
(2014) 11 NCDRC CK 0110

In the National Consumer Disputes Redressal Commission

V.B. Ambedkar

APPELLANT

Vs

DISTRICT COLLECTOR

RESPONDENT

Date of Decision : 03-11-2014

Acts Referred:

Citation : 2014 4 CPJ 601

Hon'ble Judges : V.B.GUPTA J.

Final Decision : Petition dismissed

Judgement

1. PETITIONER /Complainant has filed the present petition challenging order dated 31.3.2008 passed by Consumer Disputes Redressal Commission, Maharashtra (for short, "State Commission").

2. BRIEF facts are that, petitioner after having purchased certain land in Pune applied to the Office of Respondent/Opposite Party on 12.6.2002 for measurement of the land. Petitioner was asked to deposit the measurement fee of Rs. 6,000/- which he deposited. The grievance of petitioner is that he approached the officers of respondent several times for measurement of the land, but they refused to do the measurement. Accordingly, consumer complaint was filed by him before the District Consumer Disputes Redressal Forum, Pune (for short, "District Forum "). The consumer complaint was contested by the respondent. The officers of respondent intimated the Forum that measurement has been completed and papers pertaining to the same were filed before the Forum.

3. DISTRICT Forum after hearing the parties vide order dated 22.6.2007, partly allowed the complaint and directed the respondent to complete the work of measurement of the disputed land. It also awarded a sum of Rs. 10,000/- as compensation to the petitioner in addition to Rs. 2,000/- as cost.

4. BEING aggrieved, respondent filed appeal before the State Commission which allowed the same and dismissed the complaint. Hence, this revision petition.

5. AFTER filing the petition, petitioner appeared only once i.e. on 7.5.2014,

before this Commission. Notice of the petition was issued to the respondent but none appeared for it. Hence, respondent was proceeded ex parte.

6. ON 13.6.2014, when petition was listed for final hearing, the petitioner sent an application by post stating that it is not possible for him to attend the hearing before this Commission as he is residing 1500 kms. away and his written arguments may be considered. In spite of the aforesaid request, we gave him one further opportunity to argue the matter. Further, it transpired from the record, that petitioner had not filed the copy of pleadings. Therefore, opportunity was given to him to file the same. However, petitioner did not file any copy of the pleadings but sent again written arguments by post, which were received on 9.9.2014. We have perused the entire record.

7. PRESENT petition is liable to be dismissed on this ground alone, since petitioner in spite of specific directions has not filed the copy of pleadings which were required to be filed.

8. BE that as it may, coming to the merits of the case, the complaint filed by the petitioner before the District Forum was barred by limitation. As per petitioner's case, he deposited the measurement fee of Rs. 6,000/- with the respondent in June, 2002, whereas consumer complaint was filed only on 9.3.2006. Section 24A of the Act, deals with limitation and it reads as under; "24 -A. Limitation period : - 1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1) a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period.

Provided that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay."

9. THE above provision is clearly peremptory in nature requiring the Consumer Fora to see at the time of entertaining the complaint, whether it has been filed within the stipulated period of two years from the date of cause of action.

10. HON "ble Apex Court in case of Kandimalla Raghavaiah & Co. versus National Insurance Co. Ltd. and another,, 2009 CTJ 951 (Supreme Court) (CP) took view of the observations made in case State Bank of India vs. B.S. Agricultural Industries, : 2009 CTJ 481 (SC) (CP) : JT 2009 (4) SC 191, as under: - "12. Recently, in State Bank of India Vs. B.S. Agricultural Industries, : 2009 CTJ 481 (SC) (CP) : JT 2009 (4) SC 191, this Court, while dealing with the same provision, has held;

8. It would be seen from the aforesaid provision that it is peremptory in nature

and requires consumer forum to see before it admits the complaint that it has been filed within two years from the date of accrual of cause of action. The consumer forum, however, for the reasons to be recorded in writing may condone the delay in filing the complaint if sufficient cause is shown. The expression, "shall not admit a complaint" occurring in Section 24A is sort of a legislative command to the consumer forum to examine on its own whether the complaint has been filed within limitation period prescribed thereunder. As a matter of law, the consumer forum must deal with the complaint on merits only if the complaint has been filed within two years from the date of accrual of cause of action and if beyond the said period, the sufficient cause has been shown and delay condoned for the reasons recorded in writing. In other words, it is the duty of the consumer forum to take notice of Section 24A and give effect to it. If the complaint is barred by time and yet, the consumer forum decides the complaint on merits, the forum would be committing an illegality and, therefore, the aggrieved party would be entitled to have such order set aside."

Now question arise for consideration is, as to whether petitioner is a consumer as per provisions of Consumer Protection Act, 1986, or not.

11. THE petitioner had applied to the respondent for measurement of the land. The act of measurement of the land, is a duty cast under the Revenue Act. Therefore, it cannot be said that respondent was rendering any kind of service for consideration.

12. THE State Commission in its impugned order observed; "We gave anxious consideration to the issues involved in the complaint. Distinction will have to be made between statutory duty performed by the authority appointed by the Government and any commercial activity carried out by the Corporation of Government with a sole aim of earning profit. So far as decision of Supreme Court in the case of Lucknow Development Authority V/s. M.K. Gupta is concerned, issue was with regard to construction activity undertaken by Lucknow Development Authority. The said authority carried on business for profit. The element of commercialism is present in the construction activity carried out by Housing Board or authority. In the case in hand, measurement of land is not a commercial activity of the State. It is the statutory function of TLR and DLR concerning maintenance of land records.

There is another facet, which is not at all considered by the District Consumer Forum. Collector plays a dual role, one as a District Magistrate and other as a Revenue head and is called a Collector. For measurement of land, one has to approach TLR, which is the grass root level official entrusted with the job of measurement of land. If the measurement is not properly done, aggrieved person has to approach Superintendent of land record by way of appeal. The Collector does not directly come into picture. The Collector does not render service for consideration.

After having examined the correctness of the order passed by the District

Consumer Forum, we are of the clear view that the Forum below applied ratio erroneously to the facts of present case. Forum below should have applied ratio of S.P. Goel's case. Order passed by the Forum below therefore suffers from illegality. In the result, we pass following order: -

Order

1. Misc. application for condonation of delay is allowed.
2. Appeal is allowed.
3. Impugned order under challenge is quashed and set aside.
4. Complaint stands dismissed."

We are in full agreement with the reasoning given by the State Commission, that the act of measurement of land is not a commercial activity. It is a statutory function under the Revenue Act. Hence, we do not find any infirmity or illegality in the impugned order.

13. THE present revision petition having no legal force has been filed just to waste the time of this Commission, is hereby dismissed being barred by limitation as well as on merits with cost of Rs. 5,000/- (Rupees Five Thousand only).

14. PETITIONER is directed to deposit the cost by way of demand draft in the name "Consumer Legal Aid Account" of this Commission, within four weeks from today. In case, petitioner fails to deposit the cost within the prescribed period, then he shall be liable to pay interest @ 9% p.a., till realization.

15. LIST for compliance on 12.12.2014.