(2012) 07 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Guranna APPELLANT

Vs

Jeetendra RESPONDENT

Date of Decision : 04-07-2012

Acts Referred:

Citation : 2012 0 NCDRC 931 : 2013 1 CPJ 249

Hon'ble Judges : R.C.JAIN , S.K.NAIK J.

Final Decision : Revision Petitions allowed

Judgement

1. THIS batch of cases raises a short but important question of law, the question being about the jurisdiction of a Consumer Fora to award interest in lieu of or in addition to compensation as talked of in Section 14 of the Consumer Protection Act, 1986 (for short ''the Act '') and further, whether such interest should be awarded to a consumer who has been deprived of his money for a certain period and if so, from what date and at what rate.

2. CHALLENGE in this batch of petitions is to the common order dated 11.1.2007 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short the ''State Commission '') in appeal Nos. 2788/2006 to 2826 of 2006 (27 appeals). The appeals before the State Commission have been filed by the complainants, petitioner herein, against the common order of the District Consumer Forum at Gulbarga in complaints Nos. 40/06 to 66/06 dated 27.10.2006 by which order the District Forum had partly allowed the above referred complaints giving direction to the opposite party-dealer of TVS Motor Vehicles to refund the deposited amounts to each complainant along with interest @ 6% per annum from the date of filing of the complaint till the date of realization besides a sum of Rs. 1,000 as compensation towards mental agony and cost of the proceedings with a stipulation that amount shall be paid within one month from the date of the said order. Not contended with the said order passed by the District Forum, the complainants approached the State Commission through appeals but without success as the State Commission disposed of the appeals by means of a very short order which we would like to

reproduce here: "All these appeals are by the complainants challenging the order insofar as the awarding of interest from the date of the complaint stating that the interest should have been awarded from the date of payment. After going through the impugned order we find that the interest awarded by the DF from the date of complaint is justified. Further awarding of interest in the absence of any contract is the discretion of the DF. Therefore, we find no reason to interfere with the impugned orders. Accordingly we pass the following: Order Appeals are dismissed. "

That led the complainants to file these proceedings before this Commission. In nut shell the case of the complainants before the District Consumer Forum was that they wanted to acquire TVS Centra motor cycle and for that purpose they had approached M/s. Nisty Automotive, Gulbarga (later on dissolved) and through its Manager of the said firm deposited a sum of Rs. 25,000 towards the registration/cost of one TVS Centra motor cycles on 10.3.2004 on the promise of the opposite party that motor cycle would be delivered to the respective complainants within a short time. It so happened that after deposit of the amounts, the TVS dealership agency of the opposite party firm was terminated on 1.4.2004 i.e. about twenty days after the deposit of the money by the respective complainants. So neither the motor cycles could be delivered to the complainants nor the money deposited by them, was refunded to the complainants promptly, though the complainants approached the said dealer for the refund of the money and served legal notice also. Complainants filed the complaints which were resisted by the opposite party raising certain pleas but the factum of the deposit of the money by the respective complainants on 10.3.2004 was not disputed. However, liability to pay any interest much less the interest at the rate sought for in the complaints was denied. On trial the District Forum partly allowed the complaints as noted above.

3. GOING by the order passed by the District Forum and as affirmed by the State Commission, one can say that the orders so passed by the Fora below are just and reasonable because the fora below besides ordering the refund of the entire amount deposited by each of the complainants, has also compensated the complainants by awarding interest @ 6% per annum from the date of the complaints. This view perhaps can be justified. However, the complainants feel that the kind of relief which they got from the Fora below is neither adequate nor reasonable and commensurate to the loss and injury caused to them on account of deprivation of the money, which they had deposited with the opposite party. Therefore, the need to examine the question as stated in the opening paragraph of this order. It may be observed that there is no uniform practice and perhaps no strait-jacket formula can be evolved to determine as to what would constitute a reasonable compensation or interest in lieu of that which should precisely match with the nature and extent of the loss and/or injury suffered by a consumer on account of deficiency in service by the service provider. This has been left to the judicial discretion of the Fora seized of the matter. Judicial discretion must however, be exercised according to the principles laid down over

the years and should not be arbitrary or whimsical.

4. WE have heard Ms. Kiran Suri, learned Counsel representing the petitioners in these cases but had not the advantage of hearing the say of the respondents as despite due service of notice through registered A/D post they remain unrepresented on record. We can, therefore, safely presume that they are not serious about contesting the present petitions. Ms. Suri would assail the orders passed by the Fora below only in regard to the rate of interest as awarded by the Fora below as also the period for which the interest should have been allowed. On the strength of Section 34 of the Code of Civil Procedure as also on certain decisions of the Hon ''ble Supreme Court, she would submit that in the facts and circumstances of the present case the Fora below ought to have allowed interest atleast at the rate of 12% per annum which was the prevalent rate of interest during the relevant period and the interest should have been paid from the date of deposit of the amounts by the respective complainants rather than with effect from the date of filing of the complaints. On the other hand the plea of the respondents appears to be that no interest could have been awarded at all because there is no provision of award of interest in the Consumer Protection Act, 1986 and there being no contract to pay interest, only compensation commensurate with the deficiency found on the part of the service provider could be granted. The question as to whether the Consumer Fora established under the provisions of Consumer Protection Act, 1986, has the power and jurisdiction to award interest in lieu of compensation has been considered by the Hon ''ble Supreme Court in the case of Sovintorg (India) Ltd. v. State Bank of India, New Delhi, II (1999) CPJ 4 (SC)=VI (1999) SLT 545=(1999) 6 SCC 406, and has been answered in the following manner: "Relying upon the province of Section 34 of the Civil Procedure Code, the learned Counsel for the appellant submitted that the appellant was entitled to the payment of interest at the rate at which moneys are lent or advanced by Nationalized Banks in relation to commercial transactions. Referring to IA No. 2 filed in this Court and Banking Law and Practice in India issued in 1991, she had contended that the appellant was entitled to the payment of interest minimum at the rate of 19.4 per cent per annum. The general submission made in this behalf cannot be accepted in view of the provision of Section 14 of the Act. There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite party to render the services. Interest cannot be claimed under Section 34 of the Civil Procedure Code as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that the general provision of Section 34 being based upon justice, equity and good conscience would authorize the Redressal Forums and Commissions to also grant interest appropriately under the circumstance of each case. Interest may also be awarded in lieu of compensation or damages in appropriate cases. The interest can also be awarded on equitable grounds as was held by this Court in Satinder Singh v. Umrao Singh. Referring to the province of the Interest Act of 1839, in relation to the compulsory acquisition of land where no specific

provision is made for grant for awarding the interest, the Court held: "In this connection we may incidentally refer to Interest Act, 1839 (XXXII of 1839). Section 2 of this Act confers power on the Court to allow interest in cases specified therein, but the proviso to the said Section makes it clear that interest shall be payable in all cases in which it is now payable by law. In other words, the operative provisions of Section 1 of the said Act do not mean that where interest was otherwise payable by law Court ''s power to award such interest is taken away. The power to award interest on equitable grounds or under any other provisions of the law is expressly saved by the proviso to Section 1. This question as considered by the Privy Council in Bengal Nagpur Rly Co. Ltd. v. Ruttanji Ramji. Referring to the Proviso to Section 1 of the Act the Privy Council observed ''this proviso applies to cases in which the Court of equity exercises its jurisdiction to allow interest ''. We have already seen that the right to receive interest in lieu of possession of immovable property taken away either by private treaty or by compulsory acquisition is generally regarded by judicial decisions as an equitable right; and so, the proviso to Section 1 of the Interest Act saves the said right. We must accordingly hold that the High Court was in error in rejecting the claimants '' case for the payment of interest on compensation amount, and so we direct that the said amount should carry interest at 4% per annum from the date when Respondent 2 took possession of the claimants '' lands to the date on which it deposited or paid the amount of compensation to them. " To the same effect is the judgment in Laxmichand v. Indore Improvement Trust. The State Commission as well as the National Commission were, therefore, justified in awarding the interest to the appellant but in the circumstances of the case we feel that grant of interest at the rate of 12% was inadequate as admittedly the appellant was deprived of the user of a sum of Rs. one lakh for over a period of seven years. During the aforesaid period, the appellant had to suffer the winding up proceedings under the Companies Act, allegedly on the ground of financial crunch. We are of the opinion that awarding interest at the rate of 15 per cent per annum would have served the ends of justice. "

5. AS to the aspect from what date such interest should be awarded, Ms. Kiran Suri has relied upon the celebrated authority of the Hon ''ble Supreme Court in the case of Ghaziabad Development Authority v. Balbir Singh, II (2004) CPJ 12 (SC)=III (2004) SLT 161=(2004) 5 SCC 65. In that the Supreme Court was dealing with the cases where a Development Authority had failed to give possession of allotted plot/flat and there was delay in giving the possession. The question then cropped up as to how the allottee of the flat/plot should be compensated. The Court held that in such a situation, the allottee or the consumer can suitably be compensated by awarding reasonable interest on the deposited amount with the Development Authority depending upon the circumstances as to why it was not possible for the Development Authority to give the possession of the plot/flat. In that situation, it was held that interest could be awarded at different rates upto a maximum of 18% per annum on the deposited amount. As regards the period from which the interest should be

payable, the Apex Court held as under: "That brings us to the question as to the date from which interest would be payable. Normally in cases of refund interest will be payable from the date of monies were deposited with the body till they are returned either by payment to that party or deposited in a Court. In cases where compensation is directed to be paid, the Commission/Forum must direct payment within a particular period and further direct that if payment is not made within that time the authority will also pay interest. Such interest must be based on the current rate of interest. "

"As stated above, the interest, in both these cases, will be payable from the date the monies were paid till they are retained or deposited in Court/Tribunal. We, however, clarify that merely because we are maintaining awards of interest, it must not be taken to mean that in future the Commission/Forum must not work out compensation under various heads and that they can continue to grant interest only by way of damages/compensation. "

6. ALTHOUGH , the said rule was laid on a different set of facts and circumstances but the principle of law laid down therein as regards the period for which the interest should be awarded is equally applicable to other cases also where depositor has been deprived of his money for a period and needs to be compensated. Having considered the matter in the light of the above decisions of the Supreme Court, there is no escape from the conclusions that: (i) A Consumer Fora like a Civil Court is also empowered to award interest in lieu of or in addition to compensation talked of in Section 14 of the Act for the loss and injury occasioned to a consumer, even in case(s) where there is no agreement between the consumer and the service provider for payment of interest; (ii) The Consumer Fora must decide the rate of interest to be awarded going by the relevant factors like the nature, extent, and kind of deficiency in service which has been established: (iii) The compensation should be as far as possible commensurate to the loss or injury suffered by a consumer on account of the defects in goods or deficiency in service. (iv) The prevalent rate of interest i.e. the bank rate as notified by the Reserve Bank of India must be considered relevant; particularly in cases where the specific amount of money was paid or deposited by the consumer was retained by the opposite parties/service provider. (v) Ordinarily the interest in lieu of compensation should be awarded from the date of cause of action or from some later date say three to six months, in cases of insurance because the insurer needs time to settle the claim after the claim has been lodged. In other cases, where no such detailed exercise is required by the service provider, it should be from the date of deposit of the amount because the money goes into the hands of the service providers, which must have been gainfully utilized by him for the period the money remains with him. (vi) Interest awarded in lieu of compensation should be just and reasonable i.e. neither too high to give undue enrichment to the complainant nor too low/token so as to deprive the complainant of his legitimate claim. (vii) Ordinarily if the Consumer Fora decides to compensate the complainants by awarding interest on the deposited amounts etc., no further compensation should be awarded except in

exceptional circumstances where it is shown that the loss and injury suffered by the complainant cannot be adequately compensated by awarding interest only. The Consumer Fora may award compensation for mental harassment, etc. if the circumstances, so warrant.

7. IN the case in hand, going by the facts and circumstances of the case that the complainants had deposited almost the entire price of the motor cycles with the dealer in the hope that the motor cycles would be delivered to them in time, which hope was belied in view of the subsequent developments i.e. termination of Agency of the opposite party and further that the opposite party did not come forward even to refund the deposited amount promptly and having regard to the decisions of the Apex Court, we consider it appropriate to allow these revision petitions and modify the orders of the District Forum and affirmed by the State Commission in the following manner: (i) The complaints of the complainants are partly allowed. (ii) The opposite parties are jointly and severally directed to refund the deposited amount along with interest @ 12% per annum with effect from the date of deposit i.e. 10.3.2004 till its realization/deposit. The award of compensation of Rs. 1,000 in each case is however, set aside. The complainants shall get cost of Rs. 2,000 in each complaint throughout the proceedings before the three Fora i.e. District Forum, State Commission and the National Commission.

8. MS . Kiran Suri, learned Counsel for the petitioner has informed that during the pendency of the appeals/revision petitions, the opposite parties had deposited the awarded amount as per the award of the District Forum but the amount is yet to be released to them as certain controversy between the parties of opposite party has surfaced before the District Forum. If that is so, we direct the District Forum to decide the said controversy expeditiously in any case within a period of two months from the receipt of the copy of this order and to disburse the deposited amount to each of the complainants. Any further amount payable by the respondent in terms of this order shall be deposited/paid within a period of four weeks from the date of receipt of the copy of the order. Revision Petitions allowed.