

(2011) 12 GUJ CK 0006
In the Gujarat High Court

Case No : Special Civil Application No. 17461 of 2011

Heena Tours and Travels

APPELLANT

Vs

Hiten Shah and 2

RESPONDENT

Date of Decision : 22-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 11, 11(2), 13, 17, 17A

Citation : (2011) 12 GUJ CK 0006

Hon'ble Judges : Abhilasha Kumari, J

Bench : Single Bench

Advocate : Masoom K Shah, for the Appellant;

Final Decision : Dismissed

Judgement

Hon''ble Smt. Justice Abhilasha Kumari

1. By invoking the writ jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has made the following prayers:

(A) Be pleased to quash and set aside notice dated 4.11.11 passed below in Consumer Complaint Case No.595 of 2011 and consumer complaint no.595 of 2011 by Hon''ble District Vadodara Consumer Forum.

(B) Pending hearing, admission and final disposal of this Petition, be pleased to stay the proceedings of Consumer Complaint Case No.595 of 2011 pending on the file of Hon''ble District Vadodara Consumer Forum.

(C) Costs of this Petition.

(D) Any other relief which Hon''ble Court may deem just, fit, proper and equitable in the facts of the case.

2. The petitioner is a Partnership Firm by the name and style of Heena Tours and Travels. Although the factual matrix of the case has not been set out in detail in

the petition, it can be discerned from the material on record that respondents Nos.1 and 2, with their families, booked a tour to Bhutan through the petitioner-Firm. Thereafter, a complaint was filed by the said respondents before the District Consumer Disputes Redressal Forum, Vadodara ("the Forum" for short), against the petitioner, being Complaint Case No.595 of 2011. A notice dated 04.11.2011 u/s 13(a) of the Consumer Protection Act, 1986 ("the Act" for short), came to be issued to the petitioner, informing that a complaint has been filed against it and calling upon it to appear before the Forum for hearing on 30.11.2011, at 11:30 am. It is this notice that has been challenged by the petitioner on the ground that it is without jurisdiction, as the Complaint could not have been filed before the Forum at Vadodara, as per the provisions of Section 11 of the Act.

3. Mr.Masoom K.Shah, learned advocate for the petitioner, has submitted that the petitioner-Firm has several branches in various States but does not have a branch at Vadodara, where the complaint is filed. The cause of action has not arisen at Vadodara but the contract was concluded at Ahmedabad. Referring to Section 11(2)(b) of the Act, it is submitted that the Forum at Vadodara suffers from an inherent lack of jurisdiction, therefore it could not have issued the impugned notice. It is further urged that the complaint does not reveal how the territorial jurisdiction of the Forum at Vadodara is attracted. The learned counsel for the petitioner further submits that respondents Nos.1 and 2 have filed the complaint at Vadodara just to harass the petitioner and such tactics ought to be prevented by this Court, otherwise complaints will be filed all over the country. It is emphatically argued that the present is a fit case for the interference of this Court, and to lay down authoritative guidelines on the aspect of jurisdiction, so that frivolous complaints are not filed at wrong forums in future, and harassment to litigants is avoided. It is contended that the petitioner would choose to invoke the writ jurisdiction of this Court instead of approaching the Forum, as the impugned notice issued by the Forum is without jurisdiction.

4. In support of the above submissions, reliance has been placed upon the following judgments:

(a) The Calcutta Metropolitan Development Authority Vs. Union of India and others,

(b) Food Corporation of India v. District Consumer Forum - 1998 91 Comp Cas 518

(c) Harbanslal Sahnia and Another Vs. Indian Oil Corpn. Ltd. and Others,

(d) Sonic Surgical Vs. National Insurance Company Ltd.,

5. On the strength of the above submissions, the learned counsel for the petitioner has urged that the petition be entertained and the prayers made by the petitioner be granted.

6. Before dealing with the submissions made on behalf of the petitioner, it would

be appropriate to refer to the relevant provisions of the Act.

7. Section 11 of the Act defines the jurisdiction of the District Forum and reads thus:

11. Jurisdiction of the District Forum - (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.

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

In support of the contention that the Forum does not have the jurisdiction to issue the impugned notice, reliance has been placed by the learned advocate for the petitioner on sub-section 2(a) of Section 11 of the Act.

8. It would now be appropriate to refer to the provisions of Section 17 of the Act relating to the jurisdiction of the State Commission. The said Section reads as below:

17. Jurisdiction of the State Commission--(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction--

(a) to entertain

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office, or personally works for gain, provided that in such case either the permission of the State Commission is given, or the opposite parties who do not reside or carry on business or have a branch office or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

9. Another relevant provision of the Act is Section 17A regarding transfer of cases, which reads as below:

17A Transfer of cases - On the application of the complainant or of its own motion, the State Commission may, at any stage of the proceeding, transfer any complaint pending before the District Forum to another District Forum within the State if the interest of justice so requires.

10. A perusal of sub-section 2(a) of Section 11 makes it clear that a complaint can be instituted in a District Forum within the local limits of whose jurisdiction the opposite party or each of the opposite parties, where there are more than one, at the time of institution of the complaint, actually or voluntarily resides or carries on business or has a Branch Office or personally works for gain. This provision lays down the extent and scope of the jurisdiction of the District Forum to entertain complaint. The said provision is clear and unambiguous and there can be no doubt regarding the same.

11. Sub-section (b) of Section 17 empowers the State Commission to call for records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised the jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. This provision of law is equally clear and unambiguous and empowers the State Commission, if moved, to call for the records and pass appropriate orders in any consumer dispute which is pending or has been decided in any District Forum within the State where it appears that the concerned District Forum has exercised jurisdiction not vested in it by law.

12. As seen above, Section 17A empowers the State Commission, at any stage of the proceedings, either on its own motion or upon an application made by the complainant, to transfer any complaint pending before a District Forum to

another District Forum within the State, if the interest of justice so requires.

13. A reading of the above-quoted provisions of law would go to show that in a case where a party is of the view that the District Forum has exercised jurisdiction not vested in it by law, nothing prevents it from taking the objection before the concerned Forum itself, or moving the State Commission, even in a matter that is pending before the District Forum.

14. It is not disputed that in the present case, only a notice dated 04.11.2011 has been issued by the Forum u/s 13(a) on the complaint made by respondents Nos.1 and 2, calling upon the petitioner to give his version of the case within a period of thirty days, or such extended period not exceeding fifteen days, as may be granted by the Forum.

15. If the petitioner is of the view that the Forum does not have the jurisdiction to entertain the complaint made by respondents Nos.1 and 2, it is always open to him to appear before the Forum in response to the said notice and make a preliminary objection regarding jurisdiction. There is no averment in the petition to the effect that the petitioner has appeared before the Forum pursuant to the said notice. The District Forum is a creation of the statute and can exercise powers only within the scope and ambit laid down by the express provisions of the Act. Mere issuance of notice informing the petitioner regarding filing of the complaint cannot be taken to be an act without jurisdiction, as alleged by the petitioner, as no hearing or adjudication has taken place and the Forum has not even been made aware of the preliminary objection regarding jurisdiction to entertain the complaint. In fact, the Forum has had no opportunity, whatsoever, to apply its mind to this issue, as the question of jurisdiction has never been raised before it so far. Issuance of a notice, and that too without hearing, cannot be equated with passing of an order after hearing the parties. In this view of the matter, the petitioner ought to have raised the objection regarding jurisdiction before the Forum at the first instance. If this course of action did not appeal to the petitioner, it could have moved the State Commission u/s 17 of the Act invoking the powers of the State Commission under sub-section (1)(b) of the said Section, or u/s 17A to transfer the case to the appropriate District Forum. The petitioner has not chosen to take recourse to any of the above avenues open to it but has, instead, directly approached this Court.

16. Reference may fruitfully be made to the principles of law enunciated by the Supreme Court regarding exercise of discretion under Article 226 of the Constitution of India, in cases where an effective and efficacious alternative remedy is available. In *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, the Supreme Court has held thus:

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not

normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.

17. There can be no doubt that this Court is vested with discretion either to entertain, or not to entertain, a writ petition in circumstances where an alternative, efficacious remedy is available. One of the contingencies enunciated by the Supreme Court in the above-quoted judgment for exercise of such discretion is, where the proceedings are wholly without jurisdiction. The learned advocate for the petitioner has laid great stress upon the aspect of lack of jurisdiction. In the present case, though this Court undoubtedly has power to exercise jurisdiction under Article 226, it chooses not to do so, for the reason that, on the facts and in the circumstances of the case, only notice u/s 13 of the Act has been issued to the petitioner, informing it regarding the filing of the complaint and calling upon it to appear for hearing at the stipulated time and date. No effective hearing has taken place as it does not appear from the material on record that, the petitioner has responded to the notice. No occasion has arisen for the Forum to proceed further, as the petitioner, instead of raising the preliminary objection before the Forum, has rushed this Court, instead. As such, it cannot be said that the impugned notice has culminated into full-fledged proceedings before the Forum. Had the petitioner raised the objection regarding jurisdiction before the Forum, it could be possible that the Forum would have accepted the same. Not only that, the petitioner could have also moved the State Commission under Sections 17 and 17A of the Act, instead of invoking the jurisdiction of this Court.

18. The preamble of the Act, states that it is "an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith". A specific hierarchy of authorities has been created and maintained by the Legislature under the Act and the powers vested in the District Forum, the State Commission and the National Commission have been specifically and clearly delineated. The purpose and object of enacting the statute is to establish Consumer Councils and other authorities for settlement of disputes of the consumers and matters connected therewith. When an alternative, efficacious and effective remedy is available to the petitioner under the Act, initially by raising the objection regarding jurisdiction before the Forum itself, and then approaching the State Commission, if unsuccessful, there is no justifiable reason for this Court to exercise jurisdiction. In the view of this Court, the Forum ought

to have been apprised by the petitioner, in the first place, regarding the objection to its jurisdiction. Had that been the situation, the Forum would have been obliged to hear and decide the same before proceeding with the matter on merits, if at all. The extent of the jurisdiction vested in the District Forum has been clearly laid down in Section 11 of the Act, and the Forum is perfectly competent to decide upon its own jurisdiction. In the view of this Court, the fact that the petitioner has approached this Court instead of raising the preliminary objection regarding jurisdiction before the Forum renders the petition premature. Besides, the notice issued to the petitioner has not culminated into full-fledged proceedings, therefore, the present is not a fit case for exercise of discretion. As regards the ground of issue of lack of jurisdiction, this Court would refrain from expressing any opinion on this issue, as it would be appropriate if the objection is raised before the District Forum.

19. At this stage, it would be fruitful to advert to the judgments relied upon by the learned advocate for the petitioner.

(a) In *The Calcutta Metropolitan Development Authority v. Union of India and others* (supra), the learned Single Judge of the Calcutta High Court (as His Lordship then was) quashed the proceedings before the Calcutta District Forum on the ground of lack of jurisdiction as, in the view of that Court, the complaint was not maintainable as per the provisions of Section 2(d) of the Act. Section 2(d) defines 'consumer'. In that case, a complaint was filed before the concerned District Forum which passed an order restraining the petitioner ("CMDA" for short) therein from making further construction of Pay and Use Toilets in the Calcutta Municipal Corporation area, in pursuance of the scheme for betterment of health and hygiene in the city of Calcutta, till the matter was completely heard. CMDA preferred an appeal against the said order to the State Commission, which restrained it from carrying on construction till the matter was taken up for complete hearing on the specified date. When the matter was not taken up for hearing on the specified date, the CMDA filed a writ petition in the High Court of Calcutta taking the plea that the District Forum did not have jurisdiction to entertain the complaint in view of the provisions of Section 2(d) of the Act. It was contended before the Calcutta High Court by the respondent (original complainant) that the Writ Court had not jurisdiction to entertain the petition in view of the pending proceedings before the District Forum and State Commission. These contentions were negated by the Calcutta High Court, stating as below:

11. I am of the view that while considering the prayer for certiorari, the High Court is not entirely powerless to look into the question as to whether the concerned authority at all had jurisdiction to entertain the matter and to decide the question relating to initial lack of jurisdiction.

The Calcutta High Court also took into consideration the aspect that a good deal of money had already been spend upon the construction of a public convenience. The Court also took into consideration the aspect that existence of a public

convenience near a religious institution cannot hit anyone's religious sentiments and it cannot be said that the existence of the said public convenience would contaminate the milk sold from Mother Dairy milk booth. Ultimately, the Calcutta High Court held as below:

35. Having regard to the above, and keeping in mind the interest of the general public, as against the objections raised by a single individual, the writ application, in my view, must succeed.

36. The inconvenience that may be caused to a single individual cannot gain precedence over the benefit to be gained by the public at large. If projects of the instant nature are allowed to be stalled, not only will the public suffer great inconvenience, but the health and hygiene of the entire city would be further aggravated with the ever-increasing population and the demand for minimum sanitary facilities. One has also to take into consideration the floating population who come from the suburbs to Calcutta in connection with their work and who did not have toilet facilities which are otherwise available to the residents of Calcutta.

It is evident from the perusal of the abovereferred judgment that the petitioner had not only appeared before the District Forum but had also filed an appeal against the order of the District Forum restraining it from making any further construction, before the State Commission. It is only in circumstances that the State Commission did not proceed to hear the matter that the High Court of Calcutta was moved, and the petition entertained. Apart from the inherent power of the Court to entertain the petition, and decide the issue regarding lack of jurisdiction, the Calcutta High Court also took into consideration the factual matrix of the case regarding construction of public conveniences that were of utmost necessity to the general public and upon which a good deal of money had been spent and the public interest involved. The factual matrix of that case is completely different from the one obtaining in the present case. In the case of the petitioner before this Court, no matter of public interest is involved. The complaint has arisen purely out of a business transaction between the petitioner and the complainants. As already stated hereinabove, the objection regarding lack of jurisdiction has never been raised before the Forum by the petitioner, therefore, reliance upon the above-quoted judgment by the petitioner would not be helpful on the facts and in the circumstances of the present case.

(b) In *Food Corporation of India v. District Consumer Forum (supra)*, a complaint was filed against the Food Corporation of India before the District Consumer Forum, which was allowed. No objection regarding jurisdiction was taken before the District Forum. In the appeal against the order of the District Forum as well, such an objection was not taken. However, a separate application was filed in the appeal taking up the objection regarding jurisdiction. The State Commission was of the view that the objection that had not been taken in the appeal could not have been taken by way of a separate application. The appeal was dismissed and the matter came before the High Court of Calcutta in its writ jurisdiction. The

said High Court, following the view expressed earlier, in the case of *The Calcutta Metropolitan Development Authority v. Union of India and others* (supra), entertained the petition, making it clear that it was not a question of jurisdiction which was relevant but the fact that the State Commission refused to entertain the said question in appeal. The fact situation of that case is totally different from the one obtaining in the present case. In the present case, the petitioner has not raised the issue of jurisdiction before the Forum at all. The Calcutta High Court had entertained the writ petition after the District Forum had passed the order and the State Commission had dismissed the appeal against the said order; whereas in the present case, the objection regarding jurisdiction has not been raised before the District Forum at all and the said Forum has had no opportunity to decide this issue. Therefore, reliance upon this case would not take the case of the petitioner any further.

(c) In *Harbanslal Sahnia And Another v. Indian Oil Corpn. Ltd. And Others* (supra), the Supreme Court has placed reliance upon its earlier judgment in the case of *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others* (supra), regarding exercise of jurisdiction despite availability of an alternative remedy. As the judgment in *Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others* (supra), has already been referred to and discussed hereinabove, no further discussion is required.

(d) In *Sonic Surgical v. National Insurance Company Limited* (supra), the appellant therein filed a claim petition before the Consumer Commission of the Union Territory of Chandigarh, which came to be allowed. On appeal, the National Consumer Disputes Redressal Commission allowed the appeal of the respondent therein on the ground that the Consumer Commission had no jurisdiction to entertain and adjudicate the complaint. The view taken by the National Commission was upheld by the Supreme Court. In that case as well, the appellant had first approached the State Commission and then the National Commission whereas in the present case, the petitioner has moved this Court without any effective hearing having taken place before the District Forum and without taking the objection regarding jurisdiction in the first instance, before the said Forum.

20. Taking into consideration the aspect that it is open to the petitioner to appear before the Forum and apprise it regarding its objection regarding lack of jurisdiction to entertain the complaint, and in view of the fact that no effective hearing has taken place before the Forum, leave alone any order being passed, it cannot be said that the Forum has exercised jurisdiction which is not vested in it. A complainant cannot be estopped from making a complaint even before a Forum which may not have jurisdiction to entertain it. It is for the concerned Forum to decide the issue of jurisdiction in the first instance. If an order passed by the Forum is not sustainable in law, then the petitioner may have a grievance that can be taken to its logical conclusion. However, in the present case, such a situation has not arisen as the petitioner has not appeared before the Forum for

an effective hearing and has not raised the objection regarding jurisdiction before it. In other words, the Forum has not yet had the opportunity to effectively exercise the jurisdiction vested in it, for decision of an issue. In this view of the matter and for reasons stated hereinabove, this Court does not consider it appropriate to entertain the petition at this premature stage, leaving it open to the petitioner to approach the Forum and taken the objection regarding jurisdiction. In the event that the petitioner approaches the Forum and takes such an objection, the Forum shall consider and decide the same as a preliminary issue, in accordance with law, before proceeding with the merits of the case. Subject to the above directions, the petition is rejected.

21. It is clarified that no observation made by this Court be construed as having touched the merits of the case.