

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice Gudiseva Shyam Prasad

Writ Petition No.19548 of 2011

Date: 23.08.2018

Between:

The Commissioner
Ongole Municipality
Ongole, Prakasam District

..Petitioner

and

The District Consumer Forum
Prakasam District at Ongole and 3 others

..Respondents

Counsel for the petitioner: Mr.A.Panduranga Rao

Counsel for respondent Nos.1 & 2: AGP for Civil Supplies

Counsel for respondent No.3: Mr.Nimmagadda Satyanarayana

**Counsel for respondent No.4: AGP for Medical Health
& Family Welfare**

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Writ Petition is filed for a Mandamus to set aside Order, dated 20-06-2007, in CD.No.110 of 2007 as confirmed by Order, dated 03-12-2009, of respondent No.2 in F.A.No.1014 of 2007.

The facts of the case, in brief, are set out hereunder:

The complainant- Prakasam District Milk Producers Mutually Aided Cooperative Union Limited (hereinafter referred to as 'the Society') claimed to have been established for the benefits of farmers rearing milch animals and producing milk therefrom. It has approached the petitioner and respondent No.4 for supply of 3 lakh gallons of water per day, which is required for its activity. In pursuance of an agreement reached between the said Society, the petitioner and respondent No.4, the petitioner, which has evidently undertaken the responsibility of supplying water, has entrusted the work of laying the pipeline on a turn key basis to respondent No.4. The Society claimed to have paid the requisite deposit of Rs.1 lakh and the work was evidently completed by spending a sum of Rs.36.50 lakhs. As the petitioner did not keep up its promise of supplying water, the

Society raised Consumer Dispute *vide* CD.No.110 of 2007 before respondent No.1- District Consumer Forum, Prakasam at Ongole. Both the petitioner and respondent No.4 have resisted the said CD. On weighing the evidence of both sides, respondent No.1 has partly allowed the said CD with a direction to the petitioner and respondent No.4 to provide water to the Society and to disconnect the illegal connections given from the pipeline between the municipal filtration to the Society's dairy. Respondent No.1- Forum also stipulated two months' time for supply of water with a default provision that the petitioner and respondent No.4 shall pay Rs.50,000/- towards costs of the litigation.

While the petitioner has not questioned the said order of respondent No.1, respondent No.4 alone has filed FA.No.1014 of 2007 before respondent No.2- Andhra Pradesh State Consumer Disputes Redressal Commission.

Having regard to the rival pleadings of the parties, respondent No.2 has framed the following point for consideration:

“Whether the order of the District Forum against appellant/opposite party No.1 is sustainable and to what relief?”

Respondent No.2 has held that it is abundantly clear from the record, especially from ‘B’ series that respondent No.4 was a functionary of the State Government and that its role was limited only to the extent of execution of the project of laying the pipeline and that the money transaction was related only to that extent. It has further held that as far as the water supply activity is concerned, it was the exclusive obligation of the petitioner and that by no stretch of imagination, the said obligation could be fastened on respondent No.4- Department. A further finding was rendered that respondent No.4 was engaged only for the limited purpose of providing infrastructure for water supply and handing it over to the petitioner; that from that stage onwards, the petitioner was under the obligation to supply water to the Society in terms of the agreement reached between them; and that therefore, the order of respondent No.1 to the extent of imposing obligation on respondent No.4 was unwarranted. Accordingly, respondent No.2 has absolved respondent No.4 of the obligation imposed on it by

respondent No.2. Assailing the said order, the petitioner filed this Writ Petition.

From the facts narrated above, it is quite apparent that the petitioner has not questioned Order, dated 20-06-2007, passed by respondent No.1 in CD.No.110 of 2007 before respondent No.2. All that respondent No.2 has done in the appeal filed by respondent No.4 was to relieve it from the joint liability imposed by respondent No.1- Forum. It is not understandable as to how the petitioner can maintain this Writ Petition against the order passed by respondent No.2 on the appeal filed by respondent No.4. It is not the pleaded case of the petitioner that the order of respondent No.2 to the extent of relieving respondent No.4 of the obligation is illegal. On the contrary, for the first time, the petitioner has questioned the order of respondent No.1 in this Writ Petition. Having not questioned the said order by filing an Appeal, the petitioner is not entitled to assail the same for the first time in this Writ Petition.

For the aforementioned reasons, we do not find any reason to interfere with the impugned order.

The Writ Petition is, accordingly, dismissed.

As a sequel to dismissal of the Writ Petition,
WPMP.No.23630 of 2011, filed by the petitioner for interim
relief, is disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Dt: 23rd August, 2018
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