

HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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WRIT PETITION No.2509 OF 2014

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JUDGMENT: (Per Hon'ble Sri Justice Ramesh Ranganathan)

The 1st respondent herein approached the District Consumer Forum, Guntur (for short, the 'District Forum') complaining that the petitioner herein was guilty of deficiency in service. By its order, in C.C. No. 284 of 2010 dated 11.08.2011, the District Forum directed the petitioner herein to replace the generator set by supplying 100 KVA ALGP6DT1G1 within one month; to pay Rs.5,30,000/- together with interest at 12% p.a. from 19.04.2010 till realization if replacement was not made; and to pay Rs.20,000/- towards deficiency of service and Rs.2,000/- towards costs. These amounts were directed to be paid within a period of eight weeks from the date of receipt of a copy of the said order.

The petitioner herein preferred an appeal there against before the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short, the 'State Commission'). An interim order was passed by the State Commission on 23.08.2012, granting interim stay of all further proceedings, including the warrant of arrest, on condition that the petitioner deposited Rs.5,30,000/-, which included the statutory amount deposited by the petitioner, within one month before the State Commission. The petitioner herein complied with the interim order and deposited Rs.5,30,000/-. Thereafter, the State Commission, by its order in F.A.I.A. No.1939 of 2012 in F.A.Sr. No.4461 of 2012 dated 18.03.2012, rejected the petitioner's application to condone the delay of 346 days in filing the appeal. As a result of the condone delay petition being dismissed, the appeal

preferred by the petitioner was rejected.

Aggrieved thereby, the petitioner invoked the jurisdiction of the National Consumer Disputes Redressal Commission, New Delhi, (for short, the 'National Commission') by way of a Revision. In its order, in Revision Petition No.2003 of 2013, dated 24.07.2013, the National Commission recorded the submission urged by the learned counsel for the petitioner that the petitioner had instructed him that he would comply with the impugned order within 30 days and, therefore, he requested that he be permitted to withdraw the Revision Petition. In view thereof, the National Commission dismissed the Revision Petition as withdrawn. Consequent on the Revision Petition being dismissed by the National Commission, the order of the District Forum, as aforementioned, attained finality.

The 1st respondent herein filed a petition before the District Forum, in P.P. No.25 of 2012, seeking the petitioner's arrest. The petitioner filed a counter-affidavit thereto and P.P. No.25 of 2012 is said to be still pending adjudication before the District Forum. The 1st respondent herein filed I.A. No.2725 of 2013 in F.A.I.A. No.1939 of 2012 before the State Commission requesting that he be issued a cheque for Rs.5,30,000/- with upto date interest. By its order dated 24.01.2014 the State Commission, after considering the submissions of the petitioner herein, observed that, when the order of the District Forum had attained finality, neither the District Forum nor the State Commission could go beyond the decree; the writ petitioner had even moved the National Commission by way of a Revision Petition, but had chosen to withdraw the same; as per the Registry, an amount of Rs.5,30,000/- was lying in deposit with them; and, as there was no order of stay from any quarter for withdrawal of the amount, they were of the opinion that there should not be any impediment for release of the amount to the 1st respondent herein. The Registry was directed to

issue a cheque for Rs.5,30,000/- with accrued interest, if any, drawn in favour of the 1st respondent.

Sri. M. Sudheer Kumar, learned counsel for the petitioner, would contend that the State Commission had erred in directing the Registry to issue a cheque for Rs.5,30,000/-, with accrued interest, in favour of the 1st respondent; the Penalty Petition filed by the petitioner was pending before the District Forum wherein the petitioner had stated that they were ready and willing to replace the generator set supplied earlier; as a Penalty Petition has been filed before the District Forum by the 1st respondent, all questions, including the entitlement of the 1st respondent for refund of the money, and the petitioner's contention that they should, instead, be permitted to replace the generator set, were required to be examined only by the District Forum; on an order being passed by it dismissing the condone delay petition, the State Commission became *functus officio*; and it was not entitled, thereafter, to entertain any application or to issue any direction to Registry to issue a cheque in favour of the 1st respondent herein.

We must express our inability to agree. The direction to deposit Rs.5,30,000/- was as a condition for even entertaining and examining the condone delay petition. But for the interim orders passed by the State Commission, the order of the District Forum, directing the petitioner's arrest, would have been enforced. The petitioner's appeal was not entertained by the State Commission, and the Revision preferred by him there against was withdrawn by him, resulting in the order of the District Forum attaining finality. The District Forum had directed the petitioner, by its order dated 11.08.2011, to replace the generator set within one month. The one month period expired by 11.09.2011, more than three years ago. The order of the District Forum does not enable the petitioner herein to now seek to replace the generator set. The alternative direction, on the petitioner's failure to

replace the generator set on or before 11.09.2011, was to pay Rs.5,30,000/- with interest to the 1st respondent.

Pursuant to the order of the State Commission dated 23.08.2012, the petitioner herein deposited Rs.5,30,000/- with the State Commission. Even after the direction now issued by the State Commission, permitting the 1st respondent to withdraw the amount, the petitioner would still be liable to pay the 1st respondent interest at 12% p.a. from 19.04.2010 till 23.08.2012, when Rs.5,30,000/- was deposited before the State Commission. In terms of the order of the District Forum dated 11.08.2011, the 1st respondent is also entitled for payment of Rs.20,000/- towards deficiency in service, and Rs.2,000/- towards costs. These are the matters of examination by the District Forum in the Penalty Petition filed by the 1st respondent.

The jurisdiction which this Court exercises, under Article 226 of the Constitution of India, is discretionary. The petitioner, having failed to comply with the directions of the District Forum and in having withdrawn the Revision Petition filed before the National Commission after undertaking to comply with the order of the District Forum within 30 days, cannot now be heard to contend that the sum of Rs.5,30,000/- , directed to be paid by the District Forum should not have been directed to be paid to the 1st respondent by State Commission; and that the matter should be examined by the District Forum in the Penalty Petition filed by the 1st respondent. As the order of the District Forum, as aforementioned, has attained finality, no Court or Tribunal can go behind the said order to examine its validity. The order of the District Forum required the petitioner to replace the generator set by 11.09.2011, and not thereafter. We see no reason, therefore, to entertain a writ petition on hyper technicalities or to direct that the amount of Rs.5,30,000/- be deposited with the District Forum. The writ petition, as filed, is an abuse of process of Court. Having withdrawn

the Revision Petition filed before the National Commission, undertaking to comply with the order of the District Forum within 30 days (which expired by 24.08.2013), the petitioner is still dragging on proceedings; and has successfully circumvented the order of the District Forum, and the undertaking given on his behalf before the National Commission.

The writ petition is dismissed with exemplary costs of Rs.10,000/-, which the petitioner shall pay to the 1st respondent, within four weeks from today. With regards return of the old generator set, it is always open to the petitioner to seek appropriate orders before the District Forum.

In consequence, the miscellaneous petitions, if any, pending in this writ petition, shall stand dismissed. No order as to costs.

RAMESH RANGANATHAN, J

**M. SATYANARAYANA MURTHY,
J**

Date: 05-02-2015.
Dsh

**HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

CMSO:10.02.2015

WRIT PETITION No.2509 OF 2014

(Order of the Division Bench delivered by
Hon'ble Sri Justice Ramesh Ranganathan)

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Date. 05-02-2015

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