

(2024) 11 NCDRC CK 0068

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 1327 Of 2019

Rajasthan State Industrial
Development & Investment
Corporation Ltd. (RIICO)

APPELLANT

Vs

Dwarka Prasad

RESPONDENT

Date of Decision: Nov. 25, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21, 21(b)

Hon'ble Judges: Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

Bench: Single Bench

Advocate: Nikhil Jain, Somdev Tiwari

Final Decision: Dismissed

Judgement

Avm J. Rajendra, Avsm Vsm (Retd.), Presiding Member

1. This Revision Petition has been filed under Section 21(b) of the Consumer Protection Act, 1986 (the "Act") against State Consumer Disputes Redressal Commission, Rajasthan ('State Commission') order dated 14.03.2019 in FA No. 674/2018 wherein the State Commission dismissed the Appeal and upheld the District Consumer Disputes Redressal Forum, Bhilwada ('District Forum') order dated 01.08.2018 in CC No. 219/2016.

2. For convenience, the parties are referred to as placed in the original complaint filed before the District Forum.

3. Brief facts of the case, as per the complaint, are that OP initially allotted him Plot No. G-1-152 in the Growth Centre, Swaroopganj (Hameergarh), Bhilwada, to Smt. Neera Kapoor, proprietor of M/s Prachi Trade Line, who commenced production activities on the

plot on 18.12.2014. Subsequently, due to financial necessity, Smt. Kapoor transferred the plot and production unit to the complainant through a registered sale deed dated 07.01.2015. Prior to finalizing the transaction, the complainant confirmed with OP that there was no objection to the transfer, and upon purchasing the unit, he deposited an outstanding amount of Rs. 6,958/- with OP vide cheque. On 04.02.2015, he formally requested a transfer of ownership, submitting all requisite documentation and fees. OP, however, contended that a discrepancy in the firm's name - recorded as "M/s Prachi Trade Link" instead of the original "M/s Prachi Trade Line" - rendered the unit inactive as on the purchase date. Based on this assertion, OP issued a demand for name transfer fees @ 18.75% from the complainant and vide letter dated 28.01.2016 asked the complainant to deposit Rs. 75,000/- as holding fees and Rs. 2,81,250/- as transfer fees. The complainant contended that these charges were unwarranted, as no formal change in the firm's name had been made, and the production unit remained operational under Smt. Kapoor's proprietorship, with both firms being essentially identical under her single TIN number. The complainant thus sought an order directing OP to recognize the production unit as operational under his ownership in accordance with the Disposal of Land Rules, 1979 and to effectuate the transfer without additional fees. Also, the complainant sought Rs. 50,000/- in compensation for mental distress and reimbursement of costs.

4. In its written version, OP contended that the original allottee, M/s Prachi Trade Line, had failed to commence production within the prescribed period and unilaterally changed the firm's name without prior approval. The complainant failed to produce a No Objection Certificate from OP before purchasing the plot. No consumer relationship existed between the parties and that the complaint was without merit. OP further asserted that the unit was unproductive at the time of transfer, justifying the demand for Rs. 2,81,250/- as transfer fees. OP denied the complainant's claim that the firm name change had no legal consequence, emphasizing that the allottee's failure to begin production within the prescribed period warranted the fees. No official report was issued confirming production by M/s Prachi Trade Line. OP denied any allegations of negligence or unfair trade practices and requested the dismissal of the complaint.

5. The learned District Forum vide Order dated 01.08.2018, allowed the complaint with the following finding:

"7. Hence on the basis of the above mentioned investigation, we conclude that as per the documents provided by both the parties, as the production unit of the original allottee was manufacturing at the disputed plot since the date 18.12.2014 and under the condition of selling the said production unit to the complainant, the said transfer fees for Rs. 2,81,250/- cannot be recovered from the complainant whereas the said transfer fees is unwholesome & arbitrary imposed due to which the said recovery is illegal & inappropriate. On this ground, the complainant has the right to get the desired compensation from the respondent.

Order

As a result, the complaint of the complainant Dwarka Prasad is accepted against the respondent RILCO Ltd. and it is ordered that the respondent RICO Ltd., assuming the industrial unit M/s Prachi Trade Line at plot No. G1-152, Growth Centre, Hameergarh, Bhilwada of the original allottee Smt. Neera Kapoor as manufacturing will receive the fixed transfer fees under the Disposal of Land Rules 1979 from the complainant and transfer the plot accordingly in favour of the complainant within two months from the date of the order.

The complainant will also recover Rs. 10,000/- as compensation for mental disturbance and Rs. 5,000/- as complaint expense from the respondent RICO Ltd.”

6. Being aggrieved by the aforesaid order, OP filed First Appeal No. 674/2018. The State Commission vide Order dated 14.03.2019 dismissed the Appeal and upheld the Order passed by the District Forum, with the following observations: -

“There is no dispute in this situation that the disputed plot had been allotted to Smt. Neera Kapoor in the name of the firm Prachi Trade Line. The appellant states that the firm Prachi Trade Line has not started the commercial production but this situation was cleared in front of the District Forum that the plot had been allotted in the name of the firm Prachi Trade Line and it is also clear from the appellant's order dated 13.10.2015 that on 18.12.2014 the respondent had started the production and thereafter there was no reason to express any opinion contrary to it and there was no justification to change the name of the firm from Prachi Trade Line to Prachi Trade Link in the documents by the respondent. Therefore the District Forum has not erred in accepting the complaint; there is no strength in the appeal hence it is unacceptable.”

7. Dissatisfied by the State Commission order, the OP filed this Revision Petition before this Commission with the following prayer:

“(a) call for the records and accept the Revision Petition by setting aside the the Judgment and Order dated 14.03.2019 passed by the Hon'ble State Consumer Disputes Redressal Commission, Bench No. 1, Jaipur, Rajasthan in First Appeal No. 674 of 2018 and

(b) pass such other order/orders as this Hon'ble Commission may deem just and proper in the facts and circumstances of the case.”

8. The learned counsel for OP argued that, the complainant had not obtained a No Objection Certificate or Letter of Acceptance from the OP. Additionally, it was contended that no report was issued by the OP regarding production commencement at M/s Prachi Trade Line as of 18.12.2014 and that the complainant was not a consumer of the OP. The State Commission erred in disregarding documents reflecting discrepancies in the firm names and

a report from the officer who inspected the site. It was further submitted that M/s Prachi Trade Link and M/s Prachi Trade Line were registered for distinct purposes—M/s Prachi Trade Link for lubricants, spare parts, packing material, and garments, while M/s Prachi Trade Line was registered for handicrafts, consistent with the original application to OP. Given the firm's origin and production details pertained to the original allottee, the OP argued she should have been made a party to the complaint. The OP contended that the Forum overlooked the OP's internal orders (Nos. 65, 66, 84, and 85) and that the District Forum erroneously relied on these internal notes. It was further argued that the Forum neglected later orders addressing the allottee's separate firm, distinct production documents, and the need for clarification, with Orders Nos. 84 and 85 deeming the unit non-operational due to the two distinct firms and recommending transfer procedures. Additionally, it was noted that the Forum failed to consider that a TIN update on 20.02.2015 changed the firm name from M/s Prachi Trade Link to M/s Prachi Trade Line. He sought dismissal of the complaint.

9. The learned counsel for the complainant reiterated the facts initially outlined in the complaint. He submitted that the complainant was the Sole Proprietor of the Proprietorship Firm, M/s Charbhujia Fabrics, engaged in manufacturing yarn goods and that this activity, carried out by the complainant on the premises, was solely for earning livelihood through self-employment, which could not be deemed a commercial purpose. He relied on *Laxmi Engineering Works v. P.S.G. Industrial Institute* (1995) 3 SCC 583, and argued that merely conducting an activity of a commercial character did not preclude an individual from filing a consumer complaint if the commercial activity was carried out to earn a livelihood and fell under the exception to 'commercial purpose.' He further relied on *Cheema Engineering Services v. Rajan Singh*, (1997) 1 SCC 131 and submitted that a key consideration in determining whether a commercial activity qualified as self-employment for livelihood purposes was the number of workmen, if any, employed by the individual. Cases where family members or a few employees assisted in the activity fell within the scope of the exclusion, unlike instances where a full workforce was employed to manage the activity. He asserted that each case had to be assessed based on its specific facts and if it was shown that the goods or services were used by the individual directly for livelihood purposes, either alone or with family members or a few employees, the individual qualified as a consumer under the Act. He further argued that the reliance placed on RP No. 4038/2012 and RP No. 3811/2007 by the OP was misplaced as, in those cases, the commercial activities performed by the complainants were deemed 'profit-making' activities not solely for earning a livelihood, whereas the present case was different as rightly held by the Fora below. He prayed that the Revision Petition be dismissed and the impugned order be upheld.

10. I have examined the pleadings, associated documents placed on record and rendered thoughtful consideration to the arguments advanced by learned counsels for both the parties.

11. Based on the evidence and records led before it, the learned District Forum concluded that the original allottee of Plot No. G1-152, Smt. Neera Kapoor, had registered her firm as

M/s Prachi Trade Line, but the OP (RIICO Ltd.) incorrectly recorded the firm's name as M/s Prachi Trade Link in its records. Despite this error, it was found that both names referred to the same proprietor, Smt. Neera Kapoor, and both firms operated from the same plot (G1-152). The OP did not accept the starting date of manufacturing as 18.12.2014, based on the discrepancy in the firm name. However, the District Forum found this rejection inappropriate as the records showed that the original allottee had started manufacturing at the plot as of 18.12.2014 itself, irrespective of the ambiguity in name. The District Forum further concluded that the change of the firm name from M/s Prachi Trade Line to M/s Prachi Trade Link in OP records was due to a clerical error and not a change made by her. Both firms have same TIN, further supporting that the two names to the same person. The District Forum thus concluded that the complainant was not liable to pay OP the transfer fee. The learned State Commission concurred with the finding of the District Forum.

12. It is a well settled position in law that revision under Section 21(b) of the Act, 1986 confers very limited jurisdiction on this Commission. In the present case there are concurrent findings of the facts and scope for revisional jurisdiction is limited. On due consideration of the entire facts and circumstances of the case, I do not find any illegality, material irregularity or jurisdictional error in the orders passed by the learned State Commission warranting interference in revisional jurisdiction. I rely upon the decision of Hon'ble Supreme Court in the case of Sunil Kumar Maity Vs. State Bank of India & Anr., Civil Appeal No. 432 of 2022, dated 21.01.2022, wherein it was held that the revisional Jurisdiction of this Commission is extremely limited: -

"9. It is needless to say that the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated within the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity. In the instant case, the National Commission itself had exceeded its revisional jurisdiction by calling for the report from the respondent-bank and solely relying upon such report, had come to the conclusion that the two fora below had erred in not undertaking the requisite in-depth appraisal of the case that was required."

13. Similarly, the Hon'ble Supreme Court in *Rajiv Shukla Vs. Gold Rush Sales and Services Ltd.* (2022) 9 SCC 31, dated 08.09.2022, held that:-

"As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with

material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record."

14. In *Narendran Sons v National Insurance Co. Ltd.*, 2022 SCC OnLine SC 1760 dated 07.03.2022, Hon'ble Supreme Court held:

"The NCDRC could interfere with the order of the State Commission if it finds that the State Commission exercised jurisdiction has not vested in it by law or has failed to exercise its jurisdiction so vested, or has acted in exercise of its jurisdiction illegally or with material irregularity. However, the order of NCDRC does not show that any of the parameters contemplated under Section 21 of the Act were satisfied by NCDRC to exercise its revisional jurisdiction to set aside the order passed by the State Commission. The NCDRC has exercised a jurisdiction examining the question of fact again as a court of appeal, which was not the jurisdiction vested in it"

15. Considering the above discussion, it is evident that both the order of the State Commission dated 14.03.2019 in Appeal No. 674/2018 and the District Forum order dated 01.08.2018 in CC No. 219/2016 do not suffer any illegality or material irregularity which call for any interference of this Commission and the same are affirmed.

16. Therefore, Revision Petition No. 1327 of 2019 is dismissed.

17. Considering the circumstances of the case, there shall be no order as to costs.

18. Pending applications, if any, are disposed of accordingly.