

Deepthi Coaching Centre Vs. Itta Krishnaiah

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Court : Andhra Pradesh State Consumer Disputes Redressal Commission
SCDRC Hyderabad

Decided On : Oct-06-1998

Judge : S. Parvatha Rao, President & the Honourable Dr. (Mrs.) Mamata Lakshmanan, Member

Appeal No. : R.P. No. 29 of 1997

Appellant : Deepthi Coaching Centre

Respondent : itta Krishnaiah

Judgement :

S. Parvatha Rao, President:

1. In this revision petition the petitioner questions the order dated 3.4.1997 of the Guntur District Forum in E.P. No. 48/1996 in O.P. No. 147/1996 holding its Director guilty for the non-compliance of the original order dated 3.9.1996 in O.P. No. 147/1996 as modified by order dated 28.11.1996 passed in LA. No. 228/1996 and imposing on him a fine of Rs. 1,000/- and also a sentence to undergo simple imprisonment of one month and in default of payment of fine to undergo simple imprisonment for one week. The impugned order also directed warrant against Sri V. Venkateswara Rao, the Director of the petitioner, for production before the Guntur District Forum for payment of the fine and also to undergo the imprisonment awarded.

2. We find that the order itself states that the execution petition was filed under Section 25 of the Consumer Protection Act, 1986 (the Act for short). The record of the District Forum in the E.P. also disclose that execution petition was presented under Section 25 of the Act. The prayer sought in that E.P. was to arrest the Director of the petitioner by issuing arrest warrant and sending him to prison till returning of the documents, and to attach the movable and immovable properties of that Director and auction the same, and to grant such other and further reliefs etc. It is obvious that all this was on the civil side. The interesting question that arises is whether in an application made under Section 25 of the Act without specific initiation of proceedings under Section 27 of the Act and without giving notice in respect of those proceedings to the party concerned, he could be have visited with punishment under Section 27 of the Act.

3. We are of the clear view that while passing orders in an execution petition filed under Section 25 of the Act this is impermissible for more than one reason. It is well established that proceedings under Section 25 of the Act are of civil nature and that they are independent and different from proceedings initiated under Section 27 of the Act which are of a criminal or quasi-criminal nature. If action is sought to be taken under Section 27 of the Act, separate proceedings will have to be initiated under that section and notice has to be issued to the person against whom action is sought to be taken under Section 27 and, after reasonable opportunity to him only, appropriate orders imposing punishment under that section can be made. This is imperative because orders passed under Section 27 of the Act effect the liberty of the person concerned inasmuch as a sentence of imprisonment can also be imposed under that section both directly as well as if and when the fine if imposed is not paid. In *M. Umamaheswara Base Babu v. Botnmakanti Rama Murthy*, 1998 ALD (CONSUMER) 204, we held that Sections 25 and 27 provided for two independent remedies - Section 25 on the civil side and Section 27 on the criminal or quasi-criminal side - though both were intended for enforcement of the orders. After referring to the various decisions we observed mat the procedure to be followed under these two sections were also different.

4. In the present case we find that no separate proceedings were initiated against the petitioner or its Director under Section 27 of the Act by the District Forum. No

notice was given to the party concerned about such proceedings and no opportunity whatsoever was given to him to explain his stand. In view of this factual position we are constrained to hold that the imposition of fine and sentence on the Director of the petitioner, who was the respondent before the District Forum in E.P. No. 48/1996, apart from being without jurisdiction, is violative of principles of natural justice and fair play. We are well supported in this by the books. In *Vikmans v. Rakesh Kumar*, I (1992) CPJ 386, the Delhi State Commission held that proceedings under Section 27 of the Act were criminal in nature and that therefore adequate opportunity was necessary and that an accused could not be convicted in absentia. In *Jt. Secretary, Gujarat Secondary Education Board v. Daksha Ishwarlal Dhorajiya*, II (1993) CPJ 1058 the Gujarat State Commission held that before an order could be passed under Section 27, show-cause notice should be issued against the concerned person who was alleged to have disobeyed the order. The Gujarat State Commission further clarified as follows :

The provisions of Section 27 are quasicriminal and, therefore, before any penalty can be imposed the delinquent must be given full opportunity to defend his case. It means that he must be served with a notice pointing out the default committed by him. He must be also given an opportunity to file his defence and examine the witness if there is any and after full consideration appropriate order can be passed under Section 27.

A learned Single Judge of the Kerala High Court also took a similar view in *Babu Joseph v. Consumer Disputes Redressal Forum*, II (1997) CPJ 377 and held that since Section 27 of the Act gave ample power to the Tribunal to enforce their orders by imprisonment or fine or with both penalties together, principles of natural justice should be complied with before imposing punishment and the person sought to be proceeded against should be heard. In *Jose Philip v. Satish Nambisan*, I (1998) CPJ 108 the Kerala State Commission held that the principles laid down in the Civil Procedure Code applied only to proceedings under Section 25 and not under Section 27 of the Act because under Section 27 of the Act the Tribunals were not executing the orders as if they were decrees or orders by a Court in a suit.

5. In the result, we set aside the order of the District Forum purported to be under Section 27 of the Act imposing fine of Rs. 1,000/- and sentence of simple imprisonment of one month on the Director of the petitioner. The revision petition is accordingly allowed. The sum of Rs. 2,000/- deposited by the petitioner before the District Forum shall be returned to the petitioner on an application made for that purpose.

We make it clear that this does not preclude the District Forum from initiating action under Section 27 of the Act in accordance with law and from passing appropriate orders thereon after affording reasonable and adequate opportunity to the petitioner.

R.P. allowed.

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