

Muneesh Devi

v.

U.P. Power Corporation Ltd. & Others

(Supreme Court Of India)

HON'BLE MR. JUSTICE G.S. SINGHVI HON'BLE MR. JUSTICE  
SUDHANSU JYOTI MUKHOPADHAYA HON'BLE MR. JUSTICE V.  
GOPALA GOWDA

Civil Appeal No. 4075 Of 2013 | 19-07-2013

An extremely narrow and pedantic approach adopted by the National Consumer Disputes Redressal Commission (for short, 'the National Commission') in dealing with the issue of limitation and consequential dismissal of the complaint filed by her for award of compensation in lieu of the death of her husband has compelled the appellant to seek intervention of this Court.

The appellant's husband Shri Jagbir Singh was employed with Mahanagar Telephone Nigam Ltd., Delhi. On 5.2.2000, he suffered 85% burn injuries on his body due to sudden bursting of the transformer installed by respondent No.1- U.P. Power Corporation Ltd.

He succumbed to the injuries leaving behind the appellant and three minor children.

The appellant claims to have made representation dated 28.7.2000 to the respondents for award of Rs.25,00,000/- as compensation but they did not respond. Therefore, she filed Civil Suit No.196/2000 in the Court of Civil Judge (Senior Division), Ghaziabad for payment of compensation of Rs.20,00,000/-. The same was dismissed on account of non-payment of deficit court fees amounting to Rs.1,50,607.50. Her plea for waiver of the court fee was also rejected by the trial Court vide order dated 7.8.2000.

The appellant then filed a petition under Article 226 of the Constitution and prayed for issue of a mandamus to the respondents to pay compensation by

alleging that her husband had died due to their negligence. The same was dismissed by the Division Bench of the High Court by observing that the appellant can avail remedy by filing civil suit. SLP (C) No.5210/2002 filed by the appellant against the order of the High Court was summarily dismissed by this Court on 15.3.2002.

Having lost battle in the civil Court due to her inability to pay huge court fee and having failed to persuade the High Court and this Court to entertain her prayer for issue of a mandamus to the respondents to pay compensation, the appellant filed a complaint (O.P. No.253/2002) under Section 21 of the Consumer Protection Act, 1986 (for short, 'the Act') for award of compensation of Rs.25,00,000/-. By an order dated 25.7.2002, the Commission gave liberty to the appellant to amend the complaint. She availed that opportunity and amended the complaint.

After hearing the counsel for the appellant, the Commission admitted the complaint vide order dated 31.7.2002, which reads as under:

"Admit. Issue notice to the Opp. Parties returnable on 20.1.03."

On notice, respondent No.1 filed reply and the appellant filed rejoinder. She filed her evidence in the form of affidavit dated 14.2.2003, paragraph 23 of which reads as under:

"The Original Petition is within time as per S 24-A of the Consumer Protection Act. The time gap between the death of my husband and the filing of the present Original Petition occurred because the complainant first approached the High Court and then the Supreme Court."

On behalf of respondent No.1, evidence was adduced in the form of affidavit of Shri S.K. Singh, Executive Engineer, Electricity Distribution Division, Loni.

In furtherance of the leave granted by the Commission vide order dated 15.1.2012, the appellant filed application dated 24.1.2013 for condonation of delay in filing the complaint. Paragraphs 4 to 11 and the prayer clause of the application read as under:

"4. That the Complainant was advised to file a claim petition, a letter to the Electricity Distribution Division of the Opposite Parties seeking compensation of Rs.25 lakhs. The deceased was drawing Rs.6275 as salary per month at the time of his death. The claim petition was filed on 28.07.2000 as per the record maintained by the Complainant. It is submitted that such a claim petition was submitted to the concerned office by hand and the same was received by them. A true copy of the claim petition dated 28.07.2000 wherein on the left side of the claim paper, it has been mentioned received and signed, along with true translated copy is attached herewith and marked as Annexure B.

5. That as it was then advised, the Complainant filed a civil suit in the Ghaziabad Court valuing the suit at Rs.20 lakhs. At the initial stage, the Complainant was directed by the Court to pay the deficit court fee of Rs.1,50,407.50/- in the Court so that the suit may be registered as regular suit as per law. However the Complainant being an unemployed and illiterate lady and who had no means to pay such a huge court fee, did not prosecute the matter further.

6. That since no action was forthcoming on the complaint filed before the officials of the opposite parties; the Complainant left with no option approached the Hon'ble High Court of Allahabad under Article 226 of the Constitution of India. The Hon'ble High Court disposed of the petition by an order dated 01.11.2001 with a direction that the Complainant may approach the Civil Court for proper remedy.

7. That against the Order dated 01.11.2001 passed by the Hon'ble High Court of Allahabad; the Complainant approached the Hon'ble Supreme Court of India by way of Special Leave Petition. The same was dismissed by order dated 15.03.2002 with an oral direction to the complainant to approach the appropriate forum.

8. Thus, the claim before this Hon'ble Forum has not been considered till date by any authority or any Court on merits and the Complainant herein has not received any single penny against the claim preferred before this Hon'ble Forum. It is respectfully submitted that the Complainant is an illiterate/domestic lady. The deceased has left behind three minor children at the time when the cause arose for the first time. The Complainant was left in penury. The compensation amount would have really helped her to overcome the financial crisis, to her due to untimely death of her husband due to the negligent act of the Opposite Parties.

9. That the Complainant thereafter filed the present complaint before the Hon'ble National Consumer Disputes Redressal Commission, New Delhi on 11.07.2002. The case came up for hearing on 25.07.2002 wherein the Hon'ble Forum directed the Complainant to file an amended complaint substantiating the plea that the deceased has been consuming electricity through the transformer which was the cause of accident and his untimely death. Subsequently the amended complaint was filed on 29.07.2002.

10. That the complaint case was admitted by the Hon'ble Forum by Order dated 17.02.2010. It is humbly submitted that the Hon'ble Forum before admitting the complaint considered the question of limitation at length and only then the complaint was admitted by the Hon'ble Forum.

11. That the cause of action is still continuing since the Opposite Party has-not acceded to the claim petition dated 28.07.2000 filed by the Complainant and there has been no waiver by her till date. It is humbly submitted that if the limitation is calculated from the date of the claim petition, the present complaint before the Hon'ble Forum is within time as per Section 24A of the Consumer Protection Act, 1986.

## PRAYER

It is therefore most respectfully prayed that this Hon'ble Forum may be pleased to:

a) Condone the delay of 156 days calculated from the date of the fateful | incident i.e. 05.02.2000 in filing the present complaint case;

(b) pass any other order or orders as this Hon'ble Forum may deem fit and proper."

The respondents filed reply dated 14.2.2013 to contest the appellant's prayer for condonation of delay. They pleaded that the cause shown by the appellant for delayed filing of the complaint was not satisfactory.

The National Commission did not take cognizance of the appellant's assertion that before filing the complaint, she had pursued remedies before the civil Court, the High Court and this Court and dismissed the complaint as barred by time by simply observing that she could not substantiate her assertion of having made representation dated 28.7.2000. This is evinced from the following extracts of the impugned order:

"This is admitted that the cause of action in the present case arose on 05.02.2000. The claim petition was filed before the OP on 28.07.2000. The said claim petition was submitted to the concerned officer, by hand, and the same was received by them.

It is contended that the cause of action is still continuing because no compensation has been paid by the OP to the Complainant. They have not cared to respond to the said application. It is prayed that under these circumstances, the delay in filing this complaint, of about 156 days, be condoned. The said application was hotly contested by the OP.

We are of the considered view that the complainant has failed to prove sufficient ground for condonation of delay. The complainant has produced the copy of the claim petition filed before the OP, which the OP has categorically denied receiving the original copy of the claim petition. There is no proof of service. Signature of a person appears with the remarks "received". No stamp appears on it, in token of the receipt of the original claim petition. The

signatures are illegible. The counsel for the complainant could not explain to whom it had been handed over. Such like evidence can be created at any time. The complainant has failed to produce solid and unflappable evidence in support of her case. It is clear that the complaint is barred by time."

We have heard learned counsel for the parties and carefully perused the record.

Sections 12 and 24A of the Act, which have bearing on the decision of this appeal read as under:

"12. Manner in which complaint shall be made.-(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by –

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force.

Explanation. - For the purpose of this section "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 or any other law for the time being in force".

24A. 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."

A reading of Sections 12 and 24A makes it clear that a complaint filed after expiry of two years counted from the date of accrual of cause of action cannot be admitted by any Consumer Forum unless the complainant is able to show that he had sufficient cause for not filing the complaint within the prescribed period and the concerned forum records reasons for condoning the delay. The embargo contained in Section 24-A against admission of a complaint is unambiguous and if that section is read in conjunction with Section 12, which prescribes the procedure for entertaining the complaint, it becomes clear that before admitting a complaint and issuing process, the Consumer Forum must feel convinced that the same has been filed within the period of limitation or that the complainant has succeeded in showing sufficient cause for delayed filing of the complaint.

In the application filed by her for condonation of delay, the appellant made copious references to the civil suit, the writ petition and the special leave petition filed by her and the fact that the complaint filed by her was admitted after considering the issue of limitation. She also pleaded that the cause for claiming compensation was continuing. The National Commission completely ignored the fact that the appellant is not well educated and she had throughout relied upon the legal advice tendered to her. She first filed civil suit which, as mentioned above, was dismissed due to non payment of deficient court fees. She then filed writ petition before the High Court and special leave petition before this Court for issue of a mandamus to the respondents to pay the amount of compensation, but did not succeed. It can reasonably be presumed that substantial time was consumed in availing these remedies. It was neither the pleaded case of respondent No.1 nor any material was produced before the National Commission to show that in pursuing remedies before the judicial forums, the appellant had not acted bona fide. Therefore, it was an eminently fit case for exercise of power under Section 24-A(2) of the Act. Unfortunately, the National Commission rejected the appellant's prayer for condonation of delay

on a totally flimsy ground that she had not been able to substantiate the assertion about her having made representation to the respondents for grant of compensation.

In view of the above, we hold that the impugned order is legally unsustainable and is liable to be set aside.

In the result, the appeal is allowed, the impugned order is set aside. The delay in filing of complaint by the appellant under Section 21 of the Act is condoned and the matter is remitted to the National Commission for disposal thereof on merits.