

(2017) 01 NCDRC CK 0044

In the National Consumer Disputes Redressal Commission

Case No : 3250 of 2016

YOUSUF ALI PEEDIKAPARAMBAN S/O. ABDU P.P. HAJIYAR
PALLY

APPELLANT

Vs

M/S. WORLD WIDE IMMIGRATION CONSULTANCY SERVICES
LTD. & ORS.

RESPONDENT

Date of Decision : 18-01-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : 2017 1 CPR 119

Hon'ble Judges : Rekha Gupta, Prem Narain

Advocate : RAJESH KUMAR

Judgement

1. The present revision petition has been filed against the judgment dated 20.06.2016 of the Kerala State Consumer Disputes Redressal Commission, Thiruvananthapuram ("the State Commission") in First Appeal no. 353 of 2013.

2. The facts of the case as per the petitioner/ complainant are that on the assurances made by the respondent/ opposite parties the petitioner contacted respondent no. 4/ OP no. 4 who directed the petitioner/ complainant to approach respondent no. 5/ OP no. 5. The respondents claimed that they are the world's largest global re-settlement solutions company delivering excellence in industrial knowledge, world class infrastructure and comprehensive resettlement package, consisting of immigration, placement and settlement services with offices at Cochin and all over India and also overseas offices in several countries. The petitioner/ complainant is a graduate having MSW and was working as a Co-ordinator on contract basis. On 02.08.2009 the resume of the petitioner was received by the respondent Respondent no. 5/ OP 5, at Cochin Office, instructed the petitioner to deposit an amount of Rs.55,000/- in advance and to deposit an amount of Rs.20,000/- after one month and further deposit of 1500 US Dollars, they also provided a leaflet to the petitioner. The petitioner remitted Rs.55,000/- on 11.08.2009. As per the demand draft drawn on Andhra Bank and respondent

no.5/ OP 5 issued a receipt no. 118608 dated 11/08/2009. A check list was provided on remittance of the amount. The complainant prepared all the documents as per check list and duly attested through M/s Sree Sai Documentation on remitting the amount of Rs.8,000/- and the fee receipt was issued in this regard. Thereafter the petitioner had to remit Rs.20,063/- on 29/10/2009 against which the respondent no. 5/ OP no.5 issued receipt also. On the same day itself an amount of Rs.73,375/- (1500 US Dollars) was also remitted as per the direction of the respondents and all the documents were submitted on 30/10/2009. The complainant received the receipt for 1500 US Dollars from the respondent no. 6/ OP 6 on 7/11/2009. Intimation was received from respondent no.8/ OP no. 8 to submit an application which was duly filled by respondents before the Danish Visa Application Centre, Chennai directly. The respondent no.8 again instructed the petitioner to remit an amount of Rs.16,427/- to VFS Global Pvt. Ltd., Chennai. Meantime the respondent received a call from Royal Danish Company, New Delhi to attend an interview. On 11/6/2010 the Royal Danish Company, New Delhi informed that the application submitted by the petitioner had been rejected. An appeal was filed before the Embassy which was also rejected. The petitioner made repeated enquiries and at last the petitioner was called upon to meet at the respondent no. 5's office and to settle the matter. It has come to the knowledge of the petitioner that in order to obtain work permit in Denmark under Green Card Scheme there was no need for service of a third party. The petitioner incurred an expenditure of Rs.1,87,865/-, which he had to arrange by availing loan and pledging gold ornaments. The respondents accepted consideration without providing proper service to the petitioner, they fraudulently grabbed money from people giving fraudulent promises. The complaint was filed for getting the refund of the amount expended i.e. Rs.1,87,865/- from the respondents and also Rs.1 Lakh towards mental agony and also for Rs.1 Lakh for the deficiency in service. The respondent nos. 1 to 8 are jointly and severally liable to compensate the complainant. A petition to delete the respondent no. 6 from the party array was allowed by Forum Below.

3. The respondents except the respondent no.6, filed joint version contending that the petitioner had not impleaded the respondent no. 6 who was a separate legal entity and with whom the petitioner had deposited 1500 US Dollars vide receipt dated 7/11/2009. It was contended that the respondent no. 6 was a necessary party to the proceedings. The other respondents have no connection with regard to the amount of 1500 US Dollars paid by the petitioner to respondent no.6. It was admitted that the respondent no.1 is a company having branches all over India and 14 International Offices having its registered office at New Delhi and Head Office at Chandigarh. The respondent no. 1/ company are professionals who have knowledge about the immigration laws and formalities regarding migration to European Countries, Australia, Canada etc. The respondents assist the candidates in processing and preparation of immigration file, verify their credentials, supplying with required documents and communicate

with the respective authorities and High Commission. It was contended that 100% guarantee of migration cannot be given as it was subject to the satisfaction of the authorities in the respective embassies. The migration depends upon educational/technical qualifications, experience and ability of the petitioners. The Global Strategic Business Consultancy was one such company providing the facility for the migrants. The application was to be submitted in person at Chennai and it was mandatory as a legal requirement. The petitioner had not produced the full extract of the rejection letter issued from the Embassy. The respondent prepared the draft of appeal to be submitted before the Appellate Authority on behalf of the petitioner. The performance of the petitioner at the interview was a criterion to be decided by the officials of the Embassy. The professional fees and other amounts were paid to third parties for the preparation of the documents and the respondents are not liable as not remitted any money with the respondents. The petitioner's case was rejected on the ground that he failed to qualify as per his qualifications and could not succeed in the interview. The inability to qualify for the interview cannot be treated as a deficiency on the part of respondents. The entire process of migration with regard to Green Card Scheme for Denmark was a lengthy process and it depends upon approval from authorities. The conditions in the contract of engagement were binding on the parties and the petitioner had accepted the same. As per clause 10 of the contract it was stated that the services provided by the company being professional in nature the entire fees was non-refundable. The petitioner's case could not be processed not due to deficiency on the part of respondents but on the petitioner's failure in the interview and the petitioner was not entitled for any refund as regards the retainer fee and professional fee. The petitioner suppressed material facts and the complaint is only to be dismissed.

4. The District Consumer Disputes Redressal Commission, Ernakulam vide its order dated 31.07.2012 ("the District Forum") held that:

"No explanation is forthcoming on the part of the opposite parties against the allegations put forward by the complainant. The absence of the opposite parties in this forum speaks volumes. In the above circumstances the opposite parties 1 to 5, 7 and 8 are jointly and severally liable to refund the amounts as per Exhibits A 3, A 6, A 7, A 11 and A 13 to the complainant with interest at the rate of 12% per annum from the date of the complaint till realisation. Though the complainants submitted that he had to spend Rs.15,000/- towards travelling expenses, nothing is on record to substantiate the same.

The primary grievance of the complainant having been met squarely. No order for compensation is called for.

In the result, we partly allow the complaint and direct that the opposite parties on record shall jointly and severally pay the amounts as per Exhibits A 3, Ag 5, A 7, A 11 and A 13 to the complainant with interest at the rate of 12% per annum from the date of complaint till realisation".

5. Aggrieved by the order of the District Forum, respondent no. 5/ OP no. 5 filed an appeal before the State Commission. The State Commission in their order observed as under:

"Heard, both counsels in detail and had gone through the records. The undisputed facts are that appellants offered immigration, placement and settlement services in Denmark and are having branches all over India and in overseas. It is also an admitted fact that the appellants offered services on accepting money in several stages. It is evident from records that the appellants accepted Rs.55,000/- as per Exbt: A3 as professional charges. The amount of 1500 US Dollars was remitted to the Global Strategic Business Consultancy in Dubai directly of whom the 1 st respondents deleted from the party array clearly shows that it amounts to mis-joinder of necessary party. The receipt produced is marked as Exbt: A7 issued by the 6 th opposite party. An amount of Rs.8,000/- remitted was for the documentation charges with M/s. Sree Sai Documentation. It is not disputed that the documentation was not carried out by M/s Sree Sai Documentations. The other remittances were made by the respondent directly. The Bank draft for Rs.8,650/- in favour of Royal Danish Embassy payable at Delhi shows that it is the fees to be remitted for the processing fee required to be paid to the Danish Visa Application Centre. So also verification charges for the dependents are made to the Visa Danish application centre. The amount of 1500 US Dollars paid to the Global Strategic Business Consultancy in Dubai was directly sent by the respondent himself and the appellant/5 th opposite party is to be clearly exonerated. The letter issued by Royal Danish Embassy regarding refusal of residence permit states that the applicant has to obtain 100 points according to the executive order on the Green Card Scheme point system. The Danish immigration service had not granted the residence permit to the 1th respondent pursuant to section 9(a)(2)(1) of the Danish Aliens Act. It is mandatory for the person who attends the interview to obtain 100 points. In the case of the complainant he received only 70 points and the 1 st respondent was dis-qualified from granting the residence permit. We would like to point out that the candidates had to attend the interview and the interview is based on the points obtained based on the qualification, experience and ability of the party. Nothing could be done by the appellants in the interview as it is exclusively done by the Danish Embassy. It is pertinent to point out that all the processing work was assisted by the appellants in the case of the respondent. It is also evident from the records that the appellants have supported the 1 st respondent even in filing the appeal for the 2 nd time also and the complainant's application was again rejected. The Forum Below partly allowed the complaint is not sustainable as the complainant himself has not mounted to the box nor he filed proof affidavit in support of his case. Both parties had not filed any proof affidavit. The 1 st respondent failed to prove that the opposite parties have not extended the professional service. It is pleaded in the complaint that the respondent accepted the service on remitting the professional fees and the respondent attended the interview. At this juncture the immigration process and the Green Card Scheme

is given directly by the Embassy people and the appellants have no role in extending the Green Card. It is purely on the basis of the qualification, experience and ability of the person who is attending the interview which is exclusively done by the Danish Embassy. The performance is accounted in points up to 100 against which the 1 st respondent received 70 points only. Hence, we find no deficiency in service on the part of the appellants.

In the result, appeal is allowed setting-aside the order passed by the Forum Below".

6. Hence, the present revision petition.

7. We have heard the learned counsel for the petitioner and have carefully gone through the record. The revision petition has been filed with a delay of eight days. For the reasons given in the application, the delay is condoned.

8. Learned counsel for the petitioner has contended that the State Commission's order should be set aside because the State Commission has failed to appreciate that the respondents had misrepresented, misguided and misled the petitioner by sending him an e-mail dated 02.08.2009 wrongfully informing him that he is a suitable candidate for Danish visa under Green Card Scheme implying thereby that petitioner would definitely qualify for, i.e., score the necessary marks in order to get the Danish Visa under Green Card Scheme. Further the State Commission has wrongly concluded that nothing could be done by the petitioner in the interview as it is exclusively done by the Danish Embassy.

9. We have gone through the record after hearing the Counsel. As per the contract of engagement for the Danish Visa Green Card Scheme entered into between the petitioner and the respondents, the duties of the company for the Worldwide Immigration Consultancy Services Ltd. were as under:

10. "In consultation with its associates at various locations the company shall provide the following services to its clients:

1. Assess the client according to the information provided by the client in his assessment form;
2. Assist the client in preparation of his/ her immigration case;
3. Review and identify submission of required documents and supporting evidences;
4. Providing assistance to submit the application with supporting documentation and evidence along with the submission report to the Danish Embassy;
5. Handle all correspondence of client with Danish Embassy;
6. Assist the client in keeping his/ her file up to date; and
7. Advice the client about any subsequent changes in the immigration laws and any subsequent conditions applicable to meet the selection criteria" .

11. It cannot be disputed that services mentioned above were rendered by the respondents. Petitioner as per the information given by him was eligible to apply for the Danish Visa. It is apparent from the record that the respondents were to assist him and prepare the immigration case and identify the required documents and supporting evidence to be submitted with the application. Had this been not done, the Danish Embassy would not have accepted the application and called the petitioner for an interview. The contention of the learned counsel for the petitioner was that the petitioner was lured, misguided and misled into thinking that he was eligible for Danish Visa under the Green Card Scheme has not been borne out by the facts. Had he not been suitable/ eligible for the same, the Danish Embassy would have rejected the application in the first instance. The fact remains that he was called for the interview and the performance during the interview, did not get him the minimum points required for the Danish Visa, instead of getting 100 points he got only 70 points for this. He cannot lay the blame for the same at the door of the respondents unless he has proof to establish that he lost points because he was not eligible to apply and be considered.

12. Thus, we find that no jurisdictional or legal error has been shown to us in the impugned order to call for our interference under Section 21 (b) of Act. The order of the State Commission does not call for any interference nor does it suffer from any infirmity or erroneous exercise of jurisdiction or material irregularity. Hence, the revision petition as also the complaint is dismissed.