

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

W.P.No.1524 of 2015

Date: 19.07.2018

Between:

Ms.Ashwini Sattaru,
D/o.Sri S.Umapathi,
Regional Passport Officer,
Regional Passport Office,
Ministry of External Affairs,
Aged about 30 years,
R/o.D.No.8-2-215 to 219,
Adjacent to Prashant Theatre,
Kummarguda, Secunderabad-08

... Petitioner

And

Hon'ble District Consumers Forum-II,
Hyderabad and another.

... Respondents

Counsel for the Petitioner : Mr. Raghavender Reddy
for Mr.K.Lakshman,
(Assistant Solicitor General)

Counsel for the Respondents : Mr.Siva for R2

A.G.P. for Civil Supplies
for R1.

The Court made the following:

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

This writ petition is filed for issue of mandamus, declaring the action of respondent No.1, in entertaining Consumer Complaint No.486 of 2013 filed by respondent No.2 and in proceeding with the same under Section 12 of the Consumer Protection Act, 1986 (for short 'the Act'), as illegal and arbitrary and consequently to dismiss the Consumer Complaint No.486 of 2013 filed by respondent No.2.

2. We have heard Mr.Raghavender Reddy, learned counsel representing the learned Assistant Solicitor General and Mr.Siva, learned counsel for respondent No.2

3. Respondent No.2 filed the aforementioned consumer dispute seeking various reliefs, such as refund of passport application fee and payment of compensation, damages for allegedly committing the deficiency in service, causing mental agony, etc. Though the writ petition is filed in the personal name of the then Regional Passport Officer, Mr.Siva, learned counsel for respondent No.2, fairly conceded that the writ petition may be treated as having been filed by the Regional Passport Officer in her official capacity. Be that as it may, though the petitioner has sought for the relief of issue of mandamus in form, in effect, it is in the nature of writ of prohibition. According to the petitioner, the issue of passport being a sovereign function of the Government of India, the concept of service provider

and consumer, under the Act, is not attracted to the activity of issue of passport. In support of his submission, he relied upon the judgment of the National Consumer Disputes Redressal Commission in **S.Vijayakumar Vs. Regional Passport Officer** dated 10.04.2015, wherein the National Commission has held as under:

“In so far as this Commission is concerned, the issue is no longer *res integra*. In a catena of decisions rendered by this Commission, it has been held that issuance of a passport is a statutory function and the Passport Officer cannot be held to be a ‘Service Provider’ and therefore, the complaint under the Act for delay in issuing the passport would not be maintainable. In this behalf, it would suffice to make reference to a recent order dated 13.03.2015 passed in Revision Petition No.3785 of 2013 (Passport Officer Vs. Ajay Bansal), wherein referring to the earlier orders passed by this Commission and also the decisions of the Hon’ble Supreme Court in Standard Chartered Bank Ltd. Vs. Dr.B.N.Raman (2006) 5 SCC 727 and Bihar School Examination Board Vs. Suresh Prasad Sinha (2009) 8 SCC 483, a co-ordinate Bench of this Commission has also taken the aforesaid view”.

4. Mr.Siva sought to distinguish the judgment of the National Commission with some of the Supreme Court judgments and submitted that the view taken by the National Commission requires reconsideration. He further raised objection to the maintainability of the writ petition on the ground whether the District Consumer Forum has jurisdiction or not, is the matter which requires to be considered by the Forum itself and, therefore, it is appropriate to adjudicate the writ petition on merits.

5. Having considered the respective submissions of the learned counsel for both the parties, we are of the opinion that as this writ petition is filed at the stage of notice issued by the District Consumer

Forum, it is appropriate for the petitioner to raise all the legally permissible pleas, including the one relating to the maintainability of the consumer dispute in the light of the judgment of the National Commission in **S.Vijayakumar** (supra). The respondent No.2 is also entitled to raise all the pleas available to him in law. On consideration of such pleas, the respondent No.1 – District Consumer Forum, shall decide the case on all the aspects, including the one relating to the maintainability of the consumer dispute.

6. Subject to the above directions, the writ petition shall stand disposed of.

7. As a sequel to the disposal of the writ petition, interim order dated 04.09.2015 is vacated. I.A.No.1 of 2015 (WPMP.No.2028 of 2015) is dismissed. I.A.No.2 of 2015 (WVMP.No.3972 of 2015) shall stand disposed of.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 19th July, 2018

msb

