
(2010) 07 NCDRC CK 0008

In the National Consumer Disputes Redressal Commission

Subodh B Gokhale , P.D. Khedkar

APPELLANT

Vs

G T B L Sr Executives Provident Fund Trust , G.T.B.L., Sr.
Executives, Provident Fund Trust

RESPONDENT

Date of Decision : 27-07-2010

Acts Referred:

Citation : 2010 4 CPJ 233

Hon'ble Judges : K.S.Gupta , S.K.Naik J.

Final Decision : R.P. disposed of.

Judgement

1. SINCE all these seven Revision Petitions arise out of the same order of Consumer Disputes Redressal Commission, Gujarat, Ahmedabad, dated 9.9.2009, we propose to dispose them of by this common order. In the order the parties are referred to as they were in the complaints before the District Forum.

2. FACTS giving rise to the revisions lie in a narrow compass. Subodh B. Gokhle, complainant in O.P. No. 192 of 2006 was working with Gujarat Themis Biosin Limited, opposite party No. 5 in the capacity of a Vice-President at the Administrative Office from 1.9.1991. He resigned on 17.6.1999. During the period of employment, contribution towards provident fund was being deducted from his salary. Equivalent amount of contribution was being made by opposite party No. 5. As the salary of complainant was more than Rs. 6,500 per month, he was an excluded employee under the Provident Fund Act, 1952. To manage the PF contributions, the opposite party No. 5 had created G.T.B.L. Senior Executive, Provident Fund Trust, opposite party No. 4 under a Trust-deed. On accumulated contribution in PF account not being paid by opposite parties 4 and 5 the complainant filed the said complaint claiming amount of Rs. 12,38,132 along with interest and compensation etc.

3. ON similar allegations O.P. No. 193 of 2006 was filed by P.D. Khedkar, another employee of opposite party No. 5 seeking direction of payment of Rs. 13,25,473 in his PF account along with interest and compensation etc. impleading opposite party No. 4-Trust and opposite party No. 5-Company.

4. BOTH the complaints were contested by filing written versions. Since both the complainants have been non-suited by the order under challenge on ground of the trustees of opposite party No. 4-Trust not having been impleaded as parties in the complaints, the reference to the pleas taken in written version(s) by opposite parties 4 and 5 need not be made in detail here. It may be mentioned that both the opposite parties have not denied that the complainants were in the employment of opposite party No. 5 and the contribution towards provident fund was being managed by opposite party No. 4-Trust. Aforesaid O.P. No. 192/2006 was disposed of vide order dated 31.1.2009 by the District Forum in following terms: "1. The present complaint of the complainant is partly allowed. 2. The opponent No. 4 G.T.B.L. Senior Executive, Provident Fund Trust and its all three trustees and the opponent No. 5 - Gujarat Themis Biorsin Limited are jointly and severally directed that they shall pay to the complainant total amount of provident fund due to the complainant of Rs. 9,74,126 together with interest at the rate of 9% per annum from the date 1.7.2006 till realization to the complainant Shri Subodh Gokhale. 3. The opponent Nos. 4-5 are further directed to pay Rs. 25,000 to the complainant towards physical and mental harassment suffered by the complainant and Rs. 5,000 towards the cost of the present complaint. 4. The opponent No. 4 and the opponent No. 5 have to obey the above order within 30 days from today. 5. The present complaint against the opponent Nos. 1 and 2 is dismissed and other relief of the complaint is rejected. 6. The name of opponent No. 3 being deleted from the complaint, no separate order is passed".

5. O.P. No. 193 of 2006 filed by P.D. Khedkar was also disposed of by the order dated 31.1.2009 on the lines the order was passed in O.P. No. 192 of 2006 except that the amount of the provident fund to be paid was Rs. 13,25,473.

6. DISSATISFIED with the orders dated 31.1.2009, both the complainants filed appeal Nos. 84 of 2009 and 83 of 2009 seeking enhancement of the awarded amount. Opposite party No. 4 filed appeal Nos. 153 of 2009 and 154 of 2009. Two trustees of opposite party No. 4-Trust filed appeal Nos. 751 of 2009, 749 of 2009 and 750 of 2009. By the impugned order dated 9.9.2009 the State Commission has allowed appeal Nos. 153 of 2009, 154 of 2009, 749 of 2009, 750 of 2009 and 751 of 2009 and dismissed appeal Nos. 83 of 2009 and 84 of 2009. The State Commission was of the view that opposite party No. 4-Trust is not a legal entity and in absence of joining of the trustees of the Trust as opposite parties the complaints were not legally maintainable and the complaints were, accordingly, dismissed. Reliance was placed on the decision in *Pratibha Pratishthan and Ors. v. Allahabad Bank and Ors.*, IV (2007) CPJ 33 (NC) and *Homi Nariman Bhiwandiwalla v. The Zoroastrian Co-operative Credit Bank Ltd. and Anr.*, AIR 2001 Bom. 267.

7. WE have heard Mr. Anand Patwardhan, Advocate for the complainants and Mr. H.M. Thakkar, Advocate for the opposite parties and have been taken through the records.

8. IT is not in dispute that the complainants were the employees of opposite party No. 5-Company; from complainant's salary deductions were made towards provident fund; certain amount of contribution towards the fund was also made by opposite party No. 5; contributions made were being managed by opposite party No. 4-Trust created for the purpose of which there were three trustees and after resignation from opposite party No. 5-Company the complainants have not been paid the accumulated contribution in the account along with interest etc. by opposite parties 4 and 5. It was submitted by Mr. Patwardhan, Advocate that the plea of non-joinder of trustees of opposite party No. 4-Trust and the complaints not being maintainable on that ground, was not raised in the written versions filed by opposite parties 4 and 5 before the District Forum. Referring to the cause title of the complaints, it was further submitted that the three trustees were arrayed as parties in addition to the Trust and the trustees were also served with the notices sent by Reg. A.D. covers in the complaints and the said plea of non-joinder of the trustees as parties was raised for the first time in the written arguments filed on 1.1.2009 before the District Forum by opposite parties 4 and 5. According to the learned Counsel, the definition of "person" as occurring in Section 2(1)(m) of the Consumer Protection Act, 1986 (for short the "Act") is inclusive and the Trust will also be included within that definition. Reliance was placed on the decision in H.V. Balachandra Rao v. Karnataka Power Transmission Corporation and Anr., 2009 CTJ 233 (SC) (CP). Pratibha Pratishtan's case (supra) was sought to be distinguished in view of Karnataka Power Transmission Corporation and Anr's case (supra). While controverting the said submission it was urged by Mr. Thakkar, Advocate that para Nos. 2 and 6 of the joint written version filed by O.P. Nos. 4 and 5 include the plea of non-joinder of trustees and the complaint not being maintainable on that ground. He pointed out that the three trustees were not impleaded as parties in the complaints. According to him, Trust is not a legal entity and without impleading the trustees the complaints were not maintainable. In addition to two decisions referred to in the impugned order, reliance was placed on the decisions in Lala Man Mohan Das v. Janki Prasad and Ors., AIR 1945 (32) PC 23; M/s. Shantivijay and Co. etc. v. Piness Fatima Fouzia and Ors., AIR 1980 SC 17; Sheikh Abdul Kayum and Ors. v. Mulla Alibhai and Others, AIR 1963 SC 309; Atmaram Ranchodbhai v. Gulamhusein Gulam Mohiyaddin and Another, AIR 1973 Guj. 113; South Delhi University Teachers' Co-operative Group Housing Society Ltd. v. Dr. Madhu Rathour, II (1994) CPJ 49 (NC) and Sikanderlal Co. and Ors. v. Vaid Prakash Sharma, II (1994) CPJ 100 (NC).

9. AFORESAID paras 2 and 6 of the joint written version of opposite parties 4 and 5 being material, are reproduced below: "2. It is respectfully submitted that the complaint is not tenable in law. 6. It is respectfully submitted that opponent No. 4 is the trust created by opponent No. 5. It is respectfully submitted that opponent No. 4 cannot have any existence without opponent No. 5. It is, therefore, submitted that opponent No. 4 is not a separate legal entity without existence of opponent No. 5. It is submitted that if opponent No. 5 who was

having a contract of personal service between opponent No. 4 and the complainant and opponent No. 5 was not providing service to the complainant in any manner whatsoever right from the date of joining till cessation of service and opponent No. 4 cannot exist without opponent No. 5 therefore, this Hon"ble Forum has no jurisdiction to entertain any complaint against opponent No. 4 and hence the complaint deserves to be rejected. Alternatively, it is submitted that opponent No. 4 may kindly be deleted as party opponent from the complaint".

10. COPY of written arguments filed before the District Forum on behalf of opposite parties 4 and 5 is at pages 322 to 326. These submissions were filed at the stage of final arguments on 1.1.2009. It is settled law that the plea of non-joinder must be raised at the earliest opportunity and the party raising the plea should specifically state the person who should have been impleaded and if the objection as to non-joinder is not raised at an early stage, it is deemed to have been waived. As is manifest from aforesaid paras 2 and 6 of the joint written version, the plea of non-joinder of trustees and the complaints, therefore, not being legally maintainable, has not been specifically raised therein. Opposite parties cannot fill up this lacuna in the written arguments filed at the final stage of the case. Said opposite parties will, therefore, be deemed to have waived the plea of complaints not being maintainable on ground of trustees of opposite party No. 4 being not arrayed as parties in the complaints.

11. THAT apart, in the cause title of the complaints, opposite party No. 4-Trust has been described thus: "GTBL, Sr. Executives, Provident Fund Trust, Represented by Shri Anant Thakore, Shri Surendra Somani, Shri Rajnish Anand, (Trustees) C/o Gujarat Themis Biosin Ltd., 69/C. GIDC, Vapi, Distt. Valsad, Gujarat-396 195

12. NOTICES in the complaints to the three trustees were sent by Regd. Post and the copies of ADs is at page No. 27 of the paper book in R.P. No. 3657 of 2009. Principle of natural justice only is followed in deciding the cases under the Consumer Protection Act, 1986. In our view, for all intent and purpose, the three trustees of opposite party No. 4-Trust whom notices were issued, were before the District Forum. Thus, the complainants could not have been non-suited by the State Commission on aforementioned ground. For the foregoing discussion, none of the decisions referred to above relied on behalf of opposite parties 4 and 5 are of any assistance to them. It is unnecessary to go into the issue whether definition of the word "person" as given in Section 2(1)(m) of the Act also includes a Trust.

13. IT was next argued by Shri Thakkar that the complainants while in service with opposite party No. 5 had caused loss to opposite party No. 5 and for quantification of that loss and recovery thereof appropriate orders need be passed. It may be mentioned that towards the end of joint written version of the said opposite parties it is stated that the complainants have suppressed the material fact in regard to causing of loss to opposite party No. 5 by running business during their tenure of service with opposite party No. 5. Details of the

loss have not been disclosed nor any supporting evidence was adduced by the opposite parties. In absence of details and evidence, at revisional stage no order can be passed in that behalf.

14. THOUGH both the complainants had filed appeals against the Forum's order for enhancement of the awarded amount but during the course of arguments Mr. Patwardhan stated that the complainants will be satisfied with the awards as given by the District Forum.

15. FOR the foregoing discussion, while disposing of the Revision Petitions aforesaid order of the State Commission dated 9.9.2009 is set aside and the orders dated 31.1.2009 of the District Forum are restored. Opposite party Nos. 4 and 5 will pay cost of Rs. 15,000 to each of the complainants. R.P. disposed of.