassment. In such circumstances, grant of Rs. one lac as compensation for mental agony and harassment is not on the higher side but on the lower side.

10. Counsel for appellants contended that they could not take steps to enable the respondent to get visa as they had contract with Overseas Immigration Services Inc. which played a trick upon them. We are not concerned with the contract between the appellants and the Overseas Immigration Services Inc. but the fact remains that they had committed deficiency in service qua the respondent.

11. We concur with the reasoning given by the District Consumer Forum and hold that there is no force in the appeal. Consequently, it is dismissed in limine.

9. IN para 9 of the complaint, respondent has averred; That to the shock of life the complainant received a letter from the one - -"Overseas Immigration Services Inc., # 204 -12830, 80th Avenue, Surrey BCV3W3A8" dated, January 4, 2008, telling the complainant that "as on date we have not received any information so we are returning your application; and "that we have not received any payments through or Canadian 4 UR Immigration in Chandigarh". Thus, the reason of non -approval of the immigration was clear as respondents had not deposited the requisite fees, which the complainant had deposited within time. When the complainant approached the respondents with the letter and complained for their unfair trade practice, deficiency of service and crushing the plans and dreams of the complainant they just never bothered and gave unsatisfactory answer, as in fact they had none. Copy of the letter from Canadian Firm is hereby attached as Annexure C -6 for the kind perusal.

10. IN response to the above averments, petitioners in their written statement replied as under: That the contents of para No. 9 the complaint are wrong and hence denied. As far as the letter Annexure C -6 with the complaint is concerned complainant be put to strict proof of the same as the same letter is not even signed and also as to the mode of despatch of the same etc. It is once again reiterated that earlier respondent -company has contract with Overseas Immigration from Canada, but due to the fact that said Overseas Immigrant Company had started correspondence directly with the clients of respondent company, to mislead them and also against the terms and conditions as agreed

upon between Overseas Immigration Company and respondent company and so in the best of interest of the clients of respondent company, all the dealings with the said Overseas Immigration Company were immediately withdrawn and even the customers of the respondent company were suitably advised regarding the same including the present complainant vide letter dated 17.11.2007.

Thus, it stands proved from petitioners'' own case that they had not provided the services as promised by them to the respondent. In view of the admission made by the petitioners, none of the judgments (supra) relied upon, are applicable to the facts of the present case.

11. PRESENT revision petition has been filed under Section 21(b) of the Consumer Protection Act, 1986. It is well settled that powers of this Commission as a Revisional Court are very limited and have to be exercised only, if there is some prima facie jurisdictional error in the impugned order.

12. APEX Court, in Rubi (Chandra) Dutta v. United India Insurance Co., : II (2011) CPJ 19 (SC) : IV (2011) SLT 303 : 2011 (3) Scale 654, observed that: Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent finding of two Fora.

Since, both Fora below have given detailed and reasoned order which does not call for any interference nor the same suffers from any infirmity or erroneous exercise of jurisdiction. Hence, present petition is nothing but abuse of the process of law as the same is totally meritless and without any legal basis. Accordingly, present petition stands dismissed with cost of Rs. 25,000 (Rupees twenty five thousand only).

13. PETITIONERS are directed to deposit the cost by way of demand draft in the name of "Consumer Welfare Fund" as per Rule 10A of the Consumer Protection Rules, 1987, within four weeks from today. In case, petitioners fail to deposit the cost within the prescribed period, then they shall be liable to pay interest @ 9% p.a. till realization. List for compliance on 3.5.2013.

