

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).9713 OF 2010
(arising out of S.L.P.(C)No.14782 of 2010)

STATE OF U.P. AND OTHERS ...Appellant(s)

VERSUS

VIRESH KUMAR ...Respondent(s)

O R D E R

Leave granted.

This appeal is directed against order dated 19.2.2010 passed by the National Consumer Disputes Redressal Commission (for short, "the National Commission") whereby it dismissed as barred by time the revision filed by the appellant against the order of the State Consumer Dispute Redressal Commission, Uttar Pradesh (for short, "the State Commission").

Although, the learned counsel for the appellants is not at all prepared with the case, having heard learned counsel for the respondent and perused the record, we are convinced that the reasons assigned by the National Commission for dismissing the revision petition as barred by time are legally unsustainable and the impugned order is liable to be set aside with a direction for disposal of the revision petition on

2

merits.

The respondent filed complaint in 1997 under Section 12 of the Consumer Protection Act, 1986 for issue of a direction to the appellants to declare the result of C.P.Ed. Examination held in 1984 and for award of compensation and damages. The appellants questioned the maintainability of the complaint on the ground that the same was filed after a gap of 13 years. District Consumer Disputes Redressal Forum, Rampur (for short, 'the District Forum') brushed aside the objection

by recording the following observations:

"Avowedly, seeking redressal in a Forum, maximum time embargo is of 2 years. In instant complaints, declaration of result of examination held in 1985 is sought to be made in the year 1997 for which O.Ps. had been approaching very often and last time on 15.2.1997. It thus reveals that cause of action, in instant matter, was not confined to a particular date, instead it is continuous.

In Badri Nath vs. V.C., University of Jammu (supra) where internal assessment relating to examination held in 1983-84 being not sent, complaint case filed in 1994, was held not time barred as its cause of action was considered to be continuous. In T.P. Dobhal vs. Chairman, U.P. Electricity Board (supra) it has been made clear that on the date complaint is filed its cause of action should not have become time barred.

Instant complaints also stemmed from continuous cause of action which were filed on 20.9.1997 and 1.10.1997 respectively, are thus not hit by time embargo of 2 years. What is held in Haryana Urban Development Authority vs. B.K.

3

Sood (supra) that if complaint is not filed within 2 years from the date on which the cause of action has arisen it is time barred, is not applicable in instant matter because unlike that case these are the complaints arisen on continuous cause of action and not fixed one."

Another objection of the appellants that the respondent was not a consumer was also overruled by the District Forum.

The District Forum finally allowed the complaint vide order dated 23.5.2007, the operative portion of which reads thus:

"With cost Rs.2000.00 each complaint is partly allowed against O.P. 2 and 3 with direction that within one month from today they shall declare the result of each complainant as well as issue mark-sheet and pay damages of Rs.50000.00 to each complainant, failing which amount of damages shall swell to its double and will become payable along with 8% per annum interest from 1.10.1997 till payment."

The State Commission referred to the decisions of the National Commission in Ranchi University and another v. Nuzmat Sultan and others IV (2008) CPJ 148 and Badri Nath v. V.C.,

University of Jammu III (1995) CPJ 464 and dismissed the appeal.

The appellants challenged the order of the State Commission by filing revision. They also filed an application for condonation of delay. Paragraphs 3 to 7 of the application

4

which contain the explanation for delay read as under:

"3. That the judgment of the Hon'ble State Commission of Lucknow, U.P. was passed on 11.6.2009. Certified copy of the same was prepared by the Hon'ble State Commission of Lucknow on 20.7.2009 and the same was received by post by the petitioners on 22.9.2009 as the noting on the judgment dated 11.6.2009 would show.

4. On receipt of the certified copy of the judgment dated 22.9.2009, Ms. Bhavna Shiksharathi, the Secretary, Pariksha Niyamak Pradhikari, Allahabad, Uttar Pradesh studied and discussed the same with her officials and on 31.10.2009, an advice to challenge the said judgment in the Hon'ble National Commission was heeded and a communication no.1753/2009-10 was sent to the Director, Rajya Shakshik Anusandhan Aur Parikshan Parishad, Lucknow, Uttar Pradesh for approval for challenging the said judgment before Hon'ble National Commission.

5. That the Director, Rajya Shakshik Anusandhan Aur Parikshan Parishad, Lucknow, Uttar Pradesh after studying and discussing the said judgment wrote to the Special Secretary, Government of Uttar Pradesh, Education (11) Anubhag, Lucknow, U.P. on 12.11.2009 for permission to institute a Petition before Hon'ble National Commission or any other forum of law to challenge the judgment of the State Commission of Lucknow, U.P.

6. The matter was discussed in detail at a high level in the Government of U.P. and on 24.12.2009, sanction to invoke the Revisionary Jurisdiction of the Hon'ble National Commission was made vide communication dated 24th December, 2009 to the Upper Legal Advisor, 21 Rouse Avenue, New Delhi to institute the said Revision case. The said communication was received by the Upper Legal Advisor, 21 Rouse Avenue, New Delhi on 26.12.2009.

5

7. Thereafter, after the expiry of the winter vacations, the case was marked to the present counsel for the petitioners who took some time to study case, constitute records, translate Hindi documents to English, prepare and file the case."

The National Commission opined that cause shown by

(With prayer for interim relief)

Date: 16/11/2010 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Ajay Kr. Singh, Adv.

For Respondent(s) Mr. K.K. Tyagi, Adv.
Mr. Iftexhar Ahmad, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

For the reason stated in the and in terms of the signed order, the appeal is allowed, the impugned order is set aside and delay in filing of revision is condoned. The National Commission shall now dispose of the revision petition on merits.

Since the matter is quite old, we request the National Commission to decide the revision petition as early as possible but latest within six months from the date of receipt/production of copy of this order.

8

(A.D. Sharma)
Court Master

(Phoolan Wati Arora)
Court Master

(Signed Order is placed on the file)