

(1997) 05 NCDRC CK 0103

In the National Consumer Disputes Redressal Commission

SIGNET CORPORATION

APPELLANT

Vs

COMMISSIONER, M.C.D., NEW DELHI

RESPONDENT

Date of Decision : 19-05-1997

Acts Referred:

Citation : 1997 2 CPC 408 : 1997 2 CPR 179 : 1997 3 CPJ 6

Hon'ble Judges : V.Balakrishna Eradi , S.S.Chadha , R.Thamarajakshi , S.P.Bagla J.

Final Decision : R.P. No. 704 dismissed

Judgement

1. BY order dated March 27, 1996 notice was issued by the Commission calling upon the petitioner M/s. Signet Corporation to show cause why the ex parte order dated July 13,1994 passed in its favour by the State Commission should not be taken up by this Commission in suo moto revision on the short ground of its being manifestly illegal and without jurisdiction. Revision Petition No. 704 of 1995

2. THIS Revision Petition has been filed by M/s. Signet Corporation challenging the pro ceedings of the State Commission dated September 12,1995 whereby the State Commission has issued a notice to the Revision Petitioner to show cause why the main complaint filed by him should not be dismissed. By an ex parte order dated July 13,1994 the State Commission has allowed that complaint filed by the Revision Petitioner against the Municipal Corporation, Delhi. An application moved by the Municipal Corporation, Delhi for recalling that order had been rejected by the State Commission on Au gust 5, 1994. Thereafter the revision petitioner moved an application before the State Commission seeking enforcement of the order dated July 13,1994. It was at the stage of execution that the State Commission by its proceedings impugned in this Revision Petition called upon the revision petitioner to show cause why the main com plaint itself should not be dismissed. When this Revision Petition came up for hearing before this Commission on March 27, 1996 this Commission felt on persuing the records that prima facie manifest lack of jurisdiction and illegality were involved in the

order of the State Commission and hence this Commission directed issue of notice of suo moto revision to both the parties. In response thereto both sides appeared before us and arguments were duly heard. The suo moto revision has been numbered as Revision Petition No. 704 A of 1995. Revision Petition No. 704 A of 1995

The challenge in this Revision Petition is directed against the order dated July 13, 1994 passed by the State Commission, Delhi whereby the Complaint Petition filed by M/s. Signet Corporation was allowed by the State Commission by ex parte order and a direction was issued to the opposite parties namely, the Commissioner, Municipal Corporation of Delhi and two Engineers of the Municipal Corporation of Delhi in the following terms: "To repair the sewerage system, start the repairing work within a period of one month and complete it within a period of three months from the date of the order. Further they should send the jet pump to the site within a period of 5 days to drain out the water and thereafter to send the same periodically, so that the sewerage water does not stagnate there."

The complainant in the case M/s. Signet Corporation has a manufacturing unit as well as its office and administrative office at Sector 78, Okhla Industrial Area, Phase II, New Delhi. The said premises are linked with the public sewer age system of the opposite party namely, the Municipal Corporation of Delhi. The plea put forward in the complaint petition was that the sewerage system passing in front of the complainant premises had been damaged resulting in its blocking and accumulation of garbage and filth due to which filthy water is flowing in the factory premises spreading foul smell and that the whole area had become a breeding place of flies and mosquitoes. It was further alleged in hindrance in reaching the premises and there was likelihood that some epidemic may break out. Though the complainant had represented the matter to the Zonal Engineer (Drainage), Municipal Corporation of Delhi (second opposite party) on March 7, 1994 and requested him to get the damaged and broken sewerage system repaired and to send a Jet pump machine to the locality so that the overflowing water may be drained out, no action had been taken by the said Engineer till the date of the complaint. Subsequent reminders and written representations sent by the complainants had also not yielded any results. Hence the complainant instituted the complaint proceeding before the State Commission with the prayer that the opposite party be directed to repair and maintain the drainage system and send the jet pump immediately to drain out the water. Notice of the complaint had been sent to the opposite party on July 1, 1994 fixing July 8, 1994 as the date for appearance for the opposite parties. The opposite parties, appeared on that date prayed for the grant of time to file their reply and hence time was granted till the next date namely July 9, 1994. Stating that the opposite parties had not appeared before it till 1.10 p.m. on July 9, 1994, the State Commission proceeded to decide the case ex parte and passed the impugned order dated 9th July, 1994/13th July, 1994 against the opposite parties.

3. IN our opinion the order passed by the State Commission has to be set aside as being vitiated by illegality and lack of jurisdiction. Firstly, under the provisions of Section 13(1)(a) of the Consumer Protection Act, 1986 it is mandatory on the part of a Consumer Forum before which a complaint is instituted to refer a copy of the complaint to the opposite party calling upon him to give his version of the case within a period of 30 days or such extended period not exceeding 15 days as may be granted by the Forum. The provisions of Section 13 are made applicable to the disposal of disputes by the State Commission by Section 18 of the Act. Thus the Statute has made it mandatory for the State Commission to allow to the opposite party a minimum period of 30 days to file its written version of the case. Such being the legal position, it was clearly illegal on the part of State Commission to call upon the opposite party in the case by notice despatched on July 1, 1994 to appear before it on July 8,1994 and to finally dispose of the case on the next date namely, July 9,1994 on the ground that the opposite party which had appeared before it on July 7,1994 and prayed for time was not present before it till 1.30 p.m. when on July 8,1994. The entire procedure adopted by the State Commission in disposing of the case ex parte on July 8,1994 was in clear contravention of the mandatory provisions contained in Section 13(l)(a) read with Section 18 of the Act. The ex parte order dated July 8, 1994 cannot, therefore, be sustained. On the merits also, the order of the State Commission is, in our opinion, liable to be set aside for the reason that no complaint under the Consumer Protection Act can be maintained against the Municipal Corporation of Delhi on the ground of its alleged failure to discharge its statutory duty of proper maintenance of a public drain. Clauses (a) to (x) of Section 42 of the Delhi Municipal Corporation Act, 1957 enumerate the obligatory functions which the Corporation is required to discharge under the Act. Clauses (a) and (c) alone are relevant for our purpose and they read as under: "42. Obligatory functions of the Corporation (a) the construction, maintenance and cleansing of drains and drainage works and of public latrines, urinals and similar convenience; (c) the scavenging, removal and dis posal of filth, rubbish and other ob noxious or polluted matters;"

4. IT will be seen from the above that the construction, maintenance and cleansing of drain and drainage works and removal and disposal of filth, rubbish and other obnoxious or polluted matters are works which the Corporation is required to undertake and carry out in discharge of its statutory obligation. This is not a work to be performed by the Corporation under any ation entered into between it and any private party. The complainant herein has no case that except for his having paid scavenging tax to the Municipal Corporation as one of the compo nents of "property tax" leviable on lands and buildings in Delhi under Section 114 of the Delhi Municipal Corporation Act, 1957, he has paid or agreed to pay any other consideration to the Corporation for the maintenance of the public drain. It is well established by the rulings of the Supreme Court as well of this Commission that payment of a tax which is levied in the exercise of the sovereign function of the State cannot constitute consideration even remotely as

quid pro quo for any service rendered or likely to be rendered (see: The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shiru Mutt, 1954 SCR 1005 at pp. 1040-41). The dictum laid down in the aforesaid ruling has been subsequently followed and reiterated in many reported cases. It was recently restated by the Supreme Court in its judgment in Indian Medical Association v. V.P. Shantha & Ors., III (1995) CPJ 1 (SC), wherein the Apex Court has again laid down that the "tax paid by the person availing the service at a Government hospital cannot be treated as a consideration or charge for the service rendered at the said hospital and such service though rendered free of charge does not cease to be so because the person availing the service happens to be a tax payer." Reference may also be made with advantage to the following decisions of this Commission where after making detailed advertence to the various rulings of the Supreme Court this Commission has dealt with the question as to whether payment of tax can be held to be consideration for the hiring of the service: 1. The Consumer Unity & Trust Society, Jaipur v. State of Rajasthan & Ors., I (1992) CPJ 259 (NC). 2. A. Srinivas Murthy v. The Chairman, Bangalore Development Authority, II (1992) CPJ 395 (NC). 3. Parash Nath Baksi & Ors. v. Calcutta Municipal Corporation, III (1994) CPJ 125 (NC). In the light of the principles laid down in the aforementioned rulings, we have no hesitation to hold that there was no arrangement of hiring of service for consideration as between the complainant and the Municipal Corporation of Delhi in regard to maintenance of public drains passing in front of the petitioner's premises. Hence the proceeding initiated by the complainant under the Consumer Protection Act seeking relief against the Municipal Corporation of Delhi on the ground of its alleged failure to carry out its statutory duties of proper maintenance of the public drains was totally misconceived and the ex parte order of July 13, 1994 passed by the State Commission granting the relief of issuing of direction to the Municipal Corporation of Delhi as prayed for in the complaint was wholly without jurisdiction. We accordingly set aside the order dated July 13, 1994, passed by the State Commission in the exercise of our suo motu power of revision under Section 21 of the Consumer Protection Act. Revision Petition No. 704 A of 1995 is disposed of as above. Coming to Revision Petition No. 704 of 1995 is as much as the ex parte order dated July 9th/13th, 1994 has been set aside by this Commission as per the order passed in Revision Petition No. 704 A of 1995 the proceeding initiated by the complainant for enforcement of that order stands automatically terminated. Hence R.P.No.704 of 1995 which arises out of an order passed by the State Commission in the execution proceeding has only to be dismissed. We do so. No costs. R.P. No. 704 dismissed. R.P. No. 704 A disposed of.