

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 30230 of 2010

Between :

Sri Chakradhara Nataraj Kumar

... Petitioner

And

Visakhapatnam Urban Development Authority,
Visakhapatnam, rep. by its Vice-Chairman and others.

... Respondents

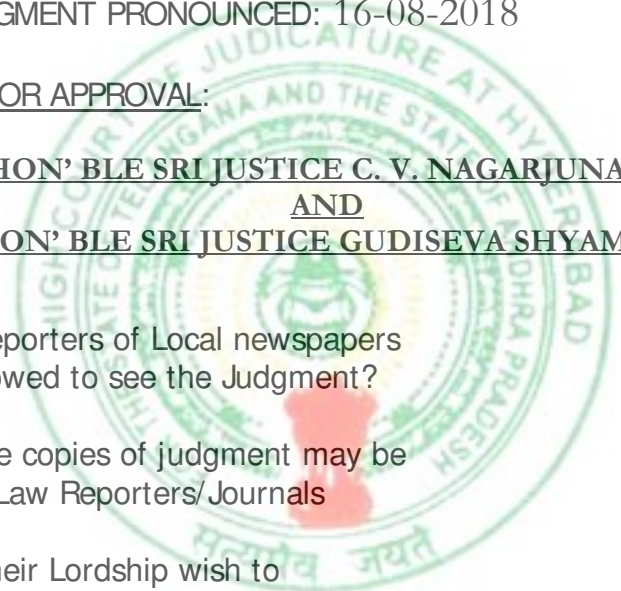
DATE OF JUDGMENT PRONOUNCED: 16-08-2018

SUBMITTED FOR APPROVAL:

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

AND

THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

- 
1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No
 2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
 3. Whether Their Lordship wish to see the fair copy of the Judgment? Yes/No

C.V.NAGARJUNA REDDY, J

GUDI SEVA SHYAM PRASAD, J

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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Between :

Sri Chakradhara Nataraj Kumar

... Petitioner

And

Visakhapatnam Urban Development Authority,
Visakhapatnam,
rep. by its Vice-Chairman and others.

... Respondents

COUNSEL FOR PETITIONER : Mr. S. Rajan

COUNSEL FOR RESPONDENTS :

Mr. Jagadish Chandra Prasad, SC for R1
Mr. A. Samir Kumar Reddy, SC for R2
Mr. K. Lakshman, Asst. Solicitor General
for R3 & R4
G.P. for Agriculture for R5

THE COURT MADE THE FOLLOWING:



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

This is a desperate piece of litigation launched by an unsuccessful consumer before the District Consumer Disputes Redressal Forum-II, Visakhapatnam (for brevity "the District Forum") and the A.P. State Consumer Disputes Redressal Commission at Hyderabad (for brevity "the State Commission"), seeking declaration that Section 16(1B) of the Consumer Protection Act, 1986 (for brevity "the Act") and Regulation 12 of the Consumer Protection Regulations, 2005 (for brevity "the Regulations") are bad in law and violative of Section 14(2) and 14(2A) of the Act.

The brief facts leading to the filing of this writ petition are that the petitioner has filed Consumer Case, C.C.No.691 of 2003 before the District Forum to direct respondent No.1 Authority (i) to furnish the factors and the details of escalation as per the terms of the agreement, (ii) to furnish the particulars of the site and the relevant documents, (iii) to remove the encroachments and deliver the site free from all encumbrances, (iv) to refrain from collecting penal interest on interest and to adjust the amount already collected as principal amount, (v) to pay for compensation for causing mental agony and financial hardship at Rs.2,00,000/-, and (vi) to pay for costs of the complaint at Rs.3,000/- and to pass such other relief.

Respondent No.1 contested the case by filing its version. The District Forum, presided over by its President sitting with another Member, dismissed the said case, by order dated 23.04.2007. Feeling aggrieved by the said order, the petitioner has filed F.A.No.712 of 2007 before the State Commission. The Bench comprising a woman Member and a former District Judge, by order dated 22.10.2009 dismissed the appeal confirming the order of the District Forum. Feeling aggrieved by the said order, the petitioner has filed this writ petition.

Mr. S. Rajan, learned counsel for the petitioner, submitted that in this writ petition his client has not raised illegality or otherwise of the order of respondent No.2 on merits and that he is only concerned with the limited aspect of the legal validity of Section 16(1B) of the Act and Regulation 12 of the Regulations.

The sheet anchor of the case of the petitioner, as presented by Mr. Rajan, is that there is a disparity between Sections 14 and 16 of the Act. Under the former provision, every proceeding before the District Forum shall be conducted by the President of the District Forum and atleast one Member sitting together and every order of the District Forum shall be signed by its President and the Member or Members, who conducted the proceeding. That in contrast to the said provision, the learned counsel argued, under

Section 16 of the Act, while a Judge or former Judge of the High Court shall be the President, not less than two, and not more than such number of members, as may be prescribed, one of whom shall be a woman, shall comprise the Bench. He further submitted that as per Explanation to Section 16(1) of the Act, a Judge at the District level with 10 years experience as Presiding Officer could be appointed as a Member and that unlike Section 14 of the Act, the Benches in the State Commission could be constituted with one or more Members and orders of the State Commission passed by such Benches need not be signed by the President. He has further argued that where a District Forum presided over by the District Judge passes an order, there is a possibility of such an order being considered in appeal and set aside by a Bench consisting of two Members only of the State Commission, who are equal in rank with that of the President of the District Forum.

The learned counsel also submitted that under Section 18 of the Act, the provisions of Sections 12, 13 and 14 of the Act and the Rules made thereunder for disposal of complaints shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission, which shall necessarily mean that the provisions, identical to Section 14 of the Act applicable to the District Forum, should have been made for the State Commission also.

We have carefully considered the submissions of the learned counsel for the petitioner.

When the petitioner has conceded that he is not interested in questioning the orders passed by the said Forum i.e., State Commission, the writ petition is liable to be thrown out in limini as he cannot call upon the Court to adjudicate the legality or otherwise of the provisions of a Statutory enactment in vacuum or academic interest. Therefore, there is no necessity for us to adjudicate the said issue. However, even on examination of the issues raised by the petitioner, we do not find any merit whatsoever therein for the following reasons.

In order to deal with the submissions of the learned counsel for the petitioner, it is necessary to refer to the relevant provisions of the Act hereunder:

“10. Composition of the District Forum.—

(1) Each District Forum shall consist of,—

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

12. Manner in which complaint shall be made.—

(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by—

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected: Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant: Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act: Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other court or tribunal or any authority set up by or under any other law for the time being in force. Explanation.—For the purposes of this section, “recognised consumer association” means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.]

14. Finding of the District Forum.—

Section 14(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.]

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

15. Appeal.—Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Provided that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

16. Composition of the State Commission

(1) Each State Commission shall consist of—

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;

(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognised university; and

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst persons having a judicial background.

Explanation.—For the purposes of this clause, the expression “persons having a judicial background” shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level.

(1B) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

18. Procedure applicable to State Commissions.—

The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission

Rule 12. Hearing by Benches:

Where a Bench, constituted by the President of the State Commission or the National Commission as provided under Section 16 or Section 20 as the case may be, does not have a member with judicial background and any complex question of law arises and there is no precedent to decide the point, the Bench so constituted may refer the matter to the President of the State Commission or the National Commission as the case may be to constitute another Bench of which the President shall be a Member.

Rule 6(9) Where any such vacancy occurs in the office of the President of the State Commission, the senior most (in order of appointment) member holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the State Commission.

Rule 6(10) When the President of the State Commission is unable to discharge the functions owing to absence, illness or any other cause, the senior most (in order of appointment) member of the State Commission shall discharge the functions of the President until the day on which the President resumes the charge of his function.”

As regards the submission of the learned counsel for the petitioner that the Members in the State Commission are equal in rank with the President of the District Forum, under Section 10(1)(a) of the Act, it is sufficient, if a person is qualified to be a District Judge, to be its President.

However, as for the State Commission, to be a Member from the category of persons having judicial background, one must not only have knowledge, but also experience for atleast 10 years as Presiding Officer of the District level Court or any Tribunal at equivalent level. Thus, the qualifications prescribed for being selected as President of the District Forum and Member of the State Commission are at variance with each other. In other words, to be appointed as President of the District Forum, one need not even be a District Judge and even if he is a District Judge, he need not have presided over the Court at District level or any Tribunal for a period of atleast 10 years unlike in the case of a Member of the State Commission. When there is no parity in the qualifications prescribed for selection and appointment to the office of the President of the District Forum and the Member of the State Commission, there could be no comparison between them, and consequently, no attempt can be made to equate both these categories.

Indeed, under Section 10(1)(a) of the Act, the Selection Committee consisting of the President of the State Commission; Secretary, Law Department of the State; Secretary, incharge of the Department dealing with consumer affairs in the State, who, upon selection and recommendation by the State Government appoint the President and Members of the District Forum. Similar exercise

is prescribed under Section 16(1)(a) of the Act, for selection to the posts of Members of the State Commission. When the selection process is undertaken separately for both these categories with different qualifications prescribed therefor, it is arduous to compare the person selected as a Member of the State Commission with a person selected as President of the District Forum through the Selection Committees constituted therefor.

The submission of the learned counsel for the petitioner that absence of the President of the State Commission on the Bench and his not signing the orders of the Bench not presided over by him runs contrary to Section 14(2A) of the Act, is also without any merit. If we consider the scheme of the Act, the District Forum shall comprise only one Bench presided over by the President. Therefore, Section 14 of the Act envisages signing of the orders by the President, who inevitably will be part of the Bench dealing with every case decided by the District Forum. In contrast, the State Commission may comprise multi-Member Benches with the President presiding over one Bench in which he sits and two or more independent Members functioning as separate Benches. As the State Commission is intended to be a multi-Member Bench, the President cannot be expected to sit in every Bench. Therefore, if a Bench, constituting two or more Members only without the President, passes orders, such orders cannot be expected to be

signed by the President without being part of the said Bench. In our opinion, the comparison between Sections 14 and 16 of the Act is wholly preposterous as these provisions govern the proceedings before different Fora with dis-similar structure and constitution between them. In this view of the matter, we are of the opinion that the challenge to the provisions of Section 16 of the Act is wholly without any basis.

The submission that Section 16 of the Act runs contrary to Section 18 is equally fallacious. Section 16 deals with composition of the State Commission which is a counterpart provision to Section 10 of the Act dealing with the composition of the District Forum. Section 18 deals with the procedure which made the provisions of Sections 12, 13 and 14 of the Act and the Rules made thereunder mutatis mutandis applicable to the State Commission. The words “with such modifications as may be necessary” in Section 18 of the Act indicate that if a separate procedure is prescribed for disposal of the complaints by the State Commission, the procedure laid down under Sections 12, 13 and 14 of the Act need not be followed. When the plenary legislation itself has contained a provision in the form of Section 16(1B)(ii) facilitating constitution of Benches with one or more Members, it is idle to contend that Section 16 runs contrary to Section 10 of the Act. In other words, the modification referred to in Section 18 is envisaged

by the Act itself, which provided a separate procedure for disposal of the complaints to the extent of composition of Benches.

For the aforementioned reasons, the writ petition fails and it is accordingly dismissed.

Though the petitioner has stated that he is not interested in pressing the legality or otherwise of the orders of the Fora below, he nevertheless not only filed the writ petition but also secured interim suspension of the orders of the District Forum as confirmed by the State Commission. The petitioner has thus enjoyed the benefit of interim order for eight years in the guise of which he withheld the amounts legitimately due to respondent No.1 – Public Authority. For indulging in frivolous and vexatious litigation, the petitioner is saddled with costs of Rupees Fifty Thousand payable to respondent No.1.

As a sequel to the dismissal of the writ petition, interim order dated 03.12.2010 is vacated and consequently WPMP.No.38507 of 2010 is dismissed.

C.V. NAGARJUNA REDDY, J

GUDISEVA SHYAM PRASAD, J

16.08.2018.

Note: LR Copy

B/o

Msr

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

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16.08.2018

Msr