
(1998) 06 NCDRC CK 0004

In the National Consumer Disputes Redressal Commission

DABBERU VENKATA RAO

APPELLANT

Vs

AALURI VIJAYALAKSHMI

RESPONDENT

Date of Decision : 29-06-1998

Acts Referred:

Citation : 1998 3 CPJ 399

Hon'ble Judges : S.Parvatha Rao , T.Ranga Rao J.

Final Decision : Revision Petition dismissed

Judgement

1. THE 3rd petitioner in LA. No. 21/1998 in O.P. No. 230/1995 questions the order of the East Godavari District Forum dated 19.3.1998 dismissing the said I.A. preferred by the three complainants in the said O.P. including the petitioner herein.

2. THE petitioner is the 3rd complainant in O.P. No. 230/1995. Respondents 1 and 2 are the opposite parties. THE respondents filed their version already. THE petitioners and the respondents have also filed their affidavit evidence and also the affidavit evidence of their witnesses. At that stage, the present application I.A. No. 21/1998 was preferred by the complainants for an opportunity to cross-examine the doctors by directing the respondents to provide the doctors who gave affidavits on behalf of the respondents, to know the genuinity and validity, in the interest of justice. The District Forum by its order impugned in the present revision held that the application for cross-examining the doctors was premature and that the petitioners had to come up with appropriate evidence, if any, to prove their case, in the first instance and that then only the question of testing the veracity of affidavit evidence filed on behalf of the respondents would arise.

It is not the case of the 3rd petitioner (3rd complainant) that by the time the present application was being pressed, the evidence on the complainants' side was closed. Even now when we asked the learned Counsel for the 3rd petitioner to state whether the evidence on the complainants' side was closed, he states that he has no instruction in that regard and that he is not in a position to commit himself.

3. IN the circumstances, we have to hold that the District Forum was right in not ordering the application at that stage. To dispel any doubt, it would have been better if the District Forum clarified that it would be open to the complainants to present such an application after evidence on their side was closed. We, however, make it clear now that the I.A. was dismissed, that it would be open to the complainants in O.P. No. 230/1995 after the evidence on their side is closed to apply for cross-examining those who gave affidavit evidence in support of the opposite parties. We also observe that the District Forum ought not to have expressed that the Forum "was not expected to take oral evidence also in support of their respective contentions of the parties". Summary procedure to be adopted by the District Forum does not mean that those who give affidavit evidence cannot be cross-examined if the other side makes a request, or that oral evidence is excluded. These are the matters which have to be decided on the facts and circumstances obtaining in each case; there cannot be any hard and fast rule in that regard. In *Salgaocar Medical Research Centre v. R.B. Raikar and Others*, II (1996) CPJ 209 (NC)=1996 CPR 50 (NC)=1986-96 Consumer 2289 (NS), the National Commission faulted the Goa State Commission for not permitting cross- examination of a witness who gave evidence on affidavit. The National Commission clarified the position as follows: "...the State Commission did not give permission to the opposite party to cross- examine him (Dr. Bhansali) on the ground that under Section 13(4)(iii) of the Consumer Protection Act, 1986 the reception of evidence on affidavit is legal and it further remarked that the affidavit was sufficient to establish the negligence on the part of the opposite party. We are not able to appreciate the above view and the procedure adopted by the State Commission. Of course, the Consumer Protection Act permits the reception of evidence by various Fora on affidavits but when a party insists that he wants to cross- examine the deponent of the affidavit to prove that the affidavit cannot be relied upon natural justice requires that permission to cross-examine that witness should be given. The State Commission further remarked that under the scheme of Consumer Protection Act consumer disputes are to be decided expeditiously. According to the State Commission merely because a witness is not produced for cross- examination it does not render the evidence of such witness on affidavit in admissible.... The State Commission has relied upon the report of Dr. Bhansali and remarked that it was corroborated by his affidavit and contemporaneous record of the Jaslok Hospital. We are not able to agree with all the above observations of the State Commission. When Dr. Bhansali was present the opposite parties had a right to cross-examine him about his report dated 2.1.1992".

4. SIMILARLY in *Canara Bank v. Uppal Brass Industries*, 1986-96 Consumer 1965 (NS)=1996 (1) CPR 109 (NC), where the question was whether several cuttings made in the two cheques to make them bearer cheques and the alteration of the date had been authenticated by the drawer of the cheques or was a forgery, and hence whether there was negligence of the Canara Bank in making payment on the interpolated forged cheques, the National Commission opined that the

handwriting expert would throw some light after it had been tested in the cross-examination. In that view of the matter the National Commission, while remanding the matter to the District Forum, directed as follows: "The District Forum will allow the filing of a duly signed copy of the opinion of the handwriting expert.... by the Canara Bank. ... The District Forum will give an opportunity to the complainant to file an expert opinion in rebuttal, if any. If the Canara Bank chooses to file an affidavit of the handwriting expert instead of oral examination, then an opportunity would be given to the complainant to cross-examine the expert".

In *Maharashtra Hybrid Seeds Co. Ltd. v. Aziz Baig & Ors.*, I (1997) CPJ 93 (NC)=1997 (1) CPR 150 (NC)=1998 CTJ 247, the National Commission was dealing with a case where the A.P. State Commission allowed Maharashtra Hybrid Seeds Company Ltd. to be impleaded as a party to the complaint at the appellate stage and no opportunity was afforded to that newly added party to test the veracity of the evidence tendered by the complainant before the District Forum or to lead evidence even before the State Commission; the State Commission allowed the complaint on merits and granted reliefs as against the newly impleaded party as well. On appeal by the newly added party i.e. M/s. Maharashtra Hybrid Seeds Company Ltd., the National Commission held as follows: "We are not inclined to go into the merits of the case as we propose to remand the complaint to the District Forum for de novo trial. The Fora under the Consumer Protection Act, 1986 have to determine the complaint in accordance with the procedure laid down in the Act. On the receipt of a complaint in relation to the defects in goods or deficiency in service, the Fora is required to refer a copy of such complaint to the opposite party directing him to give his version of the case within 30 days or such extended time. In this case the petitioner herein was not made a party to the complaint but was added as a party only in appeal. The appeal is a continuation of the original proceedings and there is no illegality in impleading a party at an appellate stage, but the State Commission had to give an opportunity to the opposite party to give his version of the case and this was done in this case. But the complaint could not be decided on merits as the allegations of the complainant were disputed by the newly added party in the written version. The evidence that was brought to the notice of the District Forum by the complainant was not tested in cross-examination by the newly added party. The petitioner herein was also not given any opportunity to lead evidence in support of its version. The impugned orders suffer from serious illegalities in the exercise of jurisdiction and are entitled to be set aside".

There is also the decision of the Chandigarh Union Territory Commission in *Chandigarh Administration v. R.C. Gupta*, I (1998) CPJ 210. In that case the District Forum ordered on 10.12.1996 that the complainant should be brought for his cross-examination with reference to his affidavit placed on record in support of his complaint. But subsequently by another order dated 8.4.1997 that earlier order was recalled. The opposite party questioned the same before the Union Territory Commission by way of a revision and that Commission allowed the

revision setting aside the subsequent order dated 8.4.1997 and holding that the earlier order requiring appearance of the complainant for cross-examination was reasonable and a necessary step taken and was in the interests of justice. On the facts of the present case we have to observe that the District Forum could have adjourned the consideration of the I.A. to a subsequent date instead of dismissing it straight- away. It could have also directed the attendance of the doctors for cross-examination after the complainants closed their evidence. That would obviate further adjournment of the matter for the attendance of the doctors and consequential delays. We therefore make it clear that it will be open to the complainants to make a fresh application for cross-examination and if such an application is made the District Forum shall consider the same in accordance with law. Subject to the above observations the R.P. is dismissed. Office is directed to communicate this order to the District Forum immediately. Revision petition dismissed.