

**(2004) 01 NCDRC CK 0105**

**In the National Consumer Disputes Redressal Commission**

AMRITA VENKATESWARLU

APPELLANT

Vs

KIRLOSKAR INVESTMENTS AND FINANCE LTD.

RESPONDENT

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**Date of Decision :** 08-01-2004

**Acts Referred:**

**Citation :** 2004 2 CPR 122 : 2004 3 CLT 170 : 2005 1 CPJ 308

**Hon'ble Judges :** M.S.Rane , R.N.Varhadi J.

**Final Decision :** Revision disposed of

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**Judgement**

1. WE are proceeding to dispose of this revision on consideration of the material, which has been made available in the appeal paper book.

2. AT the resume itself, we wish to state that this Commission in exercise of power conferred under Section 17 of Consumer Protection Act, 1986 took suo motu action specially, in view of peculiar circumstances and the petition has been numbered as Suo Motu Application No. 85/2003. On 26.6.2003 when this Commission was required to take cognizance and step into action, we have briefly adverted to the facts and circumstances entailing us to do so and which we have recorded in our brief recording made on 26.6.2003. "What we gathered that the Addl. District Forum, Nagpur, has made award in the complaint against the org. O.Ps. M/s. Kirloskar Investments and Finance Ltd. and in favour of the complainant Smt. Amrita Venkateswarlu. It appears that the said order remained to be complied with and it appears that on behalf of the complainant/decreed holder, District Forum was moved in execution application. It appears that although it was brought to the notice of the Addl. District Forum, Nagpur that under the order passed by Hon'ble High Court, Karnataka, Hon'ble Shri K.A. Swamy Retired Chief Justice of Madras High Court (Chennai) and Dr. K. Shrinivasan, IPS, Ex-Director General of Police, Karnataka were appointed as members of the Committee probably constituted by the Hon'ble High Court in the proceeding adopted under Companies Act in respect of assets of M/s. Kirloskar Investments and Finance Ltd. It appears that Addl. District Forum, Nagpur has proceeded to issue process of, warrants against the said Members of

the Committee for non-compliance of its order."

As processes of arrest warrants were issued to the Members of the Committee appointed/constituted by the Hon"ble High Court, Karnataka, we issued notices to the District Forum and to the parties. We thought it necessary to do so to know whether, (i) The said members were made parties to the complaint or for that matter to the Execution application moved by the complainant; (ii) Whether District Forum had issued and served its process upon them and given an opportunity to them to know and ascertain their obligations to comply with its award and their say as well; (iii) Whether District Forum was right and justified in issuance of such process in execution proceedings at the execution stage when they i.e., Committee members were not parties to the complaint; (iv) Whether they (Committee Members) can be held responsible and accountable for non-compliance of the award, warranting issuance of process as done; and (v) Whether District Forum has followed and adhered to and complied with the formalities in the light of recent amendment of Section 27 of Consumer Protection Act, 1986 introduced w.e.f. 15th March, 2003. 4A. We also summoned the record and proceedings in the execution from the Additional District Forum, Nagpur. We also called for the report of the President of the Additional District Forum, Nagpur, which have been received and made available for our perusal.

3. THE complainant appeared through Advocate and the Advocate has submitted the written say on behalf of the complainant. It is to be stated that the District Forum had entertained the execution application presented by and on behalf of the complainant, in which the Additional District Forum issued the process as it appears from the reproduced portion of our earlier order dated 26.6.2003. O.P. also filed the affidavit in the proceedings herein detailing the circumstances in which the order was passed despite their opposition.

4. CONSIDERING importance and seriousness of the matter, we directed the complainant to file the affidavit, when on 13.8.2003, matter appeared before us, one Mr. T.S. Pathak, learned Advocate appeared on behalf of the complainant. However, no such affidavit has been filed. On perusal of record and proceedings on the file of District Forum, report of the Hon"ble President of Additional District Forum, Nagpur and the pleadings in application herein (i.e., statement filed on behalf of the complainant, which is not, as stated on affidavit, under signature of her Advocate, and the affidavit of the original O.P., what we gather is follows: That the application, which the complainant made seeking execution before the Additional District Forum, Nagpur was under Section 27 of Consumer Protection Act, 1986 seeking issuance of warrant process and the Additional District Forum, Nagpur, issued its process under Section 27 by issuance of warrants against the Hon"ble Mr. K.A. Swamy, Retired Chief Justice of Madras High Court (Chennai), as also Dr. K. Shrinivasan, I.P.S. Ex-Director General of Police, Karnataka, as sought for and who were appointed/nominated by the Hon"ble High Court, Karnataka, by its order passed in the proceedings adopted by certain creditors against the O.P. herein under the relevant provisions of Companies Act for

proposing the scheme with regard to settlement of the dues against the O.P. i.e., respondent herein M/s. Kirloskar Investments and Finance Ltd. It clearly emerges even from the report which has been submitted by the Hon'ble President of Additional District Forum, Nagpur that the process of warrants were issued to the said Hon'ble Members mentioned herein above, was on a mere application of the complainant moved at execution stage and without issuance of prior notices to them. It clearly emerges that the District Forum did not issue any prior processes to those Hon'ble Members to whom it had issued warrants. Undisputedly said Committee Members were and are not parties to the complaint proceedings. However, it is noticed that the Addl. District Forum, Nagpur, realising this, had promptly withdrawn its process of warrants and matter rests at that.

5. PROCESS of warrant is a most stringent and static action, which gravely affects/jeopardises right of liberty and freedom of a citizen which is a precious right guaranteed under the constitution as one of the fundamental rights, and, therefore, it is necessary that before proceeding to take such a drastic action, it is necessary to exercise caution and be circumspect and not to resort to an action inviting penal consequences, as is the case herein, in a casual and lighter manner, as it appears to have been done.

6. HOW far the Addl. District Forum was justified in resorting to issue of processes under Section 27 of Consumer Protection Act, 1986 on the parameters as mentioned in paragraph 4 above of the judgment, would need consideration. First of all, we only reproduce Section 27 of Consumer Protection Act, 1986 as it stands after amendment brought into effect from 15th March, 2003- "27. Penalties-(1) Where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both."

By plain reading of the said provisions, it would imply that the provisions thereof which are of penal nature would apply to "a trader or a person against whom a complaint is made". It would imply that the party against whom the process under the said provisions is to be applied and issued has in the first instance to be a party to the complaint. This further demonstrates from the expression as appeared in the said section reading as "Such trader or person shall be punishable with imprisonment, etc.". This further lends support to the fact that only the party against whom the award has been made or any order passed in a consumer dispute can be dealt under the provisions of the said section.

In the instant case as we noticed that Hon'ble Committee Members appointed by the Hon'ble High Court of Karnataka were admittedly not parties to the consumer dispute herein. As stated they were functioning and acting at the behest and under the orders of the Hon'ble High Court, Karnataka. The said

Members have very limited role to play and the Committee was to function under the orders as also under the supervision and directions of the Hon'ble High Court, Karnataka. The award in question is not against the said Committee members and certainly it is not also the case of the complainant that otherwise they will be liable to meet the liabilities under the award in question by applying the same. In short, the Committee Members are strangers to the proceeding to the consumer dispute herein.

7. NOTWITHSTANDING, it is noticed that on behalf of the complainant an application was presented before the Addl. District Forum which was not even on affidavit of the complainant but under the signature of the Advocate of the applicant for issuance of processes under Section 27 of Consumer Protection Act, 1986 and Addl. District Forum proceeded to issue the processes of warrants against the said Committee Members. As would be noticed by reading the provisions of the said section already reproduced herein above such course was not at all permissible under the statute. This is more so when the Addl. District Forum has not issued appropriate process to the Committee Members, prior to issuance of processes of warrants as has been done. In this respect, we wish to state that the proceeding as contemplated under Section 27 of Consumer Protection Act, 1986 and as recently held by the Division Bench of Allahabad High Court in the case of Ghaziabad Development Authority v. Union of India and Another, reported in 2003 CTJ page 863, wherein it is stated which we only reproduce as it appears in the head note itself: "Considering the nature and purpose of the proceedings under the section, they are really in the nature of proceeds for civil contempt compelling obedience of the Forums" orders-only procedure required to be followed in them is to make compliance with the principles of natural justice."

It would thus be noticed that the said judgment clearly underlines that the principles of natural justice have to be followed before recourse to the process under Section 27 of Consumer Protection Act, 1986.

8. USEFULLY, we may make reference to yet another decision of Full Bench of the Andhra Pradesh High Court in the case of Dr. C.V. Raman v. Union of India and Others, reported in 2002 CTJ 421, and paragraph 46 of the said judgment sums up the modalities and principles underlined thereunder as under: "46. By reason of the aforementioned provisions, not only the opposite party but also the complainant can be proceeded against. The statute has thus made no discrimination. Parliament in exercise of its legislative competence may provide for a provision in terms whereof a statutory authority would become entitled to impose a penalty. There cannot, however, be any doubt whatsoever that before a penalty is imposed, the principles of natural justice have to be complied with. The authorities under the Act, can pass an ex parte interim order. Section 27 can be taken recourse to only by way of a last resort. It has evidently been enacted for the purpose of dealing only with such defaulters, who, despite several opportunities, failed and/or negligent to comply with the directions."

Further, recently the Hon"ble Supreme Court in the case of State of Karnataka v. Vishwabharathi House Building Co-operative Society, reported in I (2003) CPJ 1 (SC)=I (2003) SLT 435=AIR 2003 Supreme Court page 1043, equivalent to (2003) 1 CLD page 570 (SC), has held in paragraph 58 as under: "58. Furthermore, Section 27 of the Act also confers an additional power upon the Forum and the Commission to execute its order. The said provision is akin to Order 39, Rule 2-A of the Code of Civil Procedure or the provisions of the Contempt of Courts Act or Section 51 read with Order 21 Rule 37 of the Code of Civil Procedure. Section 25 should be read in conjunction with Section 27. A Parliamentary statute indisputably can create a Tribunal and might say that non-compliance of its order would be punishable by way of imprisonment or fine, which can be in addition to any other mode or recovery."

It is further to be stated that on or after the amendment to Section 27 of Consumer Protection Act, 1986 under Sub-section (2) thereof the Legislature has made provisions as to how the Forum should process the matter when application for issuance of process under Sub-section (1) of the said section is made. The Forum has been empowered with the power of a Judicial Magistrate of the First Class for trial of offences under this Act, and Sub-section (3) of the said section also provides the trial has to be by adherence to summary procedure.

9. IN the matter herein, we do not find any such steps, have been taken by the Addl. District Forum, Nagpur while issuance of the processes as done in the matter herein.

10. WE wish to also mention at this stage, certain guidelines, which this Commission has issued and circulated to all the District Forums in the State in this regard incorporating the procedure to be followed and principles to be applied has enunciated in the judgments referred to herein above. However, regretfully, the Addl. District Forum has not adhered to the same. In the circumstances, we quash the processes of warrants issued against the Hon"ble Committee Members, Hon"ble Retired Chief Justice of High Court of Madras (Chennai), Shri K. A. Swamy and Dr. K. Shrinivasan, IPS, Ex-Director General of Police, Karnataka, under Section 27 of Consumer Protection Act, 1986.

We being the Appellate Forum under the Consumer Protection Act, 1986 as far as this State is concerned, express our sincere regret over the avoidable embarrassment caused to the Hon"ble Committee Members and express our sincere apology for the same. ORDER 1. Application is allowed and processes issued by Additional District Forum, Nagpur in the matter herein under Section 27 of Consumer Protection Act, 1986 against Hon"ble Committee Members, Hon"ble Retired Chief Justice of High Court of Madras (Chennai), Shri K.A. Swamy and Dr. K. Shrinivasan, IPS, Ex-Director General of Police, Karnataka, constituted by the Hon"ble High Court, Karnataka stand quashed. 2. Copies to be furnished to the parties as also to the Addl. District Forum, Nagpur. 3. We also direct the Registry to forward copies of this order to the Hon"ble Retired Chief Justice of High Court of Madras (Chennai), Shri K.A. Swamy and Dr. K.

Shrinivasan, IPS, Ex-Director General of Police, Karnataka. 4. We however make it clear that quashing of the processes under Section 27 of Consumer Protection Act, 1986 by us vide this judgment shall not operate as an impediment to the complainant taking steps for execution of the impugned order in accordance with the provisions of the law and the rules and which the District Forum shall consider on merits. 5. We also direct the Registry of this Commission to circulate copies of this order to all the District Forums in the State.

Suo Motu Revision disposed of.