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**(1995) 07 NCDRC CK 0015**

**In the National Consumer Disputes Redressal Commission**

SIGNET CORPORATION

APPELLANT

Vs

COMMISSIONER, M.C.D.

RESPONDENT

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**Date of Decision :** 19-07-1995

**Acts Referred:**

**Citation :** 1995 3 CPJ 79 : 1995 3 CPR 3 : 1996 1 CLT 447

**Hon'ble Judges :** A.P.Chowdhri , S.Brar , Desh Bandhu J.

**Advocate :** Rajesh Mahna , S.K.Chhabra , A.S.Narang

**Final Decision :** Dismissed

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## **Judgement**

1. FACTS necessary for the disposal of this application under Sections 25/27 Consumer Protection Act are that the applicant M/s. Signet Corporation has its factory and office etc. at S-78 Okhla Industrial Area, Phase II, New Delhi. It appears that sewerage line passes near applicant's premises. Due to faulty construction or defective repair or lack of maintenance the sewerage line gets choked resulting in over flow of sewerage water which adversely affects the applicant. The applicant, therefore, filed a complaint before this Commission which was registered as C-160 of 1994. On notices having been given to Commissioner MCD, Zonal Engineer and Junior Engineer of the Drainage Department arrayed as Opposite Parties, appearance was entered on their behalf on 8.7.94. They were given time to file their written version. On the adjourned date the Opposite Party failed to appear and was proceeded ex parte, and the complaint was allowed. The operative part of the order was "We accept the complaint with costs and direct the Opposite Party to repair the sewerage system, start the repairing work within a period of one month and complete it within a period of 3 months from the date of the order. Further they should send a jet pump to the site within a period of 5 days to drain out water and thereafter to send the same periodically so that the sewerage does not stagnate there. Costs Rs. 1000/-. In case the Opposite Party fails to carry out the directions as given above action shall be taken against them under Section 27 of the Consumer Protection Act".

2. AN application for recalling the above ex parte order, being C-221 of 1994, was moved before this Commission by the Opposite Party on 5.8.94. The said application was dismissed by a short order dated 22.11.94 with the finding that no reasonable cause has been shown as to why no one appeared for the Opposite Party on the date fixed in the case. The present application under Sections 25/27 was moved on 4.10.94. It was stated that the Opposite Party had been attending to the sewer line by bringing jet pump occasionally and not in accordance with the directions issued by this Commission every 5th day. It was farther stated that no work was being done in respect of cleaning and no work had been done for repairing the defects which persisted. It was prayed that the Opposite Parties were trying to evade their responsibility to correct the defects for repairing the sewer line or lay fresh sewer line in accordance with the right specifications. Even costs had not been paid. The applicant, therefore, prayed that the Opposite Party may be burdened with exemplary costs to complainant i.e., the applicant be paid cost already awarded and further a sum of Rs. 11,000/- on account of Lawyer's fee for making the present application besides Rs. 500/- spent by the applicant for cleaning of the sewerage line undertaken by the applicant.

In reply, detailed objections have been filed by the respondents. It is stated that the complainant is not a "consumer" within the meaning of the Consumer Protection Act notwithstanding the fact that he is paying property tax which includes sewerage charges as well. Nor functions being preferred by the MCD amounted to rendering of "services" within the meaning of Section 2(1)(o) of the Act. It was further stated that there were several other vital points of Law which had not been brought to the notice of the Commission with the result that the aforesaid order dated 13.7.94 was passed in the complaint. This had resulted in miscarriage of justice. It was also highlighted that unless corrective action was taken the order would furnish a bad precedent especially for the District Fora, who were bound by decision of the State Commission.

3. WE have heard Mr. Rajesh Mahna for the applicant and Mr. S.K. Chachra for the respondent and have considered the case law cited before us. The main contention of Mr. Mahna is that the order dated 13.7.94 had attained finality as admittedly no appeal there against was filed by the Opposite Party. That being so, the order of this Commission could not be reagitated in proceedings under Section 27 of the C.P. Act. Mr. Mahna further submitted that this Commission had not been invested with any power of review by the C.P. Act. This Commission being quasi-judicial in nature could not exercise powers of review and therefore, the dismissal of the application for setting aside the ex-parte order could not be reviewed. He also added that the order in question was not ex-parte order properly so called. It purported to be an order on merits. Mr. Mahna also submitted that after the decision of the complaint, this Commission had been functus officio and the present objections could not be entertained.

4. MR. Chachra, on the other hand, contended that he was not seeking a review

of the order dated 22.11.94. He submitted that the respondents had been called upon to show cause why action under Section 27 be not taken against them for their failure to comply with the order and directions given by this Commission by order dated 13.7.94. It was thus the right of the respondents to raise the various legal pleas which go to the root of the matter and which must be decided according to Law to do complete justice between the parties. If a strict technical view of the matter is taken, it may be argued that the main order dated 13.7.94 had become final especially when the application for setting it aside was dismissed by order dated 22.11.94 and it was not open to this Commission to entertain any application which seems to assail the order on any ground whatsoever. It, however, substance of the matter is considered it is equally dear that the respondents are entitled to raise the pleas especially of legal nature which relate to jurisdiction of this Commission and which have the effect of showing that the order of this Commission is per incurium. If such an opportunity is denied, show cause notice will have little meaning. It cannot be disputed that it is a necessary condition precedent under Section 27 that before a person is - visited with punishment he should be afforded a fair and reasonable opportunity of showing cause against it. There can be no absolute infallibility in so far as human institutions are concerned. This Commission is no exception. We may recall the observations of Justice Lurton of U.S Supreme Court in (1909) 218 US 205 (N) as follows: "The Court bows to the lessons of experience and the force of better reasoning, recognising that the process of trial and error so fruitful in the physical sciences is appropriate also in the judicial function."

We may further point out that the paramount consideration in all such matters is requirement of justice. The Supreme Court of India in Katiji's case (1987) 2 SCC 107 observed as under: "It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

In the peculiar facts and circumstances of the case the objections filed on behalf of the respondents could not be deemed to amount to an application for review and we need not, therefore, scrutinise the objection with a view to finding whether anyone of the known ground for review has been made out therein.

5. THIS brings us to a consideration of the objections raised by Mr. Chachra.

6. THE first contention in this behalf is that the complainant was not a consumer inasmuch as payment of property taxes which included sewerage charges did not amount to consideration for discharging to statutory functions and duties by the Corporation nor the performance of such functions amount to rendering of "service" within the meaning of the Consumer Protection Act. Mr. Chachra submitted that the matter is not res-integra but is covered by a string of decisions of the National Commission and various State Commissions. We find that the above contention is supported by the following decisions: 1. "Consumer Unity & Trust Society, Jaipur v. State of Rajasthan, I (1992) CPJ 259 (NC)." 2. "A. Srinivas Murthy v. THE Chairman, Bangalore Development Authority, II (1992)

CPJ 395 (NC)" 3. "Paresh Nath Baksi & Others v. Calcutta Municipal Corporation, III (1994) CPJ 125 (NC)." 4. "THE Commissioner, Pondicherry Municipality v. A. Dhanavathi Ammol, 1992 (2) CPR 642, p.643 (Pondicherry SCDRC)." 5. "THE Commissioner, Mannargudi Municipality v. Consumer Protection Council, III (1992) CPJ 455 (TN SCDRC)." 6. "Raosaheb Devrao Hajare v. Ulhasnagar Municipal Council, 1993 (2) CPR 234 P. 235 (Mah. SCDRC)." 7. "Laxmi Narain Goel v. Punjab Water Supply & Sewerage Board & Ors; III (1993) CPJ 1333. (Pb. SCDRC)."

It may be seen that in the cases noted at SI. Nos. 4 to 7 the direct question considered by the State Commission was whether the persons paying tax to the Municipal Committee or Corporation could be considered a consumer within the meaning of Consumer Protection Act in respect of services rendered by the Municipal Committee/Corporation. THE conclusion was that such a person was not a consumer. No decision to the contrary has been brought to our notice. The basic question raised by Mr. Chachra is that the area in question had not yet been taken over by MCD and functionaries of the MCD are, therefore, not authorised to incur any expenditure for repair or maintenance of the sewerage line in question. The various Officers and employees of the MCD are bound by the provisions of the MCD Act and the Rules framed thereunder and no amount can be spent or authorised in contravention of those provisions.

Mr. Chachra next submitted that this Commission has not become functus officio because the applicant itself has moved this Commission for enforcing the order dated 13.7.94. He also submitted that the order passed by this. Commission travelled beyond the scope of Section 14 of the Act. There can be no dispute that the only relief which can be given by the agencies created under Consumer Protection Act are those specified in Section 14 of the Act. Prima facie, the direction given in the order dated 13.7.94 do not fall within the parameters of Section 14. For these reasons, we allow the objections raised by the respondent and dismiss the application under Sections 25/27 filed by the petitioner. We further call upon the petitioner who filed the complaint to show cause why the main complaint itself may not be dismissed for want of jurisdiction. To come up for arguments on 12th Sept., 1995. Application dismissed.