

(2016) 10 NCDRC CK 0081

In the National Consumer Disputes Redressal Commission

Case No : 2358 of 2016

**HINDUSTAN COCA-COLA BEVERAGES?PRIVATE LIMITED Vs RAMESH
PRAJAPAT & ANR.**

Date of Decision : 18-10-2016

Acts Referred:

Consumer Protection Act, 1986, Section 21(b), Section 13(1)(c) - Jurisdiction of the National Commission - Procedure on admission of complaint

Citation : 2016 4 CPR 497

Hon'ble Judges : D.K. Jain, M.Shreesha

Advocate : Rajiv Tyagi

Final Decision : Petition Dismissed

Judgement

1. This Revision Petition, under Section 21(b) of the Consumer Protection Act, 1986 (for short "the Act"), has been filed by Hindustan Coca Cola Beverages Private Limited, Opposite Party No.1 in the Complaint, against the order dated 29.02.2016, passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (for short "the State Commission") in Appeal No.708 of 2015. By the impugned order, while affirming the order dated 22.05.2015, passed by the District Consumer Disputes Redressal Forum - II, Jaipur (for short "the District Forum") in Consumer Complaint No. 750 of 2009, preferred by Respondent No.1/Complainant, alleging deficiency in service on the part of the Opposite Parties, including the Petitioner, on the ground that the soft drink, purchased by him, manufactured by the Petitioner herein, was carrying some substance unfit for human consumption, the State Commission has dismissed the Appeal. By the

said order, the District Forum had allowed the Complaint and directed the Opposite Parties to jointly and severally pay to the Complainant 10,000/- towards compensation along with 2,000/- as litigation expenses, within two months from the said date, with a default stipulation of payment of interest @ 10% p.a.

2. The Complaint came to be filed under the following circumstances: On 09.07.2009, the Complainant had purchased three bottles of Limca, manufactured by the Petitioner, from the shop of Respondent No.2, its one of the dealers. After consuming two bottles, the Complainant was taken ill. On checking the remaining one bottle, it was found that there was some flowing particle, like a piece of plastic bag in the said bottle. On his medical examination at the State Primary Health Centre, Malviya Nagar, Jaipur, it was diagnosed that the Complainant was suffering with food poisoning, due to consumption of contaminated drink. He was treated for the said disease. Subsequently, the Complainant got issued a legal notice to the Opposite Parties, which evoked no response from them. Accordingly, alleging deficiency in service on the part of the Opposite Parties, the Complainant filed the afore-noted Complaint, praying for a direction to them to refund the cost of the three bottles in question, cost of medicines, compensation and litigation expenses.

3. Upon appraisal of the documents on record, including the report dated 30.06.2011, submitted by the Chief Public Analyzer, wherein it was opined that the drink was not fit for human consumption as it contained pieces of polythene, the District Forum accepted the Complaint and passed the afore-stated order. The said order having been affirmed by the State Commission, the manufacturer of the soft drink is before us.

4. It is pointed out by the Office that this Revision Petition is barred by limitation, inasmuch as there is a delay of 71 days in filing the same. An Application, praying for condonation of the said delay, has been filed along with the Revision Petition. In paragraphs 3 - 8 of the said Application, the Petitioner has furnished the following explanation: "3. It is submitted that the impugned order was passed on 29.02.2016. Immediately on 1.3.2016, the Petitioner's Counsel at Jaipur applied for the Certified Copy of the impugned order. The certified copy was delivered 2.3.2016. Thereafter, the Certified Copy was sent to the Corporate Office of the Petitioner at Gurgaon and it was received around mid March, 2016. It is submitted that as the concerned person was travelling and then the intervening Holi festival holidays, the certified copy could only be perused on or about 30.3.2016.

4. Upon perusing the impugned order, the Corporate Office of the Petitioner sought the advice of their Counsel at Jaipur for filing of the appeal. The Petitioner's Counsel at Jaipur advised them to take up the matter in further appeal as there were certain factual and legal errors in the impugned order.

5. The Petitioner, thereafter, called upon their local Counsel at Jaipur to send them the complete records for assigning the matter to their Solicitors at New Delhi. It is submitted that the entire case file was received by the Petitioner on or about 3 week of April, 2016. rd

6. Thereafter, the Petitioners instructed their Solicitors at New Delhi to draft the Revision Petition. The Petitioner's Solicitors after perusing the papers raised

certain queries with regard to the labeling of the bottles. The Petitioner then forwarded the queries to their Plant at Dasna, Hapur. The matter was examined at the Petitioner's Plant and thereafter the detailed response was provided to the queries on or about 13.5.2016.

7. In the meantime, as the Hon'ble Supreme Court closed for summer vacation and, the Petitioner's Solicitors could draft the Appeal only towards the end of June and then sent the draft to the Petitioners in the first week of July, 2016. The Petitioners offered their comments on the draft of the Revision Petition. Thereafter, the Revision Petition was finalized and signed in the end of July, 2016.

8. The Petition was submitted for filing in the Registry of this Hon'ble Commission on 1.8.2016 but, it was returned on the ground that there was delay in filing the Revision Petition. Thereafter, the Petitioner's Solicitor drafted the Application for condonation of delay and the same was sent to the Petitioner for vetting. After vetting, the Application was signed and then Revision Petition was filed on ____ .8.2016. In the process a delay of ? days has occurred in the filing of the Revision Petition."

5. We have heard learned counsel for the Petitioner on the question of delay.

6. The explanation furnished by the Petitioner does not make out a sufficient cause for condonation of delay. Though the certified copy of the impugned order had admittedly been received by Counsel for the Petitioner on 02.03.2016 and, after knowing the same on 30.03.2016, the Petitioner's Corporate Office took three weeks in taking legal advice in the matter and obtaining the relevant papers from its Counsel. Subsequently, though the Petitioner instructed its Counsel at New Delhi to do the needful in the matter, in respect of which there is no indication as to when Counsel was instructed, it was only on or about 13.05.2016 that the Petitioner was able to reply to the queries raised by the said Counsel, who also took his merry time in finalizing and getting the Revision Petition signed, and taking further one and a half months in filing the same. Though the Revision Petition, intended to be filed by the Petitioner, was already barred by limitation, yet neither the Petitioner nor its Counsel showed any sense of urgency in filing the Petition as quickly as possible, perhaps for the reason that the amount involved was too small for

a giant multi-national soft drink manufacturer. Bearing in mind the limited period of 90 days, as provided under Regulation 14 of the Consumer Protection Regulations, 2005 for filing the Revision Petition and since it was already barred by limitation, at least on finalization of the Revision Petition, i.e. at the end of July, 2016, the Petitioner was expected to pursue the matter with utmost alacrity but that was not to be, resulting in an inordinate delay of 71 days in filing the present Revision Petition.

7. Bearing in mind the afore-stated facts and the observations of the Hon'ble Supreme Court in *Anshul Aggarwal vs. New Okhla Industrial Development Authority* [(2011) 14 SCC 578] to the effect that while deciding an application for

condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Act for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if highly belated petitions filed against the orders of the Consumer Foras are entertained, we are not inclined to condone an inordinate delay of 71 days in filing of the present Revision Petition, more so when the amount of paltry compensation, aggregating 12,000/-, awarded by the lower Fora cannot be said to be disproportionate to the afore-noted sufferings undergone by the Complainant at the hands of the Petitioner.

8. Even on merits, we are unable to persuade ourselves to agree with the strenuous submissions made by Mr. Tyagi, learned Counsel appearing for the Petitioner, to the effect that since the bottle did not even bear Batch number, the date of manufacture etc., it was spurious, not being manufactured by the Petitioner, and the District Forum had also erred in not obtaining an expert's report from a Central Testing Laboratory, as envisaged in Section 13(1)(c) of the Act. Since we are not inclined to condone the delay in filing the Revision Petition, we deem it unnecessary to deal with the submission in great detail and it would suffice to observe that the concurrent finding of fact to the effect that the soft drink in question was manufactured by the Petitioner and was unfit for human consumption is based on the report of a Government Laboratory, which, for all intents and purposes, is valid and sufficient for the purpose of the said Section.

9. Consequently, the Revision Petition is dismissed in limine mainly on the short ground of limitation.