

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

WP.No.35480 of 2012

Date:03.08.2018

Between.

R.Bhojanna,
S/o Kistanna and four others.

.....Petitioners

And.

The District Consumer Forum,
reptd by its President, Adilabad
and six others.

.....Respondents

Counsel for the petitioners: Mr. D.Linga Rao

Counsel for respondent No.1: Mr. J.Anil Kumar

Counsel for respondent No.2: Mr. N.Praveen Kumar

Standing Counsel for Municipality

Counsel for respondent Nos.3 to 7: None appeared

The Court made the following:

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

Feeling aggrieved by order, dated 01.10.2012, in C.C.No.11 of 2012 on the file of respondent No.1-District Consumer Forum at Adilabad (for short 'the District Forum'), third parties to the said case filed this Writ Petition.

In spite of service of notice on respondent Nos.3 to 5 and 7, no one entered appearance on their behalf and contested the Writ Petition. Notice sent to respondent No.6 has been returned with the endorsement "No such addressee. For want of Door Number".

A perusal of the cause title of the respondents including respondent No.6, who figured as complainant in C.C.No.11 of 2012, shows that they were shown to be residents of Ward No.24 of Bhokthapur, Near Railway Tracks, Adilabad Town and District. The Registry of this Court has sent notices to respondent Nos.3 to 7 to the same address. Therefore, we treat that all the respondents have been duly served.

Respondent Nos.3 to 7 have approached respondent No.1-District Forum with the complaint that respondent No.2 has not been removing the illegal constructions on the Master Plan 50' road. They sought for a direction to respondent No.2 to remove the illegal constructions and lay the Master Plan 50' Road. By

the impugned order, respondent No.1-District Forum has allowed the said complaint.

The petitioners pleaded that though they will be the affected parties if the impugned order of respondent No.1-District Forum is implemented, they were not put on notice. They further pleaded that respondent Nos.3 to 7 do not fall within the definition of "Consumer" and the dispute raised by them does not fall within the definition of "Consumer disputes" under the Consumer Protection Act, 1986 (for short the Act'), and that accordingly, respondent No.1-District Forum had no jurisdiction to entertain the complaint and pass the impugned order.

The phrase "Consumer" is defined under Section-2(1)(d) of the Act and "Consumer dispute" is defined under Section 2(1)(e) of the Act. For convenience, they are reproduced herein below:

"Consumer means any person who buys any goods for a consideration which has been paid or promised or 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.

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

It is not the pleaded case of the petitioners that they have bought any goods from respondent No.2, and therefore, they do not fall under Sub-clause (i) of Section-2(1)(d) of the Act. It is also not their case that they availed any services for a consideration from respondent No.2 and consequently, they do not fall under Sub-clause (ii) of Section-2(1)(d) of the Act either.

The word “Complaint” is defined under Section-2(1)(c) of the Act. A reading of the said definition would show that any defect in goods or deficiency in services and a grievance relating to unfair trade practice while dealing with goods or services by a trader or a person who renders services are comprehended by the said definition. By no stretch of imagination, the public functions discharged by respondent No.2-Municipality could be brought within the fold of a trader dealing in goods or rendering services within the meaning of the above-mentioned statutory definitions.

We are, therefore, of the opinion that respondent No.1-District Forum *ex facie* lacks jurisdiction to entertain the complaint and grant the relief claimed by respondent Nos.3 to 7.

The impugned order is accordingly quashed and the Writ Petition is allowed.

As a sequel to disposal of the Writ Petition, WPMP.No.45079 of 2012 and WVMP.No.3865 of 2013 are disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

03rd August, 2018
DR

