

STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PUNJAB
DAKSHIN MARG, SECTOR 37-A, CHANDIGARH

Misc. Application No. 1726 of 2012
in/
and
First Appeal No. 1119 of 2012

Date of institution: 24.8.2012
Date of Decision : 9.9.2013

The Public Information Officer, Office of Tehsildar, Tehsil Jaitu, Distt.
Faridkot.

.....Applicant/Appellant/Opposite party

Versus

Simarjit Singh, Advocate son of Sh. Gurdip Singh, resident of House No.
12989, Near Namdev Gate, Tinkoni, G.T. Road, Bathinda.

.....Respondent/Complainant

Argued By:-

For the appellant : Sh. V.S. Rana, Advocate
For the respondent : Ex.-parte.

**Misc. Application for condonation of delay of
84 days in filing the appeal.**

In Re:

**First Appeal against the order dated 19.3.2012
passed by the District Consumer Disputes
Redressal Forum, Bathinda.**

Quorum:-

**Shri Gurcharan Singh Saran, Presiding Judicial Member
Shri Piare Lal Garg, Member**

Gurcharan Singh Saran, Presiding Judicial Member

Misc. Application No. 1726 of 2012

Applicant-appellant-opposite party (in short 'the applicant') has moved application under Section 5 of the Limitation Act on the grounds that the delay of 84 days occurred in filing the appeal due to mis-conception that the limitation to file the appeal is 90 days instead of 30 days as it was so advised by the counsel for

the appellant. On the other hand, the respondent is ex-parte and no rebuttal to the version given by the applicant. The version given by the applicant is supported by an affidavit, accordingly, the delay of 84 days in filing the appeal is hereby condoned.

Main Case

2. The appellant-opposite party (hereinafter called 'the opposite party') has filed the present appeal against the order dated 19.3.2012 passed by the District Consumer Disputes Redressal Forum, Bathinda (hereinafter called "the District Forum") in consumer complaint No. 563 dated 28.11.2011 vide which the complaint was allowed on the ground that the opposite party/appellant has failed to supply information within the stipulated period under RTI Act and the opposite party was directed to pay Rs. 10,000/- as compensation.

3. The complaint was filed by Simarjit Singh under Section 12 of the Consumer Protection Act, 1986 (in short 'the Act') alleging that he had filed an application dated 12.7.2011 under Right to Information Act (in short 'RTI Act') with the opposite party for supply of certified copy of the affidavit filed by Gurdeep Singh relating to death of Mukhtiar Singh at the time of sanctioning of mutation No. 4148 dated 9.12.2004 and certified copy of the document on which signatures as mark of presence of legal heirs of Mukhtiar Singh at the time of sanctioning the mutation. He had also paid the requisite fee for the supply of this information. As per provisions of RTI Act, information was required to be supplied within a period of 30 days but opposite party has failed to give the required information despite the fact that he had been approaching and also filed the reminder dated

9.9.2011. Due to the Act of the opposite party, the complainant had suffered great mental tension, agony, botheration and harassment for which the opposite party be directed to pay compensation of Rs. 25,000/- and litigation expenses to the tune of Rs. 3300/-.

4. The complaint was contested by the opposite party, who filed written statement with preliminary objections that the District Forum does not have the jurisdiction to entertain the complaint under Section 11 of the Act. On merits, it has been stated that mutation No. 4148 was sanctioned on 9.12.2004 by AC-II, Jaitu in favour of natural heirs of Mukhtiar Singh as no Will was shown at the time of sanctioning of mutation, therefore, there is no need of any affidavit of Gurdeep Singh s/o Mukhtiar Singh. The mutation was sanctioned vide roznamcha No. 229 dated 3.12.2004. The pedigree table of Mukhtiar Singh was verified by Lamberdar Neela Singh of Village Chand Bhan and file of mutation was attached with the case pending in various Courts, firstly, in the Court of AC-I, Jaitu (SDM, Jaitu), then in the Court of District Collector, Faridkot, in the Court of Financial Commissioner (Appeals), Punjab, Chandigarh, therefore, the information could not be supplied to the complainant within time, therefore, there is no deficiency in services on the part of the opposite party and the complaint be dismissed.

5. The parties were allowed by the learned District Forum to lead their evidence.

6. In support of his allegations, the complainant had tendered into evidence Ex. C-1 photocopy of Form No. 1, Ex. C-2, copy of postal receipt, Ex. C-3&4 copy of postal orders, Ex. C-5 letter

dated 9.9.11, Ex. C-6 copy of postal order, Ex. C-7 affidavit dated 21.2.2012, Ex. C-8 memo dated 24.10.11, Ex. C-9 Intkal.

7. After going through the allegations in the complaint, written statement, evidence and documents brought on the record, it was observed by the learned District Forum in the impugned order that despite demand, the opposite party failed to give the above required information to the complainant. Moreover, in Jamabandi Ex. C-9 it has been mentioned that affidavit was taken from Gurdial Singh whereas in the affidavit the opposite party has taken the stand that no such affidavit was taken. Moreover, the file was not sent to Financial Commissioner (Appeals), Punjab, Chandigarh, therefore, there is deficiency in service and accordingly, the complaint was partly allowed as stated above.

8. Feeling aggrieved with the order passed by the learned District Forum, the appellant/opposite party has filed the present appeal.

9. We have heard the learned counsel for the appellant Sh. V.S. Rana, Advocate and none on behalf of the respondent.

10. Although Sh. Manish Bansal, Advocate filed memo of appearance on 18.10.2012 but after that none appeared on behalf of the respondent, therefore, respondent was proceeded against ex-parte.

11. In the grounds of appeal, it has been contended by the counsel for the appellant that RTI Act provides for setting out the practical regime of the right to information for Citizens to secure access to the information under the control of public authorities for

which State Information Commission and Central Information Commission has been established. In case any Public Officer has not provided the information called for, the complainant had a right to approach the State Information Commission or the Central Information Commission and under Section 23 of the RTI, there is a bar to the jurisdiction of the Court. The counsel for the appellant has further referred to judgment of the Hon'ble National Commission in Revision Petition No. 4061 of 2010 "**T. Pundalika versus T. Revenue Department**", decided on 31.5.2011 wherein it was observed that the complainant cannot be considered as 'consumer' as defined under the Act since there is remedy available for the complainant to approach the Appellate Authority under Section 19 of the RTI Act, 2005, accordingly the revision petition is dismissed.

12. When separate remedy of appeal is available under RTI Act, 2005 and if required information was not provided to the respondent, he is required to approach the Appellant Authority under RTI Act to redress his grievance as different channels were provided under RTI Act i.e. Appeal, Second Appeal, Revision Petition etc.. The respondent has a right to avail all the remedies under one channel because it is settled law that if the applicant has availed one channel he must avail the further remedies under that channel before the appropriate authority.

13. This Commission in F.A. No. 1269 of 2010 "**Ashwani Kumar Kakkar versus Public Information Officer**" decided on 29.10.2010 as well as F.A. No. 1404 of 2012 "**Parbodh Chander Bali versus Public Information Officer**", decided on 4.12.2012 held

that '*complaint against the RTI Information does not lie before the District Forum as there is a separate remedy available under RTI Act, 2005*'.

14. In view of the law referred above, we are of the opinion that the learned District Forum did not have the jurisdiction to try this complaint once the complainant approached the opposite party under RTI Act and he had the remedy under Section 19 of the RTI Act to file an appeal before the State Information Commission.

15. In view of the above discussion, we accept the appeal and order passed by the learned District Forum is set-aside on the grounds that the learned District Forum has no jurisdiction to entertain the complaint.

16. The arguments in this appeal were heard on 3.9.2013 and the order was reserved. Now the order be communicated to the parties as per rules.

17. The appellant had deposited an amount of Rs. 5,000/- with this Commission at the time of filing the appeal. This amount of Rs. 5,000/- with interest accrued thereon, if any, be remitted by the registry to the appellant by way of a crossed cheque/demand draft after the expiry of 45 days under intimation to the learned District Forum.

18. The appeal could not be decided within the statutory period due to heavy pendency of Court cases.

(Gurcharan Singh Saran)
Presiding Judicial Member

September 9, 2013
as

(Piare Lal Garg)
Member

