(2014) 02 NCDRC CK 0087

In the National Consumer Disputes Redressal Commission

V.K. Chaturvedi APPELLANT

Vs

COMMISSIONER MUNICIPAL CORPORATION RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Citation : 2014 0 NCDRC 75

Hon'ble Judges : V.B.GUPTA , Rekha Gupta J.

Judgement

1. PETITIONER /Complainant had filed the present revision petition under Section 21(b) Consumer Protection Act, 1986 (for short, ''Act) with following prayers; ""It is therefore prayed to kindly set aside the judgment dated 6.7.2011 of State Commission, Lucknow and Cancel Rs.19,875/ - illegal bill of House, Water and Sewerage Tax being demanded in the year 2011/12 and Rs.15,041 water charges taken by Respondent no.2 on 18% interest. 2. Kindly pass order to keep out Sewerages of 4 Houses from my Courtyard being used by others with outside Service lane. 3. Order to Cancel Rs.5402/ - from Lucknow Jal Board illegal billing of years together. 4. Pass order to snatch House NO.256/6 and 256/7 the Allotment of which has been cancelled in the year 2006 as because it is not Unauthorized Construction but encroachment of my place. 5. Pass any order which this Hon''ble Commission may Consider fit and Appropriate in the circumstances of the Case with Compensation of Rs.20/ - Lac and refund of money @ 18% which has been claimed by Respondent No.2.

2. BRIEF facts are that Petitioner/Complainant filed a consumer complaint against Respondent/Opposite Party not to realize any taxes from him as his colony was not supervised or maintained by them. Petitioner pleaded in his complaint that House No.256/5 Sector -16, Vasundhara, Ghaziabad at the relevant time was not located within the territorial limits of respondent. Thus, they were not competent to levy water, sewer, drainage and house taxes. The District Consumer Forum, Ghaziabad (for short, ''District Forum '') vide order dated 16.4.2007, rejected the petitioner ''s complaint on the ground that it was not maintainable before the Consumer Forum.

3. PETITIONER filed (Appeal No.1035/SC/2007) before the State Consumer Disputes Redressal Commission, Uttar Pradesh (for short, ''State Commission '') which disposed of the same vide order dated 18.7.2007, observing as under; ''''According the impugned order dated 16 -04 -2007 so far as it relates to the disposal of the appellant ''s complaint pertaining to recovery of taxes, is set aside. The matter is remanded to the District Consumer Forum, Ghaziabad for rehearing of the said issue and a fresh decision in accordance with law. In case the complainant prays for amendment of his complaint, his application shall be allowed, and then the complaint is heard on the issue of taxes alone. ''''

4. THEREAFTER , the petitioner was heard and fresh order dated 01 -11 -2008 was passed by the District Forum with the finding that complaint pertaining to the municipal board taxes was not maintainable before it. Accordingly it dismissed the complaint. Petitioner again challenged the order of the District Forum before the State Commission which vide impugned order dated 6.7.2011 observed; ''''In our considered opinion, the judgement of this Forum passed on 18 -07 -2007 had been fully carried out. The complainant was to be heard on the merit of his plea relating to the issue of taxes alone and the District Consumer Forum clearly spelled out that such an issue was not cognizable by it and as such his complaint being not maintainable was liable to be dismissed. Obviously, there was no question of any breach of our judgment. The contention of the appellant that it was not sincerely carried out is absolutely misconceived and accordingly it is rejected. His contention that some other issues pertaining to deletion of name of Sri Hari Singh Karnyal were not dealt with is not sustainable as the judgment of the State Commission specifically mentioned that the issue of taxes alone would be re -examined and decided. It was implied in this order that any other issue except the taxes was not to be examined and adjudicated upon. The appellant must have been convinced with this factual position and should not have raised any other issue. We are, therefore, of the considered opinion that the appeal against the order dated 17 -01 -2009 is merit -less and as such it deserves to be dismissed.

The other issue relates to taxes which were allegedly levied by the Municipal Board, Ghaziabad without any jurisdiction, as alleged by the appellant. In this regard, it may be observed that the appellant knocked at a wrong door of the District Consumer Forum. As a matter of fact, he should have filed civil suit in a civil court of competent jurisdiction praying for a prohibitory injunction against the Municipal Board or Corporation, retraining it from realizing the taxes on the basis of his alleged plea that the colony in which he was residing was not located within the municipal limits of Ghaziabad Municipal Corporation. But instead of taking the right course of action before a competent Forum, he filed his complaint under the Consumer Protection Act before the District Consumer Forum, Ghaziabad without realizing that it was not a case of deficiency in service as the complainant himself stated that neither any service was rendered by the Municipal Board, nor his residential colony could have been subjected to levy of municipal board taxes. How then a question of deficiency in service would have arisen? It is a settled law that municipal board taxes are realized by a Municipal Board or a Corporation not for the services rendered but for maintaining the roads, streetlights, managing and maintaining the sewer line and regulating the water ferrule. Since these facilities are not extended to the citizens on payment for consideration, question of a deficient service would not be attracted. In other words, these facilities are arranged on payment of token fees as taxes and not as a consideration. Therefore, on the basis of this fine distinction it can be observed that the matter relating to municipal board taxes are not cognizable before the Consumer Fora. And, in the case of the complainant, the complainant himself has alleged that the service of municipal board being not available during the relevant years (for which the taxes were allegedly levied), where would come the plea of deficiency? On the face of the complaint of the appellant it is abundantly clear that neither any service was available, nor liability was attached. In this situation the complainant was expected to have moved his application before a Civil Court for appropriate relief on payment of stamp fees as prescribed. By no stretch of reasoning, thus the complaint of the appellant was maintainable before the District Consumer Forum. It has rightly been dismissed by the District Consumer Forum and we have no cogent reason to record a different finding. The appellant has raised irrelevant issues in his memorandum of appeal. We do not consider it worthwhile to refer to them. We have dealt with the point of the complainant ''s main grievance as held above, we are of the decisive view that his complaint was not maintainable before the Forum below. In the result, this appeal being devoid of merit is hereby dismissed. ''''

5. PETITIONER in its amended complaint has prayed for the following reliefs before the District Forum; ''''It is therefore most respectfully prayed to kindly order to keep out Sewerage at Common Place out of 4 Houses away from the Court yard Less area had been given with pollution and Municipal Corporation is cashing the deficiency done by Awas Vikas. Rs.20 Lakh compensation which spent and for mental torture. 2. Cancel illegal Bill House, Sewerage and Water Tax and refund Water Charges of Rs.1504/ - and Rs.1,220/ -, 90/ -, 100/ - taken at initial stage at the time of allotment of house at 18% interest when the possession of the house was done on 31.7.1995 and Rs.30/ - Per Month were Claimed but here claimed Rs.1504/ - which comes to Rs.1,441/ - only this was illegal Bill and after three years Bill was time barred. 3. Enforce order of State Commission dated 3.5.05 regarding raising of Wall and Contempt of State Commission U/S 25 and 27 which was not permissible under Rules and Bye laws. The Respondent given the licence to the Residents for Raising of Wall. ''''

6. IT is apparent from the record that some of the reliefs sought by the petitioner in its amended complaint are different from the reliefs which the petitioner is now seeking in the present revision petition. Petitioner cannot change the nature of its complaint which was filed before the District Forum. Be that as it may, the case of petitioner is that respondent cannot realize any taxes from the petitioner since petitioner ''s house at the relevant time was not located within the territorial limits of the respondent. When as per petitioner ''s own case the

respondent cannot levy any taxes upon his house as his house was not within the territorial limits of the respondent -Corporation, the complaint filed before the Consumer Fora is not maintainable and petitioner could have sought relief before the Civil Court.

7. IT is well settled that under section 21(b) of the Act, this Commission can interfere with the order of the State Commission where such State Commission has exercised jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

8. HON ''ble Supreme Court in Mrs. Rubi (Chandra) Dutta vs. United India Insurance Company, 2011 (3) Scale 654 has observed; ''''Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view that what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that that the jurisdiction conferred on the National Commission under Section 21(b) of the Act has been transgressed. It was not a case where such a view could have been taken, by setting aside the concurrent finding of two fora. ''''

Hence, we do not find any illegality or infirmity in impugned order passed by the State Commission. There is no merit in this revision petition. Accordingly, the same is hereby dismissed.

9. NO order as to cost.

