

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

WRIT PETITION No.41022 of 2017

Date:23.08.2018

Between.

The Greater Visakhapatnam Municipal
Corporation, repto by its Commissioner,
Visakhapatnam.

.....Petitioner

And.

The Union of India,
Ministry of Consumer Affairs,
New Delhi and five others.

....Respondents

Counsel for the petitioner: Advocate General for AP

For Mr. S.Lakshminarayana Reddy

Counsel for respondent No.1: Mr. K.Lakshman

Asst. Solicitor General

Counsel for respondent Nos.2 to 4: Mr. Saptagiri Metta

Counsel for respondent No.5: Mr. M.Ravinder

Standing Counsel

The Court made the following:

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

This Writ Petition is filed for issue of *Certiorari* to call for the records from the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad (for short 'the State Commission') relating to order, dated 01.3.2016, in Consumer Complaint No.108 of 2013 and quash the same.

We have heard the learned Advocate General for the State of Andhra Pradesh appearing for the petitioner and Mr. Saptagiri Metta, learned counsel for respondent Nos.2 to 4.

As their ill luck would have it, the husband of respondent No.2 and the father of respondent Nos.3 and 4 met with an accidental death when an electrical pole erected on a public street, belonging to respondent No.5 and maintained by respondent No.6, fell on him while he was going in the street. Respondent Nos.2 to 4 were, therefore, constrained to approach the State Commission by filing Consumer Complaint No.108 of 2013 seeking compensation for deficiency of services arising out of the improper maintenance of the electrical poles erected on the streets.

Though respondent Nos.5 and 6 have entered appearance and contested the said Consumer Complaint by filing opposite versions, the petitioner has failed to respond to the notice

received by it from the State Commission and consequently, contest the said case. The State Commission upon hearing the respective pleas on behalf of respondent Nos.2 to 4 on the one hand and respondent No.5 and 6 on the other hand, rendered a finding that a duty and obligation lie on the petitioner to maintain the electrical poles properly and that on account of the negligence on its part, the electrical pole fell on the deceased resulting in his death. Accordingly, the State Commission has awarded a sum of Rs.13,33,000/- towards compensation together with interest @ 9% per annum from the date of filing of the said Consumer Complaint, *i.e.*, 17.9.2012 till realisation apart from awarding Rs.25,000/- towards mental agony and Rs.10,000/- towards costs. Feeling aggrieved by the said order, opposite party No.2 in the said Consumer Complaint filed this Writ Petition.

It is not in dispute that against the impugned order of the State Commission, the petitioner has a remedy of a statutory appeal under the Consumer Protection Act, 1986 (for short 'the Act').

The learned Advocate General for the State of Andhra Pradesh, however, submitted that the deceased was not a consumer within the definition of Section-2(1) (d) of the Act, in that, he neither bought any goods for a price nor availed any

services for a consideration and that, therefore, the impugned order passed by the State Commission is without jurisdiction and hence, the doctrine of alternative remedy is not applicable.

Opposing the above submissions of the learned Advocate General, Mr. Saptagiri Metta, learned counsel for respondent Nos.2 to 4, submitted that the petitioner has not chosen to contest the Consumer Complaint and that, it has filed the present Writ Petition only when the proceedings under Section-27 of the Act were initiated.

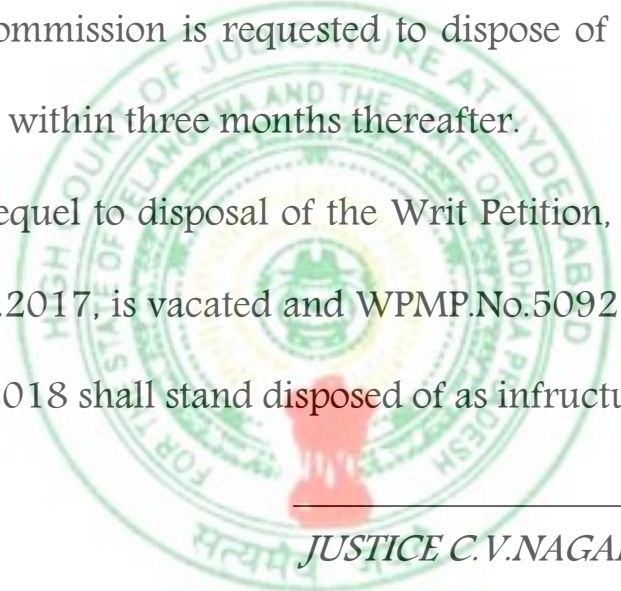
Ordinarily, this Court would not entertain the Writ Petitions by exercising its extraordinary original jurisdiction in cases where the aggrieved party has effective alternative remedies. In this case, however, the petitioner has pleaded a complete lack of jurisdiction on the part of the State Commission in entertaining and disposing of the Consumer Dispute. On the facts of the present case, we cannot readily infer that the State Commission inherently lacks jurisdiction as, the question whether the deceased falls within the definition of "Consumer" under the Act or not requires to be adjudicated based on the nature of the services rendered by the petitioner and the payments, if any, made by the general public for rendering such services. We also need to take note of the fact that no semblance of explanation is offered by the petitioner for its failure to

appear and contest the complaint before the State Commission. Therefore, we have an option to dismiss the Writ Petition *in limini* on the afore-mentioned conduct of the petitioner. However, we refrain from doing so, keeping in view the fact that the petitioner is discharging public functions and is the custodian of public money from out of which compensation was directed to be paid. We are therefore of the opinion that it would be in the interests of justice that the petitioner is given an opportunity to contest the afore-mentioned Complaint Case by raising all the pleas which are permissible under law including the one relating to the jurisdiction of the State Commission to entertain the said Consumer Complaint and adjudicate the same on merits.

However, we feel that the plight of respondent Nos.2 to 4, who lost their breadwinner and who have succeeded before the State Commission as far back as March, 2016 deserves to be considered. Till now, they have not received a penny towards compensation. By remanding the case to the State Commission, they will be subjected to further round of litigation. In these facts and circumstances, we feel that interests of justice would be met if the impugned order of the State Commission is set aside on imposition of compensatory costs of Rs.1 lakh on the petitioner payable to respondent Nos.2 to 4.

For the afore-mentioned reasons, the Writ Petition is allowed and the impugned order of the State Commission is set aside on condition of the petitioner paying Rs.1,00,000/- (Rupees One lakh only) to respondent No.2 on her and also on behalf respondent Nos.3 and 4 within one month from today. On such deposit, Consumer Complaint No.108 of 2013 shall stand restored to the file of the State Commission. Within one month of such restoration, the petitioner shall file its version. The State Commission is requested to dispose of C.C.No.108 of 2013 afresh within three months thereafter.

As a sequel to disposal of the Writ Petition, interim order, dated 05.02.2017, is vacated and WPMP.No.50927 of 2017 and I.A.No.2 of 2018 shall stand disposed of as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

23rd August, 2018

DR