

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T. MATHIVANAN

Civil Revision Petition (PD) No.4687 of 2011 &
M.P.No.1 of 2011

1. The General Manager,
TNSTC Limited,
No.37 Mettupalayam Road,
Coimbatore.

2. The Secretary,
Provident Fund Trust,
TNSTC,
Coimbatore.

... Petitioners

Versus

1. The District Consumer Disputes
Redressal Forum,
Collectorate Campus,
Coimbatore – 18.

2. K.Gopal

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the order dated 09.09.2011 passed in CMP.No.216 of 2011 in C.C.No.6 of 2011 on the file of the District Consumer Disputes Redressal Forum, Coimbatore.

For Petitioners : Mr.T.Chanrdasekaran

For Respondents : Mr.Ry.George Williams – R2

ORDER

Challenging the legality of the Order dated 08.09.2011 and made in CMP.No.216 of 2011 in C.C.No.6 of 2011 on the file of the District Consumer Disputes Redressal Forum, Coimbatore, this memorandum of revision is filed.

2. The petitioners being the General Manager, Tamil Nadu State Transport Corporation Limited, Coimbatore and the Secretary, Provident Fund Trust, Tamilnadu State Corporation Limited, Coimbatore have filed this revision after invoking the provisions of the Article 227 of the Constitution of India.

3. In so far as this revision is concerned, two crucial questions are arisen :

(i) Whether the second respondent/complainant would come under the purview of Consumer?

(ii) If not so, whether the District Consumer Disputes Redressal Forum is having jurisdiction to entertain the complaint filed by the second respondent?

4. It is apparent from the records that the second respondent Mr.Gopal seems to have filed a complaint under section 12 of the Consumer Protection Act 1986 before the District Consumer Disputes Redressal Forum, Coimbatore as against the revision petitioners and thereby sought the relief of damages to the

extent of Rs.one lakh as there was deficiency in their service in non payment of his pension, and for causing mental agony. Further, he had also sought the relief of litigation expenses to the extent of Rs.2000/-, and a direction to the revision petitioners to pay the balance of pension along with interest at the rate of 12% per annum.

5. During the pendency of the said complaint, the second respondent had taken out a petition in CMP.216 of 2011 under section 12(3), 13(4) (VI) of Consumer Protection Act read with 151 Code of the Civil Procedure to try the preliminary issue with regard to the jurisdiction of the Consumer District Redressal Forum in entertaining the complaint and its maintainability and admissibility. The revision petitioners being the respondents therein had also filed their counter statement. After hearing both sides, the District Consumer Disputes Redressal Forum, Coimbatore had proceeded to pass an order on 08.09.2011 with a finding in para 4, which is extracted as under :

“4. Admittedly, the petitioners/opposite parties have made their contribution as employer to the Provident Fund Trust of the same Tamilnadu State Transport Corporation and have recovered the employee's (i.e. the complainant's) contribution. It is also admitted by them in paragraph 2 of

their affidavit, that due to non recovery of loan from Provident Fund of Employer Contribution the complainant was not sanctioned pension. It is, therefore, evident that there exist a consumer dispute between the petitioners and the respondents.”

Placing reliance upon the decision of the **National Commission, New Delhi** reported in **III (2010) CPJ 270 (NC)** the District Consumer Forum has concluded that the complaint is not maintainable and that the question of taking this issue as a preliminary issue does not arise and for the aforesaid reasons, this petition was dismissed.

6. It is apparent from the records that the second respondent Mr.K.Gopal was an employee in the Tamil Nadu State Transport Corporation at Coimbatore Division. It is also revealed that he had availed some amounts towards loan from the Transport Corporation. But, at the time of his retirement, he had not repaid the said amount and on account of this reason, he was not paid the pension and therefore, the second respondent had approached the District Consumer Disputes Redressal Forum with the above said complaint. When a question of jurisdiction was arisen with regard to the maintainability of the complaint before the District Consumer Disputes Redressal Forum, Coimbatore,

he happened to file the above said petition in CMP.216 of 2011 which was also dismissed.

7. According to **Section 2(b) of the Consumer Protection Act,**

The term 'complainant' means

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or

(iii) the Central Government or any State Government, who or which makes a complaint;

[(iv) one or more consumers, where there are numerous consumers having the same interest;]

[(v) in case of death of a consumer, his legal heir or representative.”]

8. **Clause (d) of S(2)** defines the term CONSUMER as under :

'Consumer' means any person, who -

(i) buys any goods for a consideration which has been

paid or promised or partly paid or and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration 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, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid or partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];

[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.]

9. Clause (e) of S.2 defines the term “consumer dispute”

“consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;”

In so far as the second respondent/complainant is concerned, he, being an employee of the revision petitioner's Transport Corporation, in view of the definition under clause (d) of Section 2, will not come under the amplitude of 'consumer'.

10. To add an Additional Strength to this view, the learned counsel appearing for the revision petitioners has drawn the attention of this Court to the judgment of this Court in Writ Petition in W.P.No.8122 of 2002 which was decided on 21.2.2003. In this case, Honourable Justice P.Sathasivam, a Judge of this Court as he then was, in para No.9 has given a vivid explanation with reference to the term “consumer” which is extracted as under

“In the light of the various definitions, as seen from Section 2 of the Act and the dictum laid down by the Supreme Court, in the above referred cases, it is clear that the

Government servant has been excluded from the purview of the Consumer Protection Act to claim damages/compensation against the State under the Act. However, if any claim arises, it would be open to him/her to pursue the same in any other forum, namely, either before this Court under Section 226 of the Constitution of India or before the competent Civil Court.”

11. Further the District Consumer Forum has also passed an order, which is impugned in this revision petition saying that the petition itself is not at all maintainable before the District Consumer Disputes Redressal Forum, Coimbatore. Keeping in view of all the above facts and in view of the observation made in the writ petition W.P.No.8112 of 2002, this Court finds that this revision petition deserves to be allowed as the second respondent/complainant does not have any competency to maintain the complaint before the District Consumer Disputes Redressal Forum as he will not come under the purview of 'consumer'.

12. Accordingly, this Civil Revision Petition is allowed and the impugned Order dated 08.09.2011 is set aside and the petition in CMP.No.216 of 2011 is allowed. However, there shall be no order as to cost. Consequently, the

connected miscellaneous petition is closed.

23.09.2016

Index:yes/no

Internet:yes

vrc

To

The District Consumer Disputes
Redressal Forum,
Collectorate Campus,
Coimbatore – 18.

T.MATHIVANAN, J.,

vrc

C.R.P.(PD) No.4687 of 2011

23.09.2016