

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 3213 OF 2012

(Against the Order dated 10/05/2012 in Appeal No. 1209/2008 of the State Commission
Rajasthan)

1. GLAXO INDIA LTD. (NOW KNOWN AS GLAXO SMITH
KLINE PHARMACEUTICALS LTD.)

Having Its Registered Office at, Dr Annie Besant Road, Worli
MUMBAI - 400030
MAHARASTRA

.....Petitioner(s)

Versus

1. DR. RAJENDRA GHIYA & 5 ORS.

S/o Shri Badri Narayan Ji Ghiya R/o C/o Navjivan Hospital
Road No1 Vishwakarma, Opp Insdustrial Area

JAIPUR

RAJASTHAN

2. SMT BEENA KHANDELWAL, W/O SHRI RAJENDRA
GHIYA

R/o C/o Navjivan Hospital Road No1 Vishwakarma, Opp
Insdustrial Area

JAIPUR

RAJASTHAN

3. HONGKONG AND SHANGHAI BANKING
CORPORATION

Through Branch Manager, 52/60, MAHATMA GANDHI
ROAD, KALA GHODA FORT

MUMBAI-400001

MAHARAHSTRA

4. CANARA BANK, ACCOUNT CANARA BANK, MUTUAL
FUND HSBC BANK LTD

Custodial Persingo Sandoz House, Dr Annie Besant Road

JAIPUR

RAJASTHAN

5. RAJENDER BAJNA TODKAR

53 Guari Shanker HUDCO Colony,

MANMAD - 423 104

6. POONAM NAGAR

10 CIDCO Colony,

NASHIK - 422 009

MAHARASTRA

.....Respondent(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI, PRESIDENT

HON'BLE DR. INDER JIT SINGH, MEMBER

FOR THE PETITIONER : MR. UJJWAL A. RANA, ADVOCATE

MR. HIMANSHU MEHTA, ADVOCATE
FOR THE RESPONDENT : MR. MOHIT MITTAL, ADVOCATE FOR R-1 & 2
MS. ANUSHKA BHATNAGAR, ADVOCATE FOR R-3
R-4 EX-PARTE VIDE ORDER DATED 13.12.2016
R-5 & 6 EX-PARTE VIDE ORDER DATED 07.01.2020

Dated : 05 August 2024

ORDER

This revision petition questions the order passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur dated 10.05.2012, whereby the order passed by the District Commission dated 28.02.2008 has been upheld that arose out of CC/372/2006.

2. The facts in brief appear to be that the two complainants, Dr. Rajendra Ghiya and Smt. Beena Khandelwal had purchased about 250 shares of the petitioner company and sent the same to the petitioner along with a transfer deed for transferring the same in their names. The allegation was that having transferred the said shares, the share certificates were not sent back and it is this deficiency which led to the filing of the complaint before the District Consumer Disputes Redressal Commission, Jaipur.

3. Notices were issued but the revisionist does not seem to have put in appearance despite due service of summons on them. The evidence affidavit was filed by the complainant and the District Commission concluded that the 250 shares purchased by the complainants had been dispatched but they were neither returned back nor any intimation about transfer was given, as a result whereof the complainants suffered a financial loss of Rs.3,66,575/- on account of this deficiency and the loss deserved to be compensated. The complaint was allowed with a direction to make payments coupled with Rs.10,000/- as compensation for mental agony and Rs.2,000/- as litigation costs.

4. The petitioner filed an appeal before the State Commission being appeal no. 1209 of 2008 and it was revealed that the complainants had earlier filed a complaint that was dismissed, against which an appeal was filed before the State Commission being appeal no. 371 of 2005 that was dismissed on 07.07.2005. The earlier complaint had been dismissed because the complainants had also filed a Civil Suit that was dismissed and then an appeal filed before the learned District Judge had also been dismissed. Against the said dismissals, Second Appeal No. 58104/2005 had been filed but the same was disposed off with the observation that the complainants can file their complaint afresh. Copies of these orders of the Civil Court and of the High Court are not on record.

5. The State Commission has noticing the above facts categorically recorded that in compliance of the order of the High Court dated 27.07.2005, the complaint giving rise to the present controversy was filed. As noted above the complaint went ex parte as the petitioner did not appear to contest the same and accordingly it was finally decided on 28.02.2008, against which the appeal was preferred by the petitioner before the State Commission. The State Commission dismissed the appeal without entering into the merits of the matter and observed that the amount which had been deposited by the appellant/ petitioner be paid to the complainants.

6. The revisionist before this Commission has filed a written synopsis through its counsel on 16.11.2023 and in paragraph 9, thereof it has been stated that a sum of Rs.3,60,575/- has already been paid by the petitioner to the complainants. This fact has not been disputed by the learned counsel for the respondents and he submits that this revision petition now practically survives for the amount of Rs.12,000/- which remains to be paid in terms of the final order of the District Commission.

7. On 25.02.2016 the question as to who was effectively holding the shares at present seems to have been canvassed, when the following order:

“Counsel for petitioner seeks time to apprise this Commission as to who is the shareholder at present of the shares in question. He is directed to file an affidavit to the effect as to who is the shareholder of the shares in question at present, and who is getting the dividend as on date. Needful be done within four weeks.

List for admission hearing on 05-07-2016.”

8. The affidavit sworn by Mr. Ajay Nadkarni, the General Manager and the Company Secretary of the appellant company, has been placed on record. According to the said affidavit the details of 250 shares in question have been explained. Paragraph 3 to 5 of the said affidavit are extracted herein under:

“3. The Petitioner herein submits that the details of the 250 Shares in question are mentioned below.

i 10 Shares bearing Folio No. 269204 are in the name of Mr. Vijay Ramchandra Chandratre, who was the Original Holder (before the date of the alleged request for transfer). Since the Petitioner had also received these certificates for transfer in other names, the disbursement of dividend has been kept in abeyance till resolution of the matter.

ii. 150 Shares bearing Folio No. 256090 are in the name of M/s. Robert Fleming Nominees Ltd A/C Fleming India Investment Co. Mauritius Ltd. These shares were transferred to the name of Robert Fleming on 30.09.1997 (i.e. long before the present dispute arose). Since the Petitioner had also received these certificates for transfer in other names, the disbursement of dividend has been kept in abeyance till resolution of the matter.

iii. 40 Shares bearing Folio No. 228262 are in the name of Mr. Rajendra Rachappa Todkar and Sandhya Rajendra Todkar who are the Original Holder. Since the Petitioner had also received these certificates for transfer in other names, the disbursement of dividend has been kept in abeyance till resolution of the matter.

iv. 50 Shares bearing Folio No. 43605 are in the name of M/s. Canara Bank A/c Canbank Mutual Fund, who is the Original Holder of the shares. Since the Petitioner had also received these certificates for transfer in other names, the disbursement of dividend has been kept in abeyance till resolution of the matter.

4. *It is relevant to point out that the all the above mentioned shares are either with the Original holder or transferred in or about 1997.*

5. *During the pendency of the present case these shares in question have not been transferred to any person and the dividend in respect of the said shares has been kept in abeyance, as above."*

9. A perusal of the said affidavit demonstrates that 10 shares were transferred in the name of an original holder and 150 shares were transferred to the name of another original holder and 150 shares were transferred in the name of Robert Fleming on 30.09.1997 long before the dispute arose. 40 other shares are stated to be in the name of persons who are original holders. 50 shares are in the name of M/s. Canara Bank, the original holder of the shares with a further recital that all the shares are either with the original share holder or shares were transferred in or about 1997. But in view of the pendency of the present case neither the shares have been transferred to any person nor the dividends in respect of the said shares have been disbursed and have been kept in abeyance.

10. The fact remains that as per the orders of the District Commission and the State Commission, the entire claim as accepted and awarded due to the alleged deficiency has been disbursed to the contesting respondents. It has been urged by the learned counsel for the petitioner that these transfer of shares sought are a commercial transaction and therefore the complaint was not maintainable. He further submits that it has been throughout maintained by the petitioner that they did not receive the shares and consequently no liability can be fixed on the petitioner.

11. On the other hand learned counsel for the contesting respondents submits that services were only limited to the transfer of the shares and did not relate to any profiteering or the disputes relating to the dividends out of them. Assuming though not admitting that they were investment in shares and debentures, its request for a simple transfer per se would not be a commercial transaction and the petitioner had failed to contest the same on merits before the District Commission. In the absence of any written reply or evidence to demonstrate that the transaction of request to transfer involved profiteering and trading, the stand taken by the petitioner on maintainability cannot be entertained.

12. Learned counsel for the revisionist relied on an order passed by this Commission in the case of Goutam Das VS. Sun Pharmaceuticals Industries Ltd. & Anr., II (2010) CPJ 276 (NC), which is extracted herein under:

"Complaint was filed, inter alia, alleging that Dr. Krishna Das, wife of the complainant and also the complainant are doctors by profession. Dr. Krishna Das held 400 equity share of Rs. 10/- each of opposite party No. 1, the details whereof have been set out in para No. 3 of the complaint. Vide letter dated 29.10.1994, opposite party No. 1 informed Dr. Krishna Das of allotting certain additional shares. In April, 2000 Dr. Krishna Das and the complainant jointly acquired 800 equity shares of Rs. 10/- each of opposite party No. 1 as detailed in para No. 5 of

the complaint. Shares were held by both of them for personal investment. Dr. Krishna Das died on 29.10.2009.

Alongwith the letter dated 12.12.2009, the complainant forwarded certificates of said 1200 equity shares to opposite party No. 1 for getting them transferred in his name. Vide letter dated 30.12.2009 the opposite party No. 1 intimated the complainant that against those certificates, duplicate shares have been issued in past. Those duplicate shares were transferred in the name of Jatindra Shukla in July 2007 which were subsequently dematerialized through Karvy Stock Broking Limited. It was claimed that the complainant never sold the shares.

*Direction was sought to be passed to the opposite parties to hand over the shares in question with bonus shares, pay dividend on them, pay interest as also compensation etc. We have heard Shri A.K. Sil for the complainant on admission. **In our view, complainant, a shareholder cannot be the consumer qua Sun Pharmaceuticals Industries Ltd.-opposite party No. 1 within the meaning of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986 and the present complaint is, therefore, not legally maintainable under that Act. Dismissed as such.***

13. Learned counsel for the petitioner has urged that on 07.09.1998, the petitioner company had informed the contesting respondents that they had never received the share certificates. The question therefore that has arisen is as to whether there was any actual transmission of the instruments for transfer regarding the share certificates, so as to construe deficiency on the part of the petitioner. The question of passing of any consideration and then the issue of jurisdiction of the consumer forum to proceed with the matter has also been raised by contending that this nature of dispute fell exclusively in the domain of Companies Act.

14. The fact remains that the petitioner company had failed to file any response before the District Commission and consequently there was no evidence to controvert the allegations made by the complainants.

15. The issue as to whether the complaint would be maintainable for the nature of the deficiency alleged has also to be viewed from the interpretation given to the word 'consumer' and 'service' as used in the Consumer Protection Act, 1986. The said issue was again discussed in the case of *Shrikant G. Mantri Vs. Punjab National Bank, (2022) 5 SCC 42*, where the Apex Court traced the legislative history and also after referring to Section 2 (1)(d) of the Consumer Protection Act, 1986 has observed in paragraph 27 to 29 as follows:

“27. It could thus be seen that Section 2(1)(d) of the said Act is in two parts. Section 2(1)(d)(i) of the said Act deals with buying of goods. A person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment would be a consumer within the meaning of Section 2(1)(d)(i) of the said Act. It also includes any user of such goods other than the person who buys such goods for a consideration, which has been paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person.

However, Section 2(1)(d)(i) of the said Act excludes a person who obtains such goods for resale or for any commercial purpose.

28. *Section 2(1)(d)(ii) of the said Act is with respect to hiring of services. According to it, the term “consumer” means any person who hires any services for a consideration, which has been paid or promised or partly paid and partly promised, or under any system of deferred payment. It also included any beneficiary of such services other than the person who hires the services as is provided under Section 2(1)(d)(i) of the said Act.*

29. *It could thus be seen that as per the definition of the term “consumer”, under Section 2(1)(d)(ii) of the said Act, as enacted originally, even if a person who hires any services for any commercial purpose, he could still be included in the definition of the term “consumer”. It is relevant to note that Section 2(1)(d)(i) of the said Act clearly kept a person who obtains such goods for resale or for any commercial purpose, out of the ambit of definition of the term “consumer”. However, insofar as hiring of services is concerned, no such provision was made in the original enactment.”*

It then went on to analyse the amendments which were brought by the legislature in the aforesaid section and then observed about amendments which have been referred to in paragraph 30 to 36, which are extracted herein under:

“30. *The legislature noticed various deficiencies and inadequacies in the said Act. Therefore, in order to plug these loopholes and enlarge the scope of areas covered, the legislature brought certain amendments to the said Act by the Consumer Protection (Amendment) Act, 1993 (hereinafter referred to as “the 1993 Amendment Act”). One of the objects of the said Act was to enable the consumers, who are self-employed, to file complaints before the redressal agencies, where goods bought by them exclusively for earning their livelihood, suffer from any defect. By sub-section (5) of Section 2 of the 1993 Amendment Act, the following amendments were effected to the definition of the term “consumer”:*

“2. (5) in clause (d)—

(A) in sub-clause (ii), for the word “hires”, in both the places where it occurs, the words “hires or avails of” shall be substituted;

(B) after sub-clause (ii), the following Explanation shall be inserted at the end, namely:

‘Explanation.—For the purposes of sub-clause (i), “commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment’;”

31. *It could thus be seen that by the 1993 Amendment Act, insofar as services are concerned, wherever the word “hires” was used, the same was substituted by the words “hires or avails of”. By the said 1993 Amendment Act, insofar as Section 2(1)(d)(i) is concerned, an Explanation was provided to the effect that*

“commercial purpose” does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood by means of self-employment. It could thus be seen that though the original Act of 1986 excluded a person from the ambit of definition of the term “consumer” whenever such purchases were made for commercial purpose; by the Explanation, which is an exception to an exception, even if a person made purchases for “commercial purpose”, he was included in the definition of the term “consumer”, if such a person bought and used such goods exclusively for earning his livelihood by means of self-employment. The legislative intent is clear; that though the purchases for commercial purposes are out of the ambit of the definition of the term “consumer” in the said Act, if a person buys and uses such goods exclusively for earning his livelihood by way of self-employment, he would still be entitled to protection under the said Act.

32. *The legislature further noticed several bottlenecks and shortcomings in the implementation of various provisions of the said Act and with a view to achieve quicker disposal of consumer complaints, and to make the said Act more effective by removing various lacunae, the legislature amended the said Act by the Consumer Protection (Amendment) Act, 2002 (hereinafter referred to as “the 2002 Amendment Act”). One of the objects for bringing out the 2002 Amendment Act was “exclusion of services availed for commercial purposes from the purview of the consumer disputes redressal agencies”. It could thus be seen that the legislature noticed the mischief, that though Section 2(1)(d)(i) of the said Act kept out of its purview the goods purchased for commercial purpose, the said restriction was not found in Section 2(1)(d)(ii) of the said Act.*

33. *As such, in order to bring Section 2(1)(d)(ii) on a par with Section 2(1)(d)(i), the following amendment was effected to in clause (d):*

“2. (1)(c) in clause (d)—

(i) in sub-clause (ii), the following words shall be inserted at the end, namely:

‘but does not include a person who avails of such services for any commercial purpose’;

(ii) for the Explanation, the following Explanation shall be substituted, namely:

‘Explanation.—For the purposes of this clause, “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment’;”

34. *It could thus be seen that by the 2002 Amendment Act, the legislature clearly provided that a person, who avails of such services for any commercial purpose would be beyond the ambit of definition of the term “consumer”. The Explanation, which is an exception to an exception, which earlier excluded a person from the term “commercial purpose”, if goods were purchased by such a person for the*

purposes of earning his livelihood by means of self-employment, was substituted and the Explanation was made applicable to both clauses (i) and (ii).

35. It can thus clearly be seen that by the 2002 Amendment Act, though the legislature provided that whenever a person avails of services for commercial purposes, he would not be a consumer; it further clarified that the “commercial purpose” does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment.

36. It is thus clear that by the 2002 Amendment Act, the legislature has done two things. Firstly, it has kept the commercial transactions, insofar as the services are concerned, beyond the ambit of the term “consumer” and brought it in parity with Section 2(1)(d)(i), wherein a person, who bought such goods for resale or for any commercial purpose, was already out of the ambit of the term “consumer”. The second thing that the legislature did was that even if a person availed of the commercial services, if the services availed by him were exclusively for the purposes of earning his livelihood by means of self-employment, he would still be a “consumer” for the purposes of the said Act.”

While emphasising the scope and ambit of the Consumer Protection Act, the Apex Court went on to hold in paragraph 40 as follows:

40. It could thus be seen that this Court has clearly held that the idea of enacting the said Act was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. It has been held that the entire Act revolves round the consumer and is designed to protect his interest. It provides for “business-to-consumer” disputes and not for “business-to-business” disputes. It has been held that forums/commissions provided by the said Act are not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services.

While summarising the ratio the Apex Court observed as under in paragraph 50 as follows:

“50. It is thus clear, that this Court has held that the question, as to whether a transaction is for a commercial purpose would depend upon the facts and circumstances of each case. However, ordinarily, “commercial purpose” is understood to include manufacturing/industrial activity or business-to-business transactions between commercial entities; that the purchase of the good or service should have a close and direct nexus with a profit-generating activity; that the identity of the person making the purchase or the value of the transaction is not conclusive for determining the question as to whether it is for a commercial purpose or not. What is relevant is the dominant intention or dominant purpose for

the transaction and as to whether the same was to facilitate some kind of profit generation for the purchaser and/or their beneficiary. It has further been held that if the dominant purpose behind purchasing the good or service was for the personal use and the consumption of the purchaser and/or their beneficiary, or is otherwise not linked to any commercial activity, then the question of whether such a purchase was for the purpose of “generating livelihood by means of self-employment” need not be looked into.”

16. The question of trading in shares and profiteering may be a commercial activity in view of the ratio of the judgment referred to hereinabove. But in the instant case, the contention raised by the learned counsel for the respondents is that the deficiency in the service which has been complained of, is relating to the absence of any steps having been taken by the petitioner for the transfer of the shares. The contention of the learned counsel for the petitioner is that such transfer of shares is governed by the provisions of the Companies Act, 1956 and any dispute relating to such transfer would fall within the jurisdiction of the forum provided under the Companies Act and hence a consumer complaint would not be maintainable.

17. 250 shares certificates which are said to have been sent by the respondents have been denied to have been received by the petitioner. Accordingly, the stand taken throughout was that they had not received the share certificates and consequently there was no deficiency in service. This disputed question of fact therefore cannot be a matter for investigation in the revisional jurisdiction of this Commission, when findings on the said issue have been returned by the forums below. The District Commission as well as the State Commission has factually considered the said aspects and no irregularity is perceivable on the basis of the material on record. A mere denial by the petitioner of not having received the shares does not give rise to a question to be gone into in the limited revisional jurisdiction to be exercised in terms of the Consumer Protection Act, 1986.

18. Even otherwise it is evident that in compliance of the order of the State Commission, the petitioner has made good the loss said to have been suffered by the respondents by making payments as per the award of the forums below. The only amount which remains to be paid is a sum of Rs.12,000/- on account of mental harassment and costs of litigation.

19. With the conclusions drawn and in view of these altered circumstances, it is not necessary to undertake an exercise regarding the larger questions that have been raised in respect of the maintainability of the complaint, which issue can be decided in a case on some better facts.

20. The question is as to whether this request of transfer of shares amounts to a service under the Consumer Protection Act has to be viewed in terms of the provisions of Section 56 and Section 126 of the Companies Act that govern the issues relating to transfer of shares. Essentially such disputes relate to commercial transactions as they are investments but the distinguishing feature in the present case is about the Petitioner having acted deficiently in not carrying out the expected obligations that has been contested by the Petitioners on several grounds. It is open to the Petitioner to take such steps in respect of the shares as may be

permissible under any law for the time being in force and therefore we are not entering into the contention of the maintainability of the complaint in the peculiar facts of the present case as we do not find it necessary to probe the matter any further.

21. The question of awarding Rs.10,000/- for mental agony therefore in the circumstances of this case may not be a sound exercise of discretion when the dispute seems to be resolved with the payments already extended. Award of Rs.10,000/- as mental agony is therefore set aside and the revision is partly allowed only to the extent indicated above. The litigation cost of Rs.2,000/- shall be payable to the respondents which shall be deposited by the revisionist within a month from today.

22. In the wake of the circumstances of the facts no other issue needs to be gone into and the revision is accordingly disposed off.

.....J
A. P. SAHI
PRESIDENT

.....
DR. INDER JIT SINGH
MEMBER