
(2016) 08 NCDRC CK 0009

In the National Consumer Disputes Redressal Commission

Case No : 2514 of 2014

Bharadwaja Complex Welfare

APPELLANT

Vs

B. Vijay Bhaskar

RESPONDENT

Date of Decision : 29-08-2016

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 190](#), [Section 200](#) - Cognizance of offences by Magistrates - Examination of complainant
[Indian Penal Code, 1860](#), [Section 1767-50](#)

Citation : 2016 3 CPR 635

Hon'ble Judges : B.C. Gupta

Advocate : Vishnu Sankar, David Rao, Athira G. Nair, S. Nanda, R.P. Singh

Judgement

1. This revision petition has been filed u/s 21(b) of the Consumer Protection Act, 1986 against the impugned order dated 1.05.2014, passed by the Andhra Pradesh State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in FA No. 674/2013 in "Bhardwaja Complex Welfare Association & Anr. Vs. Sri B. Vijay Bhaskar," vide which, while dismissing appeal, the order passed by the District Forum Ranga Reddy in consumer complaint No. 184 of 2011, allowing the said complaint, was upheld.

2. Briefly stated, the facts of the case are that the present respondent/complainant B. Vijay Bhaskar is owner of flat No. 120, Bharadwaja Complex, Gaddiannaram, Dilsukhnagar, Hyderabad. The OP/Petitioner is the Bharadwaja Complex Welfare Association, represented by its General Secretary and Manager. There are total number of 105 members of the said Association. It has been stated in the consumer complaint that on 01.10.2009, the OP demanded a sum of Rs.4,000/- from the complainant for carrying out the colouring of the exterior of the apartment complex. Since the complainant did not pay the said amount, the electric supply to the complainants flat was allegedly cut-off partially on 04.10.2009. Further, on 31.10.09, the Association announced the cut-off of total electricity of the complainant's apartment on a black-board located near the

entrance of it, although at that time, his wife, 3-year old daughter and 70-years old mother were present in the flat. The complainant's wife made a written complaint to the local police on 1.11.2009, alleging suffering and harassment at the hands of the Association. The said electricity was restored after a period of one month. Subsequently, the Association installed a water regulator device on the pipe leading to water-supply in the complainant's bath room. It is further alleged that since January 2010, the letters addressed to the complainant's house were also intercepted by the watchman on the instructions of the manager of the Society. The Association again demanded a sum of Rs.4,000/- from the complainant on 04.01.2010. The complainant borrowed monies from his relative and paid a sum of Rs.4,000/- to the OPs. It is stated in the complaint that on account of mental harassment, humiliation and agony caused by the OPs, the complainant's wife was forced to consume poison, whereupon she had to be admitted to the hospital for treatment and had to remain in the intensive care unit for some time. The complainant had to incur a huge expenditure on her treatment. The complainant also alleged that there had been damage to their bath room due to action of the OP Association to install regulator on the water pipe. The consumer complaint in question was filed, seeking directions to the OPs as follows:-

- "(a) To rectify the leakages in the complainant's flat No. 120,
- (b) To pay a sum of Rs.1,25,000/- alongwith interest 24% for p.a. from 18/03/2010 towards Hospital Expenditure caused by the Opp. Party.
- (c) To reimburse Rs.4,000/- towards collecting painting charges with interest 24% p.a. from till the date of realisation.
- (d) To pay an amount of Rs.2,00,000/- towards damages and for mental agony sustained by the Complainant and his family specifically his wife,
- (e) To award costs of Rs.50,000/- for this Complaint,"

3. The complaint was resisted by the OP Association by filing a written statement before the District Forum, in which they stated that payment of Rs.4,000/- for colouring/painting of the exterior of the building and repair of civil works was being made by all the flat owners without any dispute. The action of the complainant in refusing to make the payment was, therefore, not justified. On the other hand, the complainant instituted criminal action against the OPs which was pending before the Metropolitan Magistrate. The complainant even filed a writ petition against the OPs, seeking directions to the Police authorities to register complaint against the office bearers of the Association. The Hon'ble High Court disposed of the petition by giving liberty to the complainant or his wife to file petition under section 190 of Cr.P.C. The OPs stated that the complainant and his wife were litigant people and had instituted various proceedings against them. They stated that the wife of the complainant was admitted to some hospital after consuming poison, but the Association was not concerned in any manner with the episode.

4. The District Forum after taking into account the averments made by the parties, allowed the complaint and directed the OP Association to rectify the leakage in the complainant's bathroom. They also directed them to remove the water regulator device attached to the pipeline supplying water, at their own cost. In addition, the OP Association was directed to pay a sum of Rs.3 lakh as compensation for mental agony etc. and Rs.5,000/- as litigation cost. Being aggrieved against the said order, the OP Association challenged the same by way of first appeal before the State Commission and the said appeal having been dismissed vide impugned order, the OP Association is before this Commission by way of the present revision petition.

5. During hearing, the learned counsel for the petitioner/OP Association stated that the Association had the responsibility to look after the common areas of the premises in question. The complainant being member of the Association did not come under the definition of consumer. Further, the complainant had filed false criminal complaints against them for no fault of theirs. The petitioner denied that they had installed the water regulator device on the pipe supplying water to the complainants' flat. It is further stated that under section 21 of AP Apartments (Promotion of Construction & Ownership) Act, 1987, the Welfare Association was entitled to disconnect water, power, lights in passages and on staircases, and lifts and conservancy of sanitary service of any member for just and sufficient cause.

6. The Ld. Counsel for the respondent/complainant stated that his complaint against the OP Association was maintainable, as he was the consumer of the services provided by the Association. It was clear from the bye-laws of the Association that they were under obligation to maintain the pipe-lines in the common areas properly. The OP had disconnected the power supply to their flats, as was clear from the writing on the black-board on the premises. The Ld. Counsel also stated that the officials of the Association had misbehaved with his wife by compelling her to come to attend meetings at odd hours, without any prior notice and using vulgar language against her in the presence of other residents. The Ld. Counsel has drawn attention to the order passed by the Special Magistrate, Ranga Reddy District in complaint under section 200 Cr. P.C. by the wife of the complainant against the officials of the OP Association by which the respondents including the General Secretary and OP 1 & 2 had been convicted for offence punishable u/s 506 IPC and sentenced to undergo simple imprisonment for a period of 3 months.

7. I have examined the entire material on record and given a thoughtful consideration to the arguments advanced before me.

8. It is clear from the facts of the case that the whole dispute had arisen from the refusal of the complainant to pay Rs.4,000/- to the OP Association for colouring / painting of the outer premises of the flat in question. The first point to be considered in the whole episode is whether the complainant has the status of consumer, vis-?-vis, the Association. It is true that the Association consists of members who are residents of that very complex, but they are required to

provide facilities to the residents as stated in their bye-laws. Clause 12(1) of the Bye-laws provides as follows:-

"12(i) the funds so raised by the Association shall be utilised towards the maintenance of common areas and facilities like the compound wall, the roads, water supply, common drainage, lighting of the common areas, gardening, cleanliness and sanitation, lifts generator, pumps, storage tanks, white washing and painting of common areas, external surface of the building and cable T.V."

9. It is clear from above that there is a duty cast upon the OP Association to raise funds from the members and then provide facilities as stated in the bye-laws. The complainant, being a beneficiary of these services, therefore, falls under the definition of "consumer". I, therefore, do not agree with the contention of the petitioner that the complaint in question is not maintainable on the ground that the complainant did not come under the category of "Consumer".

10. A glance at the sequence of events in the case reveals that there was serious dispute between the complainant and the office bearers of the Association, following the refusal of the complainant to pay a sum of Rs.4,000/-. It has not been made clear by the complainants anywhere as to why they refused to pay their dues to the Association, as was being done by other members of the Association. There were criminal proceedings between the complainants and the OPs and as per order dated 21.04.2015, the petitioners were even convicted by the Criminal Court. There are allegations that the wife of the complainant consumed poison due to harassment made by the office bearers of the OP Association.

11. In so far as the commission of criminal offence is concerned, the same has already been taken cognisance by the local police and the judicial court and the necessary orders were made in the case CC 318/2011. The main point to be decided in the present consumer complaint is whether the complainants are entitled for any compensation keeping in view the facts and circumstances of the case. The District Forum in their order directed the Association to rectify the leakages in complainant's bathroom and to remove water regulator device attached to the pipeline supplying water to their flat. There is nothing wrong with this direction and the same is upheld. The OP Association is directed to remove the water regulatory device etc. if installed and also carry out the necessary repairs in the pipes leading to the flat of the complainant. However, in so far as the payment of compensation is concerned, it is felt that the District Forum has awarded a sum of Rs.3 lakh to the complainant without spelling out any reasonable basis for coming to their conclusion. It is quite apparent that had the complainant paid the usual charges to the Association, the whole issue might not have arisen. However, looking at the sequence of events and the orders passed by the criminal court as well, it is felt that the OP Association shall be liable to pay a sum of Rs.50,000/- to the complainant for the alleged mental harassment and agony caused to his family. This petition is, therefore, partly allowed and the orders passed by the Consumer Fora below modified to the extent that a

compensation of Rs.3 lakh shall stand reduced to Rs.50,000/-. There shall be no order as to costs.