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**(2013) 07 SC CK 0080**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No. 5476 of 2013 (Arising out of S.L.P. (C) No. 11381 of 2012)

Dr. Jagmittar Sain Bhagat

APPELLANT

Vs

Dir. Health Services, Haryana and Others

RESPONDENT

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**Date of Decision :** 11-07-2013

**Acts Referred:**

Consumer Protection Act, 1986 — Section 11, 2, 2(1)

**Citation :** (2013) 5 ABR 793 : (2013) 7 AD 604 : AIR 2013 SC 3060 : (2013) 5 ALLMR 912 : (2013) 6 AWC 6152 : (2013) 5 BomCR 709 : (2014) 1 CDR 61 : (2013) 3 CPJ 22 : (2013) 3 JLJR 336 : (2013) LabIC 3412 : (2013) 4 LW 536 : (2013) 6 MhLj 923 : (2014) 3 MhLj 127 : (20

**Hon'ble Judges :** Sharad Arvind Bobde, J; Balbir Singh Chauhan, J

**Bench :** Division Bench

**Advocate :** Prateesh Kapur, for the Appellant; Narendra Hooda, Sr. AAG and Monika Gusain, for the Respondent

**Final Decision :** Disposed Of

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## Judgement

1. Leave granted.

2. This appeal has been preferred against the judgment and order dated 26.11.2009 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as the 'Commission') constituted under the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act'), in Revision Petition No. 1156 of 2007, MA. No. 291 of 2008; and MA. No. 450 of 2008, by way of which, the Commission has dismissed the claim of the Appellant as well as the review petition seeking certain reliefs.

3. The facts and circumstances giving rise to this appeal are that:

A. The Appellant joined Health Department, of the Respondent State, as Medical Officer on 5.6.1953 and took voluntary retirement on 28.10.1985. During the period of service, he stood transferred to another district but he retained the

government accommodation, i.e. Bungalow No. B-8 from 11.5.1980 to 8.7.1981. Appellant claimed that he had not been paid all his retiral benefits, and penal rent for the said period had also been deducted from his dues of retiral benefits without giving any show cause notice to him.

B. Appellant made various representations, however, he was not granted any relief by the State authorities.

C. Aggrieved, the Appellant preferred a complaint before the District Consumer Disputes Redressal Forum, Faridabad (hereinafter referred to as the 'District Forum') on 5.1.1995 and the said Forum vide order dated 24.3.2000 dismissed the complaint on merits observing that his outstanding dues i.e. Pension, gratuity and provident fund etc. Had correctly been calculated and paid to the Appellant by the State authorities.

D. The Appellant approached the appellate authority, i.e., the State Commission. The State Commission dismissed the appeal vide order dated 31.1.2007 observing that though the complaint was not maintainable as the District Forum did not have jurisdiction to entertain the complaint of the Appellant as he was not a "consumer" and the dispute between the parties could not be redressed by the said Forum, but in view of the fact that the opposite party (State) neither raised the issue of jurisdiction before the District Forum nor preferred any appeal, order of the District Forum on the jurisdictional issue attained finality. However, there was no merit in the appeal.

E. Aggrieved, the Appellant filed Revision Petition No. 1156 of 2007 before the Commission. The said revision stood dismissed vide order dated 1.4.2008 and the review filed by the Appellant has also been dismissed vide order dated 26.11.2009.

Hence, this appeal.

4. Shri Narendra Hooda, learned Senior AAG, Haryana, has raised preliminary issue of the jurisdiction submitting that the service matter of a government servant cannot be dealt with by any of the Forum in any hierarchy under the Act. Therefore, the matter should not be considered on merit at all. More so, all the outstanding dues of the Appellant had been paid, and none of the issues survive any more.

5. Shri Prateesh Kapur, learned Amicus Curiae, has raised a large number of grievances, inter-alia, that till today the Appellant has not been paid all his retiral benefits as some of his outstanding dues have been withheld by the authorities, thus, he is entitled to recover the same with interest; whether the Forum was competent to entertain the complaint ought to have been decided by the District Forum first as a preliminary issue. It is difficult for a litigant to go back to any other appropriate Forum after such a long time. In the instant case, the Appellant approached the District Forum in 1995, the matter could not be finalised till date, and at such a belated stage, the Appellant if asked to approach

the other forum, a great hardship would be caused to him.

6. We have considered the rival submissions made by learned Counsel for the parties and perused the records.

7. Indisputably, it is a settled legal proposition that conferment of jurisdiction is a legislative function and it can neither be conferred with the consent of the parties nor by a superior Court, and if the Court passes a decree having no jurisdiction over the matter, it would amount to nullity as the matter goes to the roots of the cause. Such an issue can be raised at any stage of the proceedings. The finding of a Court or Tribunal becomes irrelevant and unenforceable/in executable once the forum is found to have no jurisdiction. Similarly, if a Court/Tribunal inherently lacks jurisdiction, acquiescence of party equally should not be permitted to perpetuate and perpetrate, defeating the legislative animation. The Court cannot derive jurisdiction apart from the Statute. In such eventuality the doctrine of waiver also does not apply. (Vide: The United Commercial Bank Ltd. Vs. Their Workmen, Smt. Nai Bahu Vs. Lala Ramnarayan and Others, Natraj Studios (P) Ltd. Vs. Navrang Studios and another, and Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others,

8. In Sushil Kumar Mehta Vs. Gobind Ram Bohra (Dead) through his Lrs., this Court, after placing reliance on large number of its earlier judgments particularly in The Premier Automobiles Ltd. Vs. Kamlekar Shantaram Wadke of Bombay and Others, ; Kiran Singh and Others Vs. Chaman Paswan and Others, ; and Chandrika Misir and Another Vs. Bhaiya Lal, held, that a decree without jurisdiction is a nullity. It is a coram non judice; when a special statute gives a right and also provides for a forum for adjudication of rights, remedy has to be sought only under the provisions of that Act and the Common Law Court has no jurisdiction; where an Act creates an obligation and enforces the performance in specified manner, "performance cannot be forced in any other manner."

9. Law does not permit any court/tribunal/authority/forum to usurp jurisdiction on any ground whatsoever, in case, such a authority does not have jurisdiction on the subject matter. For the reason that it is not an objection as to the place of suing;, "it is an objection going to the nullity of the order on the ground of want of jurisdiction". Thus, for assumption of jurisdiction by a court or a tribunal, existence of jurisdictional fact is a condition precedent. But once such jurisdictional fact is found to exist, the court or tribunal has power to decide on the adjudicatory facts or facts in issue. (Vide: 23 CWN 1033 (Privy Council) State of Gujarat Vs. Rajesh Kumar Chimanlal Barot and another, Harshad Chiman Lal Modi Vs. DLF Universal and Another, ; and Carona Ltd. Vs. Parvathy Swaminathan and Sons,

10. The Act was enacted to provide for the better protection of interest of consumers, such as the right to be protected against marketing of goods which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price of goods, to protect the consumer

against unfair trade practices; and right to seek redressal against an unscrupulous exploitation of consumers, and further to provide right to consumer education etc. As is evident from the statement of objects and reasons of the Act.

11. Section 2 of the Act which is a definition clause defines the following as under:

2(b) 'Complainant' means-

(i) a consumer; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or

(iii) the Central Government or any State Government;

(iv) one or more consumers, where there are numerous consumers having the same interest;

(v) in case of death of a consumer, his legal heir or representative; who or which makes a complaint;

2(c) 'complaint' means any allegation in writing made by a complainant that-

(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;

(ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;

(iii) the services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;

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2(d) 'consumer' means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person; [but does not include a person who avails of such services for any commercial purpose;

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2(g) 'deficiency' means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;

2(o) 'service' means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, [housing construction], entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Section 11 of the Act deals with the jurisdiction of the District Forum as:

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed [does not exceed rupees twenty lakhs.

The aforesaid statutory provisions make it crystal clear that the Act is made to deal with the rights of consumers wherein marketing of goods, or "services" as defined under the Act have been provided. Therefore, the question does arise as to whether the Forum under the Act can deal with the service matters of government servants.

12. In Morgan Stanley Mutual Fund Vs. Kartick Das, this Court examined the issue as to whether a prospective buyer can be "consumer" under the Act, and held:

The consumer as the term implies is one who consumes. As per the definition, consumer is the one who purchases goods for private use or consumption. The meaning of the word 'consumer' is broadly stated in the above definition so as to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. The consumer deserves to get what he pays for in real quantity and true quality. In every society, consumer remains the centre of gravity of all business and industrial activity. He needs protection from the manufacturer, producer, supplier, wholesaler and retailer.

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Therefore, it is after allotment, rights may arise as per the contract (Article of Association of Company). But certainly not before allotment. At that stage, he is only a prospective investor (sic in) future goods....There is no purchase of goods for a consideration nor again could he be called the hirer of the services of the company for a consideration. In order to satisfy the requirement of above

definition of consumer, it is clear that there must be a transaction of buying goods for consideration u/s 2(1)(d)(i) of the said Act. The definition contemplates the pre-existence of a completed transaction of a sale and purchase. If regard is had to the definition of complaint under the Act, it will be clear that no prospective investor could fall under the Act.

13. In *Secretary, Board of Secondary Education, Orissa Vs. Santosh Kumar Sahoo and Another*, this Court resolved the issue as to whether the Forum under the Act had jurisdiction to entertain and allow a complaint filed by a person for correction of his date of birth recorded in the matriculation certificate, observing that the impugned order was liable to be set aside because all the consumer forums failed to consider the issue of maintainability of the complaint in a correct perspective. Before the District Forum could go into the issue of correctness of the date of birth recorded in the matriculation certificate of Respondent 1, it ought to have considered whether the so-called failure of the Appellant to make correction in terms of the prayer made by Respondent 1 amounted to deficiency of service.

The court remitted the matter to the District Forum to decide the issue of maintainability of the complaint.

14. This Court in *Bihar School Examination Board Vs. Suresh Prasad Sinha*, considered the question as to whether a candidate can file a complaint before the District Forum under the Act raising any grievance regarding his examinations conducted by the Bihar School Examinations Board constituted under the Bihar School Examinations Board Act, 1952 and answered it in negative observing as under:

The object of the Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial activity in its broadest sense (including professional activity or quasi-commercial activity). But the Act does not intend to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the examination, or evaluation of answer scripts, or furnishing of mark sheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. We are clearly of the view that the Board is not a 'service provider' and a student who takes an examination is not a 'consumer' and consequently, complaint under the Act will not be maintainable against the Board.

(See also: *Maharshi Dayanand University Vs. Surjeet Kaur*,

15. In *Regional Provident Fund Commissioner Vs. Bhavani*, , this Court dealt with the issue as to whether Dr. Padia's submissions regarding the non-applicability of the Act to the case of the Regional Provident Fund Commissioner-the person

responsible for the working of a Pension Scheme, could be held to be a 'service giver' within the meaning of Section 2(1)(o) of the Act, as it was neither a case of rendering of free service nor rendering of service under a contract of personal service so as to bring the relationship between the parties within the concept of 'master and servant'. The court held:

In our view, the Respondent comes squarely within the definition of 'consumer' within the meaning of Section 2(1)(d)(ii), inasmuch as, by becoming a member of the Employees' Family Pension Scheme, 1971, and contributing to the same, she was availing of the services rendered by the Appellant for implementation of the Scheme. The same is the case in the other appeals as well.

16. In view of the above, it is evident that by no stretch of imagination a government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act. The government servant does not fall under the definition of a "consumer" as defined u/s 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and Regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any his grievance, may be the State Administrative Tribunal, if any, or Civil Court but certainly not a Forum under the Act.

17. In view of the above, we hold that the government servant cannot approach any of the Forum under the Act for any of the retiral benefits.

18. Mr. Hooda has made a statement that all the dues for which the Appellant had been entitled to had already been paid and the penal rent has also been dispensed with and the State is not going to charge any penal rent. If the State has already charged the penal rent, it will be refunded to the Appellant within a period of two months. In view thereof, we do not want to pass any further order.

In view of the above, the appeal stands disposed of. Before parting with the case, we record our appreciation for the assistance rendered by Shri Prateesh Kapur, learned Amicus Curiae. He is entitled for full fees as per the Rules.