

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2875 OF 2016

(Against the Order dated 18/07/2016 in Appeal No. 827/2015 of the State Commission Punjab)

1. BHARAT KAPUR

LUDHIANA-141012

PUNJAB

.....Petitioner(s)

Versus

1. EDITOR (READER'S DOGEST) & 2 ORS.

1201, 12TH FLOOR, TOWER 2-A, 1 INDIA BULLS
CENTRE, S.B. MARG, LOWER PAREL WEST

MUMBAI-400013

MAHARAHSTRA

2. SUPERINTENDENT OF POST OFFICES

LUDHIANA CITY DIVISION,

LUDHIANA-141001

PUNJAB

3. CHIEF POST MASTER GENERAL

DELHI CIRCLE MEGHDOOT BHAWAN, LINK ROAD,
NEW DELHI-110001

.....Respondent(s)

BEFORE:

HON'BLE MR. C. VISWANATH, PRESIDING MEMBER

HON'BLE MR. SUBHASH CHANDRA, MEMBER

For the Petitioner : IN PERSON

For the Respondent : For Respondent no.1 Ns Nisha Bhambani, Advocate
Mr Rajesh Kumar, Advocate
For Respondent no.2 Mr Sanjib Kumar Mohanty, Advocate
Mr Subesh Kumar Sahoo, Advocate

Dated : 21 Nov 2022

ORDER

PER MR SUBHASH CHANDRA

1. This revision petition under section 21 of the Consumer Protection Act, 1986 (in short, the 'Act') assails order dated 18.07.2016 of the State Consumer Dispute Redressal Commission, Punjab, Chandigarh (in short, 'State Commission') against the order in First Appeal No. 827 of 2015 filed against order of the District Consumer Disputes Redressal Forum, Ludhiana (in short, 'District Forum') dated 10.06.2015 in complaint no. 876 of 2014.

2. In brief, the facts of the case are that the petitioner subscribed to the monthly magazine named 'Readers Digest' published by the respondent no. 1 in May 2014 and was assured of 'Guarantee of Satisfaction' as per the advertisement. However, the delivery of the magazine was consistently delayed and was done much after the magazine was available in the market, usually by the third week of the month. A few issues of the

magazine were admittedly not delivered and the publishers supplied free copies on this being pointed out. The petitioner has alleged unethical practice by the respondent no. 1 at the cost of customers and public exchequer, i.e. the Department of Posts since customers who opt for annual subscription by making the payment in advance suffer transit delay. According to the petitioner, the magazine was contracted to be dispatched by ordinary post (Class 2) with no guarantee of time for delivery. The advertisement for annual subscription however does not have any disclaimer for late delivery by post. Rather, the advertisement promises 'Guarantee of Satisfaction'. According to the petitioner, the customers were overcharged and the government was underpaid which amounts to unfair trade practice. The petitioner made several efforts with the postal authorities and respondent no. 2 in order to ascertain various details pertaining to the dispatch and delivery of the magazine over an extended period of time. The matter has travelled from the District Forum and the State Commission in appeal to this Commission by way of the present revision petition.

3. The District Forum held the respondent no. 1 to be deficient in service and ordered as under:

... the present complaint is partly allowed and OP1 is directed to deliver the magazine by whatsoever means it may be to the complainant on time as agreed to. Further, OP1 is directed to pay Rs 4000/- (Four thousand only) as compensation and litigation expenses compositely assessed to the complainant. Order be complied within 30 days from the receipt of the copy of the order, which be made available to the parties, free of costs."

4. The State Commission has also held that:

"The appellant/complainant is a consumer and deficiency in service on the part of OP No 1 has been proved and the findings so arrived at by the Ld. District Forum are legally correct but the learned District Forum has failed to take into consideration the age of the complainant and dragging him into unnecessary litigation by OP No 1. As is evident from the documents placed on record the complainant has suffered mental agony and harassment because of the nefarious act of the OP No.1. Had the Reader's Digest been dispatched by OP No 1 in time then certainly, the complainant would have not faced such crucial unwanted litigation at his declining age on account of the negligence of the opposite party no 1. Moreover, OP No 1 has not filed any cross appeal which shows that it admitted negligence.

Resultantly, I have the considered view that the end of justice would meet if the meager compensation awarded by the learned District Forum is enhanced. The compensation awarded by the learned District Forum is enhanced from Rs 4000/- to Rs 15,000/-. The present appeal stands disposed of in view of the enhancement of compensation to the extent indicated above."

5. The petitioner is before us with the prayer to:

- (i) Allow the revision petition and set aside the judgment and order dated 18.07.2016 of the Hon'ble State Consumer Disputes Redressal Commission, Punjab passed in the First Appeal No. 827 of 2015 dated 27.07.2015
- (ii) Pass such order and/or further order(s) as the Hon'ble National Consumer Disputes Redressal Commission may deem fit and proper in the facts and circumstances of the instant case.

6. We have heard the submissions made by the petitioner who is appearing in person as well as the learned counsels for the respondent nos. 1 and 2 and have perused the records carefully.

7. This is a case where a consumer has fought for the timely delivery of a magazine that was advertised to guarantee satisfaction to the subscriber. It would be self-evident that this satisfaction covers not merely the content and presentation of the magazine but also its timely and proper delivery. The petitioner's grievance is with regard to the delay in delivery of the magazine with reference to the date on which the issue for the month is available on the stands. It is argued that the delay constitutes deficiency in service and an unfair trade practice with regard to the amount charged in the subscription and the charges paid to respondents 3 and 4 for the delivery of the magazine by way of postal delivery. The lower *fora* have arrived at concurrent findings based on the evidence on record.

8. The learned counsel for the respondent no. 1 has argued that the 'Reader's Digest' has been erroneously arrayed as a party since the magazine is published by the Living Media India Limited. Objection is taken on the ground of misjoinder of parties since 'Reader's Digest' is a brand name and a trade mark only. The compliance of the State Commission's order also was to be done by Living Media India Limited which was refused by the petitioner. On merits, it is argued that in appeal tabulated chart for posting of magazine was presented wherein only three issues out of 14 issues by the claimed date of 5th of every month. Thus, timely delivery was 21.43% only. Respondent no.2 and 3 claimed that respondent no.1 has availed the cheapest and subsidized postal service wherein there is no guarantee of delivery of particular time frame. Respondent no.1 never took up the issue of delayed delivery with respondent nos.2 and 3. Another issue is that respondent no.1 is claiming a profit of Rs.12 lakh per year without any investment as all the money of Rs.15 lakh have been received in advance from the enrolled subscribers for one year. Another argument of the petitioner is that respondent no.1 claimed that subscription amount of RD was actually credited to Living Media India Limited. However, RD explicitly advertised that cheques be drawn in favour of it.

9. The present petition assails the order of the State Commission which has ruled in favour of the petitioner. The District Forum has arrived at the finding that deficiency in service is established. This order has not been challenged by the respondent no. 1. The central issue is the compensation for the deficiency in service. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower *fora* are concurrent on facts. Interference with concurrent findings of the *fora* below is justified only when findings are either perverse based on either evidence that has not been produced or on conjectures/ surmises or without jurisdiction.

10. From the records it is apparent the petitioner has raised issues which affect the larger community of subscribers with regard to delay in delivery of magazines purchased through subscription. The concurrent findings on facts of these two *foras* are based on evidences led by the parties and documents on record.

11. We therefore, find no illegality or infirmity or perversity in the impugned order. However, considering the fact that the petitioner, who is a senior citizen, has ploughed a lonely furrow seeking to rectify a system that will serve the public interest concerning timely availability of an iconic magazine that offers substantive reading content that is keenly awaited every month by those who subscribe to it, we are inclined to modify the order in light of the averments made before us. The present revision petition is, therefore, allowed with the direction that the petitioner be compensated for the deficiency in service by the respondent no.1 through the payment of Rs 1,00,000/- along with costs for litigation of Rs 50,000/- within a period of 8 weeks from the date of this order. The respondents are also directed to ensure that the magazine which has acquired considerable brand value for content over the decades is delivered in time, within a reasonable period of time, such as a week from publication, to all subscribers such as the petitioner in order to adhere to its own advertisement of "Guarantee of Satisfaction" by working out a system with the other respondents in a time bound manner.

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C. VISWANATH
PRESIDING MEMBER
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SUBHASH CHANDRA
MEMBER