

BEFORE THE A.P. STATE CONSUMER DISPUTES REDRESSAL COMMISSION
AT HYDERABAD.

EAIA 1262/2010 in E.A. 12/2010 in C.C. 30/2009



Between:

Srinivas Mopuri, S/o. Mobanna
Age: 33 years, R/o. 1509
Weatherford Drive, Austin, Texas-78753,
Rep. by his GPA Holder Mopuri Obanna
S/o. C. Kondaiah, Age: 63 years
R/o. 11-3-155, Venkateswara Colony
Road No. 12, Saroornagar
Hyderabad-35.

DHr/Complainant

And

1) M/s. Maytas Properties Ltd.
Earlier Mytas Hill County Pvt. Ltd.
Regd. Office: 6-3-1186/5/A, 3rd Floor
Amogh Plaza, Begumpet, Hyderabad,
Rep. by its Directors.

JDR/O.P1

2) Byra Raju Rama Raju
S/o. Ramalinga Raju
Plot No.12/4A, Road No. 63
Jubilee Hills, Hyderabad.

3) Datla Gopala Krishnam Raju
S/o. Satyanarayana Raju
H-17, Tulasi Apartments
Madhuranagar, S.R. Nagar
Hyderabad.

4) Ved Kumar Jain
S/o. Padam Sain Jain
R/o. 33, Babar Road
Bengal Market,
New Delhi.110 001.

Respondents/
(Proposed Ops 2 to 4)

EAIA 2125/2010 in E.A. 12/2010 in C.C. 30/2009

Between:

1) M/s. Maytas Properties Ltd.
Earlier Mytas Hill County Pvt. Ltd.
Regd. Office: 6-3-1186/5/A, 3rd Floor
Amogh Plaza, Begumpet, Hyderabad,
Rep. by its Directors.

Petitioner/JDR/O.P1

2) Byra Raju Rama Raju
S/o. Ramalinga Raju
Plot No.12/4A, Road No. 63
Jubilee Hills, Hyderabad.

3) Datla Gopala Krishnam Raju
S/o. Satyanarayana Raju
H-17, Tulasi Apartments
Madhuranagar, S.R. Nagar

4) Ved Kumar Jain
S/o. Padam Sain Jain
R/o. 33, Babar Road
Bengal Market,
New Delhi. 110 001.

Petitioners/
(Proposed Ops 2 to 4)

And

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Age: 33 years, R/o. 1509
Weatherford Drive, Austin, Texas-78753,
Rep. by his GPA Holder Mopuri Obanna
S/o. C. Kondaiah, Age: 63 years
R/o. 11-3-155, Venkateswara Colony
Road No. 12, Saroornagar
Hyderabad-35.

DHr/Complainant

EAIA 2126/2010 in EAIA 1262/2010 in E.A. 12/2010 in C.C. 30/2009

Between:

1) M/s. Maytas Properties Ltd.
Earlier Mytas Hill County Pvt. Ltd.
Regd. Office: 6-3-1186/5/A, 3rd Floor
Amogh Plaza, Begumpet, Hyderabad,
Rep. by its Directors.

Petitioner/JDR/O.P1

2) Byra Raju Rama Raju
S/o. Ramalinga Raju
Plot No.12/4A, Road No. 63
Jubilee Hills, Hyderabad.

3) Datla Gopala Krishnam Raju
S/o. Satyanarayana Raju
H-17, Tulasi Apartments
Madhuranagar, S.R. Nagar
Hyderabad.

4) Ved Kumar Jain
S/o. Padam Sain Jain
R/o. 33, Babar Road
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Petitioners/
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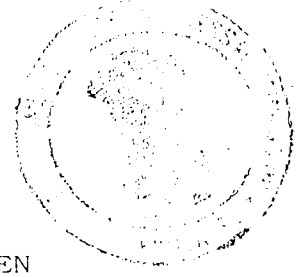
DHr/Complainant

Counsel for the Complainant:
Counsel for the Respondent:

M/s. Hari Babu
M/s. K. Vishwanath Reddy

CORAM:

HON'BLE SRI JUSTICE D. APPA RAO, PRESIDENT
&
SMT. M. SHREESHA, MEMBER



MONDAY, THIS THE THIRTEENTH DAY OF DECEMBER TWO THOUSAND TEN

Oral Order: (Per Hon'ble Justice D. Appa Rao, President)

1) The complainant filed EAIA No. 1262/2010 to implead the directors of respondent company viz., (1) Sri Byra Raju Rama Raju (2) Sri Datla Gopala Krishnam Raju (3) Vedkumar Jain to the proceedings in the proceedings filed in E.A. 12/2010. The respondent equally filed EAIA No. 2125/2010 to dismiss E.A. 12/2010 and direct them to proceed u/s 25(3) of C.P. Act instead of Section 27 of C.P. Act. It also filed EAIA. No. 2126/2010 to dismiss the application filed in EAIA No. 1262/2010.

2) Since in all these applications commons questions of fact and law arise they are disposed of by way of this common order :

3) The parties are described as arrayed in the complaint for felicity of expression.

4) On the complaint filed in C.C. No. 30/2009 against the respondent M/s. Maytas Properties Ltd., represented by its Directors (without naming any of them) by order dt. 30.4.2010 this Commission directed the respondent company to pay Rs. 63,37,984/- with interest @ 12% p.a., from 4.8.2008 till the date of realization together with compensation of Rs. 5 lakhs and costs of Rs. 5,000/-.

- 5) Aggrieved by the said order the respondent filed F.A. No. 189/2010 before the National Commission. While dismissing the appeal by order dt. 12.8.2010 the National Commission modified the order of this Commission and directed the respondent to refund the deposited amount of Rs. 63,37,984/- along with interest @ 12% from the respective dates of deposits till realization by awarding costs of Rs. 20,000/- within a period of four weeks from the date of order failing which it carries interest @ 15% p.a.
- 6) Aggrieved by the said order, the respondent company filed SLP No. 26256/2010 before the Hon'ble Supreme Court and the same was dismissed on 27.9.2010.
- 7) The complainant filed E.A. No. 12/2010 u/s 27 of C.P. Act alleging that the order was not complied and therefore liable to be punished u/s 27 of C.P. Act. Along with said application the complainant filed EAIA No. 1262/2010 to implead the directors of respondent company viz., (1) Sri Byra Raju Rama Raju (2) Sri Datla Gopala Krishnam Raju (3) Vedkumar Jain to the proceedings
- 8) Since this Commission has observed that the representatives of the opposite party company was not mentioned, which is required for execution or implementing the order of this Commission, for which the matter was adjourned to 22.6.2010. On that he filed a certified copy of present directors mentioning the names of above persons, and permit him to add as directors and proceed under law. On receipt of notice the proposed parties filed EAIA No. 2125/2010 to dismiss E.A. 12/2010 and direct them to proceed u/s 25(3) of C.P. Act instead of Section 27 of C.P. Act and also filed EAIA. No. 2126/2010 to dismiss the application filed in EAIA No. 1262/2010.

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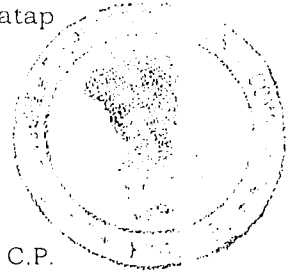
9) As an authorised signatory of M/s. Mytas Properties Ltd., Mr. Teja Pratap Raju filed Writ Petition No. 24533/2010 when NBW was issued for his non-appearance. The Division Bench of High Court of A.P. by its order dt. 15.10.2010 directed the petitioner to raise all the contentions that were urged in the writ petition before this Commission, which we have already mentioned, and the NBW issued against him was stayed.

10) He alleged that as a consequence of disclosure made by the Chairman of M/s. Satyam Computer Services Ltd., government agencies and statutory bodies have taken up the investigations including the affairs of respondent company due to which the respondent company has come to a standstill. Op1 being a prudent and responsible corporate entity extending its full support and co-operation to these agencies for carrying out the investigation. Due to the reasons beyond its control and as enquiries were initiated by the government and other investigating agencies the construction could not be completed. Apart from it, despite their efforts to complete the construction, due to various orders of injunctions, and orders of attachments passed by various courts they were not in a position to comply with the order of this Commission immediately. Due to attachment orders passed in O.P. No. 2339/2009 on the file of III Additional Chief Judge, City Civil Court, Hyderabad and various statutory attachments passed under Income Tax Act, Prevention of Money Laundering Act they are not in a position to raise the funds and complete the construction or comply the orders of this Commission. Against the orders of attachment he has preferred an appeal to the Hon'ble High Court in CMA No. 546/2010 and it is pending. Besides attachments, orders were passed prohibiting from dealing with the properties since investigations and enquiries are made. The complainant ought to have proceeded u/s 25(3) of C.P. Act instead of Section 27 of C.P. Act as it is penal in nature and it has to be exercised as a last resort. Since Sri B. Rama Rau, Sri D. Gopala Krishnam Raju and Sri Ved Kumar Jain (Ops 2 to 4) were not parties to the original complaint no action u/s 27 of C.P. Act could be

initiated against them. Sri Ved Kumar Jian (Op4) is a nominee director of Op1 appointed by the Company Law Board vide order dt. 5.3.2009 in C.P. No. 4/2009, and therefore he is not liable to be punished u/s 27 of C.P. Act. Enforcing a civil liability of the company on the directors is contrary to well settled principles of limited liability that forms the basis of the Company Law jurisdiction. Therefore the authorised signatory Mr. Teja Pratap Raju prayed for dismissal of the application filed by the complainant. In all these applications the very same contentions have been raised.

11) Learned counsel for the complainant on the other hand contended that the complainant has two remedies either recouring to Section 25 or 27 of the C.P. Act for enforcement of the orders. He preferred execution u/s 27 of the C.P. Act in order to enforce the orders expeditiously. Section 25 of C.P. Act is civil in nature, and it is a lengthy process. It is not necessary that Section 25 of the Act should be exhausted first, and then only action can be taken u/s 27 of the C.P. Act. The respondents have challenged the order at every stage up to Hon'ble Supreme Court, and despite grant of time for compliance they did not so, however filing one application or the other to drag on the proceedings. When the company is impleaded it could lift the veil and identify the persons who were responsible for committing statutory offences referred to u/s 27 of the C.P. Act. The directors of the company were responsible for complying the orders. The penal provisions u/s 27 of the C.P. Act can be applied to the directors of the companies notwithstanding the absence of specific provision for action against those in charge of or in control of the affairs of the company. Op4 himself admitted that he was appointed for the purpose of assisting, and proper functioning of the company. In view of the fact that there was a wide spread apprehension among the share holders, investors of the company that the affairs of the company were being conducted in a manner prejudicial to the interests of the company, and the management is indulging in activities that are against public interest, Ops 2 & 3 whole time directors and Op4 official director are responsible for

compliance of the order. This Commission has not issued an NBW for non-compliance of the order but it was issued when the petitioner Mr. Teja Pratap Raju did not appear the court despite notices were received by him.



- 12) The points that arise for consideration are :
- i. Whether the directors of the company can be proceeded u/s 27 of the C.P. Act?
 - ii. Whether the directors of the company can be impleaded without they being parties to the original complaint?
 - iii. Whether the proceedings u/s 27 of the C.P. Act is validly initiated?

13) Most of the contentions that have been raised questioning the proceedings initiated u/s 27 of the C.P. Act. against a company are covered by one decision or the other.

14) Before answering this question, we may state that in *Ravi Kant Vs. National Consumer Disputes Redressal Commission* reported in AIR 1997 DELHI

(182) it was held that :

(13) Now the Act in question before us has been passed by Parliament, as stated in the preamble, to provide for the better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and for matters connected therewith. Parliament, in our view, was surely aware that substantial part of consumer goods or services to the consumers were rendered by "companies" incorporated under the Companies Act and action was necessary under section 27 of the Act against companies. There is also evidence in section 25 of Act in this behalf because section 25 states that the District Forum, State Commission and National Commission shall execute their respective orders in the same manner as in suits, and in case of inability to execute, send the execution proceedings to the civil courts in whose jurisdiction the registered office of a company is situate or where the judgment-debtor ("any other person") is residing or carrying on business or is personally working for gain. This section makes it clear that orders passed under the Act could be orders against a company. When we come to Section 27, it refers to failure or omission to comply with an order passed by the District Forum, State Commission or National Commission against a trader or person i.e. under Section 25. By reading Section 25 and section 27, it is clear that the word "person" in Section 2(m) must necessarily include a company against which orders could be executed as stated in Section 25. Therefore, going by the object and purpose of the Act, it is clear that Section 27 of the Act applies to failure or omissions on the part of a "company" to comply with the provisions of orders passed."

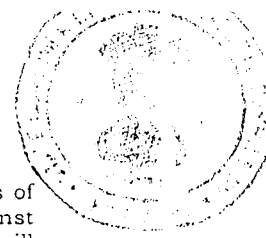
15) We may state that Section 25 of C.P. Act which was referred to in the above decision has been amended. Section 25 of C.P. Act after amendment gives the complainant a different mode of recovery of the amount by approaching the Dist. Collector under the provisions of Revenue Recovery Act by virtue of certificate, and recover the amount by attaching the properties. The opposite parties (proposed parties) contended that in the first instance they have to seek the relief u/s 25 of the C.P. Act, and in case of failure to recover the amount then only proceedings u/s 27 of C.P. Act could be initiated.

16) In *Pradeep Kumar Khurana Vs. Wheels World reported in II (1997) CPJ 36 the Himachal Pradesh State Commission observed that :*

“The true purpose and scope of Section 27 of the Act was to lay a statutory duty on the trader or a person against whom an order has been passed by a Consumer Court to comply therewith expeditiously. Failing that, it equally casts a duty on the Redressal Agencies to enforce compliance under the conferred sanction of imprisonment and fine, if necessary. The provisions of the Act would be rendered otiose and the entire purpose of the statute might stand wholly frustrated if the final substantive orders of the Redressal Agencies were not enforced under pain of the penalty under Section 27. If the orders of the FORA were to be relegated only to be enforced as decrees or orders of a Civil Court in the tortuous and tardy executory process therein with the hierarchy of appeals and the revisions under the Civil Procedure Code, then the consumer jurisdiction would again get enmeshed into the same labyrinth from which it was sought to be rescued by the Act. It is axiomatic that in India the real trouble of litigant starts after he obtains a decree.”

17) The National Commission in fact had an occasion to consider the provisions u/s 25 & 27 of the C.P. Act in a decision *R. Subrahmanian Vs. Stichcraft India Ltd. reported in III (2006) CPJ 373 (NC)*. The National Commission opined that it was open to the State Commission to proceed either u/s 25 or 27 or even simultaneously if payment of awarded amounts is not forthcoming.

18) The National Commission in *Sanjay K. Malviya Vs. Siddharth Enterprises reported in I (2008) CPJ 74 (NC)* while referring to the decision of *Ravi Kanth* case opined that



"The penal provision in Section 27 of the Act can be applied to the Directors of the Companies, notwithstanding the absence of a specific provision for action against those in-charge of or in control of the affairs of the Company. Obviously, this ratio will equally apply as regards applicability of the provision in Section 25 of the Act. Complaint pertained to the transactions of the year 1996 with OP No. 1 Company. In view of above decision, it was not necessary of the appellant being also impleaded as party being Director in addition to OP No. 1 - Company to fasten liability arising out of the award passed against the Company. Since the appellant does not dispute that he was the Executive Director of respondent No. 1-Company in the year 1996, the order dated 4.8.1998 is binding on him. It was open to respondent No. 1 to have recovered the amount as awarded by the order dated 4.8.1998 from all or any of the Directors of O.P. No. 1-Company as also the Company. Issue of territorial jurisdiction is a mixed question of law and fact and was not before the State Commission."

19) In fact the Hon'ble Supreme Court in *Aligarh Municipality Vs. E. T.*

Mazdoor Union reported in AIR 1970 SC 1767 held that :

"A command to a Corporation is in fact a command to those who are officially responsible for the conduct of its affairs. If they, after being apprised of the order directed to the Corporation, prevent compliance or fail to take appropriate action, within their power, for the performance of the duty of obeying those orders, they and the corporate body are both guilty of disobedience and may be punished for contempt."

20) The National Commission in *Sipani Automobiles Ltd. Vs. Dr. Kirti Malviya reported in III (2003) CPJ 142 (NC)* that was a case where the industry has become sick, observed that despite Section 22(1) of SICA creates embargo against disposal of company's assets for recovery of debts, the direction to the directors for payment of amounts for satisfaction of legally enforceable dues was not barred. The directors cannot escape liability at the stage of execution.

21) The learned counsel for the opposite parties (proposed parties) relying a decision in *Jolly George Varghese Vs. The Bank of Cochin reported in AIR 1980 SC 470* contended that recouring to provisions of C.P.C. u/s 51 read with O. 21 R.37 and other provisions for realization of amount is bad under law, and contrary to the mandate of Art. 11 of International Covenant on Civil and Political Rights and Art. 21 of Constitution of India. The said decision has been considered in *Ravi Kanth' case* and observed

"In fact, Section 27 of the Act has created a statutory offence the non-compliance of an order of a duty constituted Tribunal under the Consumer Protection Act 1986 - and has made the said non-compliance an offence punishable with simple imprisonment or fine. A statute can create a Tribunal and might say that non-compliance with the orders of the Tribunal is an offence and is punishable by the way of imprisonment or fine (as in Section 27) and this penal provision can be in addition to any other mode of recovery (as in

Section 25). Section 25 permits recovery as a civil court and may also permit arrest under Section 51 and Order 25 Rule 37 as a mode of recovery. But under Section 25 no statutory offence is created; while under Section 27 a separate offence is created if Section 25 order is not implemented. We are, therefore unable to hold that Section 27 is either bad or that the order of punishment of simple imprisonment passed against the petitioner is violative of Article 21. Point 3 is held against the petitioners.

(22) Point 4 : The contention is that the liability of the company or of the petitioner is to be restricted to the value of the shares held by them or has to be dealt with only during the winding up proceedings of the two companies is again untenable. It may be that the proceedings for recovery under Section 25 of the Act may on the facts, require the taking into account of the pendency of the winding up proceedings but the penal provisions under Section 27 of the act are in addition to the mode of recovery contemplated by Section 25 and, therefore, the pendency of winding up proceedings will not come in the way of the Commission passing orders under Section 27 of the Act."

Referring to *Noval Steel Vs. Municipal Corporation of Delhi* reported in 1995 (1) SCALE 525) to contend that :

"Companies Act is a special Act and the Consumer Protection Act is a general one. The Supreme Court was there dealing with a claim under the Motor Vehicles Act and said that the parties must pursue remedy under the special law, Motor Vehicles Act. There the Supreme Court was not dealing with any order of the Consumer Court creating an offence or penalty such as Section 27. That decision is therefore, clearly distinguishable in *Byford Leasing* (supra), a Division Bench of this Court had also held that the Commission is to evolve its own procedure without reference to the Criminal Procedure Code"

22) The learned counsel for the complainant relied a decision in *Standard Chartered Bank Vs. Director of Enforcement* reported in (2005) 4 SCC 530. Their Lordship while considering the prosecution and fixation of criminal liability of corporate bodies (companies and firms) vis-à-vis violation of provisions of Foreign Exchange Regulation Act, 1973 the context in which the said decision was rendered was entirely different from the question that arose under the Consumer Protection Act. We may state that the provision of prosecution for the offences under IPC and other special provisions by resorting to Cr.P.C. cannot be applied to the proceedings u/s 27 of the C.P. Act.

23) The High Court of A.P. in *Dr. C.V. Ratnam Vs. Union of India, Rep. by its Secretary, Medical & Family Welfare, New Delhi reported in 2001 (5) ALT 610 (F.B) observed :*

"The whole controversy is with regard to the question as to whether Section 27 of the Consumer Protection Act, 1986 creates an offence and if it creates an offence whether it has to be tried only under the provisions of Criminal Procedure Code. Sections 4 and 5 of the Criminal Procedure Code lay down :

"4. (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences."

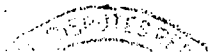
"5. Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force."

On perusal of these two provisions of Criminal Procedure Code it becomes manifest that all offences under Indian Penal Code have to be investigated, inquired into and tried under the provisions of Criminal Procedure Code and the offences under laws other than under Indian Penal Code shall also be tried in accordance with the provisions of Criminal Procedure Code, but the provisions of the Criminal Procedure Code would not apply where the special enactment which creates an offence indicates a special procedure and where an offence created by a special Act other than Indian Penal Code does not create a special procedure the Criminal Procedure Code would apply. The learned Chief Justice has dealt with the provisions of the Consumer Protection Act in detail and from perusal of Section 27 it is evident that the provision for punishment has been made only with a view to see that the orders of different authorities created under the Act are implemented. In a way it is not an offence in the way the offence is understood under Indian Penal Code or Criminal Procedure Code. This power is in the nature of a power of contempt available to High Court. The Courts have considered whether the persons accused of contempt have to be tried under Criminal Procedure Code, or not. Some of the judgments are necessary to be mentioned. The foremost judgment is the judgment of Supreme Court in *Sukhdev Singh v. Teja Singh*, AIR 1954 SC 186. The following argument was made before the Supreme Court :

"Contempt is punishable under the Contempt of Courts Act, 1952; therefore it is an offence punishable by a law which is in force; consequently, it is an offence. Being an offence it is triable under the Criminal Procedure Code because Section 5 makes the Code applicable not only to the trial of offences under the Indian Penal Code but also to the trial of offences against other laws."

The Supreme Court did not agree with this proposition and held that the proceedings for contempt are under a special jurisdiction which are inherent to all the Courts of record. After mentioning sub-section (2) of Section 1 (now Section 5) of the Criminal Procedure Code, the Supreme Court held :

"The term "special jurisdiction" is not defined in the Criminal Procedure Code but the words "special law" are defined in Section 41 of the Indian Penal Code to mean "a law applicable to a particular subject". In the absence of any specific definition in the Criminal Procedure Code, we think that that brings out the ordinary and natural meaning of the words "special jurisdiction" and covers the present case. Contempt is a special subject and the jurisdiction is conferred by a special set of laws peculiar to Courts of Record."



After dealing with the law on the subject the Supreme Court held;

"We hold, therefore, that the Code of Criminal Procedure does not apply in matters of contempt triable by the High Court. The High Court can deal with it summarily and adopt its own procedure. All that is necessary is that the procedure is fair and that the contemnor is made aware of the charge against him and given a fair and reasonable opportunity to defend himself."

The judgment was followed in *Mrs. V.G. Peterson v. O. V. Forbes*, and also in *Delhi Judicial Service Association Tis Hazari Corut v. State of Gujarat*. In this judgment (supra) the Court again dealing with the contempt matter held:

"The jurisdiction to initiate the proceedings and take seizing of the contempt is inherent in a Court of record and the procedures of the Criminal Procedure Code do not apply to contempt proceedings. Section 5 of the Code of Criminal Procedure lays down that nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.

The power to take proceedings for the contempt of Court is an inherent power of a Court of record, the Criminal Procedure Code does not apply to such proceedings. Since, the contempt proceedings are not in the nature of criminal proceedings for an offence, the pendency of contempt proceedings cannot be regarded as criminal proceedings merely because it may end in imposing punishment on the contemnor. A contemnor is not in the position of an accused, it is open to the Court to cross-examine the contemnor and even if the contemnor is found to be guilty of contempt, the Court may accept apology and discharge the notice of contempt, whereas tendering of apology is no defence to the trial of a criminal offence. This peculiar feature distinguishes contempt proceedings from criminal proceedings. In a criminal trial where a person is accused of an offence there is a public prosecutor who prosecutes the case on behalf of the prosecution against the accused but in contempt proceedings the Court is both the accuser as well as the Judge of the accusation as observed by Hidayatullah, CJ in *Debabrata Bandopadhyaya's case*. Contempt proceedings is sui generis, it has peculiar features which are not found in criminal proceedings."

24) Recently the High Court of A.P. while considering the nature of proceedings u/s 27 of C.P. Act in *Sriram Builders Vs. National Consumer Disputes Redressal Commission reported in 2010 (1) ALD 710 (DB)* went to the extent by stating that:

"The petitioner contends that the State Commission should have followed the procedure under Sections 200 and 204 of the Code of Criminal Procedure while entertaining P.P.No.35 of 2007. It is also contended that the said P.P is barred by limitation in view of rule 14 of the Consumer Protection Rules. The petitioner should have urged these aspects before the State Commission where P.P. is pending. Even though the State Commission has got powers of issuing arrest warrants and committing the non-complying persons to prison like a Magistrate, the State Commission need not follow Sections 200 and 204 of the Code of Criminal Procedure while entertaining P.P and issuing non-bailable warrants against the petitioner. P.P. is not a private complaint. It is only a petition filed for disobedience of orders issued by the State Commission. Secondly, order of the State Commission in CD No.58 of 2002 is merged in order passed by the National Commission in FA No.435 of 2002. Therefore, period of limitation, if any has to be computed from the date of order of the State Commission."

25) No doubt the persons whom the complainant intends to implead to the proceedings u/s 27 of C.P. Act contend that they were not directors by the date of cause of action, and therefore they were not liable, and answerable to the proceedings u/s 27 of C.P. Act initiated against them. We may state that the documents do not show that they having nothing to do with the company. In the light of the fact that proceedings were initiated before the Company Law Board, and that there was a change in the directorship, however, except the fourth opposite party viz., Sri Ved Kumar Jain, rest of the directors are obviously answerable vide *Sanjay K. Malviya Vs. Siddharth Enterprises reported in I (2008) CPJ 74 (NC)*. However, we may state that Sri Ved Kumar Jain is a nominee director and representative of the Government appointed for the first time subsequent to the passing of the order i.e, on 30.4.2010. By no stretch of imagination, he can be held liable u/s 27 of the C.P. Act. We may also state that The question whether the government servants can be held personally liable under Section 27 of the C.P. Act is no longer res-integra. The National Commission in *Registrar of Co-operative Societies Vs. Tamil Nadu Consumer Protection Council, Trichy reported in II (2007) CPJ 175 (NC)* in an identical case observed that "officers appointed to implement the administration of the society do not render service under the C.P. Act. The administrator or special officer appointed for administration of the society after super-session of the society cannot be personally held responsible for non-payment of the deposited amount. Following the above decision recently the Maharashtra State Commission in *Pravin Raghunath Rao Phadnis Vs. Vijay Trembakrao More and Others reported in 2010 (3) CPR 92* in an identical set of facts observed that :

"In the present case the Dist. Forum has held petitioner personally liable for non-complying the order. The petitioner is appointed under the provisions of Co-operative Society Act to discharge the duties and function as an administrator. In view of the law laid down by the Hon'ble National Commission in the above referred case, the order passed by the Dist. Forum against the petitioner is bad in law. The petitioner cannot be proceeded u/s 27 of the C.P. Act, holding him personally liable for non-refund of the ordered amount. As the order of the Dist. Forum is bad in law the same is required to be quashed by allowing the Revision Petition."

26) In fact the National Commission in its decision in *Liquidator, Bhudargad Nagari Pat Sanstha Ltd. Vs. Pratap Ramrao Ingle* reported in IV (2008) CPJ 96 (NC) referring to Section 27 of the C.P. Act observed that

“Penalty there under can be levied only against the trader or a person against whom the complaint was made or the complainant who fail or omit to comply with any order passed by the Forum. Proceedings thus cannot be initiated against the liquidator as he is neither the trader nor a person against whom complaint was made nor the complainant against whom award which is sought to be enforced, was made.”

Except the plea raised by Sri Ved Kumar Jain, nominee director, the pleas raised by the other opposite parties (proposed parties) cannot be sustained at this stage. While we direct the complainant to implead other directors, they are entitled to raise whatever defence under law they can raise. They have to give explanation to the show cause notice issued against them.

27) In the result EAIA 1262/2010 in E.A. No. 12/2010 is allowed in part dismissing the petition against Sri Ved Kumar Jain, nominee director while maintaining that the other opposite parties 2 & 3 (proposed parties) shall be impleaded as directors for the proceedings initiated u/s 27 of the C.P. Act. Consequently EAIA 2125/2010 and EAIA 2126/2010 are dismissed in so far opposite parties 2 & 3 are concerned. The claim by Sri Ved Kumar Jain (Op4) that he should not be impleaded is up-held.

The petitions are disposed of accordingly. For impleading the parties as above post on 24.01.2011.

Sd/- President.

Sd/- Member.

//CERTIFIED FREE TRUE COPY//

CC To:

1. Petitioner's

2. Respondents

S. Sankar
ASST. REGISTRAR
Asst. Registrar-Cum
P.S. to President
A.P. State Consumer
Disputes Redressal Commission
Eruvaka Building, Khairatabad,
Hyderabad.

300/2011
DF, 17-1-2011