

(1991) 03 AP CK 0037
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 300 of 1991

Tulasi Enterprises

APPELLANT

Vs

Andhra Pradesh State Consumer Commission, Hyderabad and
Another

RESPONDENT

Date of Decision : 14-03-1991

Acts Referred:

Andhra Pradesh State Consumer Protection Rules, 1987 — Rule 4(4), 7
Constitution of India, 1950 — Article 133, 226
Consumer Protection Act, 1986 — Section 12, 13, 13(4), 14, 17

Citation : AIR 1991 AP 326 : (1991) 2 AnWR 60

Hon'ble Judges : Jagannadha Rao, J;Eswara Prasad, J

Bench : Division Bench

Advocate : I. Koti Reddy, for B. Viswandha Reddy, for the Appellant;

Judgement

Jagannadha Rao, J.—The appellant M/s. Thulasi Enterprises has filed this appeal questioning the orders of a learned single Judge dated 28-2-1991 dismissing Writ Petition No. 2935/91.

2. The writ petition was filed by the appellant for the issue of a certiorari declaring that the Andhra Pradesh State Consumer Commission, Hyderabad has no jurisdiction to entertain CD. No. 117/90 filed by Sri R. Chandra Kant (second respondent) on its file and consequently the entire proceedings therein.

3. The facts of the case are as follows :--

The appellant is a partnership firm consisting of ten partners. They run a Mutual Benefit Fund. It is stated that there are 250 members in the said fund and that each member contributes Rs.2,000/- per month for a period of thirty months. The scheme runs for fifty months. On every third Sunday of the month, in the presence of the subscribers, their names will be written on chits and put up in a box. One of the subscribers will be asked to pick up one chit. Whosoever is successful in the draw, will be allotted a Maruti car or given a cash of Rs. 1,00,000/-, whichever is less. The members will be given simple interest on the

subscriptions. The 2nd respondent is stated to have joined the subscription and contributed Rs.2,000/- per month. It is stated that in August 1990, he became the successful allottee either for a Maruti car or for payment of cash of Rs. 1,10,000/-. He was declared the successful allottee in 1990 and a letter was addressed to him to that effect. On 23-8-1990, the second respondent approached the appellant requesting for allotment of a Maruti car and stating that he was going to pay any extra amount over and above Rs. 1,00,000/-. It is stated that accordingly on 25-8-1990, the appellant took a demand draft for Rupees 35,000/- in favour of a certain Maruti car-dealer and booked a car for the purpose of giving the same to the second respondent. It is stated that on 27-8-1990, the appellant received a letter dated 25-8-1990 from the second respondent stating that he wants allotment of the Maruti car or payment of Rs. 1,00,000/- as early as possible, not later than fifteen days. On 28-8-1990, it is stated that the appellant sent a letter to the second respondent informing him that a Maruti car was booked and an advance of Rs. 35,000/- was paid and that the second respondent should be ready to pay the difference. It is then stated that on 9-9-1990, the appellant received a legal notice from the second respondent's advocate demanding refund of Rs. 1,00,000/- or delivery of a car within one week. It is stated that there was no delay on the part of the appellant in fulfilling the obligations. There was, however, delay on the part of the Maruti Car dealer to supply the car. The appellant informed the second respondent that the amount of Rs. 1,00,000/- should not be returned inasmuch as a demand draft for Rs. 35,000/- was already taken. The appellant states that he informed the second respondent that they had no objection to pay the balance of Rs. 65,000/- to the second respondent. It was at that stage that the appellant received a notice from the A.P. State Consumer Commission to appear before the said Forum on 25-11-1990 pursuant to the complaint lodged by the second respondent.

4. Questioning the said notice, the present writ petition has been filed by the appellant contending that under Cl. 11 of the terms and conditions of the scheme, there is an arbitration clause for reference to an arbitrator subject to Hyderabad jurisdiction. It is stated that there is no relationship of buyer and seller between the 2nd respondent and the appellant. The appellant, therefore, contended that the State Consumer Commission has no jurisdiction to entertain the complaint. The learned single judge dismissed the writ petition at the stage of admission holding that the petitioner can as well raise all these questions before the State Commission. It is against this order that the present writ appeal is filed.

5. In this appeal, the learned counsel for the appellant, Sri I. Koti Reddi has contended that inasmuch as the question of jurisdiction of the State Forum is raised, it is open to the appellant to move this court under Art. 226 of the Constitution of India for a decision on the question of jurisdiction. It is stated that there is no relationship of consumer and seller between the second respondent and the appellant.

6. We are of the view that the learned single judge was right in not entertaining the writ petition under the Consumer Protection Act, 1986. The Act provides for better protection and the interests of the consumers and for that purpose, makes provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and matters connected therewith. In the statement of objects and reasons, it is stated that the Bill seeks to provide for better protection and the interests of the consumers and for that purpose, to make provision for the establishment of Consumer Councils and other authorities for settlement of consumer disputes. The Bill seeks to protect the various rights of consumers. It is further stated as follows:--

To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the district, State and Central levels. These quasi-judicial bodies will observe the principle of natural justice and have been empowered to give reliefs of a specific nature and to award wherever appropriate compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided.

Section 2 of the Act defines "complaint", "consumer", "consumer dispute" etc. S. 2(h) defines "District Forums" as the one established under S. 9(a). Section 2(k) defines "National Commission" as the forum established under S. 9(c). Section 2(o) defines "service". S. 2(3) provides that the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Chapter II provides for the establishment of the Central Consumer Protection Council. Section 7 provides for establishment of the State Consumer Protection Council. Chapter III deals with redressal of consumer disputes. Under S. 9, consumer Dispute Redressal Forum known as District Forum" is to be established by the State Government with the prior approval of the Central Government in each district of the State. Similarly, at the State level, the Consumer Disputes Redressal Commission is to be established under S. 9(b) and is to be known as the "State Commission". We then have the National Consumer Disputes Redressal Commission to be established by the Central Government under S. 9(c). So far as Andhra Pradesh is concerned, the District Forums and State Commission have been established. The National Commission has also been established by the Central Government. Section 12 provides for the manner in which a complaint is to be made, while S. 13 deals with the procedure to be followed on receipt of the complaint. S. 13(4) applies a few provisions of the CPC to the District Forum. Section 14 deals with the findings to be given by the District Forum. An appeal is provided to the State Commission against the orders of the District Forum. The appeal is to be filed within thirty days from the date of the order of the District Forum. Section 17 deals with the jurisdiction of the State Commission, while S. 18 deals with the procedure applicable thereto. Section 19 provides for a further appeal to the National Commission against the orders passed by the State Commission in exercise of its powers conferred under sub-clause (i) of sub-section (a) of S. 17. An appeal to the National Commission is also to be filed within thirty days. Power is given to

the State Commission as well as to the National Commission to entertain the appeal beyond thirty days. Section 21 deals with the jurisdiction of the National Commission, while S. 22 deals with the procedure applicable thereto. Section 23 is important and it provides that any person aggrieved by an order made by the National Commission in exercise of its powers conferred under sub-clause (i) of sub-section (a) S. 21 may prefer an appeal against such an order to the Supreme Court within a period of thirty days from the date of the order. However, the Supreme Court will entertain appeals after thirty days if sufficient cause is shown. S. 24 provides that every order of the District Forum, the State Commission or the National Commission shall, if no appeal has been filed against such an order under the Act, be final.

7. Coming to the question of execution of the orders, there is a separate provision under S. 25 for enforcement of the orders of the District Forum, State Commission and the National Commission as if they were decrees or orders made by the court in a suit. S. 26 provides for dismissal of frivolous and vexatious complaints. Section 27 provides for penalties and states that where a trader or a person against whom a complaint is made 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 shall be punishable with imprisonment for a term which shall not be less than one month and which may extend to three years or with fine which shall not be less than Rs. 2,000/-, but which may extend to Rs. 10,000/- or the punishment may be by way of imprisonment as well as fine.

8. It is also necessary to refer to two important rules in the A. P. State Consumer Protection Rules, 1987. Sub-clause (4) of Rule 4 which is applicable to the District Forum states that the District Forum may, on such terms as it thinks fit and at any stage, adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint shall be decided within ninety days from the date of service upon the opposite party where the complaint does not require analysis or testing of the goods, and within 150 days if it requires analysis or testing of the goods. Likewise, sub-clause (9) of Rule 7 which deals with the State Commission provides that the State Commission may, on such terms as it thinks fit and at any stage adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint shall be decided within ninety days from the date of the notice received by the opposite party where the complaint does not require analysis and testing of the goods, and within 150 days if it requires analysis and testing of the goods. Appeals against the (sic).

9. From a reading of the above provisions of the Act and the Rules, it is clear that a separate forum is constituted by the legislature at the District Level, at the State level and at the National level. Complaints can be lodged before the District Forum and in certain types of cases, before the State Forum. Appeals against the orders of the District Forum lie to the State Commission. Appeals against the

orders of the State Forum lie to the National Commissions. A further appeal lies to the Supreme Court against the orders of the National Commission. The appeals are normally to be preferred within thirty days. The complaints are to be disposed of within ninety days in cases where the dispute does not involve any analysis or testing. On the other hand, if it involves any analysis or testing, the complaints have to be disposed of within 150 days. The intention of the Legislature appears to be, therefore to provide for a speedy and expeditious remedy. In fact, the statement of objections and reasons clearly mentions that the Act is intended to provide speedy and simple redressal to consumer disputes by providing a self-contained quasi-judicial machinery.

10. It is true that whenever the Legislature creates a separate tribunal with a hierarchy of appeals, the jurisdiction of the High Courts under Art. 226 of the Constitution of India to deal with the orders passed by the said Tribunals is not and cannot be ousted. It is also true that whenever questions of jurisdiction are raised, the High Court normally permits such questions to be raised under Art. 226 of the Constitution and examines whether the applications or the other proceedings filed before the Tribunal are within the jurisdiction of the said Tribunal or not. But the High Court has a discretion to entertain the writ petitions and, in particular, to decide, for example, any questions of jurisdiction unless they involve serious or disputed questions of fact. It is not as if the High Court is bound to entertain every writ petition which raises a question of jurisdiction of a Tribunal.

11. In relation to the Consumer Protection Act, 1986, it is to be noted that apart from creating a hierarchy of tribunals, there is a specific provision made in S. 23 for a further appeal against the final orders of the National Commission. The intention of Parliament appears to be that final orders of the National Commission should not be questioned in the High Courts under Art. 226 of the Constitution of India. The District Forums are presided over by the Principal District Judge, while the State Commissions are presided over by no less a person than one who has been a Judge of the High Court or is a sitting Judge of the High Court. Surely, a litigant cannot be permitted to say that a District Judge at the level of the District Forums, or a retired or sitting Judge of the High Court at the level of the State Commission, is not competent to decide the question of jurisdiction. The entire intention of the Parliament was to give a speedy and effective remedy before these authorities. This intention will be defeated if parallel proceedings are permitted before the High Court under Art. 226 of the Constitution of India in respect of matters pending before the bodies under the Consumer Act. We are saying that merely because a question of jurisdiction is raised, the High Court should not feel it imperative to admit the writ petition. If a writ petition is permitted on the question of jurisdiction or other similar grounds, the parties would naturally have a remedy of Letters Patent Appeal and then a further appeal to the Supreme Court under Art. 133 of the Constitution of India. After the question of jurisdiction or other preliminary question is decided in proceedings arising in a writ petition and are carried to the highest court should

it be held that the matter is within the jurisdiction of the District Forum or the State Commission -- then the main case has to be then taken up by the District Forum or the State Commission, as the case may be. This would obviously entail extraordinary delay and would defeat the very purposes of the Act. We have already noticed that the rules provide for speedy disposal of the complaints normally within ninety days or in cases where any analysis or tests have to be conducted, within 150 days. The High Court is already burdened with heavy arrears and that is the precise reason why a separate hierarchy of tribunals has been created. It would therefore, be not wise for the High Court to take upon itself the burden of deciding disputes even if they relate to the jurisdiction which could be decided by the District Forums, presided over by District Judges or by the State Commissions, presided over by sitting or retired High Court Judges.

12. What we have stated above is to be the normal rule. We are saying that merely because a question of jurisdiction is raised, the High Court should not normally intervene in the matter pending before these bodies. There may indeed be rare cases where there may be, -- apart from the question of jurisdiction -- other situations compelling interference by the High Court. Those rare cases apart, we are of the view that normally the High Court should not intervene.

13. For all these reasons, we are of the view that the High Court should not entertain any writ petition under Art. 226 of the Constitution of India in regard to matters filed before the District Forums or the State Commission under the Consumer Protection Act, 1986, except in the rarest of the type of cases referred to above. We, therefore, agree with the learned single Judge and hold that the writ petition is liable to be dismissed.

14. The writ appeal is accordingly dismissed.

15. Appeal dismissed.