

(2010) 11 NCDRC CK 0015

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Kunhalan Gurukkal

APPELLANT

Vs

A.M.Muhammed

RESPONDENT

Date of Decision: Nov. 16, 2010

Citation: 2010 0 NCDRC 200 : 2010 4 CPJ 407

Hon'ble Judges: R.C.Jain J.

Final Decision: Appeal is dismissed

Judgement

1. CHALLENGE in this appeal is to the order dated 08.01.2010 passed by Kerela State Consumer Disputes Redressal Commission Thiruvananthapuram (in short the State Commission) in OP No.69/2001. By the impugned order the State Commission has partly allowed the complaint filed by the respondents - complainants and has directed the appellants herein to pay a compensation of Rs.1,00,000/- with interest @ 7.5% from the date of complaint besides cost of Rs.6000/- with the stipulation that amount shall be paid within two months from the date of receipt of the copy of the order failing which the rate of interest shall stand enhanced to 12% p.a.

2. AN application seeking condonation of 206 days delay in filing the appeal has been filed alongwith Memorandum of Appeal. We have heard Mr.Simon Benjamin, Advocate, learned counsel representing the appellant on the application for condonation of delay. As per the averments made in the application, the copy of the impugned order was received by the appellants on 24.02.2010 and thereafter he tried to obtain certified copy of relevant documents; that the delay was inter alia caused primarily due to their own fault, meaning thereby fault of the appellants although it is stated that said delay was neither intentional nor deliberate. Besides it

is mentioned that appellants had good case on merits. The law as to what are the considerations for allowing or dismissing an application for condonation of delay has been settled by the Apex Court and various High Courts in catena of its judgments. It has been laid down that Courts and Tribunal should be liberal in dealing with the prayer for condonation of delay. Nonetheless it has also been held that the party seeking condonation of delay must show existence of "sufficient cause" which prevented the party from taking prompt action in filing the proceedings for which statutory limitation has been prescribed. We are afraid that in the case in hand, the appellants have miserably failed to establish or even plead any "sufficient cause" which can be said to have delayed the filing of the present proceedings. Infact there is a clear cut admission by the appellants in the application itself that it was due to their own fault that delay has occurred. That being so, the appellants are not within their rights to invoke judicial discretion in their favour from the Commission. The application is otherwise vague as it has not been specified when the appellants applied for certified copies and of what documents and when such copies were supplied to him thereby causing delay in filing the appeal. Infact except for the certified copy of the impugned order which the appellants had received free of charge from the Commission sometimes in February 2010, no other certified copy of any other document has been placed on record. In the case of undue delay, the applicant must explain each days' delay rather than making a bald and vague averments that some delay was caused in filing the appeal. The delay in this case is by no means small and it is of more than 200 days. This Commission is, therefore not favourably inclined to condone this undue delay. The application is accordingly dismissed and appeal is also liable to be dismissed on this ground alone.

Despite having declined the application for condonation of delay, we have considered the submissions of learned counsel for the appellants which he made in order to assail the finding of the State Commission. The present case presents a disturbing situation in as much as opposite party no.1 who is stated to be an ayurvedic practitioner and opposite party no.2 Dr. Firdous Iqbal, daughter of OP No.1, though an MBBS doctor and practitioner of medicine had held out to the public at large through print media that they have the skill to treat the cancerous tumor of the children. Allured by such publicity and the assurance given by the opposite parties, the complainants had taken their son aged 21 years to the opposite parties for treatment although the said patient has already been diagnosed as suffering from "Osteosacoma right distal femur with marrow involvement" at the Regional Cancer Centre Thiruvananthapuram and had been advised to undergo amputation of leg so as to save the life of the son of the complainants, lest the cancer spreaded to the other parts of his body. The opposite parties were sure of curing the son of the complainant but ultimately when they failed to do so and the condition of the son of the complainants worsened due to the improper treatment and time lag in not amputating the leg of the son of the

complainants, he ultimately died. The State Commission has taken note of all these circumstances in its well reasoned order, holding the appellants guilty of adopting and indulging in unfair trade practice and also for deficiency in service in the treatment given to the son of the complainants by observing as under:

"At the same time, in the version of the opposite parties as well as in the testimony of RW1, it is admitted that the opposite parties were present at the press conference which has been allegedly reported in a vernacular newspaper wherein the opposite parties have claimed that they have successfully treated tumour affected children (The particular newspaper was not produced; and only a paper cutting of the news item is seen in the records and the same was not marked.) RW1 has also claimed that certain children affected by tumor have got cured in the treatment of the opposite parties. The opposite parties have not disclaimed the fact of publication in newspaper. They have only denied their active involvement in getting the matter published. We find that the above is a circumstance that would indicate that the first complainant who was disinclined to amputate the leg of his son was attracted by the above publication. In the circumstances, the version of PW1 that the opposite parties assured cure need not be disbelieved. It appears to be still the attitude of the opposite parties that children affected by tumour in the brain were treated and cured. The first complainant evidently was in a desperate mental condition and absolutely vulnerable. Offering treatment for terminal diseases like cancer and assuring cure is manifestly unfair and amounts to exploitation of the desperate situation of the illfated patients and their parents. It is evident from the testimony of PW2 the doctor of RCC that there can be no assurance of recovery even if the leg was amputated and chemotherapy started. But she has stated that there is 30 to 40% chances of survival. The deceased and his parents did not gain anything from the treatment under the opposite parties. RW1 the second opposite party who is a qualified MBBS doctor has made to attempt to establish that there is cure or effective treatment in the Ayurvedic system for the disease of cancer. Further the opposite parties have not produced any documentary evidence to establish the qualification of the first opposite party who is described as doctor in the letterheads. The circumstances would indicate that the deceased and his parents were the victims of the misleading publicity and verbal assurances of the opposite parties. Hence we find that it stands established that the opposite parties have indulged in unfair trade practice and there is deficiency in service in the treatment imparted". Although the complainants had claimed a compensation of Rs.6,00,000/- but going by the entirety of the facts and circumstances, the State Commission despite holding the appellants guilty of such deficiency etc., quantified the compensation at Rs.1,00,000/- only which in the opinion of this Commission is quite just and reasonable and is neither excessive nor harsh.

3. IN the result, the appeal is dismissed being patently barred by limitation as well as devoid of any merits.