(2013) 01 NCDRC CK 0010

In the National Consumer Disputes Redressal Commission

Government Of H.P. APPELLANT

Vs

Lata Saini RESPONDENT

Date of Decision : 08-01-2013

Acts Referred:

Citation : 2013 0 NCDRC 506 : 2013 1 CPJ 448

Hon'ble Judges : V.B.GUPTA J.

Advocate : NARESH K.SHARMA , ARVIND GUPTA , Tajinder Virdi

Judgement

1. IN this revision petition, there is challenge to order dated 1.7.2010, passed by Himachal Pradesh State Consumer Disputes Redressal Forum, Shimla (short, "State Commission ")vide which appeal of respondent Nos.1 to 5/complainants was allowed.

2. BRIEF facts are that late Mr. Jagat Ram Saini, husband of respondent No. 1 and father of respondent Nos. 2 to 5, was working as Drawing Teacher with petitioner No. 3/OP No. 3, whereas petitioner Nos. 1 and 2/OP Nos. 1 and 2 were his employer. Respondent No. 6/OP No. 4 is the insurance company, with whom deceased was insured under Group Personal Accident Insurance Scheme for an amount of Rs. 2.00 lacs,vide Notification dated 24.2.2006. It is alleged that deceased died in harness on 10.7.2006 while in active service. After his death petitioners were requested to release the insurance premium in complainant ''s favour, which they failed to do so. Hence, feeling aggrieved it is averred by the complainants that there is deficiency in service on the part of the petitioners. Petitioners, in their written version raised preliminary objections vis-a-vis maintainability of the complaint, lack of cause of action, limitation, jurisdiction, etc. On merits, it is admitted that Shri Jagat Ram was serving as drawing teacher who died in car accident. It is also admitted that deceased was insured for Rs. 2.00 lacs on payment of premium of Rs. 91 per annum under Group Personal Accident Insurance Scheme. However, renewal amount of Rs. 70 could not be deducted from the deceased salary.

3. ON the other hand, respondent No. 6 in its written statement pleaded that

deceased died after the period of the policy was over and was not covered, since policy has expired on 31.12.2005, while deceased died on 10.7.2006. Hence, it is denied that there was any deficiency in service on their part or they have indulged in any unfair trade practice.

4. DISTRICT Consumer Disputes Redressal Forum, Shimla (for short, ''District Forum '')vide its order dated 14.9.2009, dismissed the complaint. Being aggrieved by order of the District Forum, respondent Nos. 1 to 5, filed appeal before the State Commission which accepted their appeal.

5. AGGRIEVED by the impugned order, petitioners have filed the present revision. Along with it, an application for condonation of delay has also been filed in which no period of delay has been mentioned. However, as per office noting there is delay of 50 days.

6. I have heard the learned Counsel for the parties and have gone through the record. Grounds on which condonation of delay has been sought read as under: "2. That there has been a delay of.........days in filing the above matter due to reasons beyond the control of the State. That after the judgment was delivered by the Hon ''ble State Commission, its certified copy was obtained and after fulfilling all the codal formalities the papers were despatched to the office of the District Attorney H.P. Legal Cell at New Delhi to be handed over to the Standing Counsel for drafting and filing. 3. That the papers were thereafter handed over to the advocate for drafting of the revision petition. That the Advocate took some further time in drafting the petition and the petition is being filed today. 4. That it is in the circumstances explained above the delay in filing the petition is bona fide and due to circumstances beyond the control of the State. It is in the interest of justice that the delay of.......days in filing the revision petition is condoned. "

7. IT is well settled that "sufficient cause " for condonation of delay in each case, is a question of fact.

8. MAIN ground on which condonation of delay has been sought is, "That there has been a delay of......days in filing the above matter due to reasons beyond the control of the State. "

It is not clear as to what are the reasons which were beyond the control of mighty State of Himachal Pradesh. It is well settled that reasons for delay have to be specifically mentioned and each day ''s delay has to be explained. Be that as it may, petitioners have nowhere pleaded as to on which date they received the certified copy of the order, to which official and on which date the papers were sent. Application is also silent as to which Advocate the papers were handed over for drafting the petition. On all these material aspects with regard to delay, there is no explanation at all.

9. IN R.B. Ramlingam v. R.B. Bhavaneshwari, I (2009) SLT 701=2009 (2) Scale 108, Apex Court has observed: "We hold that in each and every case the Court

has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition. "

10. HON ''ble, Supreme Court in Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), laid down 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. "

Recently, Apex Court in Post Master General and Others v. Living Media India Ltd. and Another, I (2012) CLT 338 (SC)=II (2012) SLT 312=(2012) 3 SCC 563, has held: "24. After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under: "29. It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. 30. Public interest undoubtedly is a paramount consideration in exercising the Courts '' discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the landlosers facilitating their rehabilitation/resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the landlosers. These public interest parameters ought to be kept in mind by the Courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the landlosers to Courts of Law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest. " The Court further observed: "27. It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with competent persons familiar with Court proceedings. In the absence of plausible and acceptable expla-nation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. 28. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bona fide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds every-body including the Government. 29. 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 bona fide 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. 30. 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. 31. In view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. 32. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs. "

11. THUS , by no stretch of imagination, it can be said that there are sufficient grounds for condoning the delay. Moreover, how the filing of the petition within the period of limitation, was beyond the control of State of Himachal Pradesh.

12. NOW coming to the merits of the case, it has been contended by learned Counsel for the petitioners that present case is not covered under the Consumer Protection Act, 1986. Moreover, petitioners are not liable to make any payment, since there was no privity of contract with them. The claim could only be entertained by the Insurance Company. In support, learned Counsel for has relied upon decision of Hon ''ble Supreme Court in State of Orissa v. Divisional Manager, LIC and Another, II (1996) CPJ 31 (SC)=(1996) 8 SCC 655. On the other hand, it has been contended by learned Counsel for respondent Nos.1 to 5, that there is deficiency on the part of the petitioners as per findings of the State Commission. Further, it is the petitioners who are liable to pay the amount, since deceased was covered under the Group Insurance Scheme.

13. STATE Commission in its impugned order has observed: "3. Mr. Jagat Ram Saini died on 10.7.2006. As already noted hereinabove, Group Personal Accident Insurance Scheme was in force having become effective on or before 5th April, 2006. Under these circumstances, respondent No. 1 had issued instructions for getting the entire staff insured and to deduct premium from salary of such staff. However it appears that Notification dated 1.3.2006 was circulated on 12.7.2006, when the predecessor-in-interest of the appellants was already dead. 4. We are constrained to observe in this behalf that the respondent No. 1 when had made the scheme effective on and with effect from 5th April, 2006, why the notification was not circulated immediately needs to be explained by learned A.D.A. We called upon him to justify for non-issuance of notification till 12th July, 2006, his argument that whatever was possible for the benefit of its staff as a beneficial measure, was done. However, there is nothing on record to justify the time period between 5th April, 2006 to 12th July, 2006. Faced with this situation, learned A.D.A. at this stage referred letter Annexure-B, dated 8.9.2006, on the subject Group Personal Accident Insurance Scheme for all regular, ad hoc, part time, contractual and daily wages employees of Government Departments. Along with this annexure, list is attached as Annexure-C, wherein name of deceased Shri Jagat Ram Saini does not figure. The amount deducted towards premium of the employees shown in letter, dated 8.9.2006 contained as Annexure-C along with photostat copy of bank draft favouring respondent No. 4-Insurance Company. Mr. Anup Sharma, learned A.D.A. at this stage pointed out that immediately after receipt of the said letter by respondent No. 3, he immediately acted upon it and deducted the amount of premium from each one of the employees working under it and remitted the amount. Therefore, there was no negligence committed by respondent No. 3. 5. In the light of above facts, what falls is, that there is no negligence on the part of deceased employee. Negligence was on the part of respondent No. 1, who did not circulate the scheme till July, 2006. Though the scheme had already been made effective from 5 April, 2006. Mr. Anup Sharma, learned A.D.A. tried to justify the circulation of scheme on 12th July, 2006 by arguing that, immediately on its receipt by respondent No. 3, he acted swiftly. This was a matter between respondent Nos. 1 to 3 inter se. We cannot deny the benefit of a benevolent measure to the appellants for inaction and as well as acts of omissions and commission on the part of respondent No. 1. It is not the case of the respondent Nos.1 to 3 that deceased during his lifetime had declined to get himself insured under the aforesaid scheme. He having been died in accident is again an admitted fact between the parties. 6. Catching last straw Mr. Anup Sharma, learned A.D.A. tried to take advantage by referring document Annexure-A attached with affidavit of Mr. Sunil Chaudhary, Director of Education Himachal Pradesh and pointed out that the respondent No. 1 had already deposited premium with respondent No. 4 in the sum of Rs. 1,36,50,000 covering the risk in relation to its 1,50,000 employees under Group Personal Accident Insurance Scheme and the respondent No. 4 is liable to indemnify the appellants. This stand was seriously contested by learned Counsel appearing for respondent No. 4. As according to him this premium was in respect

of employees for the period from 1.1.2005 to 31.12.2005, as such respondent No. 4 was not liable. Period relevant in this appeal is after 5.4.2006. Therefore, in case, payment had been made at any point thereafter from 5.4.2006 till 10.7.2006 when Shri Jagat Ram Saini had died, situation would have been different. Admittedly it is not the case on behalf of respondents that the payment was made during this period. Though Mr. Anup Sharma, learned A.D.A. argued that in case there is no deficiency on the part of his clients, who need to be exonerated and the liability should be fastened on respondent No. 4, who covered the risk of all employees. We are not impressed with Mr. Sharma. 7. No other point was urged. 8. In view of above discussion, while allowing this appeal, order passed by District Forum, Shimla in Consumer Complaint No. 130/2007, on 14.9.2009 is hereby set aside and as a result of it, said complaint is allowed and respondent Nos. 1 to 3 are held jointly and severally liable to make the payment of Rs. 2,00,000 to the appellants along with interest @ 9 % per annum from the date of filing of complaint, i.e. 2.4.2007 till the deposit/payment whichever is earlier and also to pay compensation in the sum of Rs. 50,000 on account of their acts of omission and commission, the appellants have been dragged into unnecessary litigation. In addition to this, the respondent Nos. 1 to 3 are further held liable to make the payment of litigation cost before District Forum as well as this appeal which is quantified at Rs. 10,000. Entire awarded amount to be equally shared by the appellants. "

14. PETITIONERS in their written statement have admitted that deceased was insured under the compulsory insurance policy and Govt. Notifications issued from time to time were circulated to the employees. It has also been admitted that Group Personal Accident Insurance Scheme was introduced by the Govt. of H.P. and was applicable w.e.f. 1.1.2005 to 31.12.2005. Petitioners have also admitted in the written statement that insurance scheme was renewed on 1.3.2006 to be effective from 5.4.2006. Admittedly, the deceased has died on 10.7.2006. It is the case of petitioners that Group Personal Accident Insurance renewal amount of Rs. 70, could not be deducted from the deceased salary. As per petitioners '' own case, insurance scheme was applicable in the case of deceased. Thus, due to the negligence and carelessness on their part, renewal amount of Rs. 70 could not be deducted from the deceased salary. Accordingly, for this act, petitioners alone are to be blamed. Neither deceased nor the Insurance Company can be blamed for this negligence act. Thus, deficiency in service on the part of petitioners is writ large in this case.

15. HENCE , I do not find any infirmity or illegality in the impugned order passed by the State Commission. Present petition being barred by limitation as well as on merit is not maintainable and same is hereby dismissed with cost of Rs. 10,000 (Rupees ten thousand only).

16. PETITIONERS are directed to deposit the cost by way of demand draft in the name of respondent No. 1, within four weeks from today. In case, petitioners fail to deposit the cost, within the prescribed period, then they shall also be liable to

pay interest @ 9% p.a., till realization. Cost shall be paid to the respondent No. 1 only after expiry of the period of appeal, preferred if any.

17. PENDING application also stand disposed of.

18. LIST for compliance on 1.3.2013. Ordered accordingly.

