

(2003) 06 NCDRC CK 0047

In the National Consumer Disputes Redressal Commission

PREMIER ELECTRO MECHANICALS

APPELLANT

Vs

SECRETARY, M.P. RAJYA VIDHIK SEVA PRADHIKARAN-Non-applicant

RESPONDENT

Date of Decision : 02-06-2003

Acts Referred:

Citation : 2003 3 CPJ 248

Hon'ble Judges : S.K.Dubey , B.L.Khare , Pramila S.Kumar J.

Final Decision : Revision disposed of

Judgement

1. THIS revision arises out of order dated 17.1.2002 passed in Execution Application No. 9/93/95 by the District Consumer Disputes Redressal Forum, Bhopal (for short the "District Forum") whereby the District Forum in compliance of the order dated 12.5.1998 passed in Revision No. 36/1995 by this Commission ordered the applicant to return the amount of Rs. 18,000/- the cost of the air conditioner with interest thereon at the rate of 18 per cent per annum from 25.4.1992 till the date of payment.

2. THIS case has got its own history. The non-applicant filed a Complaint Case No. 9/1991 before the District Forum, for deficiency in service in supply of defective air conditioner, which was allowed by the District Forum vide order dated 25.4.1992 to replace the air conditioner by new one or in alternative to pay Rs. 18,000/- with interest at the rate of 18 per cent per annum. The applicant preferred an Appeal No. 197/1992, which was heard and disposed of on 2.1.1993 by the Commission with a direction to the opposite party to repair the air conditioner within a month's time. However, according to the non-applicant, the air conditioner was not repaired nor replaced, therefore, the proceedings under Section 27 of the Consumer Protection Act, 1986 (for short the "Act") were initiated wherein the District Forum directed the applicant to repair the air conditioner. Aggrieved of that order, the non-applicant filed a Revision No. 36/1995 before this Commission which was decided on 12.5.1998 by the learned members observing in para 2 that in Appeal No. 197/1992 the State Commission

directed the applicant to repair the air conditioner within a month's time. With that direction, the appeal was disposed of without going into the merits of the case. In para 3, the Commission observed that meaning of the order is clear that if the air conditioner was not restored within a period of one month, the alternate part of the order passed by the District Forum, automatically comes into play and the alternative order of the District Forum was to pay Rs. 18,000/- with interest at the rate of 18 per cent per annum. However, the opposite party did not comply the directions given by the State Commission, hence an application on 17.7.1993 for execution of the order dated 25.4.1992 was filed wherein the proceedings lingered on. In para 4 it was observed that alternative part of the order of the District Forum was not set-aside by this Commission and the complainant submitted an application dated 21.1.1993 for execution of the order dated 25.4.1992, hence set aside the order dated 21.11.1995 passed by the District Forum with a direction to see that the alternate part of the order dated 25.4.1992 executed, that is an amount of Rs. 18,000/- with interest at the rate of 18 per cent per annum with effect from 25.4.1992 is payable till the date of payment is made. According to the applicant in compliance of the State Commission, the applicant gave another new air conditioner 1.5 AC on 11.10.1995 and made a request for return of the old air conditioner but the defective air conditioner was not returned. The non-applicant has placed before us a letter dated 1.11.2002 addressed to the District Legal Aid officer that there is no entry of new air conditioner in the stock register. The applicant at his own accord, left an old air conditioner, which is not in working condition, therefore, office sent a letter No. 2513 dated 12.1.1996 to the applicant to take back the air conditioner so left. From this it is evident that a defective air conditioner so sold was not repaired and another air conditioner is also lying with the non-applicant.

It is contended that the order passed in Revision No. 36 of 1995 is without jurisdiction as when once the appeal was disposed of with a direction to repair the air conditioner within a month's time that order could only be executed. In revision, this Commission could not have observed that the appeal was disposed of without going into the merits of the case. Even if the merits of the case were not considered, the remedy for the non-applicant was to challenge the order by way of revision for seeking the alternative relief before the National Commission as there is no power of review under the Act. Counsel cited a decision of the Supreme Court in case of *Jyotsna Arvind Kumar Shah v. Bombay Hospital*, III (1999) CPJ 1 (SC)=VII (1999) SLT 146=2000 CTJ 728 (SC) (CP), and a recent decision of the National Commission in *UCO Bank v. Dilip Kumar*, I (2003) CPJ 174 (NC)=2003 CTJ 290 (NCDRC). Therefore, the order is without jurisdiction, which can be challenged at any stage even in collateral proceedings. Counsel cited a decision of the Supreme Court in case of *Kiran Singh & Ors. v. Chaman Paswan & Ors.*, AIR 1954 SC 349.

3. LEARNED Counsel for the non-applicant submitted that this Commission has no jurisdiction to hear and decide this matter as the order passed in Revision No.

36/1995 has attained its finality, which ought to have been challenged before the National Commission. Therefore, the District Forum is rightly executing the alternative part of the order that is return of the cost of the air conditioner with interest. The submission that the air conditioner was replaced by new one has no bearing as the applicant at his own accord left an old air conditioner. The applicant can collect both the air conditioners from the non-applicant. However the applicant cannot avoid its liability to pay the amount of Rs. 18,000/- with interest at the rate of 18 per cent per annum. After hearing learned Counsel for the parties, in our opinion, it is a case where the parties have been made to suffer due to the order of this Commission passed in Appeal No. 197/1992 wherein the appeal was disposed of with a direction to repair the air conditioner within one month. If either party was aggrieved of the order, the same ought to have been challenged by filing revision before the National Commission. When execution was filed and the District Forum did not make an order for payment of the amount against which a revision was filed in which this Commission observed that as the appeal was disposed of without dealing the complaint on merits with a direction to repair the air conditioner within a specified time and clarified that if the air conditioner is not repaired then automatically the alternative part will come into play, that is return of the amount of Rs. 18,000/- with interest at the rate of 18 per cent per annum.

4. IN our opinion, such an order could not have been passed. If, this Commission was of the view that the appeal was not decided on merits then in that case the appeal ought to have been revived for dealing it on merits. IN revision arising out of the execution proceedings, the Commission was having no jurisdiction to pass an order for payment, which substantially amounts to review of the order dated 2.1.1993 passed in Appeal No. 197/1992 for which there is no power under the Act. See, the decisions in *Jyotsna Arvind Kumar Shah v. Bombay Hospital and UCO Bank v. Dilip Kumar* (supra). In any case, it was the mistake on the part of this Commission by disposing of the appeal with certain directions without dealing it on merits which has resulted injustice to both the parties as the non-applicant has been deprived of the money with interest and the applicant has been deprived to make submissions that the order could have been passed only in accordance with Section 14(1) of the Act, as then it was, which reads thus : "14. Finding of the District Forum-(1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things namely : (a) to remove the defect pointed out by the appropriate laboratory from the goods in question; (b) to replace the goods with new goods of similar description which shall be free from any defect; (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant; (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer

due to the negligence of the opposite party. 14(2)....."

From a bare reading of the above it is evident that on a complaint of defective supply of goods, the Consumer Fora has jurisdiction to pass the order to remove the defects of the goods so supplied. In failure, to replace the goods with new goods of similar description which shall be free from any defects. In failure to return the complainant the price paid by the complainant the District Forum under Clause (d) of Section 14(1) of the Act can also award compensation. The District Forum in its original order passed only to repair the air conditioner in failure to return the price with interest. This order of the District Forum was modified in appeal. In execution proceedings in failure of repairs order of return of price with interest was not executed. The non-applicant preferred a Revision No. 36/1995 decided on 12.5.1998 by this Commission wherein the alternate part of the order dated 25.4.1992 was affirmed which could not have been passed. Section 14(1) envisaged firstly an order of removing defects in failure replacement of the goods by new goods of similar description and in failure of that return of the price could have been passed. If the appeal would have been heard on merits one does not know what would have been the fate whether the order would have been passed for repairs only or if the goods are not repaired then of replacement of the goods by new goods and in failure to return its price paid with or without compensation or with interest in the shape of compensation then at what rate.

5. IN the circumstances in our opinion both the parties have suffered for the mistake of this Commission in not dealing the appeal on merits, if it was not dealt on merits. IN any case when the matter came in revision, this Commission in exercise of its revisional jurisdiction ought to have dealt with the case on merits, but that course was also not adopted, on the other hand order was passed to comply the alternative part of the order passed by the District Forum.

6. NOT dealing the appeal on merits and then to say in revision arising out of the execution proceedings that as the appeal was not dealt on merits, hence, the alternative part of the order passed by the District Forum will automatically comes into play is in violence to provisions of Sections 14(1) and 15 of the Act. True, the preamble of the Act is to provide for better protection of the interest of consumers and for that purpose consumer Councils and other Authorities for the settlement of consumers disputes have been established. Consumer Council has an advisory role in promoting and protecting the rights of consumers, while the three tier system, that is the establishment of the District Forum, State Commission and the National Commission is for the purpose of settling the consumers' disputes, which are quasi judicial bodies and acts like Courts, though are not Courts but are vested with some powers of Civil Courts. Thus, the functions of these Authorities or Agencies is adjudication of consumer disputes and to award, wherever appropriate, compensation to consumers, observing the principles of natural justice. See, the decision of the Supreme Court in Common Cause (A Registered Society) v. Union of India & Ors., I (1993) CPJ 1 (SC)=1993

(1) CPR 211 (SC), and *Luxmi Engineering Works v. P.S.G. Industrial Institute*, II (1995) CPJ 1 (SC). Therefore, while deciding the adjudication of consumer disputes, it is the duty of the Consumer Fora that while granting any relief that the provisions of the Act are not violated and that the relief is granted to a consumer in accordance with the explicit language of the relevant provisions of the Act.

From the facts stated above, it is evident that the original order passed by the District Forum was not passed in accordance with Section 14(1) of the Act and the appeal preferred was disposed of without dealing it on merits. When the matter came up in revision arising out of the execution proceedings, this Commission observed that the appeal was not dealt with on merits and if the order of restoration is not complied with then alternative part automatically comes into play which means that in revision the appeal which was disposed of was allowed without affording an opportunity of hearing to the applicant and without dealing the same on merits.

7. IT is well settled that appeal is a continuation of the proceedings, in effect the entire proceedings are before the Appellate Authority and it has power to review the evidence subject to statutory limitations prescribed. See, the decisions of the Supreme Court in case of *Ramankutty Guptan v. Avara*, AIR 1994 SC 1699, and *Shiv Shakti Co-op. Housing Society, Nagpur v. M/s. Swaraj Developers & Ors.*, III (2003) SLT 287=AIR 2003 SC 2445. In view of this, if the matter was not dealt with on merits in appeal then the parties ought to have been heard on merits by reviving the appeal, but that course was not adopted and an order was passed to comply with the alternative part of the order. Such a procedure adopted is not only against the first and foremost principles of natural justice that is *audi alteram partem* rule, that is no one should be condemned unheard, whereby not only the parties were deprived of justice by violating the provisions of Sections 14(1) and 15 of the Act. It is also well settled that a party should not be made to suffer for the act of the Court. In such circumstances, the maxim of equality viz. *actus curiae neminem gravabit*, that is an act of Court shall prejudice no man will come into play. This maxim is founded upon justice and good sense which serves a safe and certain guide for the administration of law. See, the decisions of the Supreme Court in *Atma Ram Mittal v. Ishwar Singh Punia*, (1988) 4 SCC 284, and *Mohammed Gazi v. State of M.P. & Ors.*, III (2000) SLT 448.

8. APPLYING the said principle, in our opinion, it being a clear case of hardship or prejudice caused due to the act of this Commission, which has resulted injustice to the parties as the Appeal No. 197/1992 was disposed of with certain directions, the order of which was not challenged in revision before the National Commission and then in revisional jurisdiction without dealing the case on merits to say that the alternative part of the order of the District Forum comes into operation without reviving the appeal, for hearing and passing the order in line with Section 14(1) of the Act as it stood. In the circumstances, without going into question of jurisdiction that the order is a nullity we feel that what was not

done in the appeal or in Revision No. 36/1995, it should be done now in exercise of our revisional jurisdiction for passing an appropriate order to meet the ends of justice and to put a final curtain on the long litigation between the parties for moulding and granting the relief in accordance with Section 14(1) of the Act. Admittedly, the air conditioner so supplied was not repaired. Therefore, the applicant deserves an order to replace the air conditioner by new one and to pay compensation in the shape of interest which should not be too high or too low. See the decision of Supreme Court in Ghaziabad Development Authority v. Union of India, II (2000) CPJ 1 (SC)=IV (2000) SLT 654=(2000) NCJ (SC) 386. Considering the circumstances and that award of 18% interest for such a long period would be highly excessive and punitive, particularly with a change in economy and the policy of the Reserve Bank of India the interest rate has been lowered and now the Nationalized Banks are not granting interest even on fixed deposits more than 6.5%, it would be just to direct to pay interest at the rate of 6% p.a.

9. IN view of the above, we direct the applicant to replace the air conditioner by new one and to pay compensation in the shape of interest at the rate of 6 per cent per annum from the date of purchase on Rs. 18,000/- and in failure to return the amount of Rs. 18,000/- with interest thereon at the rate of 6% p.a. from the date of purchase. We further direct the applicant to take back two air conditioners at its own cost from Jabalpur. The applicant also to bear the costs of the proceedings throughout quantified at Rs. 2,000/-. The applicant to comply the order with within a period of two months from the date of receipt of certified copy of the order.

10. ACCORDINGLY, the revision is disposed of with the direction made hereinabove. A copy of this order be conveyed to the parties and a copy be sent to the District Forum along with the record of the case. Revision disposed of.