(2013) 11 NCDRC CK 0022

In the National Consumer Disputes Redressal Commission

Himachal Futuristic Communications Ltd APPELLANT

Vs

K.C.Aggarwal RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : 2013 0 NCDRC 806 : 2013 4 CPJ 567

Hon'ble Judges : K.S.CHAUDHARI , B.C.Gupta J.

Final Decision : Revision Petition is dismissed

Judgement

1. BOTH these revision petitions arise out of the impugned order passed by the learned State Commission, Delhi, hence, are disposed of by common order.

2. THESE revision petitions have been filed by the petitioners against the order dated 25.08.2002 passed by the State Consumer Disputes Redressal Commission, Delhi (in short, ''the State Commission '') in Appeal No. A -675 of 2002 - Himachal Futuristic Communications Ltd. Vs. K.C. Aggarwal and Ors. and K. Gopalakrishna Nayak and Ors. Vs. Himachal Futuristic Communications Ltd. by which, while allowing appeal partly, order of District Forum allowing complaint was modified. Brief facts of the case are that complainant K.C. Aggarwal and his family members were shareholders of HFCL and were entitled to allotment of 13100 preferential shares of M/s. Himachal Telematics Ltd. Complainants submitted duly filled application forms along with cheques to OP/State Bank of India, but complainant and his family members did not receive any intimation regarding refund or allotment of shares. Complainants wrote letters to the Company and on checking with their bankers, it was found that applications along with cheques have not been presented to the Company. It is apprehended that applications submitted have been misplaced/lost by Company ''s banker and Himachal Futuristic Communications Ltd. (HFCL) and bank are deficient in providing service. Legal notice was issued on 4.6.1994 for allotment of shares, but so far HFCL has not allotted shares. Alleging deficiency on the part of OPs, complainant filed complaint before District Forum. OP No. 1/HFCL resisted complaint and submitted that complainant was not a consumer and OP never

received applications from State Bank of India, nor amount of cheques of complainants were credited to their accounts before the stipulated closing date i.e. 30.7.1993. It was further submitted that complaint was hopelessly time barred and transaction was for commercial purposes not covered under the C.P. Act. Pecuniary jurisdiction was also challenged and prayed for dismissal of complaint. OP No. 2/State Bank of India submitted that alleged acknowledgment of applications filed by the complainant and his family members did not bear the initials of any person on behalf of State Bank of India; so, State Bank of India is not responsible. It was further submitted that there was no privity of contract between the complainant and OP and complaint was also time barred; hence, complaint may be dismissed. Learned District Forum after hearing both the parties observed that if applications forms were lost in the office of State Bank of India, OP No. 1 has to bear the responsibility vicariously and directed OP No. 1 to issue as large number of shares as complainants were entitled under the prospectus/memorandum. Appeal filed by the petitioner was partly allowed by learned State Commission vide impugned order and modified order of District Forum and directed petitioner/OP No. 1 to issue 200 shares to each of the complainants at the value prevalent on the date of judgment. Complainants as well as HFCL both filed revision petitions against the impugned order.

3. HEARD learned Counsel for the parties and perused record.

4. LEARNED Counsel for the petitioner/HFCL submitted that complaint filed by the complainant was hopelessly barred by limitation, complainant does not fall within the purview of consumer, there was no privity of contract between the complainant/OP No. 1; even then, learned District Forum has committed error in allowing complaint and learned State Commission further committed error in allowing appeal partly; hence, revision petition be allowed and impugned order and order of District Forum be set aside and complaint be dismissed. On the other hand, learned Counsel for the complainants submitted that learned District Forum rightly allowed complaint, but learned State Commission has committed error in allowing appeal partly; hence, revision petition be allowed and impugned order be set aside and further submitted that complainant may be awarded compensation to the tune of difference of value of shares on the date of allotment and price prevailing today. Learned Counsel for SBI supported arguments of Counsel for HFCL and prayed for dismissal of complaint. Learned Counsel for the petitioner -HFCL submitted that as per prospectus of Himachal Telematics Ltd., issue opened on 27.7.1993 and its earliest closing was 30.7.1993 and complaint has been filed in October, 2000 without any application for condonation of delay; hence, complaint was hopelessly barred by limitation. Perusal of record clearly reveals that Himachal Telematics Ltd. made public offer of shares and issue opened on 27.7.1993 and its earliest closing was 30.7.1993. As per complainant ''s version, they have submitted application for allotment of shares along with cheques to State Bank of India on 30.7.1993. Admittedly, shares were not allotted to the complainants. As per complaint, complainants made correspondence with HFCL, but correspondence was not responded. It has

been further submitted in the complaint that legal notice was given on 4.6.1994, but even after legal notice, shares were not allotted. It is admitted fact on the part of complainant that after this legal notice, no correspondence was done by the complainant with OP for allotment of shares.

5. ADMITTEDLY , public offer of shares closed on 6.8.1993 and shares were to be allotted within 10 weeks from 6.8.1993, but shares were not allotted in spite of correspondence and legal notice dated 4.6.1994 and complaint has been filed after almost 6 years 4 months. Complainant has not filed any application under Section 24 -A of the C.P. Act for condonation of delay. Learned District Forum while dealing with the issue of limitation observed as under: ''''Issue No. 7: Applications were submitted by the complainants somewhere in 1993. A legal notice was also sent by the complainants in 1994. As such there is a gray area regarding the point of limitation involved in this case. Considering the overall circumstances of the case and the other issues going in favour of the complainant and considering that the complainants must have kept waiting for a favourable response from the O.P. - 1 ''s Company, we feel inclined to condone the delay in filing of the complaint. This issue is accordingly decided ''''.

6. LEARNED State Commission while dealing with this issue observed as under: ''''7. As regards delay in filing the complaints, the respondents had been approaching the appellant company for long to elicit response, served the company with legal notice and the District Forum condoned the delay and rightly so as this was sufficient reason to condone the delay, if any.''''

Perusal of decision on the limitation by both the Fora below clearly reveals that no reason for condonation of inordinate delay of 6 years 4 months has been given in the orders and that too without any application for condonation of delay.

7. LEARNED Counsel for the OP submitted that mere correspondence does not extend limitation and in support of his contention he placed reliance on a judgement of this Commission in O.P. No. 332 of 2002 decided on 25.10.2002 Tehri Hydro Development Corporation Ltd. Vs. New India Assurance Co. Ltd. and judgment of this Commission in O.P. No. 256 of 2002 decided on 29.7.2002 S.A. Rawther Spices (P) Ltd. Vs. Bank of India and Anr. in which complaint filed after 7 years was treated as barred by limitation. We agree with the proposition laid down in aforesaid judgments and delay of 6 years and 4 months in filing complaint cannot be condoned.

8. LEARNED Counsel for the complainant submitted that District Forum had every right to condone delay. In support of his contention, he has placed reliance on the judgment of the Apex Court in C.A. No. 460 of 1987 - Collector, Land Acquisition, Anantnag and Anr. Vs. Mst. Kajiji and Ors. decided on 19.2.1987 in which it was held that as there was sufficient cause for condoning delay, High Court committed error in dismissing appeal as barred by limitation. We agree with the principle laid down in aforesaid judgment, but in the case in hand, neither there is any application for condonation of delay, nor any sufficient cause

has been shown for condonation of delay; hence, inordinate delay of 6 years 4 months in filing complaint cannot be condoned. Thus, it becomes clear that protracted correspondence does not extend limitation for filing complaint and in this case, there is no correspondence after 4.6.1994 and no application has been filed for condonation of delay; even then, learned District Forum committed error in allowing time barred complaint and learned State Commission further committed error in upholding complaint within limitation. As complaint is hopelessly time barred, complaint is liable to be dismissed on this count alone.

9. LEARNED Counsel for the petitioner submitted that allotment of preferential shares does not fall within the purview of Consumer Protection Act. This Commission in R.P. Nos. 4243-4245 of 2011-CMD, ONGC and Anr. Vs. Gurbir Singh Anand and Anr. upheld order of State Commission allowing vcomplaint to issue 150 equity shares to its employees. This order was challenged before Hon ''ble Supreme Court in SLP (C) No. 8529 -8540 of 2013 CMD, ONGC and Anr. Vs. Gurbir Singh Anand and Anr. which was decided on 1.3.2013 and it was observed that dispute raised by the complainant cannot be treated as a consumer dispute so as to confer jurisdiction on the Consumer Fora to entertain the same.

10. IN the light of aforesaid observations of the Hon ''ble Apex Court deficiency in allotment of preferential shares does not fall within the purview of consumer dispute and Consumer Fora cannot entertain such complaint and complaint is liable to be dismissed on this count also. Admittedly, public issue of shares was of Himachal Telematics Ltd. and 7 lakh equity shares were offered as preferential allotment to shareholders of the promoter company i.e. HFCL and as per note 8 shareholder was not entitled to allotment of more than 200 equity shares per individual. In no case every complainant was entitled to allotment of more than 200 equity shares of Himachal Telematics Ltd. As per heading ''''disposal of applications and application money '''', the Board had absolute and uncontrolled discretion without assigning any reason, right to accept or to reject any application in whole or in part meaning thereby, complainants had no right to get the allotment of shares of Himachal Telematics Ltd. only because complainants were shareholders of HFCL. There was no privity of contract between complainants and HFCL because HFCL has never agreed to allot shares of Himachal Telematics Ltd. to the complainant. Without privity of contract, petitioner HFCL is not liable for any deficiency in service.

11. COMPLAINANT should have filed complaint, if any, only against Himachal Telematics Ltd. who had come with public issue , but to our surprise, complainant has not impleded Himachal Telematics Ltd. as a party in this case without which, no relief could have been granted by District Forum against the petitioner/OP. Complainant did not implead OP No. 2/State Bank of India in the complaint in first instance and later on impleaded State Bank of India as a party, but no liability has been fastened on State Bank of India by the District Forum and no appeal against that order has been filed by the complainants before State Commission. Learned District Forum observed as under: ''''Consequent upon our

above findings we are of the view that there is deficiency on part of OPs jointly and severally in not issuing the preferential shares to the complainants. The State Bank of India was working for and on behalf of OP -1. Even if the application forms were lost in the office of the State Bank of India, the OP -1 has to bear the responsibility vicariously. Even otherwise the list of various applicants whose applications were forwarded by the State Bank of India to the OP -1 has not been produced on record for verification as to whether the applications of these complainants were included therein or not ''''.

12. ON one hand the District Forum held both the OPs jointly and severally liable and further held that HFCL has to bear the responsibility vicariously, on the other hand complaint was not allowed against State Bank of India which is apparently contrary to law. If both the parties were jointly and severally liable and HFCL was liable only vicariously, then it was obligatory on the part of District Forum to allow the complaint against the State Bank of India also. Without holding State Bank of India liable, order of District Forum is liable to set aside. In the light of above observations, we come to the conclusion that order passed by learned State Commission and learned District Forum are not in accordance with law and are liable to set aside and complaint being barred by limitation is liable to be dismissed. As revision petition filed by the OP/Petitioner -HFCL is being allowed and complaint stands dismissed, Revision Petition No. 3952 of 2006 filed by the complainant is liable to be dismissed.

13. CONSEQUENTLY , Revision Petition No. 3113 of 2006 filed by the Petitioner-OP is allowed and impugned order dated 25.8.2006 passed by learned State Commission in Appeal No. A-675/2002 - HFCL Vs. K.C. Aggarwal and Ors. and order of District Forum dated 26.3.2002 passed in Complainant No. 1101/2000 is set aside and complaint stands dismissed. Revision Petition No. 3952 of 2006 - K.C. Aggarwal and Ors. Vs. HFCL and Anr. filed by the complainant is dismissed.

