(2011) 08 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

Sahara India APPELLANT

Vs

NARESH KUMAR RESPONDENT

Date of Decision : 29-08-2011

Acts Referred:

Citation : 2011 0 NCDRC 753 : 2012 1 CPJ 133

Hon'ble Judges : V.B.Gupta , Suresh Chandra J.

Final Decision : application also stand dismissed

Judgement

1. PRESENT revision petition has been filed against order dated 11.2.2011, passed by State Consumer Disputes Redressal Commission, Jaipur (for short as ? State Commission?) vide which appeal of petitioner against order dated 19.08.2008 passed by District Consumer Disputes Redressal Froum, Alwar (for short as ? District Forum?) was dismissed.

2. BRIEF facts are that respondent filed a complaint under Section 12 of the Consumer Protection Act, 1986 on 2.11.2007 stating thereinthat Smt. Harli Devi his grandmother, purchased a Bond dated 31.8.1998 of Rs. 1,000/- from petitioner No. 1, in which name of Manna Lal is mentioned as nominee. Name of petitioner was also given as nominee in the Bond. Harli Devi died on 31.1.2006, whereas Manna Lal also died on 25.2.2006. According to the terms and conditions of the Bond, if the Bond-holder dies within the period of 10 years, death benefit of Rs. one lakh will be given to the nominee of the Bond-holder. On this ground, respondent in the capacity of nominee is entitled to get this amount. On 30.3.2007, petitioners refused to give the above amount to the respondent. Legal notice was served upon the petitioners on 16.4.2007.

Petitioners in their reply admitted the fact of issuance of the Bond and appointment of Sh.Manna Lal as nominee. However, it is alleged that the Death Help Facility allowed the nominee to have the sum on fulfilling of the terms and conditions of clause 9 mentioned in the scheme. The respondent has not produced reliable documents before the petitioners to obtain the death Help Facility. Therefore, Death Help Facility cannot be given to the respondent.

3. DISTRICT Forum vide its order dated 19.08.2008 allowed the complaint and directed the petitioners to pay the Bond amount to the respondent along with cost of Rs. 2,000/-. Aggrieved by the order of District Forum, petitioners filed an appeal which was dismissed by impugned order.

4. IT is contended by learned counsel for the petitioners that as per rules of the Bond agreed by the deceased Bond Holder, ?Death Help? is an interest free loan advanced by petitioners only on fulfillment of the conditions laid down in the Bond. In the absence of documents satisfying the fulfillment of the conditions, no Death Help can be advanced. IT is also contended that, as respondent has applied for the Death Help Facility burden was upon him to produce cogent evidence to prove fulfillment of the conditions for advancing death help. At the time of entering into agreement no documents are taken as proof of age etc. In the present case, bond was bought on 31.3.1998 and death took place on 31.1.2006, whereas birth certificate was issued on 18.8.2006 which shows that birth certificate came into existence after more than seven months of the death of the Bond holder. Thus, birth certificate was clearly procured one and the entire transaction is vitiated by fraud and void for such reasons. Issuance of Bond by the petitioners is not in dispute. It is also not disputed that Bond holder had died. The only question which arise for consideration as to whether nominee of deceased Bond holder is entitled for the amount or not? District Forum in its order has held; "Inconnection with all these objections, the defendants should have got made necessary inquiries on the basis of principle of caution before issuing the bond of Rs. 1000/- to Smt. Harli Devi. Now, at this stage, making this kind of objections in the matter of a minor Bond of Rs. 1000/- after the period of 10 years by a big group like Sahara Group, on the application filed to get the benefit allowable in connection with the said bond of Rs.1000/- after the death of Smt. Harili Devi, a consumer of a very-simple level, who purchased the Bond of Rs. 1000/- only dated 31.8.1998, who has died, in our opinion, is inhumanity. We find that the defendants have admitted receiving bond of Rs. 1000/- by Smt. Harli Devi on31.8.1998 from the defendants and photo copy of the bond is also produced, which has been exhibited as Exhibit-I by us. This is in two pages and it bears the signatures against the name of Naresh Kumar in " A to B" portion for first nominee(legal heir). It makes clear that the complainant is entitled to get the benefit payable according to the agreement under Scheme Sahara-10 of the defendants and by not paying such benefit, default to consumer by the defendants is proved and in our opinion, this complaint of the complainant deserves to be allowed".

5. STATE Commission while agreeing with District Forum has observed; "Learned counsel for the appellant has stated that at the time of taking Bond by Smt. Harli Devi, she had attained the age above 60, however, wrong facts have been mentioned in this regard. In this regard, Voter list has been taken for support and on the other hand, Birth Certificate was produced in connection with Bond-holder, on the basis of which, Bond was issued. In our opinion, we do not find any reason to not rely upon the Birth Certificate produced by the complainant.

We agree with the judgment of the learned Forum. This kind of formalities should have been got completed from the applicant earlier itself and the Bond should have been issued after total satisfaction. In view of the above mentioned grounds, the appeal is found baseless, hence is dismissed?.

6. COPY of the Birth Certificate placed on record by the petitioner, goes on to show that date of birth of deceased is 22.9.1946. This certificate has been issued by a statutory authority. In these proceedings, authenticity of this document cannot be challenged or looked into by this Commission. Present Revision Petition has been filed under Section 21(b) of the Act. It is well settled that power of this Commission as a Revisional Court are very limited and have to be exercised only, if there is some prima facie jurisdictional error in the impugned order.

Recently, 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."

7. IN the present petition, no jurisdiction or legal error has been shown to us to call for interference in the exercise of power under section 21 (b) of the Act, 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 passed on sound reasoning.

8. 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, we dismiss the petition with costs of Rs. 10,000/-(Rupees Ten thousand only). Petitioner is directed to deposit the costs by way of cross cheque for a sum of Rs. 10,000/- in the name of "Consumer Legal Aid Account" within four weeks from today. In case, costs are not deposited within the prescribed period, petitioner shall be liable to pay interest @ 9% p.a., till realization.

9. PENDING miscellaneous application also stand dismissed, being not

maintainable.

10. LIST on 29th September, 2011 for compliance.

