

(2012) 08 NCDRC CK 0056

In the National Consumer Disputes Redressal Commission

City And Industrial Development

APPELLANT

Vs

Montessory Balak Mandir Shikshan

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 466 : 2012 3 CPJ 622 : 2012 3 CPR 476

Hon'ble Judges : J.M.Malik , Vinay Kumar J.

Advocate : S.B. Adgaonkar , Yashwardhan

Judgement

1. 1. THE present revision petition has been filed by City and Industrial Development Corporation of Maharashtra Limited (hereinafter referred to as "CIDCO"). THE facts of the case are these. THE complainant, Montessory Balak Mandir Shikshan Sanstha is discharging charitable activities. THE petitioner had called tender for the plots reserved for the education purpose in CIDCO area of Aurangabad through advertisement in the month of Feb., 1998. THE respondent-complainant submitted tender for plot Nos. 2, 2a, 2b and 2c alongwith earnest money in the sum of Rs.71,000/- in respect of plot Nos. 2, 2a separately and Rs.85,000/- each in respect of plot No. 2b, 2c. However, the petitioner allotted only two plots in favour of the respondent which are 2b and 2c each admeasuring 1968 sq. mtr. to the respondent vide its letter dated 17/24-11-99. THE said letter also required the respondent to pay the balance amount of Rs.92,120/- for each of the two plots, out of which, an amount of Rs.3560/- was to be paid upto 27.12.1999 and an amount of Rs.88,560/- was to be paid upto 27.1.2000. THE respondent paid the entire balance amount of Rs.92,120/- in respect of above said both the plots i.e. 2b, 2c.

2. THEREAFTER, the respondent requested the petitioner to execute the lease deed and to hand over the possession of both the plots. The petitioner informed the respondent vide letter dated 16.6.2000 that allotment of said plots have not been sanctioned by "Social Facility Committee" vide its resolution dated 13.10.1999. The petitioner was directed to send the proposal on the lines of "CIDCO", New Mumbai. The said resolution was wrongly interpreted by the

Marketing Division of its office and it wrongly issued allotment letter dated 24.11.1999 to the respondent.

3. THE petitioner further intimated that whatever amount was deposited would be refunded or they should wait till proposal was cleared by the said Committee. The respondent sent letters and requested that sale deed of the plots in their favor should be executed. The respondent, thereafter, issued legal notice dated 27.3.2001 to the petitioner. The petitioner sent reply dated 3.4.2001 and intimated the respondent that original file regarding allotment of plot had been submitted to the Head Office for sanction.

4. THE petitioner vide letter dated 18.4.2001 directed the respondent to comply with two points: (i) since the said plot would be allotted for secondary school, cost of the plots equal to the 50% be deposited and consent for the same be given, (ii) to provide the result of the school for the last three years.

5. ULTIMATELY, the respondent approached the District Forum. The District Forum vide its order dated 11.8.2010 directed the petitioner to execute registered lease deed in respect of plot Nos. 2b and 2c in favour of the complainant as per the agreement within a period of two months. The said order was announced on 11.8.2003.

6. AN appeal was filed against the order of District Forum before the State Commission. The State Commission dismissed the appeal vide order dated 19.11.2010.

7. THE first question which falls for consideration is "whether the application for condonation of delay should be allowed or not. There is delay of 446 days in filing this revision petition. The petitioner has explained the delay and made the following averments. The fora below have failed to consider that the "Social Facility Committee" which is authority to consider and approve the offer, had at no point of time, approved the same. On the contrary, the matter was referred back to the Chief Administrator, (New Towns), Aurangabad to resubmit the same with further scrutiny etc., however wrongly interpreting the same, allotment letter was issued by Aurangabad office. According to the petitioner, such a letter cannot give a right to the addressee to claim the right as attempted by the complainant. The petitioner is a Government owned company and various high level officers of the petitioner-company come on deputation for short period. Due to transfers of the officers, the file of the present matter kept unattended and unfortunately remained pending for decision to challenge the same before this Commission. Again, Mr. Chouhan, who, was looking after the present case had undergone the operation of spine and remained on leave for four months. He was not attending the case regularly, thereafter. consequently, the file remained unattended. When the petitioner came to receive the notice of execution from District Forum, only the then petitioner-CIDCO came to know about the non-challenge of the impugned order. Learned counsel for the petitioner reiterated this point.

8. WE are not at all satisfied with the explanation given by the petitioner. The Apex Court in the recent authority in *Office of the Chief Post Master General and Ors. Vs. Living Media India Ltd.* and Anr. 2012 STPL(Web) 132 (SC) was pleased to hold:- "13. 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. Accordingly, the appeals are liable to be dismissed on the ground of delay."

9. IN another authority reported in *Balwant Singh vs. Jagdish Singh and & Ors.* decided on 8.7.2010 in civil appeal No. 1116 of 2006 it was held :- "The party should show that besides acting bona fide, 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. A bare look at Sec. 5 of the Limitation Act, makes it plain that the material part of the language of proviso appended to Section 15 of the Consumer Protection Act is in pari materia therewith. Therefore, it would seem settled beyond caisil; that it is incumbent on the appellant to explain each day of default beyond the terminus line of the prescribed period of limitation. (*State of West Bengal v. Brojesh Chandra Singha Barman*, 2005(3) CHN 19 at p.24).

11. 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".

12. 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."

13. 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.

14. IN *Delhi Development Authority Vs. Ramesh Kumar*, 1996 (2) CCC 150 (Del), it was observed that when appellant found grossly negligent and administrative delays have not been properly explained, application for condonation is liable to be dismissed.

15. FOR all the reasons, we find that the petitioner has failed to prove the sufficient ground. Therefore, the application for condonation of delay is dismissed.

16. NOW let us turn to the merits of this case. Plot Nos. 2b and 2c were allotted by the Government itself through an advertisement. Almost entire money stands paid. At the eleventh hour, the allottees were taken for a ride. It was the bounden duty of the CIDCO to take the sanction of "Social Facility Committee". It is difficult to fathom as to why "CIDCO" ventured in such a scheme without getting the permission from "Social Facility Committee". The gullible people were led up the garden path. They paid the money and got nothing in response to that. The Administrators of "CIDCO" are not discharging their duty properly. The allotment letters are issued to those persons, who, may not be entitled for the same. There is a delay because of the fault of the employees of "CIDCO". Learned counsel for the petitioner stated that action against three officers is taken by CIDCO. He could not explain what action was taken against those persons who had issued the allotment letter. It appears that the employees of CIDCO are working in cahoots with the interested parties. It is also apparent that the petitioner harassed the people like the present case. More than 9 years have elapsed but the respondent is yet to reap the fruits of the price it paid for purchasing such plots. The above mentioned two points were already complied with by the respondent as is apparent from the order of the State Commission. It appears that the allotment letters of plots were not issued mistakenly. The allotment letters are signed by the Administrator, CIDCO. All the above mentioned conditions were fulfilled. The State Commission was pleased to hold :-

"9. It is also pertinent to note that the appellant vide letter dated 18.4.2001 asked the respondent to comply two points, one pertaining to the use of plot for secondary school instead of Balwadi and payment at rate of 50% of the reservation price for secondary school and to give consent for the same. Secondly, to provide information regarding result of the school run by respondent for last 3 years. In fact this information appeared to be already available in the item note of Resolution of "Social Welfare Committee" bearing No. 176 and 246. It is thus apparent that the reasons given by the appellant for not executing the lease deed and handing over the possession of the plots to the respondents are not justified. 10. From the above said observations, it is evident that allotment letter regarding plot in question is already issued by the appellant to the respondent. Secondly, all the conditions of the allotment letter dated 24.11.1999 have already been complied with by the respondent. Now the question of getting approval from the concern committee is the internal matter of the appellant and his higher office and the same is not issue to be dealt with by respondent. We are therefore of the opinion that all these aspects have rightly been considered by the Forum below. Therefore the order passed by the Forum does not require any modification. Hence we pass the following order. O R D E R 1. Appeal is dismissed 2. No order as to cost 3. Copies of the order be sent to both the parties."

We find no force in this case. The revision petition is dismissed.