(1992) 10 NCDRC CK 0063

In the National Consumer Disputes Redressal Commission

Hindustan Paper Corporation Ltd. , WHEELS WORLD APPELLANT

Vs

DHIR COPY HOUSE , SARJIT SINGH RESPONDENT

Date of Decision : 12-10-1992

Acts Referred:

Citation : 1992 0 CPC 704 : 1992 2 CPJ 528 : 1992 2 CPR 753 : 1993 1 CLT 381 : 1993 1 CTJ 29 : 1993 2 CLC 178

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Final Decision : Petition disposed of

Judgement

1. - BOTH these Revision Petitions are being disposed of by this single order. Though these Revision Petitions arise out of different cases the question involved is identical. Briefly stated the facts of Revision Petition No. 37 are that the Revision Petitioner filed an appeal before the State Consumer Disputes Redressal Commission, Haryana, Chandigarh against the order of the District Consumer Disputes Redressal Forum, Hisar. The order of the District Forum was pronounced on 18th September, 1989. It requires mention that before the District Forum the Opposite Party had not appeared though a letter has been sent to the Forum. Thus the order of the District Forum against the Opposite Parties was ex-parte. It was against that order that the appeal was filed before the State Commission on 11th November, 1991. The copy of the order of the District Forum had been received by the present Revision Petitioner only on 8th October, 1991. Before the State Commission an application for condonation of delay in presenting the appeal was filed. The State Commission dismissed the appeal on the ground that the starting point of the limitation for preferring an appeal is the date of order appealed against and not the date of receipt of the copy thereof. For coming to that conclusion, the State Commission relied upon its earlier order passed in the case - Haryana State Electricity Board, Hisar v. Dinesh Kumar. In the Grounds of Revision Petition the petitioner has inter alia stated that Courts were closed on 8th, 9th and 10th November, 1991 on account of Bhaiya Dooj, Second Saturday and Sunday respectively and thus the appeal was filed on the next working day i.e. 11th November, 1991, and therefore, the State Commission ought to have

held that the appeal was filed within time and disposed it of on merits.

2. IN Revision Petition No. 48 of 1992 the facts are that the District Consumer Disputes Redressal Forum. Ambala City passed an ex-parte order against the Revision Petitioner, who was Opposite Party in Complaint, on 7th November, 1991. The copy of the order was stated to have been received by the petitioner on 19th November, 1991. The appeal before the State Commission was filed on 19th December, 1991. It was urged before the State Consumer Disputes Redressal Commission, Haryana, Chandigarh on behalf of the Petitioner who was appellant before the Commission that the period of limitation for filing an appeal should not run from the date of the order but only from the date when a copy thereof is communicated to the appellant. The State Commission rejected that plea on the basis of its earlier decision in the case of Haryana State Electricity Board, Hisar v. Dinesh Kumar of Hisar. The application for condonation of delay of 13 days in presenting the appeal which was filed by way of abundant caution was rejected by the State Commission on the ground that the explanation given for the delay was not satisfactory. We are of opinion that the orders of the State Commission cannot be sustained. As noticed earlier in both the cases the orders were passed against the Opposite Parties in their absence. They came to know of the orders only when the copies thereof were received by them. In such circumstances, the expression "date of order" occurring in Section 15 of the Consumer Protection Act, 1986 should be construed as date of knowledge of the order. When so construed, the appeals in both the cases were within limitation. The matter has been dealt in detail by the Kerala State Consumer Disputes Redressal Commission in Appeal No. 31 of 1991, Marikkar (Motors) Ltd. v. Mrs. Marry Poulose, II (1991) CPJ 283. In that case the appeal was filed before the State Commission on 23rd February, 1991 against the order of the District Forum dated 7th January, 1991. The order was received by the appellant therein on 4th February, 1991. The appellant filed an application for condonation of delay on the ground that he was under the impression that the appeal could be filed within 30 days from the date of communication of the order and thus the appeal was within time, though subsequently the appellant learnt that the appeal should have been filed within 30 days from the date of the order, therefore, the application for condonation of delay was being filed. It was further added that there was no willful negligence or omission on the appellant''s part in filing the appeal beyond the period of limitation. That application was contested by the respondent therein. After considering the arguments of the parties, the Commission remarked: "After considering the question in details we are inclined to accept the appellant''s contention, in fact the principle of the matter is no longer res Integra. In the Assistant Transport Commissioner Lucknow & Others v. Nand Singh, AIR 1980 SC 15 the question arose under the U.P. Motor Vehicles Taxation Act. Under Section 15 of the Act an appeal has to be filed within 30 days of the order of the Taxation Officer. In that case the order of the Taxation Officer although dated October 24, 1964 was received by the respondent only on October 29. He filed the appeal within 30 days of October 29, but beyond 30

days of October, 24. If October 24, could be taken to be the date of the order, then the appeal was out of time but if however, the date of the order, in the context of Section 15, meant the date of Communication of the order, then the appeal was within time. The Lordships followed an earlier decision of the Court, Raja Harish Chandra Raj Singh v. The Deputy Land Acquisition Officer, AIR 1961 SC 1500 and observed : "It is plain that mere writing an order in the file kept in the Officer of the Taxation Officer is no order in the eye of law in the sense of affecting the rights of the. parties for whom the order is meant. The order must be communicated either directly or constructively in the sense of making it known, which may make it possible for the authority to say that the party affected must be deemed to have known the order. In a given case, the date of putting the order in communication under certain circumstances may be taken to be the date of the communication of the order on the date of the order but ordinarily and generally speaking, the order would be effective against the person affected by it only when it comes to his knowledge either directly or constructively otherwise not."

We might also refer to Madan Lal v. State of U.P. & Others, AIR 1975 SC 2085. Section 17 of the Indian Forest Act allows an appeal to be preferred against the order passed by the Forest Settlement Officer and prescribes a time limit of three months from the date of the order for presenting the appeal. The question that fell to be decided was whether the order in question should be treated as having been passed on the date it bore or when it came to the notice of the appellant, Forest Department. Their Lardships followed AIR 1961 SC 1500 and held that time ran from the date when the Forest Department came to know the order. The head note embodies the principle laid down by the Court. The Forest Act does not state what would happen if the Forest Settlement Officer made an order under Section 11 without notice to the parties and in their absence. In such a case, If the aggrieved party came to know of the order after the expiry of the time prescribed for presenting an appeal from the order, would the remedy be lost for no fault of his? It would be absurd to think so. It is a fundamental principle of justice that a party whose rights are affected by an order must have notice of it. This principle is embodied in O.20 R. 1 of the Code of Civil Procedure : though the Forest Settlement Officer adjudicating on the claims under the Act is not a Court, yet the principle which is really a principle of fair play and is applicable to all Tribunals performing judicial or quasi-judicial functions must also apply to him."

Consequently, the State Commission held that the appeal was within time as the appellant got knowledge of the order only on 4.2.1991.

We are in complete agreement with the above statement of the legal position. Accordingly, we hold that in both the present Revision Petitions the appeals were filed within time and the State Commission acted without jurisdiction in dismissing the appeals. The appeals ought to have been disposed of on merits.

3. IN the light of the above conclusion arrived at by us. We accept both the

Revision Petitions, set aside the impugned orders of the State Commission in both the cases and remand the appeals to the State Commission for disposal on merits. It is expected that the State Commission will expedite the disposal of the appeals. IN the circumstances we make no order as to costs. A copy of this order shall be placed on the file of Revision Petition No. 48 of 1992. Petition disposed of.