
(2004) 03 NCDRC CK 0072

In the National Consumer Disputes Redressal Commission

NAURATA MAL GUPTA

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 24-03-2004

Acts Referred:

Citation : 2005 1 CPJ 432

Hon'ble Judges : K.K.Srivastava , MajGenS.P.Kapoor J.

Final Decision : Appeal allowed

Judgement

1. -THIS is an appeal filed against order dated 17.12.2003 passed by District Consumer Disputes Redressal Forum-II, U.T., Chandigarh [for short hereinafter referred to as the District Forum] in Complaint Case No. 1061 of 2002-Naurata Mal Gupta v. Union of India & Others.

2. THE learned Counsel for the appellant referred to Para 7 of the impugned order where the District Forum made, inter alia, the following observations : "....But it is not shown by him as to for which period the arrears of Rs. 36,344/- had accumulated. THE proper procedure for him would have been to file copies of all the bills from 10.2.1999 upto date and then to show as to how much energy was consumed in each of the billing cycles and in which particular billing cycles the excessive bill had been prepared and on what grounds it was being attacked or challenged. But he has not produced the copies of these bills. THEREfore, the essential and necessary date for deciding this consumer complaint is singularly missing. Hence, it cannot be said that deficiency in service has been committed by the O.Ps. So, this complaint is dismissed leaving the parties to bear their own costs." The learned Counsel for the appellant took us through the impugned order to show that the complainant had filed his affidavit, copies of bills, copy of earlier complaint bearing No. 846 of 1999 decided by the District Consumer Disputes Redressal Forum-I, U.T., Chandigarh on 11.1.2002 with reference to another bill though for the period in question when the premises remained locked and not used. A mini bill was also placed on record.

The O.P. Nos. 1 and 2 who were represented through the Government Pleader

did not file written statement despite grant of statutory time of more than 45 days and the District Forum refused to grant further opportunity to them for filing their written statement vide order dated 28.3.2003 and as such, the case was undefended insofar as O.P. Nos. 1 and 2 i.e., Union of India through Chief Engineer, Electricity, U.T. Secretariat, Sector 9D, Chandigarh and Sub-Divisional Officer, Electricity Operation, Sub Division No. 1, Sector 23-C, Chandigarh are concerned and were accordingly proceeded with.

3. O.P. No. 3 - Municipal Corporation through Assistant Commissioner, Sector 17, Chandigarh and O.P. No. 4 Shri Krishan Kumar Sharma, Booth No. 2927/A, Sector 22-C, Chandigarh were proceeded ex parte. However, O.P. No. 3 had filed written statement to the effect that the electricity bills were issued by O.P. Nos. 1 and 2 and O.P. No. 4 is alleged to be the tenant of the appellant. The contention of the learned Counsel for the appellant is that the District Forum instead of proceeding to decide the complaint in the absence of the evidence, which it required for deciding the complaint case, ought to have offered a reasonable opportunity to the complainant considering the fact that Consumer Protection Act, 1986 [for short hereinafter referred to as the C.P. Act] has been enacted for providing better protection to the consumer and further in view of the fact that the averments made in the complaint were not even replied to by the O.Ps./ respondent Nos. 1 and 2. Not only this, it was contended that the District Forum could direct respondent Nos. 1 and 2 who were represented through the Government Pleader to place on record the basis for issuing the disputed bill showing the arrears in respect of the premises in question.

4. WE find considerable merit in the submission made by the learned Counsel for the appellant. Moreover, Mr. K.C. Sahu, Govt. Pleader who accepted the notice of appeal on behalf of respondent Nos. 1 and 2 and appeared before us sought liberty to file written statement in respect of the averments made in the complaint case and contended that the right to file written statement was denied only on the ground that the statutory period of 45 days as provided in Section 13(2)(a) of the C.P. Act had expired. So far as the right of the O.P. to file written statement within the prescribed period of 45 days only and thereafter the right being not exercisable for seeking further time to file written statement is concerned, the Hon'ble Supreme Court considered this matter in the case of Topline Shoes Ltd. v. Corporation Bank, II (2002) CPJ 7 (SC)=IV (2002) SLT 235=2002 CTJ 682 (Supreme Court)(C.P.). It was held that the provision as contained under Clause (a) of Sub-section (2) of Section 13 does not indicate that it is mandatory in nature. The provision appears to be directory in nature. It was further held that this provision envisaged that the proceedings may not be prolonged for a very long time without the opposite party having filed his reply but no penal consequences have, however, been provided in case extension of time exceeds 15 days. Therefore, it could not be said that any substantive right accrued in favour of the appellant or there was any kind of bar of limitation in filing of the reply within extended time though beyond 45 days in all. The reply is not necessarily to be rejected. This provision, it was held, is procedural in nature

and the statement of objects and reasons of the C.P. Act also provides that the principles of natural justice have also to be kept in mind. In view of the law laid down by the Hon"ble Supreme Court in the case of Toplevel Shoes Ltd. (supra), the order dated 28.3.2003 of the District Forum in closing the right of the respondent Nos. 1 and 2 to file their written statement is not in accordance with law. The respondent Nos. 1 and 2 can be allowed an opportunity keeping into consideration the principles of natural justice and for proper adjudication of the consumer complaint filed by the appellant.

5. RESULTANTLY, the appeal is allowed. The impugned order is set aside. The complaint case is remanded to the District Forum-II, U.T., Chandigarh with the directions to allow opportunity to respondent Nos. 1 and 2 to file written statement in respect of the averments made in the complaint case within three weeks from the date the parties appeared before the District Forum-II, U.T., Chandigarh. The respondents will not seek further time in filing the written statement as this opportunity is being allowed to them keeping in view the principles of natural justice. Thereafter, the District Forum-II, U.T., Chandigarh shall afford a reasonable opportunity to the appellant/complainant as well as respondents/O.P. Nos. 1 and 2 to file such evidence as they desire to file in respect of their respective pleas and then proceed to decide the complaint case within the time allowed under the C.P. Act. The parties are directed to appear before the District Forum-II, U.T., Chandigarh on 2.4.2004. Copies of this order be sent to the parties free of charge. Appeal allowed.