
(1999) 04 NCDRC CK 0070

In the National Consumer Disputes Redressal Commission

MANJOG CONSULTANCY SERVICES

APPELLANT

Vs

H.B.K.SHASTRY

RESPONDENT

Date of Decision : 22-04-1999

Acts Referred:

Citation : 1999 0 CTJ 667 : 1999 2 CLT 266 : 1999 2 CPC 352 : 1999 2 CPJ 521 : 1999 2 CPR 287 : 1999 2 CPR 521

Hon'ble Judges : N.D.V.Bhatt , B.H.Kamalamma , Abdul Perwads J.

Final Decision : Appeal dismissed

Judgement

1. IN this appeal, the point for consideration is as to whether the District Forum has committed an error in correcting its earlier order by way of review.

2. A few facts need to be stated for the disposal of this appeal : The complainant had approached the District Forum, praying for the reliefs reflected in his complaint. It appears that the District Forum, in the context of the decision of the Hon"ble High Court of Karnataka, in Contempt Petition No. 56/89 and under the bonafide belief that the opposite party (instant appellant) is a "Company" within the meaning of that expression under the Companies Act, was of the view that the complainant will have to put in his claim before the Official Liquidator. In that view of the matter, by its order dated 16.1.1996, the District Forum directed the Complainant to appear before the Official Liquidator to agitate regarding his claim. The complainant, by a separate application, brought to the notice of the District Forum that the opposite party is not a Company but a proprietorship firm and that therefore the observation of the Hon"ble High Court, in the Contempt Petition, referred to in its order, has no application and the complaint is maintainable before the District Forum and prayed for the correction of the mistake by reviewing the same. The notice of the said application appears to have been given to the opposite party by the District Forum. The opposite party in its objection, among other things took up a contention that the District Forum has no power to review its own order. It is also decided that a few decisions including those of the Hon"ble National Commission were pressed into service

before the District Forum. The District Forum, took the view that, in the facts and circumstances of the case, it has got the power to review its order, with the result/the order dated 16.1.1996 was recalled and the complaint was restored to file by its order dated 10.12.1998. It is this order of the District Forum which is challenged before this Commission by way of this appeal.

The main thrust of the submission made by Mr. Shivaprasad, the learned Counsel for the appellant, is that the District Forum after passing the order dated 16.1.1996 had become "functus officio" and it has no power to review its own order. The learned Counsel, dilating on this aspect, submitted that, if at all the complainant was aggrieved by the order of the District Forum dated 16.1.1996, the complainant's remedy was to prefer an appeal against the said order before the State Commission, and a review petition filed at a later point of time before the District Forum, is not maintainable at all. In support of his submission, the learned Counsel for the appellant has placed before us the decisions of the Hon'ble National Commission, viz., the decision reported in 1997 (1) CPR 42, and the decision reported in 1991 (5) CPR 614. Reliance is also placed by the learned Counsel on the decision reported in I (1995) CPJ 57 (NC), and the decision reported in III (1993) CPJ 1787. Pressing into service these decisions the learned Counsel for the appellant contended that the order passed by the District Forum is liable to be set at naught and the application filed by the instant respondent, praying for the review of the earlier order dated 6.1.1996, is liable to be dismissed.

3. ON the other hand, Mr. Gopalaswamy, the learned Counsel appearing for the respondent) contended that the decisions pressed into service by the other side have no application to the facts of the instant case. Dilating on this aspect, the learned Counsel contended that it is permissible for every Court or the Tribunal and a judicial body to correct its own patent mistake. The learned Counsel added that such a Court or a judicial body has got not merely the power to correct its own mistake, but has a duty to correct its mistake, on the face of its order. In the connection, the learned Counsel for the respondent has placed reliance of the decision of the Hon'ble Supreme Court reported in AIR 1997 SC 2660. We have given our anxious consideration to the submissions made on either side.

4. WE have carefully gone through the decisions of the Hon'ble National Commission as also the decision of the Hon'ble Supreme Court. WE have also gone through our judgment in Appeal No. 209/97. It is true that the Hon'ble National Commission has held in the decision, pressed into service by Mr. Shivaprasad, that a Commission or a Forum has no power of review except in the context of the provisions reflected in Section 13 of the Consumer Protection Act, 1986 (hereinafter referred to as "The Act" for short). In the other case, the National Commission has further held that reliefs can be granted by the Commission or the Forum under Section 14 of the Act, and once when a relief is granted under Section 14 of the Act, the District Forum cannot review its own order by correcting its order in that behalf. It is needless to say that the ratio

reflected in the said decision is unexceptionable. However, what is required to be considered in this case is as to whether a patent mistake committed by the Court or a judicial body or a Tribunal can be corrected by the said Court or the judicial body or the Tribunal. It is well-settled that a quasi-judicial body with judicial powers "is a Tribunal". If any authority is needed on this proposition, we would like to place reliance on the decision of the Allahabad High Court reported in AIR 1974 All. 275, and the decision of our Hon"ble High Court reported in AIR 1991 Kar. 234. Further, the decision of the Hon"ble Supreme Court reported in AIR 1997 SC 2660, will not leave any doubt with reference to the legal position in this behalf. The sum total of these decisions is "actus curae meminem gravevit". The meaning of the said maxim is that the act of the Court shall prejudice none. In that behalf, it is ruled in substance in the aforesaid decisions that a Court or a Tribunal has not merely the power to correct its own mistake but also has a duty to do the same. We may point out here that a Court of law or a quasi-judicial body is likely to commit many types of mistakes. It is not as if every mistake committed by a Court can be corrected by way of a review. If however, a patent mistake, without the intervention of anyone is committed by the Court of its own, such mistakes will have to be corrected by a Court of law or a quasi-judicial body as a matter of duty. In the instant case, it is not in dispute that the opposite party is not a Company. It was not anybody's case that the opposite party was a Company. However, the District Forum obviously believed under a bonafide mistake that the opposite party was a Company and passed the order which is passed. This, therefore, clear that the mistake committed by the District Forum is patent. In other words, the mistake is writ large on the face of the order. If that be so, for the reasons stated hereinabove, the District Forum has not merely the power to correct its mistake, but also has got a duty to correct its mistake, in view of the decisions referred to earlier. The decisions of the Hon"ble National Commission, pressed into service by Mr. Shivaprasad, the learned Counsel for the appellant, do not cover a situation like the one in hand. In that view of the matter, we are of the view that the said decisions are not of any assistance to the learned Counsel for the appellant.

5. FOR the reasons stated hereinabove, we are of the view that the order passed by the District FORum, and which is challenged before this Commission, cannot be found fault with.

6. ACCORDINGLY, the appeal is liable to be dismissed. Hence, the appeal is hereby dismissed. We make no order as to costs in this appeal. Appeal dismissed.