HOUSING BOARD HARYANA Vs HOUSING BOARD COLONY WELFARE ASSOCIATION, KURUKSHETRA

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: Jan. 7, 1993

Citation: 1993 0 CPC 162 : 1993 2 CPJ 680

Hon'ble Judges: S.S.Sandhawalia , Basanti Devi , S.Kulwant Singh J.

Final Decision: Appeal dismissed

Judgement

1. WHAT is the ""date of the knowledge of the order"" of the District Forum wherein the party is fully represented before it by Counsel? This is the

significant threshold question in this set of three appeals, in the wake of a recent decision of the National Commission in II (1992) CPJ 528 (NC),

2. THESE appeals have been listed on the preliminary issue of limitation. Since the question arising herein is identical, this order will govern all of

them. The relevant facts which are not in serious dispute may be noticed from First Appeal No. 389 of 1992 (Housing Board, Haryana & Anr. v.

Housing Board Welfare Association & Anr.).

The order of the District Forum was pronounced in open Court on the 22nd of October, 1992. It is manifest from the order that the appellant-

Board was represented therein by Shri Tirath Singh, Advocate. The complaint was duly contested on behalf of the Board both on the issues of fact

and law as is evident from the order itself and the judgment was pronounced on the date aforementioned. However, the present appeal was

preferred on the 30th of November, 1992 beyond the strictly prescribed period of thirty days under Section 15 of the Act.

Mr. K.K. Jaggi the learned Counsel for the appellants took up the plea that the terminus for determining the period of thirty days aforementioned

has to begin only from the date of the receipt of the order by the appellant. It was submitted that the copy of the order bears the date of its

attestation and certification by the Superintendent on the 30th October, 1992 and it may be therefore presumed that the same was received by the

appellant much later. The firm stand taken was that this being so, the present appeal was clearly within limitation in view of the ratio in M/s.

Hindustan Paper Corporation Ltd. v. M/s. Dhir Copy House & Anr. (supra).

3. THE specific and the somewhat vehement contention of Shri Jagia, the learned Counsel for the appellants was that the appellant-Board would

not have the knowledge of the order until and unless a copy thereof was delivered to it. THE express stand taken was that even if the order was

pronounced in open Court in the presence of the Counsel or otherwise, the Board cannot be deemed to have the knowledge thereof until and

unless it receives the copy and peruses the reasoning for the same. THE submission was that even the allowance and dismissal of the complaint in

presence of the party or his Counsel would not be tantamount to the knowledge of the order until and unless the reasons thereof are deciphered

from its copy, sent to the Board under Rule 4(10).

We are afraid that it is not possible to subscribe to the doctrinaire stand taken on behalf of the appellant-Board. However, since a serious attempt

is being made to raise the submission primarily and wholly on the recent binding decision in M/s. Hindustan Paper Corporation Ltd. v. M/s Dhir

Copy House & Anr. (supra), the compliment of a rational refutation has to be extended thereto.

4. IN this context, it becomes necessary to analyze and arrive at a true import of the aforesaid judgment. It was rended in revision proceedings

arising from two orders of this Commission. As stands expressly noticed by the National Commission itself, both these cases pertained to the

orders of the District Forums passed against the opposite party in ex-parte proceedings. The core question therefore, was whether a party

proceeded against in its absence could be planted with the knowledge of the order pronounced in its absence whilst in actual fact it may not even

be aware of the said proceedings at all. It was in this firm fact-situation that the National Commission had observed as under-

We are of the opinion that the orders of the State Commission cannot be sustained. As noticed earlier in both the cases the orders were passed

against the Opposite Parties in their absence. They came to know of the orders only when the copies thereof were received by them. IN such

circumstances, the expression ""date of order"" occurring in Section 15 of the Consumer Protection Act, 1986 should be construed as date of

knowledge of the order. When so construed, the appeals in both the cases were within limitation.

Having recorded the aforesaid opinion, the National Commission placed its stamp of approval on the view of the Kerala State Commission in II

(1991) CPJ 283, Marikkar (Motors) Ltd. v. Mrs. Marry Poulose. What deserves pointed highlighting in the said case is that therein it was also

recorded"" as in this case order is passed in the absence of potential appellant and it is communicated to him only later.

It would be somewhat manifest from the above observations that the ratio in M/s. Hindustan Paper Corporation Ltd v. M/s Dhir Copy House &

Anr. (supra), is thus clearly confined to the situation where the party is absent in the proceedings ex-parte against him. Obviously enough, it can

have little relevance in the situation where a party is fully represented before the District Forum by counsel and is either actually or constructively

present at the time of the announcement of the order. It is plain that the two situations are radically different.

5. NOW apart from the general principle, the matter is particularly and peculiarly so within the consumer jurisdiction. What herein deserves special

notice is the relevant part of sub-rule 8 of rule 4 of the Haryana Consumer Protection Rules which is in the following terms : -

(8) If during the proceedings conducted under Section 13, the District Forum fixes a date for hearing of the parties, it shall be obligatory on the

complainant and opposite party or his authorized agent to appear before the District Forum on such date of hearing or any other date to which

hearing could be adjourned. xx xx

6. IT would be plain from the above that this statutory provision obliges the presence of the party at the hearing and equally at its decision either by

their counsel or any authorized person. that being so, it is obviously not open to a party to first infringe the said rule and then to take the benefit of

its own wrong by setting up a specious plea that it had no knowledge of an order pronounced in an open Court.

It is somewhat manifest that the core of Mr. Jaggia''s submission indeed is that despite the representation of the appellant-Board through counsel

before the District Forum and even his presence at the time of announcement of the order, the terminus for limitation can only run from the

purported receipt of a copy there of communicated under Rule 4(10) of the rule aforementioned. A similar if not identical submission had come up

for consideration in I (1992) CPJ 359, Haryana State Electricity Board v. Dinesh Kumar. After considering the issue on principle and precedent

and the intendment of the Legislature and from all other conceivable angles, the conclusion arrived at was that the terminus is not necessarily the

date of the receipt of a copy of the order. Undoubtedly, that ratio stands somewhat clarified or modified by the ratio in M/s. Hindustan Paper

Corporation Ltd. v. Dhir Copy House & Anr. (supra). Without doubt the principle thereof is binding and has to be followed unreservedly. There is

thus no manner of doubt that in the specific fact situation and the absence of the litigant being proceeded against ex-parte the correct terminus for

the limitation would be the date of the knowledge of the order by him. However, the said binding ratio is indeed a far cry from the stand now being

taken by Mr. Jaggia that even when fully represented by counsel and being present at the time of the pronouncement, the party is not planted with

the knowledge of the order unless it can be established that he has received a copy thereof under Rule 4(10). In our view, the ""date of the

knowledge of the order"" is patently something different from the supposed date of the receipt of a copy of the order"", posted to the party under

Rule 4(10). We are firmly of the view that the National Commission in Hindustan Paper Corporation Ltd. v. Dhir Copy House and Anr. (supra)

designedly used different terminology and the same is not to be equated with the fortuitous circumstance of the receipt of a copy of the order by

the litigant or otherwise.

The true import and ratio of M/s. Hindustan Paper Corporation Ltd. v. M/s Dhir Copy House & Anr. (supra) has already been noticed and

elaborated above. That the National Commission therein did not lay down that the date of the knowledge of the order means or implies the

fortuitous date of the receipt of the copy of the said order is further evident from the fact that it had in passing noticed the view of this Commission

in "Haryana State Electricity Board v. Dinesh Kumar" (supra), but did not in terms overrule or disapprove the kernel of its ratio apart from

qualifying the rule in the context of an ex-parte order only.

7. THIS Commission in I (1992) CPJ 127 "S.D.O., A.E.E. City Division, Hissar v. M/s. Hotel Palki, Hissar" had firmly taken the view that it

would be bound by its own decisions on pure questions of law. THIS is of course subject to such a decision being not overruled or over ridden by

the decisions of the National Commission or their Lordships of the Supreme Court. As we now construe the ratio in M/s. Hindustan Paper

Corporation Ltd. v. M/s Dhir Copy House & Anr." (supra), the same is a meaningful qualification or clarification of the principle in the "Haryana

State Electricity Board v. Dinesh Kumar (supra). So far as Mr. Jaggia"s basic stand now that limitation can run only from the purported date of the

receipt of the copy of the order, the same is still concluded against him, by the aforesaid case. It is, therefore, unnecessary to tread the same

grounds over again which has been done in Haryana State Electricity Board v. Dinesh Kumar (supra) but the relevant observations on the receipt

of a copy of the order bear repetition : -

In the ultima-ratio one cannot lose sight of the end result of a construction even where two views may perhaps be possible. As has been pointed

out earlier, it is the hall-mark of the limitation statutes that the two termini for the prescription of time should be fixed and firm. If the construction

advocated on behalf of the appellant were to be accepted, then the terminus-a-quo far from being fixed would remain in a constant and debatable

flux. In every case, it will have to be determined whether the order of the District Forum was dispatched at all to the aggrieved party or was

received at all by him at the other end, and, if so, the precise date on which it came to his notice. Rule 4(10) does not prescribe for the authenticity

or certification of the order or the time or the method of communicating the same to the party with any exactitude. To test the strength of an

argument it is sometimes necessary to carry it to its logical length. Assuming a case where the District Forum or its employees due to an

administrative lapse fail to forward or communicate the order to the party concerned, would it then follow that the period of limitation will not run at

all and remain perennially open to the patent detriment of the successfull party. Yet again, if for one reason or another the copy of the order is

dispatched but lost in transit, would it again follow that the period of limitation would continue to remain in an unending flux. It calls for pointed

notice that under the Act and the rules the Redressal Forums are not machinery at all. How is the communication of the order to be made, the

manner of its actual service and a concrete and unimpeachable proof thereof to be retained? Invariably such a communication, has as yet to be

through the post. In such a situation, the actual receipt and the date thereof by the party concerned may and can always be put under a cloud. It is

significant that the whole purpose of the Act and the rules is the expeditious decision of the consumer disputes, obviously including the appeals

there under. It is with that object in view that Section 15 prescribes the shortest period of 30 days for preferring appeals from the date of order. If

the view canvassed by the learned Counsel for the appellant is accepted, then that basic purpose may well be defeated and limitation for appeals,

far from being fixed, would remain in a constant flux of disputes and debates. A construction which tends to lead to such startling and sometimes

mischievous results is, therefore, to be avoided on the larger principle as well.

In the light of the above Mr. Jaggia''s primal stand that despite the full representation of the appellant through counsel before the District Forum the

Board must still be deemed to be ignorant of the pronouncement of the order made in the presence of their counsel or otherwise, must fail. It is a

well settled rule of our justice system that the actual or the presumed knowledge of the Counsel is equally the knowledge of his client.

8. LASTLY the matter deserves to be viewed from another refreshing angle as well. In the ordinary Courts and other quasi-judicial bodies where

parties are represented by their counsel it is never conceivably open to them that they do not have the knowledge of the proceedings personally.

This is particularly so with regard to the pronouncement of the orders in open Court. It has never been allowed to be said that a party represented

by counsel in a Court of law would not have the knowledge of the order from the date of its announcement. It is by now settled law that limitation

in a context of the orders of a judicial or quasi-judicial bodies would run from the date of the announcement of the order. Of course cases of

hardship and of peculiarities on their own merits can be alleviated by the condonation of delay on showing sufficient cause, therefore. However, the

terminus of limitation has always been sought to be fixed like a pole-star.

In the light of the foregoing discussion, the answer to the question posed at the outset has to be rendered in the terms that - ""the date of knowledge

of the order"" of the District Forum wherein the party is represented before it by Counsel is the pronouncement of that order in open Court and no

other.

Once it has been concluded as above, then the dice is loaded against the appellant. It is not in dispute that Shri Tirath Singh, Advocate diligently

represented the Board in the proceedings. The order indicates that ticklish questions of jurisdiction were raised and counsel''s presence and

arguments are specifically noticed with regard thereto and thereafter the order was pronounced in open Court. In this fact situation, the learned

Counsel of the appellant must clearly be planted with actual or constructive knowledge of the order from the date of its pronouncement. Inevitably,

the appellant-board must in the eye of law be aware of the same with effect from that very date.

9. HEREIN, there is no other extenuating circumstance. Rule 8(4) of the Haryana Protection Rules mandates that whenever a memorandum of

appeal is presented beyond the strictly prescribed period of limitation under Section 15, it must be accompanied by an application precisely setting

out the grounds on which the applicant relies as sufficient cause for condonation. The same must in turn be supported by an affidavit. Neither of

these mandatory requirements have been complied with. As already noticed the firm stand taken on behalf of the appellants is that the appeal per-

se is within limitation. We regret our inability to hold so.

10. TO conclude all the three appeals have been filed beyond the prescribed period of limitation under Section 15 and no sufficient cause for

condonation has even been pleaded far from being established. Consequently, these must be held to be barred by time and dismissed on this

threshold ground. Appeal dismissed.