

KARVY COMPUTERSHARE PVT. LTD. & ANR. V. SARLA PRASAD & ANR.

1. KARVY COMPUTERSHARE PVT. LTD. & ANR.
305, 3RD FLOOR,, NEW DELHI HOUSE, BARAKHAMBHA
ROAD, CONNAUGHT PLACE,
NEW DELHI-110001

2. JSW STEEL LTD.
REGD. OFFICE JINDAL MANSION, 5A, DR. G. DESHMUKH
MARG,
MUMBAI-400026
MAHARASHTRA

.....Appellant(s)

Versus

1. SARLA PRASAD & ANR.
3/17-S, 3RD FLOOR, GROVER MANSION, ASAF ALI ROAD,
NEW DELHI

2. INDIAN POSTAL OFFICE,
GOI, DAK BHAWAN, SANSAD MARG,
NEW DELHI

.....Respondent(s)

Case No: FIRST APPEAL NO. 78 OF 2013

Date of Judgement: 04 Jan 2023

Judges:

HON'BLE MRS. JUSTICE DEEPA SHARMA, PRESIDING MEMBER

For the Appellant : Mr. Inder Pahuja, Advocate

For the Respondent : None for R-1

Mr. Sanjay Bora, Postal Assistant for R-2

Facts

Complainant was holding 45,300 shares of Jindal Vijay Nagar Steel Ltd (JVSL). JVSL merged into Jindal Iron and Steel Co. Ltd, which further merged into JSW Steel Ltd (Appellant no. 2). As per merger scheme, Appellant no. 2 issued 1890 shares to complainant. Also issued dividend warrant of Rs 5,670/-. Appellant no. 1 is registrar and transfer agent of Appellant no. 2. Complainant alleged she never received new shares or dividend warrant issued to her. Despite multiple complaints, Appellant no. 1 maintained shares and warrant dispatched. But postal authorities (Respondent no. 2) confirmed no such registered parcel received for complainant. Finally, legal notice sent again seeking delivery of shares and warrants within 15 days, failing which consumer complaint filed.

Court's Elaborate Opinions

Deficiency in service writ large against both appellants based on own documents and contradictory stands. Issuance of shares on merger in 2005 itself was appellants' stand earlier. This contradicts present contention of determining complainant's actual shareholding in 2008. Share issuance in 2008 shows deficiency in promptly issuing proportionate shares post-merger in 2005. Multiple unresponded complaints by complainant also confirm appellants' negligence. Argument that compensation not based on evidence is wrong. Entitlement of 393 right shares based on 1890 shares is not denied by appellants. Loss shown of Rs 5 lakhs due to missing opportunity is supported by evidence. No infirmity in state commission order; appeal dismissed.

Arguments by Parties

Appellants:

New shares could not be issued as originals never deposited by complainant. Actual shareholding determined through scrutiny in 2008; no delay or deficiency. Compensation of Rs 5 lakhs without any factual basis.

Complainant:

Non-issuance of proportionate shares post-merger despite

multiple complaints shows deficiency. Caused loss of dividend and opportunity to buy right shares. Compensation claimed supported through evidence.

Sections:

Appeal against state commission order under consumer protection law.

The National Commission concurred with state commission finding appellants guilty of deficiency in service and dismissed their appeal.

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Court

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Full Text of Judgment:

1.The present Appeal has been filed against the order dated 15.10.2012 of the State Consumer Disputes Redressal Commission, Delhi (for short “the State Commission”) in Complaint No.2 of 2008.

2. The admitted facts of the case are that the Respondent No.1 (hereinafter referred to as “the Complainant”) and her family members were holders of Jindal Vijay Nagar Steel Ltd. shares. Those shares were subsequently merged in Jindal Iron and Steel Company Limited and further merged in JSW Steel Limited, i.e., the Appellant No.2. The Complainant was holding 45,300 shares in Jindal Vijay Nagar Steel Limited (JVSL). Appellant No.2 after the merger issued her 1890 shares as per the merger scheme and also issued dividend warrant for ₹5,670/-. Appellant No.1 (hereinafter referred to as “Karvy Computershare Private Limited”) is the Registrar and Transfer Agent of Appellant No.2. The contention of the Complainant had been that despite depositing her own shares with Karvy Computershare Private Limited, she did not receive new share certificate or the dividend warrant from the Appellants. She wrote letters dated 23.03.2005 and 18.04.2005 to Karvy Computershare Private Limited which in response wrote letters

dated 02.05.2005 and 03.05.2005 informing her that her share certificates and dividend warrants had been dispatched to her by registered post on 19.03.2005. She thereafter approached the postal authorities i.e. Respondent No.2. The postal authorities informed her that no registered parcel was ever received by them for her from Karvy Computershare Private Limited. She again wrote a letter dated 14.06.2005 to Karvy Computershare Private Limited showing her concern and when she did not get any reply, she sent a legal notice dated 07.07.2005. Vide their reply dated 28.06.2005, Karvy Computershare Private Limited again reiterated their stand that they had already sent the share certificates and dividend warrants by registered post on 19.03.2005 and since they did not receive back the registered post, they had presumed that the same had been delivered to her. The Complainant thereafter sent another legal notice dated 19.05.2006 asking Karvy Computershare Private Limited to deliver share certificates and dividend warrants within 15 days. Since she did not receive any reply to the legal notice, she filed the Consumer Complaint with her family members who were holding the shares, against the Appellants and the Respondent No.2.

3. Initially the Complaint was dismissed for misjoinder of parties vide order dated 21.11.2007. Thereafter, Complaint No.2 of 2008 was filed on 04.01.2008 again in her individual capacity, praying for directions to all the Opposite Parties jointly and severally to deliver her share certificates for 1890 shares of Folio No. JW 0297722 along with dividend warrant or to pay her market value of those shares as on 13.12.2007 amounting to ₹25,11,810/- besides amount of dividend warrant amounting to ₹5,670/- and ₹28,538/- on account of dividend declared by JSW Steel Limited on 12.03.2007 and also to pay her compensation of ₹5,22,297/- on account of financial loss suffered due to non-delivery of shares and warrants along with interest @ 24% with ₹1 Lakh as compensation for mental harassment and agony.

4. The Complaint was contested by both the Appellants.

Respondent No.2, the postal authorities, was however ex parte. 5. Several preliminary objections have been raised by the Appellants. On merits it was contended that after accounting for all the transfers of the shares of JVSL held by the Complainant and family members, after the sale of some of the shares of JVSL in the year 1995 in the open market, actual holding of the Complainant was 1776 shares. A request vide letter dated 07.07.2008 was made to the Complainant and family members informing them about their actual shares holding of JVSL. The Complainant was also requested to produce old share certificates of JVSL to facilitate a proper and fair solution of the problem being faced by the Opposite Parties and also to give undertaking/indemnity. They have denied that there is any deficiency in service or any unfair trade practice.

6. Parties led their evidences before the State Commission. After hearing learned Counsels for the parties and going through the evidences on record, the State Commission rejected all the preliminary objections raised by the Appellants. On merits, the State Commission found the Appellants guilty of deficiency in service and issued the following directions:

"12. Allowing the complaint, therefore, we direct as follows:

1. That OP-2 shall issue New 1776 shares in JSW of admittedly held by the complainant vide letter dated 7.7.2008 (Ex-R/5) of the OP's after complainant submits requisite undertaking/indemnity bond as desired by the OPs, within 30 days of the receipt of copy of this order.

2. That OP-1 and OP-2 shall jointly and severally pay a sum of ₹5,00,000/- (Rupees Five Lakhs only) in lumpsum to the complainant to make good the financial loss suffered by her due to non- delivery of shares since 2006 and non-payment of dividends declared till date and also for causing her mental harassment and agony.

1.

3. That OP-1 and OP-2 shall also pay jointly and severally a

sum of ₹10,000/- (Rupees Ten thousand only) as cost of litigation to the Complainant."

7. These findings have been challenged before me. It is argued by learned Counsel for the Appellants that there is no deficiency in service on their part since the share certificates had never been deposited by the Complainant and therefore, the new share certificates could not be issued by them and as soon as the needful was done, they issued new share certificates in 2009. It is submitted that this fact can be ascertained from the document dated 15.05.2009 showing the receipt of 1776 share certificates of JSW Steel Limited by the Complainant. It is argued that there is no basis of grant of compensation of ₹5 Lakhs to the Complainant and therefore, the impugned directions are perverse and illegal.

8. Another contention of the Appellants is that since the Complainant had sold some shares of JVSL in 1995, they needed to do detailed scrutiny and verification of the records and it was only in 2008 that they could arrive to the conclusion that the Complainant was entitled to 1776 shares of JSW Steel Limited.

9. In this case the Complainant is not attending the proceedings since long and since the Appeal is very old pertaining to year 2013, arguments on behalf of the Appellant and the Respondent No.2 are heard.

10. It is the admitted case that the Complainant was holding shares of Jindal Vijay Nagar Steel Limited and after merger in JSW Steel Limited, she was entitled to issuance of shares of JSW Steel Limited. The merger had taken place in the year 2005 and therefore on the merger, the Complainant was entitled to receive the shares of JSW Steel Limited proportionate to the shares she was holding at that time. As per the argument addressed by the learned Counsel for the Appellants, JSW Steel Limited could decide that the Complainant was entitled to 1776 shares only in the year 2008. Therefore, apparently there is deficiency in service on the part of the Appellants in issuing the share certificates to the Complainant to which she was

entitled immediately on merger in the year 2005. Therefore, the argument of learned Counsel clearly shows deficiency on the part of the Appellants. Besides that, the documents on record and the stand taken by the Appellants clearly show that the Appellants' stand in trial before the State Commission was that they had on merger issued 1776 shares of JSW Steel Limited in the year 2005 itself and sent it by post and since the post had not been received back unserved, they presumed that the warrants and the shares had been delivered to the Complainant. Also in their reply to the letters of the Complainant, the stand taken by the Appellants was that Share Certificates of JSW Steel Limited had already been sent to her by post. Through her subsequent letters, the Complainant informed the Appellants categorically that she had not received the share certificates allegedly sent by them to her. Therefore, the argument of the learned Counsel for the Appellants that the Appellants could decide that the Complainant was entitled to 1776 shares only in the year 2008 is in direct conflict with the earlier stand of the Appellants.

11. The State Commission has gone through the evidences on record and based on the same reached to the conclusion that there was deficiency on the part of the Appellants. It has been so held by the State Commission as under:

"11. In view of their letter dated 7.7.2008 (Ex-R/5) filed by the OPs on the record, it stands clearly established that they have not issued new shares in JSW to the complainant and other members of her family, whereas, OP had been claiming since 28.7.2005 (Ex.G) that the New Shares have been issued to the complainant; that her shares held under Folio No. JSW0297722 issued under the New Folio have already been sent to her at the address of the complainant by Registered Post on 19.3.2005 which since have not been returned to the OP were presumed to have been delivered. She had been continuously, in communication with them telling the OP that she had not received the New Shares, but the OP instead of verifying their record till 7.7.2008 continued harping on the same tune that

the New Shares have already been sent to the complainant on 19.3.2005, which fact was even denied by OP-3 informing the complainant that no such Registered Mail from OPs was received for delivering to the complainant. OPs are, thus, falsified by their own documents dated 27.7.2008 (Ex.R-5). These facts are sufficient to constitute gross deficiency-in-service writ large on the fact of the record against the OP-1 & OP-2. Hence both are jointly and severely liable to make good the loss and for causing mental harassment to the complainant."

12. The other argument of learned Counsel is that the grant of ₹5 Lakhs as compensation is not based on any facts or evidences in this case. I have gone through the contentions in the Complaint. In para (11) of the Complaint, the Complainant has contended as under:

"11. Meanwhile the Complainant also came to know that the Respondent No.2 had also issued warrants against the existing share holdings for purchase of new shares in the Respondent No.2. Accordingly, as per the entitlement of the Complainant based on her existing shareholding of 1890 shares, 393 warrants were issued in her favour. That the Complainant in terms of the said warrants could have purchased additional 393 shares. However, the complainant did not receive even the said warrants. However as the last date for applying for purchase of the said 393 additional shares was 01.04.2006, the Complainant missed the said option and suffered loss on account of the values of the said shares as well as the dividend that the Complainant would have earned the same. The purchase amount of the said 393 shares @ ₹160/- per share would have been ₹62,880/-. Market value of 393 shares as on 13.12.2007 at the rate of ₹1,329/- per share was ₹5,22,297/-. Therefore the total loss suffered by the Complainants on the additional 393 shares amounts to ₹4,59,417/-. Loss on account of amount of dividend declared/receivable on the additional 393 shares amounts to ₹4,912.50. The Complainants, therefore, suffered the direct and actual loss because of the non-delivery of share certificates, dividend warrants and the

warrants for purchase of additional shares as aforesaid."

This contention is supported by the affidavit in evidence of the Complainant.

13. In the written version filed by the Appellants before the State Commission, there is no denial that the Complainant, on the basis of her new shares of JVS Steel Limited, was entitled to buy right shares of quantity of 393. It, therefore, is clear that had the shares of JSW Steel Limited been issued to her, she could have applied for the right shares which she could not do due to the deficiency on the part of the Appellants. She, therefore, has established that she had suffered a loss of ₹5 Lakhs. Therefore, the grant of compensation of ₹5 Lakhs is not based on surmises and conjectures but based on the facts and evidences on record. I found no illegality, perversity or infirmity in the impugned order. The present Appeal has no merit and the same is dismissed with no order as to costs.