

(2012) 01 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

RCI India Pvt. Ltd Pine Valkley, First Level, Embassy Golf Links Business Park Off Intermediate Ring Road Bangalore - 560 017 Through its Authorized Representative APPELLANT

Vs

Parthasarthy S/o Late Sri C. Ramachandra Aged 76 years, Occ: Advocate R/o 6 RESPONDENT

Date of Decision : 11-01-2012

Acts Referred:

Citation : 2012 0 NCDRC 16 : 2012 1 CPJ 461

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Application dismissed

Judgement

1. IN this revision there is challenge to order dated 19.10.2006 passed by A.P. State Consumer Disputes Redressal Commission, Hyderabad (for short as State Commission) vide which appeal of the petitioner was dismissed.

2. THE brief facts of this case are that respondent no. 3/opposite party no. 1 before the District Forum and petitioner/opposite party no. 3 before the District Forum, invited respondents no. 1 and 2/ the complainants to participate in a meeting held by them and there respondents no. 1 and 2 were induced to buy timeshare in respondent no. 3's resorts by name "the Village". Respondents no. 1 and 2 believing the words of the petitioner and respondent no. 3, paid the amount and booked their studio apartments. But when respondents no. 1 and 2, went to Bangalore and wanted to avail their studio apartment for vacation they observed that "the Village" was not at all developed and hence they were forced to stay at Bangalore by incurring huge expenditure. Respondents no. 1 and 2 therefore got issued a legal notice to the petitioner/respondent no. 3. Petitioner sent a reply stating that they have cancelled the affiliation to the respondent no. 3 and hence they have nothing to do with the amounts paid by respondents no. 1&2. However, petitioner offered to extend their facilities to respondents no. 1 & 2 on payment of some extra amounts. Respondents no. 1&2, therefore approached the District Forum seeking for appropriate relief. Notice sent to the

respondent no. 4/opposite party no. 2 was returned unserved. Therefore, District Forum ordered fresh notice at the cost of respondents no. 1 and 2 but as they failed to deposit the costs, the case against respondent no. 4 was dismissed.

3. PETITIONER filed counter affidavit denying their liability in returning the amounts. It is their case that they gave affiliation to respondent no. 3 and they never received any amounts from the respondents no. 1 and 2. Hence, the question of refund of amount from petitioner does not arise.

4. BASED on the pleadings and documents, the District Forum directed petitioner and respondent no. 3, jointly and severally to pay an amount of Rs. 1,15,175/- to respondents no. 1 and 2 with interest @ 9% p.a. from 23.2.2005 till the date of payment together with compensation of Rs. 10,000/- and costs of Rs. 1,000/-. Aggrieved by the order of the District Forum, petitioner filed an appeal before the State Commission. State Commission, vide impugned order, dismissed the appeal of the petitioner.

5. THIS is how the matter has reached before this Commission.

6. RESPONDENTS no. 3 and 4 have been served by publication in the present revision, but they did not appear. Hence, they were proceeded ex parte. It has been contended by learned counsel for the petitioner that petitioner has not received any amount from respondents no. 1 and 2 and as such direction given in the impugned order for refund to the petitioner is wholly erroneous and is liable to be set aside.

7. IT is also contended that petitioner is only a proforma party who facilitates its members in the "Holiday Exchange System" and has no co-relation to the payment made by respondents no. 1 and 2 to respondent no. 3 or to the services to be provided by respondent no. 3, to respondents no. 1 and 2 as per the purchase agreement.

8. ON the other hand, it is contended by learned counsel for the respondents no. 1 and 2 that petitioner as well as other respondents are jointly and severally liable and there is no ambiguity in the impugned order passed by the State Commission. Since, there are concurrent findings of facts by the two fora below and as no legal issue is involved in this case, thus the revision petition under these circumstances is liable to be dismissed. District Forum in its order dated 22.6.2006 has held that: 9. Now OP -3 is contesting in this particular case. They filed their counter arguments along with documents marked as Exs. BI to B4. OP -3 contention is that they never entered into an agreement with the complainants directly and never accepted any amount from the complainants and hence they have no liability to refund any amount to the complainant. Ex. BI is the enrolment application showing the resort name as well as "the village". Ex. B2 is the resort affiliation agreement to "the village" and so many terms and conditions were included in this agreement. Ex. B3 is a resolution passed by the Board of Directors of OP -3 authorizing Mrs. K. Vijayachitra and Mr. Anin Bagchi as authorized signatories to appear on behalf of the OP -3. Ex. B4 is a resort

affiliation agreement of RCI India Pvt. Ltd., showing that RCI and OP -1 entered into a agreement and RCI extending its affiliation to OP -1. Both In exhibits B2 and B4, we observed that the OP -3 collected some affiliation fee and enrolment fee from OP -1 on behalf of the members. Eventually these members of the OP -1 were called as members of RCI. In ex.B4 it was very clearly given in point No. 1 with regard to members. In sub -clause 1.2 an affiliation fee of Rs. 6,15,000/- was mentioned and 1.3 enrolment fee of Rs. 4,200/-for a term of 5 years was mentioned. In 1.5 maximum number of RCI members in first year was shown as 100. From all these it is clearly evident that RCI collected some affiliation fee from the resort people i.e. OP -1 and in turn these resort people collected these amounts from the members of their customers. In this present case, the OP -1 collected the amount on behalf of the complainants and sent it to OP -3 towards affiliation fee as well as membership fee. Hence, the OP -3 denial about having contacts with complainants were overruled. In second page of B4, RCI is talking about affiliation and in sub -clause 2.3 RCI agreed to perform various obligations, services and duties associated with the RCI Exchange Programme. It clearly shows that RCI promised to give some service to their members and when they failed to do so, it certainly amounts to deficiency in service only. Even the documents of the complainant are clearly showing that RCI interacted with complainants on various occasions. In Ex.A9 RCI directly sent a letter to the complainants congratulating them on joining "the village". In this same letter RCI also promised to extend their cooperation in making the holidays of the complainants memorable. Ex A10 is another note from OP -3 with a heading "Welcome to RCI". In this particular Ex A10, the RCI described their service benefits to RCI members etc. These two documents are clearly showing that the OP3 accepted the complainants as their members and offered to do some service to them. Though it is through OP -1, the OP -3 did accept the membership of complainants 1 and 2. According to Ex B4 also the OP -3 promised to extend their services to all the members of RCI and hence their denial in this regard is overruled.

9. STATE Commission while concurring with the findings of District Forum, in its impugned order has observed : Ex -B -1 is the enrollment application showing the resort name as "the Village". Ex.B -2 is the affiliation agreement to "the Village". Ex.B -3 is the resolution passed by the Board of Directors of the appellant. Ex.B -4 is the affiliation agreement.

In the present case the first opposite party has collected the amount from the complainants and sent it to the appellant towards affiliation fee as well as membership fee. Hence, the appellant cannot deny their liability. From the facts, it is clear that the RCI promised to give service to the members and when they failed to do so there is deficiency in service on their part and they are bound to return the amounts paid by the members

Ex.A -10 letter clearly establishes that the opposite party accepted the complainants as their members and offered to do some service. We also find that

the conduct of the opposite parties in this case is not only deficiency in service but unfair trade practice.

The order of the District Forum in our opinion does not suffer from any infirmity so as to call any interference by this Commission in exercise of its appellate jurisdiction under Sec. 15 of the C.P. Act.

10. AS per written statement filed by the petitioner in the District Forum, petitioner's Managing Director has written a congratulatory letter to the respondents no. 1 and 2 at the time of purchase of time share resort and assured them the best services at all the time. Now it does not lie in the mouth of petitioner that petitioner is not at all liable in this case and has got no concern with time sharing scheme. In view of the concurrent findings of facts given by the two fora below and as per overwhelming documentary evidence placed on record, it is clearly established that the petitioner is fully involved in the timeshare allotment scheme. Admittedly, petitioner has been corresponding with respondents no. 1 and 2 in this regard also. Thus, the deficiency of service on behalf of the petitioner is writ large in this case.

11. HON "ble Supreme Court in Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd. : 2011 (3) Scale 654 has observed; Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora.

12. HENCE , in this petition no jurisdiction or legal error has been shown to call for interference in the exercise of power under section 21 (b) of the Consumer Protection Act, 1986 since, two fora below have given cogent reasons in their order which does not call for any interference nor they suffer from any infirmity or revisional exercise of jurisdiction. It is not that every order passed by fora below is to be challenged by a litigant even when the same is based on sound reasoning.

13. ACCORDINGLY , present revision petition is not maintainable being devoid of any merits. The same has been filed just to waste the time of this Commission. Accordingly, the revision petition stands dismissed with costs of Rs. 20,000/ -

(Rupees twenty thousand only).

14. PETITIONER is accordingly directed to deposit the costs by way of cross cheque for the sum of Rs. 20,000/ -(Rupees twenty thousand only) in the name of "Consumer Legal Aid Account" within four weeks from today. Pending applications, if any, stand also dismissed.

15. IN case, costs are not deposited within the prescribed period, petitioner shall be liable to pay interest @ 9% p.a., till realization.

16. LIST on 17.2.2012 for compliance.