

26.2.2024
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Ct. no. 652
sb

C.O. 3706 of 2016

Ravi Shankar Pasumarti
Vs.
United Health Care Parekh TPA Pvt.
Ltd. & Ors.

Mr. Probhat Kr. Srivastava
Ms. Ankita Singh ...for the Petitioner

Dr. Siddhartha Goswami ...for the O.P. no. 2

Ms. Soni Ojha
Ms. Sonia Nandy ...for the O.P.no. 3

Affidavit of service filed by the petitioner is taken on record. Opposite party no. 1 is not represented.

This application has been preferred against an order dated 10th August, 2016 passed by the learned State Consumer Dispute Redressal Commission, wherein the State commission has refused to condone the delay in preferring the appeal against the order passed by the District Forum.

The petitioner herein contended that the petitioner filed a complaint before the learned District Consumer Disputes Redressal Forum in connection with dispute over insurance policy which was availed at the instance of opposite party no. 3, being C.C. case no. 212 of 2015. Said complaint was dismissed by an order dated 5th January, 2016 on the ground that the said District forum had no territorial jurisdiction to entertain the said

complain. According to the petitioner, the observation of the District Forum is palpably wrong since the petitioner is within the pecuniary limits of the said District forum and furthermore opposite party no. 2 and 3 carry on their business within the jurisdiction of said District forum.

Being aggrieved by the said order, the petitioner herein preferred an appeal before the State Commission wherein there was a delay of 31 days in preferring the appeal. Petitioner filed application for condonation of delay wherein he has stated the grounds for such delay and prayed before the State commission for condonation of delay. The matter came up for hearing before the learned State commission on 10th August, 2016 but the said commission by the impugned order, refused to condone the delay and thereby refused to admit the appeal preferred by the petitioner herein.

Being aggrieved by that order, Mr. P.K. Srivastava, learned counsel for the petitioner submits that the learned State Commission has failed to appreciate the reasons and the explanation given in the application for condonation of delay. Learned State Commission ought to have taken a lenient approach while disposing such application for condonation of delay, where the delay occurred only for 31 days. He further submits that the said delay was not intentional and the court below was erred in holding that there is no iota of evidence for the

cause of delay and that the condonation of delay is devoid of merit. In this context, he relied upon a judgment passed by a co-ordinate Bench of this court in **Tej Bahadur Thapa Vs. Branch Manager of District Central Co-operative Bank Ltd. & Anr. in C.O. 2587 of 2010** which was delivered on 22nd August, 2016. Accordingly, he has prayed for setting aside the order impugned.

Mr. Goswami, learned counsel for the opposite party no. 2 strenuously argued that the order against the State Commission lies before the National Commission and as such the present application under Article 227 of the Constitution of India is not maintainable. In this context, he relied upon a judgment passed by a co-ordinate Bench of this court in **Gobinda Kumar Nag Vs. Ranjit Kumar Banerjee in C.O. 4268 of 2013 dated 10th April, 2015** and another judgment of the Apex Court in **M/s. Daddy's Builders Pvt. Ltd. and another Vs. Manisha Bhargava and another reported in 2021 (3) SCC 669**. He also relied upon another judgment passed by a coordinate bench of this court while disposing of an application under Article 226 of the Constitution of India in **National Insurance Company Ltd. Vs. Consumer Disputes Redressal Forum in W.P. 228 of 2014**.

Ms. Soni Ojha, learned counsel for the opposite party no. 3 adopted the arguments made on behalf of the opposite party no. 2 and submits that the court below has not made any jurisdictional error in passing the order

impugned and in this context, she further submits that since petitioner has an alternative efficacious remedy under Section 21 of the Act, he ought to have moved before the National Commission and in this context, he relied upon a judgment passed by a co-ordinate bench of this court in **IDBI Bank Vs. Apex Agencies & Ors. in C.O. 889 of 2018.**

I have considered the submissions made by both the parties. Before going to further details, let me reproduce the order impugned:

“Ld. Advocate for the Appellant and the Respondent no. 3 are present. Respondent no. 2 appears through Advocate by filing a vakalatnama and files a w.o. against the delay condonation petition. The said petition is taken up for consideration. Ld. Advocate for the Appellant submits that certified copy of the order dated 05.01.2016 was taken on 19.01.2016 and thereafter the appeal has been filed on 09.03.2016 and so the consequently the delay. Ld. Advocate for the Respondent nos. 2 and 3 vehemently oppose the Delay condonation petition prayer stating that there is no reason at all for the delay. Considering all aspects in the matter, specially the delay condonation petition, there is no iota of any evidence for the cause of delay. Accordingly, the condonation petition being devoid of merit stands rejected. Consequently, the appeal is dismissed being barred by limitation.”

On perusal of petition for condonation of delay, it appears that petitioner herein in paragraph 5 to 10 has given certain grounds for causing delay. Now whether such grounds are tenable to constitute “sufficient cause” or not is a separate question, but the State Commission surprisingly disposed of said application in one sentence that in the delay condonation petition there is no iota of

any evidence for the cause of delay. Grounds of delay pleaded in application, then how iota of evidence has been weighed by the State Commission in his finding is not understandable.

I am very much mindful to the fact that Section 21(a)(ii) when read along with Section 17(a)(ii) and Section 19, it is abundantly clear that an appeal lies against the order of the State Commission before National Commission. There is no quarrel with the proposition that the aggrieved party without exhausting remedy available in the statute ordinarily should not be allowed to raise disputed question of facts by invoking the power of the High Court under Article 227 of the Constitution of India. But that does not mean that the power of the High Court under Article 226 or 227 of the Constitution has been taken away because of the alternative efficacious remedy provided in the statute. In fact there lies always a distinction between a statutory power and a constitutional power, and the authority conferred under Article 227 does not have any limitation to invoke supervisory jurisdiction in appropriate cases and such power also cannot be curtailed by any statute.

On a plain reading of the order impugned, it is clear that the order is bereft of any reason or on the basis of such reason which is against the averments made in the application. Reasoning of an order is virtually an indispensable component of a decision making process

and if a quasi judicial authority or a Judge is not candid enough about his decision making process, then it is not possible to know, whether the said authority is faithful to the doctrine of precedent or the principles of law.

Since in the present case, State Commission has passed an arbitrary unreasoned order based on imaginary thought process, it amount to serious dereliction of duty and flagrant violation of fundamental principles of law and justice, where if High Court does not interfere, a grave injustice will remain uncorrected. In fact, State Commission while passing the impugned order practically has not assigned any reason to non-suit the petitioner.

Judgment referred by the petitioner in W.P. 228 of 2014 is a case in connection of which proceeding initiated under Article 226 of the Constitution of India. Furthermore, the judgment passed in C.O. 4268 of 2013 as referred by the petitioner was passed prior to the judgment of another co-ordinate bench of this court in C.O. 2587 of 2010. The judgment referred by the petitioner in **M/s. Daddy's Builders Pvt. Ltd case** (*supra*) is factually distinguishable since it involved on issue, whether the State Commission has power to condone the delay beyond 45 days for filing the written statement going beyond Section 13 of the Act concerned which is the not case in the present one, where question of perversity is involved.

In such view of the matter the order impugned is hereby set aside. Learned State Council is hereby directed to give an opportunity to both the parties to hear the petitioner's application under Section 5 of the Limitation Act afresh and to pass a reasoned order preferably within a period of twelve weeks from the date of communication of the order.

C.O. 3706 of 2016 is accordingly disposed of.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)