

NANDLAL LOHARIYA

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v.

JAGDISH CHAND PUROHIT AND ORS.

(S.L.P. (C) Diary No. 24842 of 2021)

NOVEMBER 08, 2021

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[M. R. SHAH AND B. V. NAGARATHNA, JJ.]

Consumer Protection Act, 1986: Deficiency in service – Compensation – Claim of – Complainant filed complaints through three advocates against BSNL – Dismissed by the District Forum on merits – Pursuant thereto, complainant filed complaint against three advocates who appeared for him alleging deficiency in service on their part before the District Forum – Dismissed by the Fora below – On appeal, held: Once the complaints came to be dismissed on merits and there was no negligence on the part of the advocates at all, it cannot be said that there was any deficiency in service on the part of the advocates who appeared on behalf of the complainant and lost on merits – Only in a case where it is found that there was any deficiency in service by the advocate, there may be some case – In each and every case where a litigant has lost on merits and there is no negligence on the part of the advocate, it cannot be said that there was any deficiency in service by the advocate – In every litigation, either of the party is bound to lose and in such a situation either of the party who will lose in the litigation may approach the consumer fora for compensation alleging deficiency in service, which is not permissible at all – Fora below rightly dismissed the complaint filed by the complainant against the advocates who appeared on behalf of the complainant in the said three complaints, which were dismissed on merits.

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EXTRA ORDINARY APPELLATE JURISDICTION: Special Leave Petition (C) Diary No. 24842 of 2021.

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From the Judgment and Order dated 25.11.2019 of the National Consumer Dispute Redressal Commission, New Delhi in Revision Petition No.380 of 2019 and Order dated 07.01.2020 in Review Application No.348 of 2019 in Revision Petition No.380 of 2019.

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- A Priyanshu Upadhyay, Viraat Tripathi, Mrs. Suchita Dixit, Madhusudan Agnihotri, Ashwini Kumar, Rajeev Yadav, Anilendra Pandey, Advs. for the Petitioner.

The following Order of the Court was passed

O R D E R

- B **M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the ‘National Commission’) dated 25.11.2019 in Revision Petition No. 380/2019 and order dated 07.01.2020 passed by the learned National Commission in Review Application No. 348/2019 in Revision Petition No. 380/2019, by which the learned National Commission has dismissed the said revision petition and has confirmed the orders passed by the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (hereinafter referred to as the ‘State Commission’) and the District Consumer Disputes Redressal Commission, Pratapgarh (hereinafter referred to as the ‘District Forum’) dismissing the complaint of the petitioner, the original complainant has preferred the present special leave petitions.

2. We have heard Shri Viraat Tripathi, learned Advocate appearing on behalf of the petitioner.

2.1 At the outset, it is required to be noted that as such there is a huge delay of 593 days in preferring the special leave petition against order dated 25.11.2019. Still, we have considered the special leave petitions on merits also.

- F 3. That the petitioner herein filed three complaints being complaint Nos. 101/2014, 102/2014 and 01/2015 before the District Forum through his three advocates against BSNL. All the three complaints came to be dismissed by the District Forum on merits. That after dismissal of the complaints, the petitioner herein filed a complaint against the three G advocates who appeared on behalf of the petitioner in the aforesaid three complaints alleging deficiency in service on their part in contesting his cases before the District Forum.

- H 3.1 It was alleged that all the three advocates have not performed their duties properly. The said complaints were also filed with delay of 365 to 630 days. The petitioner herein claimed for a compensation of

Rs.15 lakhs from the advocates alleging deficiency in service in contesting the three complaints which were dismissed. The said complaint filed against the three advocates came to be dismissed by the District Forum. The appeal preferred by the petitioner herein before the State Commission also came to be dismissed, which was the subject matter of the revision petition before the National Commission. By the impugned judgment and order(s), the learned National Commission has dismissed the said revision petition, as also, the review application.

4. Having heard Shri Viraat Tripathi, learned Advocate appearing on behalf of the petitioner and having gone through the impugned judgment and order passed by the learned National Commission and even the order passed by the District Forum dated 30.06.2016 passed in original complaint nos. 101/2014, 102/2014 and 01/2015, we are of the firm opinion that the District Forum, the State Commission and the National Commission have rightly dismissed the complaint filed by the petitioner herein filed against the three advocates who appeared on behalf of the petitioner in the aforesaid three complaints, which as such were dismissed on merits. There are no observations by the District Forum against the advocates that there was any negligence on the part of the advocates in prosecuting and/or conducting the complaints. In the common order, it has been specifically observed by the District Forum that the allegations in the complaints are not proved and due to which all the three complaints are liable to be dismissed. Once the complaints came to be dismissed on merits and there was no negligence on the part of the advocates at all, it cannot be said that there was any deficiency in service on the part of the advocates who appeared on behalf of the complainant and lost on merits.

4.1 Once it is found and held that there was no deficiency in service on the part of the advocates, the complaint filed by the petitioner – complainant against the three advocates was liable to be dismissed and is rightly dismissed by the District Forum and the same has been rightly confirmed by the State Commission and thereafter by the National Commission. Only in a case where it is found that there was any deficiency in service by the advocate, there may be some case. In each and every case where a litigant has lost on merits and there is no negligence on the part of the advocate/s, it cannot be said that there was any deficiency in service by the advocate/s. If the submission advanced on behalf of the petitioner is accepted, in that case, in each and every case where a litigant has lost on merits and his case is dismissed, he will

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- A approach the consumer fora and pray for compensation alleging deficiency in service. Losing the case on merits after the advocate argued the matter cannot be said to be deficiency in service on the part of the advocate. In every litigation, either of the party is bound to lose and in such a situation either of the party who will lose in the litigation may
- B approach the consumer fora for compensation alleging deficiency in service, which is not permissible at all.

5. Under the circumstances, the District Forum, the State Commission and the National Commission have rightly dismissed the complaint filed by the petitioner herein against the three advocates who

- C appeared on behalf of the petitioner in the aforesaid three complaints which came to be dismissed on merits. There is no substance in the present special leave petitions. We would have dismissed the special leave petitions with exemplary costs, however, as the present proceedings arise out of the order passed by the consumer forum, we refrain from imposing any exemplary costs while dismissing the present special leave
- D petitions.

6. The special leave petitions are dismissed on the ground of delay as well as on merits. Pending applications, if any, also stand disposed of.

Nidhi Jain

SLPs dismissed.