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(2012) 08 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

Hind Freight Services Pvt Ltd — APPELLANT

Vs

Ankit Agarwal , General Manager M/S Container Corporation Of India Ltd , Managing Director M/S Msc Agency (India) Pvt. Ltd , Managing Director M/S Mediterranean Shipping Company S.A. , Proprietor/Partner M/S — RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Citation : 2012 0 NCDRC 497 : 2012 4 CPJ 291

Hon'ble Judges : Anupam Dasgupta J.

Advocate : R.Anand Padmanabhan , S.K.Sharma , Ratan K.Singh , Gaurav Dudeja

Judgement

1. THESE two revision petitions challenge the orders dated 28.03.2011 and 21.06.2011 of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (in short, ''the State Commission'') in Revision Petition no. 7 of 2011 which, in turn, was directed against the order dated 30.12.2010 of the District Consumer Disputes Redressal Forum II, Hyderabad (in short, ''the District Forum'') on interim application (IA) no. 198 of 2010 in Consumer Complaint no. 932 of 2010.

2. ANKIT Agarwal, one of the petitioners (as the proprietor of Bigapple Life, Secunderabad) before us approached the District Forum with the allegation of deficiency in service against the seven opposite parties (OPs) which included M/s Hind Freight Services Pvt. Ltd., Secunderabad (OP 3 ï¿½ hereafter, ''HFSPL'') and M/s Container Corporation of India Ltd., Hyderabad (OP 7 ï¿½hereafter, ''CCIL'').

3. THE case of the complainant was that it was an importer and distributor of computers and computer parts and peripherals. It had placed order for such goods on OP 5 and 6 (M/s Cameco Technologies LLC and M/s Light Source Industries, both of the USA). Orders for transporting these goods (one container each of computers and computer parts and peripherals) from the suppliers warehouse to the Inland Container Deport (''ICD'') of the Government of India,

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Hyderabad were placed on M/s Sea Master Shipping Company, a US Agent of M/s Mediterranean Shipping Company SA. However, OP 4 did not pick up the goods from the suppliers for a long time in spite of repeated reminders. The two containers were expected to reach ICD Hyderabad in 40 days but OPs concerned took nearly five months in delivering them at the ICD. The dispute arose primarily between the complainant and OPs 3 and 7, i.e., HFSPL and CCI regarding payment of penal charges for delayed lifting of the containers/ goods. The case of the complainant was that the delays were on account of shipping agencies and their associates in India including HFSPL, whereas both HFSPL and CCI contended that they could not release the goods unless the charges due to them were paid fully by the complainant, the consignee of the goods on production of documents.

4. WHILE the complaint was under consideration of the District Forum, the complainant moved an interim application (no. 198 of 2010) seeking direction of the District Forum to the OPs 3 and 7 to release the goods, pending disposal of the compliant.

5. AFTER hearing the parties, the District Forum by its aforesaid order gave the following directions: "In the result, petition of the petitioner is disposed of by directing the respondents to release the goods by collecting the necessary amount (as shown in the memo filed by the respondent no. 7) and on obtaining a clearance certificate from the respondent no. 1. No order as to costs."

6. IT may be added that according to the District Forum, the amount mentioned by CCI in the memo referred to the District Forum''s order was Rs.1,51,573/- plus service tax per container and, therefore, the total amount was Rs.3,03,000/- plus service tax.

7. THE complainant challenged this order of the District Forum before the State Commission by way of a revision petition. By its impugned order dated 28.03.2011 the State Commission partly allowed the petition with the following observations: "8. Keeping in view of mitigating circumstances that the petitioner has ever been ready to discharge his part of liability, the respondents no. 5 and 6 handed over the consignment at the earliest point of time and the respondents no. 1 and 4 dillydallied the matter till the consignment were dispatched from USA to India and by application of principles of natural justice, we are inclined to hold that it would serve the interest of justice if the petitioner is directed to pay Rs.2,89,573/- plus service tax to the respondent no. 7 and deposit a sum of Rs.3,83,640/- with the District Forum for the purpose of release of the two consignments. Whether the amount of Rs.83,640/- or other claims of the respondents no. 1 to 4 such as the amount of Rs.23,74,110/- mentioned in the memo dated 23.03.2011 payable to them is a matter to be decided in the complaint. We clarify that the liability of each party will be determined in the complaint. 9. In the result, the petitioner is allowed in part. The order of the District Forum is modified. The respondents no. 1 to 4 are directed to submit the Original Shipping Line Order, Bill of Entry and Delivery Order to the respondent

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no. 7 and the respondent no. 7 is directed to release the contained to the respondents no. 1 to 4 and the two consignments to the petitioner on payment of Rs.2,89,573/- plus service tax by the petitioner and further deposit of an amount of Rs.2,89,640/- by him with the District Forum. In the circumstances of the case, there shall be no order as to costs."

8. AGGRIEVED by this order, OP 4, viz., HFSPL has filed revision petition no. 1959 of 2011 claiming payment of its dues, which are separate from those of the CCI.

9. ON the other hand, the complainant has filed RP No. 3029 of 2011 against the order dated 21.06.2011 of the State Commission by which it amended its order dated 28.03.2011 on an application (no. 1180 of 2011) filed by CCI seeking amendment/modification of the order dated 28.03.2011 to clarify that the amount of Rs.2,89,573/- plus service tax pertained to each container.

10. I have heard Mr. Ananda Padmanabhan, learned counsel for HFSPL, Mr. S. K. Sharma, learned counsel for the complainant and Mr. Ratan K. Singh, learned counsel for CCI.

11. THE short point involved in the revision petition filed by the complainant is whether the State Commission has the jurisdiction to amend its own order.

12. ON behalf of CCIL, Mr. Singh has vehemently argued that every judicial/quasi-judicial authority, including a Consumer Forum has inherent power to correct any typographical/clerical error in its order and that is what was done by the State Commission by its order dated 21.06.2011, which was merely correction of the typographical/clerical mistake that occurred inadvertently in the order dated 28.03.2011 in omitting the words "per container". In support of his arguments, he has cited the following judgments: Sr. No. Title Citation 1. Jayalakshmi Coelho v Oswald Joseph Coelho (2001) 4 SCC 181 2. Hari Singh v S. Sethi AIR 1996 Del 21 3. State of Punjab v Darshan Singh (2004) 1 SCC 328 4. A. R. Antulay v R. S. Nayak and Anr. (1998) 2 SCC 602 5. Pratibha Singh v Shanti Devi (2003) 2 SCC 330 6. Bhavnagar University v Palitana Sugar Mill Pvt. Ltd. (2003) 2 SCC 111 7. Shankar K. Mandal v State of Bihar (2003) 9 SCC 519 8. A. A. Haja v Indian Railways (1992) 4 SCC 736

13. ON the other hand, Mr. Sharma, learned counsel for the complainant has relied on the Apex Court''s judgment in the case of Rajeev Hitendra Pathak and Others vs Achyut Kashinath Karekar and Another [(2011) 9 Supreme Court Cases 541] and contended that the State Commission did not have the authority to amend/modify its order dated 28.03.2011 and what the State Commission did by its subsequent order dated 21.06.2011 was not a correction of clerical or arithmetical mistake but a substantial modification in the order with significantly adverse impact against the complainant. Mr. Sharma further argued that the power to correct a clerical or arithmetical mistake has been given to courts under the specific provisions of section 152 of the Civil Procedure Code, 1908 and no such provision exists in the Consumer Protection Act, 1986 (in short, ''the Act'').

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14. AFTER a detailed discussion of various provisions of the Act in the case of Rajeev Hitendra Pathak (supra), the Apex Court came to the following conclusion: "34. On careful analysis of the provisions of the Act, it is abundantly clear that the Tribunals are creatures of the Statute and derive their power from the express provisions of the Statute. The District Forums and the State Commissions have not been given any power to set aside ex parte orders and power of review and the powers which have not been expressly given by the Statute cannot be exercised."

15. FURTHER, as noticed by the Apex Court in its judgment in the above-mentioned case, the only powers of a Civil Court under the Code of Civil Procedure, 1908, which are also conferred on a Consumer Forum, are those specifically contained in section 13(4) of the Act. It is nobody''s case that there is any other provision in the Act (or, the Rules framed thereunder) which is akin to section 152 of the Code of Civil Procedure, 1908 (CCP). Inasmuch as the Consumer Fora derive their powers from the express provisions of the Act, it has to be held that the State Commissions and the District Forums do not have the power to correct clerical or arithmetical mistakes in the orders passed by them. It is thus also not necessary to discuss the applicability of the ratio of the judgments cited by Mr. Singh in view of the fact that they all relate to various aspects of the powers of Civil Courts under section 152 of the CCP.

16. THE modification in its order of 28.03.2011 that was brought about by the State Commission by paragraph 5 of its order dated 21.06.2011 can also not, in my view, be called correction of a mere clerical or arithmetical mistake. For, by way of justification of its action, the State Commission specifically recorded in paragraph 3 of that order that the petitioner (i.e., the complainant) was ready to pay the amount mentioned in the memo dated 23.03.2011 filed by respondent no. 7/CCI. On the other hand, the complainant had all along challenged the levy of ground rent by the CCI as excessive and not payable by him. Therefore, it would be difficult to accept that on the earlier occasion, i.e., 28.03.2011, he had expressed his readiness to pay the amount of Rs. 2,89,573/- plus service tax for each container.

17. CONSIDERING these facts and circumstances of the case, I think that the interest of equity would be served if both the orders dated 28.03.2011 and 21.06.2011 of the State Commission are set aside and the matter is remitted back to the State Commission for fresh adjudication of the revision petition filed by the complainant before the State Commission. It is clarified that the parties will be at liberty to raise their contentions before the State Commission for which purpose they are directed to appear before the State Commission on 17th October 2012. Both the revision petitions are disposed of in the aforesaid terms.

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