
(2015) 01 NCDRC CK 0078

In the National Consumer Disputes Redressal Commission

India Posts Department Of Posts

APPELLANT

Vs

Prahalad S/O Madhava Rao

RESPONDENT

Date of Decision : 16-01-2015

Acts Referred:

Citation : (2015) 01 NCDRC CK 0078

Hon'ble Judges : K.S.CHAUDHARI J.

Final Decision : Petition allowed

Judgement

1. THIS revision petition has been filed by the petitioner against the order dated 29.03.2012 passed by the Karnataka State Consumer Disputes Redressal Commission, Bangalore (in short, "the State Commission") (in short, "the State Commission") in Appeal No. 170 of 2012 India Post, Department of Posts Vs. Prahalad by which, while dismissing appeal order of District Forum allowing complaint was upheld.

2. BRIEF facts of the case are that Complainant/respondent delivered a parcel package containing 41 pairs of dance costumes estimated worth Rs.1,25,000/- and artificial jewellery worth Rs. 11,750/- to the OP/petitioner for delivery to Pradeep Kumar in Australia. Aforesaid articles were not delivered. Alleging deficiency on the part of OP, complainant filed complaint before District forum. OP resisted complaint and submitted that articles were dispatched to Mumbai International Post Office for onward journey and delivered to Singapore Airlines on 11.8.2011. It was further submitted that after several correspondence, baggage was delivered to addressee in Australia on 21.10.2013. As per norms for delay in delivery of goods, OP sent cheque of Rs.5,230/- to the complainant; hence, complaint be dismissed. Learned District Forum after hearing both the parties, allowed complaint and directed OP to pay Rs.50,000/- with 12% p.a. interest and further allowed Rs.2,000/- as cost of litigation and directed complainant to return cheque of Rs.5,230/-. OP filed appeal which was dismissed by learned State Commission vide impugned order against which, this revision petition has been filed along with application for condonation of delay.

3. HEARD learned Counsel for the parties and perused record. Petitioner has filed application for condonation of delay of 188 days whereas as per office report there was delay of 162 days in filing revision petition. In the application for condonation of delay, petitioner has explained delay step by step in filing revision petition.

4. THIS Commission in R.P. No. 2021 -2022 of 2013 Jeevanti Devi Vs. Tata Motors Ltd. and Anr. dismissed revision petition as it was barred by 135 days, but Hon"ble Apex Court while allowing Civil Appeal Nos. 10120 10121 of 2014 Jeevanti Devi Vs. Commercial Motors and Anr. observed as under: "Leave granted. The present appeals are directed against the order dated 14th August, 2013, whereby the National Consumer Disputes Redressal Commission, New Delhi, has declined to condone the delay of 135 days. Having heard learned counsel for the parties, we are of the considered view that the delay in filing the revision should have been condoned and the controversy should have been addressed on merits. In view of the aforesaid, the appeals are allowed, the impugned order is set aside and the matter is remitted to the National Consumer Disputes Redressal Commission, for disposal in accordance with law".

5. HON "ble Apex Court in Civil Appeal No. 10289 of 2014 A.T.S. Govindarajane Vs. Chief Manager, State Bank of India while allowing appeal, order dismissing revision petition as barred by 149 days was set aside and matter was remanded to this Commission for deciding revision petition on merits. Hon"ble Apex Court in C.A. No. 5071 of 2014 Taipen Traders Ltd. and Anr. Vs. M/s. Bhawanti Cold Storage and Ors. while allowing appeal, order of this Commission refusing to condone delay of 218 days in filing revision petition was set aside and observed as under: "We have perused the order of National Consumer Disputes Redressal Commission and considered the arguments advanced. On such consideration, we are of the view that the grounds assigned for the refusal to condone the delay does not merit approval. On the contrary, we are of the view that the delay is neither inordinate nor has remained unexplained".

6. IN the light of aforesaid latest judgments of Hon"ble Apex Court, delay in filing revision petition is condoned subject to payment of Rs.5,000/- as cost to the respondent.

7. LEARNED Counsel for the petitioner submitted that as there was no allegation regarding fraudulent or wilful act or default on the part of petitioner in delay delivery of articles, learned District Forum committed error in allowing complaint and learned State Commission further committed error in dismissing appeal; hence, revision petition be allowed and impugned order be set aside. On the other hand, learned Counsel for the respondent submitted that order passed by learned State Commission is in accordance with law; hence, revision petition be dismissed.

8. IT is not disputed that complainant delivered parcel packet on 10.8.2011 for delivery to the addressee in Australia and declared value of the parcel

Rs.1,25,000/- . It is also not disputed that articles were delivered on 21.10.2011 meaning thereby, articles were delivered after 72 days of handing over to the petitioner.

9. NOW the core question to be decided is whether any liability can be fastened on petitioner for not delivering articles within a reasonable time.

10. LEARNED Counsel for the petitioner submitted that as per Section 6 of Indian Post Office Act, 1998 unless fraudulent or wilful act or default on the part of petitioner is pleaded or proved, petitioner is not liable for any compensation. Section 6 of Indian Post Office Act runs as under: "6. Exemption from liability for loss, misdelivery, delay or damage. The Government shall not incur any liability by reason of the loss, misdelivery or delay of, or damage to any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Central Government as hereinafter provided; and no officer of the Post Office shall incur any liability by reason of any such loss, misdelivery, delay or damage, unless he has caused the same fraudulently or by his willful act or default."

Perusal of aforesaid provision makes it clear that petitioner can be fastened with liability only if delay in delivery is caused on account of fraudulent or wilful act or default on the part of petitioner. In this case, complainant has neither pleaded in the complaint nor proved any fraudulent or wilful act or default on the part of petitioner. Merely because there was delay of 72 days in delivering articles, no liability can be fastened on the petitioner unless fraudulent or wilful or default is proved against the petitioner.

11. LEARNED Counsel for the respondent submitted that on account of delayed delivery of articles, articles could not be used in dance programme. Learned Counsel for the petitioner could not place any document on record to substantiate that petitioner was apprised that article was being sent to Australia for dance programme to be conducted on particular date and in such circumstances, it cannot be presumed that articles were delivered after dance programme.

12. LEARNED Counsel for the respondent has placed reliance on judgments of this Commission in R.P. No. 781 of 2010 The Postmaster General Kerala, The Sr. Supdt. Post Office and The Postmaster Perinad Post Office Vs. Kiron Rasheed A.S. Manzil, R.P. NO. 664 of 2013 Head Post Master, Alwar and Post Master, Jaipur Vs. Neeraj Gupta and in R.P. No.127 of 2012 Sr. Superintendent of Post Offices Bangalore South Division and Ors. Vs. Manjit Kaur Sodhi in which order allowing compensation by District Forum was upheld by this Commission. On the other hand, learned Counsel for the petitioner has placed reliance on Three Member Judgment of this Commission in R.P. No. 15 of 1997, R.P. No. 1006 of 2001 and R.P. No. 1035 of 2002 Head Post Master, Post Office Railway Road Kurukshetra, Haryana and Ors. Vs. Vijay Rattan Aggarwal and Ors. in which the then Hon'ble President Justice D.P. Wadhwa observed as under: "In the case of Vijay Rattan

Aggarwal (R.P. No. 15/97) no case has been made out that it was ever declared that letter contained two bank drafts. Even if it is so declared there is a limit of amount of compensation to be paid which is Rs.1,000/ -. Under the Consumer Protection Act, 1986, we cannot go beyond the statutory provisions and grant compensation more than that what is statuorily fixed. A consumer Forum is even bound by the terms of the contract howsoever oppressive these may be unless those terms are against public, illegal or void".

In the light of judgment of Three Member Bench, it becomes clear that even if provisions of the Act are antiquated and out of tune with the spirit of a democratic Government in a Parliamentary system, complainant is not entitled to claim more compensation than provided by the Act.

13. OP already remitted cheque of Rs.5230/ - to the complainant on account of delayed delivery and complainant is not entitled to grant of more compensation and learned District Forum committed error in granting Rs.50,000/ - as compensation and learned State Commission further committed error in dismissing appeal; hence, revision petition is to be allowed.

14. CONSEQUENT LY , revision petition filed by the petitioner is allowed and impugned order dated 29/3/2012 passed by the State Commission in Appeal No. in Appeal No. 170 of 2012 India Post, Department of Posts Vs. Prahalad and order of District Forum dated 23.12.2011 passed in Complaint No. 1927 of 2011 Prahalad Vs. India Post, Department of Posts is set aside, but petitioner is directed to issue fresh cheque/Bank Draft of Rs.5230/ - in favour of the respondent within 30 days from passing of this order.