
(2012) 04 NCDRC CK 0065

In the National Consumer Disputes Redressal Commission

Union of India Through Post Master General In Karnataka
Police Thimmaiah Circle

APPELLANT

Vs

N. Nethravathi

RESPONDENT

Date of Decision : 12-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 111 : 2012 2 CPJ 398 : 2012 2 CPR 346

Hon'ble Judges : V.B.Gupta , Vinay Kumar J.

Advocate : R.N.Singh , S.Singh

Judgement

1. BEING aggrieved by order dated 16.8.2007, passed by Karnataka State Consumer Disputes Redressal Commission, Bangalore (for short as ?State Commission), petitioner has filed this present revision petition under Section 21(b) of Consumer Protection Act, 1986 (for short as ?Act?).

2. ALONGWITH this revision petition, an application seeking condonation of delay of 4 years 91 days has also been filed. Respondent (complainant before the District Forum) had filed complaint against the present petitioners (opposite parties before the District Forum) stating that she has invested Rs.30,000/- in Indra Vikas Patra. However, the original certificates were lost and facts about the loss was reported to the Police Station. After maturity, when respondent made a claim for payment of the money, the same was rejected.

District Forum, vide its order dated 5.7.2004, dismissed the complaint.

3. AGGRIEVED by the order of District Forum, respondent preferred an appeal before the State Commission. The State Commission, vide order dated 5th July, 2005 dismissed the appeal and observed as under; ?It is still open for the opposite parties to examine the claim of the complainant with reference to the records maintained in the Post Office. In the event if no person has got encashed IVP, the claim of the complainant may be considered for payment? Thereafter, respondent gave a representation and requested for encashment of the IVPs in question. After reexamination of the case, petitioners rejected the request of

respondent .

4. THEREAFTER, respondent filed execution petition before the District Forum which dismissed the same, vide its order dated 4.9.2006. Aggrieved by the order, respondent filed an appeal before the State Commission, which vide impugned order allowed the appeal of the respondent. This is how the matter has reached before this Commission. Taking up application for condonation delay, it is contended by learned counsel for the petitioners that delay has occurred due to procedural requirement and also due to the fact that writ petition was filed before the High Court of Karnataka challenging the impugned order. The delay is bona fide and not deliberate or willful and sufficient grounds are made out for condonation of delay. Even otherwise on merits, petitioners have good case.

5. IN support, learned counsel has relied upon the following judgement of the Hon^{ble} Supreme Court; (i) State of Haryana vs. Chandra Mani and others, AIR 1996 Supreme Court 1623 and (ii) Special Tehsildar, land Acquisition, Kerala vs. K.V. Ayisumma, AIR 1996 Supreme Court 2750.

6. THE main ground pleaded in the application for condonation of delay is that, petitioners are Govt. Department and as per norms laid down, an order/ judgement of the court against the Government, before implementation has to be considered at various levels. Accordingly, the matter was considered at various levels in the department and due to ill advice, a writ petition was filed in the Karnataka High Court, which was later on withdrawn with liberty to file the present revision petition. Thus, the delay was bona fide and not deliberate and there are sufficient and good reasons for condoning the delay. A similar question arose in K. Rajiv and M/s. Kamla Builders and others, Civil Appeal No. 11431-11434 of 2011 decided by Hon^{ble} Supreme Court on 16.12.2011, in which the Court observed; The question whether the High Court can directly entertain the writ petition under Article 226 of the Constitution against the order passed by the State Commission ignoring that the aggrieved party is entitled to avail statutory remedy of appeal under Section 19 of the Act was recently considered in Civil Appeal No.10706 of 2011 Nivedita Sharma vs. Cellular Operators Association of India and others decided on 07.12.2011 and answered in negative. The relevant portions of that order are extracted below:- There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation-? L. Chandra Kumar v. Union of India (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body / authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of

course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation. In *Thansingh Nathmal v. Superintendent of Taxes* AIR 1964 SC 1419, this Court adverted to the rule of self-imposed restraint that writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: "The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up." In *Titaghur Paper Mills Co. Ltd. v. State of Orissa* (1983) 2 SCC 433, this court observed "It is now well recognised that where a right or Liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in *Wolverhampton New Waterworks Co. v. Hawkesford* (1859) 6 CBNS 336 : 141 ER 486 in the following passage: "... There are three classes of cases in which a liability may be established founded upon a statute But there is a third class, viz., where a liability not existing at common law is created by statute which at the same time gives a special and particular remedy for enforcing it. The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to." The rule laid down in this passage was approved by the House of Lords in *Neville v. London Express Newspapers Ltd.* 1919 AC 368 : (1918-19) All ER Rep. 61 (HL) and has been reaffirmed by the Privy Council in *Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd* 1935 AC 532 and *Secy. of State v. Mask and Co.* (1939-40) 67 IA 222 : AIR 1940 PC 105. It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine." In *Mafatlal Industries Ltd. v. Union of India* (1997) 5 SCC 536, B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: "So far as the jurisdiction of the High Court under Article 226 or for that matter, the jurisdiction of this Court under Article 32 is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/ Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment." In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad now Zila*

Parishad, Muzaffarnagar AIR 1969 SC 556, it has been held that an alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Superintendent of Taxes (supra) and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still hold field. In the light of the above, we shall now consider whether the Division Bench of the High Court committed an error by entertaining the writ petition filed by the respondents. The 1986 Act was enacted for better protection of the interests of consumers by making provision for the establishment of consumer councils and other authorities for the settlement of consumer disputes. The object and purpose of enacting the 1986 Act is to provide for simple, inexpensive and speedy remedy to the consumers who have grievance against defective goods and deficient services. This benevolent piece of legislation intended to protect a large body of consumers from exploitation. Prior to the 1986 Act, consumers were required to approach the Civil Court for securing justice for the wrong done to them and it is a known fact that decision of the litigation instituted in the Civil Court could take several years. Under the 1986 Act, the consumers are provided with an alternative, efficacious and speedy remedy before consumer forums at district, state and national level. In Fair Air Engineers Pvt. Ltd. v. N.K. Modi (1996) 6 SCC 385, this Court referred to the judgment in Lucknow Development Authority v. M.K. Gupta (1994) 1 SCC 243 and observed: "Accordingly, it must be held that the provisions of the Act are to be construed widely to give effect to the object and purpose of the Act. It is seen that Section 3 envisages that the provisions of the Act are in addition to and are not in derogation of any other law in force. It is true, as rightly contended by Shri Suri, that the words "in derogation of the Provisions of any other law for the time being in force" would be given proper meaning and effect and if the complaint is not stayed and the parties are not relegated to the arbitration, the Act purports to operate in derogation of the provisions of the Arbitration Act. Prima facie, the contention appears to be plausible but on construction and conspectus of the provisions of the Act we think that the contention is not well founded. The Parliament is aware of the provisions of the Arbitration Act and the Contract Act, 1872 and the consequential remedy available under Section 9 of the Code of Civil Procedure, i.e., to avail of right of civil action in a competent court of civil jurisdiction. Nonetheless, the Act provides the additional remedy." In Charan Singh v. Healing Touch Hospital (2000) 7 SCC 668, this Court observed: "Consumer Protection Act is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation. The Act provides for an alternative system of consumer justice by summary trial. The

authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is one of the postulates of such a body that it should arrive at a conclusion based on reason. The necessity to provide reasons, howsoever, brief in support of its conclusion by such a forum, is too obvious to be reiterated and needs no emphasising. Obligation to give reasons not only introduces clarity but it also excludes, or at any rate minimizes, the chances of arbitrariness and the higher forum can test the correctness of those reasons. Unfortunately we have not been able to find from the impugned order any reasons in support of the conclusion that the claim of the appellant is "unrealistic" or "exaggerated" or "excessive". Loss of salary is not the sole factor which was required to be taken into consideration. While quantifying damages, consumer forums are required to make an attempt to serve ends of justice so that compensation is awarded, in an established case, which not only serves the purpose of recompensing the individual, but which also at the same time, aims to bring about a qualitative change in the attitude of the service provider. Indeed, calculation of damages depends on the facts and circumstances of each case. No hard-and-fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to established judicial standards where the claimant is able to establish his charge." Section 17(1) of the 1986 Act which outlines the jurisdiction of the State Commission and Section 19 which provides for an appeal against the order of the State Commission read as under: "Section 17. Jurisdiction of the State Commission- (1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction- (a) to entertain- (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and (ii) appeals against the orders of any District Forum within the State; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. (2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,- ? (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises. Section 19. Appeals - Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed: Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty per cent, of the amount or rupees thirty-five thousand, whichever is less." A reading of the plain language of Section 17 shows that every State Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs. 20 lacs but does not exceed Rs. 1 crore. By Section 18 the provisions of Sections 12 to 14 and the Rules made thereunder, for the disposal of complaints by the District Forum, have been made applicable for deciding the disputes by the State Commission. 19 provides for remedy of appeal against an order made by the State commission in exercise of its powers under sub-clause (i) of Clause (a) of Section 17. If Sections 11, 17 and 21 of the 1986 Act which relate to the jurisdiction of the District Forum, the State Commission and the National Commission, there does not appear any plausible reason to interpret the same in a manner which would frustrate the object of legislation. What has surprised us is that the High Court has not even referred to Sections 17 and 19 of the 1986 Act and the law laid down in various judgments of this Court and yet it has declared that the directions given by the State Commission are without jurisdiction and that too by overlooking the availability of statutory remedy of appeal to the respondents. By applying the ratio of the order passed in Nivedita Sharma vs. Cellular Operators Association of India & others to the case in hand, we hold that the Division Bench of the High Court committed serious error by entertaining the writ petitions filed by the respondents ignoring that they could have availed an equally efficacious remedy of filing an appeal under Section 19 of the Act.

In this context, it will be pertinent to refer to another judgement of Hon^{ble} Supreme Court, M/s. Advance Scientific Equipment Ltd. & Anr. Vs. West Bengal Pharma & Photochemical Development Corporation Ltd. (Appeal (Civil) Nos.17068 - 17069/2010, decided on 9 July 2010) wherein it observed inter alia, as under:- "We are further of the view that the petitioners' venture of filing petition under Article 227 of the Constitution was clearly an abuse of the process of the Court and the High Court ought not to have entertained the petition even for a single day because an effective alternative remedy was available to the petitioner under Section 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction".

7. RECENTLY, Hon^{ble} Supreme Court in Anshul Aggarwal vs. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC) has laid down that; It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special

period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the consumer Foras.?

Thus, looking from any angle, we do not find any sufficient ground for condoning the delay of 4 years 91 days in filing of the present revision petition. The judgements cited by learned counsel for the petitioners are not applicable at all, to the facts of the present case.

8. ACCORDINGLY, the application for condonation of delay, being hopelessly barred by limitation, is dismissed. Consequently, the revision petition filed by the petitioners also stands dismissed, with no order as to costs.