

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

WP.No.30799 of 2017

Date:08.06.2018

Between.

M/s Lot Mobiles Private Limited,
Hyderabad, repto by Jagannadha Vittal Ravindar

....Petitioner

And.

The State of A.P., repto by its Principal
Secretary, Law Department, Hyderabad
and two others.

.....Respondents

Counsel for the petitioner: Mr. M.R.K.Chakravarthy

Counsel for respondent Nos.1 & 2: GP for Civil Supplies (TS)

Counsel for respondent No.3: Mr. N.Sri Hari

The Court made the following:

ORDER: (*per Hon'ble Sri Justice C.V.Nagarjuna Reddy*)

The short issue that needs to be adjudicated in this Writ Petition is whether respondent No.2-District Consumer Disputes Redressal Forum (for short 'the Forum') has inherent power to entertain an application for recalling its own order on the allegation of fraud played by the party who secured such order.

The brief facts leading to the filing of this Writ Petition are that respondent No.3 has purchased a mobile phone on 24.3.2016 from the petitioner, a dealer in mobile phones. It is the pleaded case of respondent No.3 that he has lost the mobile phone due to alleged theft; that he issued notice on 03.8.2016 to the petitioner to explain the scope of "Rapid All in One Protects" (an insurance policy), towards which the petitioner collected Rs.400/- from him; and that as there was no reply from the petitioner, respondent No.3 has approached respondent No.2-Forum with a complaint registered as CC.No.11 of 2017. Admittedly, the petitioner remained *ex parte* and respondent No.2-Forum has disposed of the said C.C. by order, dated 10.3.2017, granting certain reliefs in favour of respondent No.3 and against the petitioner. The petitioner, thereafter, filed an application-IASR.No.687 of 2017 before respondent No.2-Forum for recalling the said order on the ground that respondent No.3 has played fraud on the Forum by suppressing certain material facts, due to which, it has granted reliefs in

favour of respondent No.3. Initially, the said application was returned on 18.4.2017 on the grounds that (i) the District Fora has no power to recall or review their own order even if it is an *ex parte* one; and (2) that the petitioner has not filed any proof with regard to service of letter, dated 21.9.2016, on respondent No.3-complainant.

On 24.4.2017, the petitioner has re-presented the said application by placing reliance on the judgments of the Supreme Court in *Sri Budhia Swain & Ors Vs. Gopinath Deb & Ors*¹ and *Indian Bank Vs. M/S Satyam Fibres (India) Pvt. Ltd*². By order, dated 22.5.2017, respondent No.2-Forum has again returned the said application, wherein it has reiterated its earlier view that the District Fora have not been vested with the inherent power to recall or review their own orders. Feeling aggrieved by the said action of respondent No.2-Forum, the petitioner has filed this Writ Petition.

We have heard Mr. M.R.K.Chakravarthy, learned counsel for the petitioner and Mr. N.Sri Hari, learned counsel for respondent No.3.

The legal position is fairly settled that fraud vitiates everything. In a long line of cases, the Constitutional Courts held that fraud or collusion in obtaining an order/judgment is a sufficient ground for nullifying it.

¹ 1999(4) SCC 396

² 1996 (5) SCC 550

In *Indian Bank Vs. Satyam Fibres (India) (P) Ltd*³, while considering the nature of power of the Court or Tribunal to recall its own order, the Supreme Court held that Courts or Tribunals have inherent power to recall and set aside an order which was (i) obtained by fraud practised upon the Court; (ii) when the Court is misled by a party or (iii) when the Court itself commits a mistake which prejudices a party.

In *A.R.Antulay Vs. R.S.Nayak*⁴, the Supreme Court has mentioned the following grounds on which the Court can recall its orders:

- “(i) a judgment was rendered in ignorance of the fact that a necessary party had not been served at all and was shown as served or in ignorance of the fact that a necessary party had died and the estate was not represented.
- (ii) a judgment was obtained by fraud.
- (iii) a party has had no notice and a decree was made against him and such party approaches the Court for setting aside the decision ex debito justice on proof of the fact that there was no service.”

In *Budhia Swain* (1 supra), the order passed by Estates Abolition Collector-cum-Additional Tahsildar, under the Orissa Estates Abolition Act, 1951, was the subject matter of a recall petition. In that context, the Supreme Court has considered the scope of power of the Court or Tribunal to recall its own order

³ (1996) 5 SCC 550

⁴ AIR 1988 SC 1531

or judgment, and reiterated the above-mentioned legal principles.

While we do not intend to examine whether the petitioner's plea of playing of fraud by respondent No.3 in securing the order, dated 10.3.2017, from respondent No.2-Forum is correct or not, we are presently concerned only with the question whether respondent No.2 can be considered as a Tribunal for the purpose of applying the principle that a Court or Tribunal has certain powers to recall its own order if the same is secured by playing fraud.

This issue is no longer *res integra* in view of the judgment of the Supreme Court in *Lakshmi Engineering Works v. P.S.G. Industrial Institute*⁵ wherein the Supreme Court while interpreting various provisions of the Consumer Protection Act, 1986 (for short, "the Act"), held that the fora constituted under the provisions of the Act are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers.

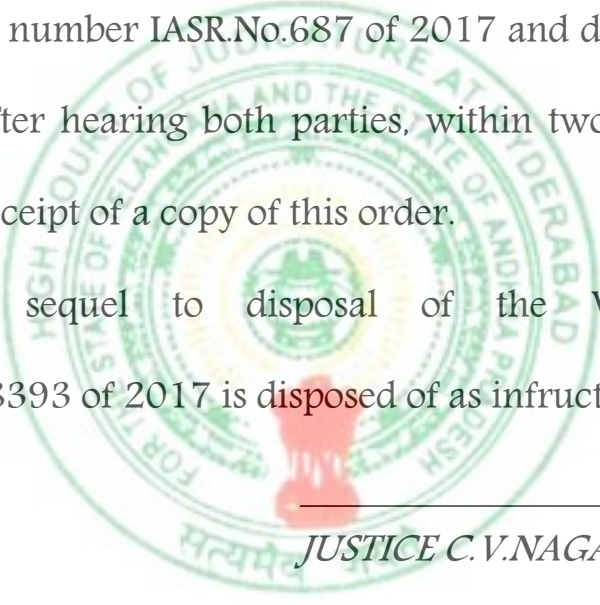
In the light of the abovementioned judgment of the Supreme Court, the reasoning of respondent No.2 – forum that it is not a tribunal and that consequently the ratio laid down in *Budhia Swain* (1 supra) has no application to it, is not sustainable in law. We accordingly hold that respondent No.2 – forum falls within the description of the "tribunal" and

⁵ (1995) 3 SCC 583

consequently the judgment in *Budhia Swain* (1 supra) applies in all fours to it so as to set aside its own order, if such an order falls within any one of the parameters laid down in *Satyam Fibres (India) (P) Ltd.* (3 supra).

For the afore-mentioned reasons, the Writ Petition is allowed and the order of respondent No.2-Forum in returning of IASR.No.687 of 2017 filed by the petitioner, as not maintainable, is accordingly set aside. Respondent No.2-Forum is directed to number IASR.No.687 of 2017 and decide the same on merits, after hearing both parties, within two months from the date of receipt of a copy of this order.

As a sequel to disposal of the Writ Petition, WPMP.No.38393 of 2017 is disposed of as infructuous.



JUSTICE C.V.NAGARJUNAREDDY

JUSTICE U.DURGA PRASAD RAO

08th June, 2018

DR