

Chandrapur. So the fact that amount received was deficit than what was sent by the brother of the appellant. So it clearly amounts to deficiency in service for which the respondent Post Office is bound to reimburse the said amount to appellant.

12. So, we find that the appellant has proved that her brother had sent Rs. 5,000 in an insured envelope through the respondent's Post Office.

13. The appellant has also proved on record that she was to receive deficit amount of Rs. 3,800 so she is entitled to receive the same from the respondent. However, in view of the provision of Section 33 of the Indian Post Office Act, she is not entitled to interest on this amount.

14. As regards to non-joinder of the necessary party, it must be stated that Postal Department is run by the Central Government and its branch offices are of one and the same department. Therefore, it is not necessary to join the Viddynagar Post Office, Mumbai through which the insured envelope was sent. So we see no merit in the argument of Mrs. U.R. Tanna when she says complaint suffered from non-joinder of the necessary party.

15. For the aforesaid reasons, we see much force in this appeal and it deserves to be allowed.

Hence, the order:

ORDER

Appeal is allowed.

- (i) Respondent to pay the amount of Rs. 3,800 to the appellant within one month from the date of receipt of this order.
- (ii) Parties to bear their own cost in this appeal.
- (iii) Copies of this order be supplied to the parties.

Appeal allowed.

IV (2007) CPJ 135

HARYANA STATE CONSUMER DISPUTES REDRESSAL COMMISSION, PANCHKULA

Hon'ble Mr. Justice R.C. Kathuria, President;
Mr. Banarsi Dass & Mrs. Shakuntla Yadav, Members

BOARD OF SCHOOL EDUCATION BHIWANI
—Appellant

versus

ANKUSH DEVI & ORS. —Respondents

First Appeal No. 321 of 2006—Decided on 6.2.2007

Consumer Protection Act, 1986 —
Sections 2(1)(c)(iii), 2(1)(q), 27, 27A —
Penalties — Non-compliance of Order —
Result of complainant wrongly withheld
and cancelled by Education Board (OP) —
Declaration of result directed by District
Forum — Order not complied — Execution
proceedings initiated — Simple
imprisonment awarded to Deputy Secretary
of OP — Fine imposed — Hence appeal —
Only trader or person who fails or omits to
comply with order of District Forum incurs
liability of punishment under Section 27 of
Consumer Protection Act — In present case,
complainant impleaded Education Board as
OP — Deputy Secretary represented OP as
incharge for its business, not impleaded in
individual capacity — Cannot be construed
as offender — Proceedings ought to have
been initiated against OP — Patent
illegality committed by District Forum —
Impugned order set aside.

[Pg. 136, 138 (Paras 6 to 9)]

Result : Appeal allowed.

Case referred :

State of Karnataka v. Paramjit Singh and Others, IV
(2004) SLT 410=2006 CIJ 419 (SC) (CP). (Relied)

[Para 8]

Counsel for the Parties :

For the Appellant : Mr. G.P.S. Bal, Advocate.

For the Respondent No. 1 : Mr. H.C. Kaushal,

For the Respondent No. 2 : Mr. Piare Singh,
Lecturer, Advocate.

For the Respondent No. 3 : None.

ORDER

Mr. Justice R.C. Kathuria, President—

This appeal has been filed under Section 27A of the Consumer Protection Act, 1986 (hereinafter referred to as the Act, 1986) by the appellant-opposite party No. 1 against the order dated 7.2.2006 passed by the District Consumer Disputes Redressal Forum, Karnal whereby on the application filed by the respondent No. 1-complainant, the Deputy Secretary of the Board of School Education, Bhiwani, Haryana (hereinafter referred to as the appellant-Board) has been sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 10,000. In case of non-payment of the fine he will have to undergo simple imprisonment for two months.

2. In order to decide the present appeal the essential facts need to be stated briefly: The District Forum, Karnal while deciding Complaint No. 454 of 2004 as per order dated 16.5.2005 issued the following directions to the appellant-opposite party No. 1:

"For the reasons recorded above we hold that OP-1 has wrongly withheld and subsequently cancelled the result of the complainant for no fault of her. Accordingly, the OP-1 is directed to declare the result of the complainant forthwith. As the complainant has already lost one precious academic year on account of non-declaration of her result, so OP-1 is also directed to pay Rs. 20,000 as compensation-cum-cost of litigation to the complainant within a period of 30 days of the receipt of copy of this order."

3. As the appellant-opposite party No. 1 did not comply with the above stated directions, the complainant filed the execution application which was registered at Sr. No. 80 of 20.6.2005 in the District Forum, Karnal. Notice was given

to the opposite parties under Section 27 of the Act, 1986 for non-compliance of the directions contains in the order. Thereafter, show-cause notice was issued to the opposite party No. 1. In answer to the show-cause notice, the Deputy Secretary (Legal) appeared on behalf of the appellant through his Counsel and it was stated that the appeal had been filed in the State Commission against the order dated 16.5.2005 passed by the District Forum in the above mentioned complaint and it was prayed that till the appeal is decided, no action be taken against the appellant. The District Forum came to the conclusion that the pendency of the appeal before the State Commission does not entitle the appellant-opposite party No. 1 to comply with the order passed and as a period of nine months had lapsed in between the opposite party No.1 intentionally, had failed to comply with the order passed in complaint. Consequently, the Deputy Secretary of the opposite party No. 1, who claimed himself to be the person responsible for not complying the order dated 16.5.2005, was sentenced as noticed above as per order dated 7.2.2006. It is against this order the present appeal has been filed.

4. Learned Counsel representing the parties have been heard at length.

5. The order dated 7.2.2006 of the District Forum has been assailed by the learned Counsel representing the appellant-opposite party No. 1 primarily for the reason that District Forum has committed gross illegality in convicting Shri R.L. Wadhwa, Deputy Secretary of the appellant-Board who has represented Secretary of the appellant—and not in his individual capacity, whereas no sentence has been passed against the procedure which is wholly illegal and not warranted under the provisions of Section 27A of the Act, 1986. Opposing the submission made, learned Counsel for the complainant has justified the order of the District Forum for the reasons stated therein.

6. In order to appreciate the submission made factual position brought on record needs to be adverted to at the risk of repetition before dealing with the legal position arisen therefrom.

The complainant filed the application on 20.6.2005 for execution of the order dated 16.5.2005 noticed above as the appellant-Board did not comply with the directions given therein. Notice was issued to the appellant-Board for 8.7.2005. On that date, none had put in appearance from the side of the appellant-Board and for that reason show-cause notice was ordered to be issued for 22.7.2005. The show cause notice reads as under:

"To

The Secretary,
Board of School Education,
Haryana,
Bhiwani.

Subject: Show Cause Notice under Section 27 of the Consumer Protection Act, 1986 for non-compliance of orders dated 16.5.2005 passed by this Forum in complaint titled *Ankush Devi v. Board of School Education, etc.*

MEMO:

Vide orders dated 16.5.2005 passed by this Forum in complaint No. 454 of 2004, it was directed as under—

"OP-1 is directed to declare the result of the complainant forthwith. As the complainant has already lost one precious academic year on account of non-declaration of her result so OP-1 is also directed to pay Rs. 20,000 as compensation-cum-cost of litigation to the complainant within a period of 30 days of the receipt of copy of this order."

You, being OP-1, did not comply with the above said order by the stipulated date as directed by this Forum. Accordingly, you are hereby served with this notice to show cause why action under Section 27 of the Consumer Protection Act, 1986 be

not taken against you. Your reply is awaited for 22.7.2005, failing which ex parte proceedings will be taken against you.

Sd/-

President

Dated: 8.7.2005

District Consumer Disputes
Redressal Forum, Karnal."

Reply to the above show-cause notice was filed on 14.9.2005 by the Deputy Secretary (Legal) of the appellant-Board. As per record of the case the arguments were heard on 31.1.2006 and the case was adjourned to 7.2.2006 for orders. There is a written application dated 7.2.2006 on record submitted by Shri Balwan Singh, Superintendent (Exam) of the appellant-Board which is addressed to the President of the District Consumer Disputes Redressal Forum, Karnal whereby he was informed that the Deputy Secretary (Legal) was Shri R.L. Wadhwa had signed the reply to the show cause notice. The relevant portion of the order of sentence passed against Shri R.L. Wadhwa reads as under:

"Reply to the show-cause notice has been filed by the Deputy Secretary of OP-1 claiming himself to be the person responsible for complying with the order dated 16.5.2005 Shri Balwan Singh, Superintendent of OP-1 has given in writing that Shri R.L. Wadhwa is the name of the Deputy Secretary of the Board of School Education, Haryana, Bhiwani and he has filed reply to the show cause notice. So, Shri R.L. Wadhwa, Deputy Secretary of OP-1 is sentenced to undergo simple imprisonment for a period of three

months and to pay a fine of Rs. 10,000. in case of non-payment of amount fine, he shall further undergo simple imprisonment for a further period of two months.

Accordingly, necessary warrants of arrest be issued against Shri R.L. Wadhwa, Deputy Secretary of the Board of School Education, Haryana, Bhiwani for producing him before this Forum by 15.2.2006."

7. From the above stated facts it is manifest that the complainant has impleaded the appellant-Board as opposite party No. 1 in the complaint against whom deficiency of service has been attributed and sought to be represented through its Secretary. As per the requirements as defined in Section 2(l)(c)(iii) of the Act, 1986, "complaint" means any allegation in writing made by a complainant that "the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect". The party to be arrayed in the complaint has to be a person or a trader as defined in Section 2(l)(c)(iv)(k) and (q) respectively. The person so defined includes—(i) a firm whether registered or not; (ii) a Hindu undivided family; (iii) a co-operative society; (iv) every other association of persons whether registered under the Societies Registration Act, 1860 or not. Trader has been defined as under:

"2(l)(q) 'trader' in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof."

Reference to these provisions has necessitated in order to show that appellant-Board has been impleaded as a person in the complaint in terms of the above stated provisions. The representation of the appellant-Board has been sought to be made through Secretary. The

impleaded in individual capacity in the complaint on the allegations that Secretary was incharge and was responsible for the business of the appellant-Board. The District Forum was duty-bound to take into account this aspect when initiating proceedings under Section 27 of the Act, 1986 which factual position has been totally ignored by the District Forum in passing the order dated 7.2.2006.

8. At this stage the provisions of Section 27 of the Act, 1986 have to be noticed and the same read as under:

"27. Penalties—(1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both—

[(2) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the First Class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a judicial Magistrate of the First Class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974)

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.]

[27-A. *Appeal against order passed under Section 27.*—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an appeal under Section 27, both on facts and on law, shall lie from—

- (a) the order made by the District Forum to the State Commission;
- (b) the order made by the State Commission to the National Commission; and
- (c) the order made by the National Commission to the Supreme Court.

(2) Except as aforesaid, no appeal shall lie to any Court from any order of a District Forum or a State Commission or the National Commission.

(3) Every appeal under this section shall be preferred within a period of thirty days from the date of an order of a District Forum or a State Commission or, as the case may be, the National Commission:

Provided that the State Commission or the National Commission or the Supreme Court, as the case may be, may entertain an appeal after the expiry of the said period of thirty days, if, it is satisfied that the appellant had sufficient cause for not preferring the appeal within the period of thirty days.]”

Reading of the above stated provisions leave no manner of doubt that the trader or person who fails or omits to comply with the order of the District Forum incur the liability of punishment

prescribed under Section 27(1) of the Act, 1986. These provisions are unique provisions because Parliament in its wisdom has conferred the powers of Judicial Magistrate of First Class for trial of offence under the Act upon the District Forum, State Commission or National Commission, as the case may be, in the manner stated therein. Consequently, while taking action under these provisions, they exercise the powers of the Judicial Magistrate of First Class for the purpose of Code of Criminal Procedure, 1973. It is also mandated that all offences under this Act be tried summarily by the District Forum or the State Commission or National Commission respectively. The Hon’ble Supreme Court in case *State of Karnataka v. Paramjit Singh and Others*, IV (2004) SLT 410=2006 CTJ 419 (Supreme Court) (CP), held as under—

“It is to be noted that by the Consumer Protection (Amendment) Act, 2002 (62 of 2002), as contained in Section 23 of the Amended Act, Proviso which was struck down as unconstitutional by the High Court has been omitted. Sub-section (2) has been introduced which provides that the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of Judicial Magistrate of First Class for the trial of offences under the Act and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be on whom the powers are so conferred, shall be deemed to be of Judicial Magistrate of the First Class of the Code. The amendments have been made effective with effect from 15.3.2003. The controversy has, therefore, become academic. The appeals are, accordingly, disposed of but without any order as to cost.”

In view of the above stated decision the validity of the provisions of Section 27 of the Act has been upheld.

9. The stage when the District Forum comes to exercise the powers of Judicial Magistrate of First Class under the above stated provisions is that as and when it is established before the District Forum that the trader or the person against whom a complaint was made failed or omitted to comply with the order made by the District Forum, and in non-compliance of its order has to be treated as the offence from that stage which is punishable with the imprisonment as laid down therein. In this case as per the complaint made the appellant-Board is the principal offender and Secretary, as such, cannot be construed as an offender. The appellant-Board has been made an offender by virtue of the legal fiction created by the Legislature as per the above stated provisions. A strength can be drawn by taking clue from the position where company is prosecuted as a juristic person and as company is incapable of being punished with imprisonment for committing an offence, sentence of fine can only be passed against the company. A situation can also arise where a minimum punishment is prescribed for violation of Section 176B of the Income Tax Act under which offence by the company and every person who at the time the offence was committed was in charge of and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly unless the case is covered under the proviso. Even in that case mandatory sentence of imprisonment cannot be imposed upon the company and only fine will be punishment. On the same analogy the District Forum was duty-bound to initiate proceedings against the appellant-Board because only appellant-Board has been impleaded as a party to the complaint and not Secretary because Secretary has not been impleaded in individual capacity, with whose consent or connivance, neglect, omission or otherwise the act of deficiency attributed was committed. In this case surprisingly enough Deputy Secretary (Case) has been punished with imprisonment

in individual capacity whereas factually he was never impleaded representing the appellant-Board in the complaint itself because only Secretary was impleaded representing the appellant—pronouncement of the order would not cure the patent illegality committed by the District Forum while initiating the proceedings under Section 27 of the Act, 1986 which culminated with the order of punishment dated 7.2.2006.

For the aforesaid reasons, the appeal is accepted and the impugned order is set aside.

Appeal allowed.

IV (2007) CPJ 140

ANDHRA PRADESH STATE CONSUMER DISPUTES REDRESSAL COMMISSION, HYDERABAD

Hon'ble Mr. Justice I. Venkatanarayana, President; Mrs. Merla Shreesha & Mr. G. Bhoopathi Reddy, Members

ANASUYAMMA (DR.) —Appellant
versus

P. RAGHUNANDAN & ANR.
—Respondents

F.A. Nos. 880 & 879 of 2004—Decided on 9.3.2007

Consumer Protection Act, 1986 —
Section 2(1)(g) — Medical Negligence —
Operation — Patient went into operation
theatre for simple surgery (MTP) —
Developed complications within 20
minutes — Resulted in death — Principle of
res ipsa loquitur applied — Ambulance and
proper facilities not provided while
shifting patient to another hospital — Case
sheet not given at time of transferring
patient — Negligence and deficiency in
service proved — Compensation enhanced
in appeal.

[Pg. 142 (Paras 9, 10)]

Result : Ordered accordingly.

Counsel for the Parties :