
(2015) 04 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1437/2015

Jaypee University

APPELLANT

Vs

Vaibhavi Basal

RESPONDENT

Date of Decision : 08-04-2015

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 15, 21

Citation : (2015) 04 MP CK 0030

Hon'ble Judges : Sheel Nagu, J.;N.K. Gupta, J.

Bench : Division Bench

Advocate : Sankalp Sharma, Counsel, for the Appellant

Final Decision : Dismissed

Judgement

1. Heard on admission.

2. The petitioners have challenged the order dated 5.2.2015 passed by District Consumer Dispute Redressal Forum, Guna in case No. 163/2014, whereby some relief was granted to the respondent No. 1 relating to her admission, fees and compensation.

3. Facts of the case, in short, are that, the respondent No. 1 has moved a complaint before District Consumer Forum, Guna under Section 12 of Consumer Protection Act (hereinafter it will be referred to as "C.P. Act") that the petitioners have assured that if a person enters in course of BMCT diploma then, he would get admission in second year of engineering degree course and whoever shall obtain above 75% of marks then, such student would get an employment positively. The complainant/respondent received 87% marks in BMCT diploma but, neither she was admitted in second year of engineering degree course nor, employment was provided to her. After giving opportunities to the parties to adduce the evidence, District Consumer Forum vide order dated 5.2.2015 granted various reliefs to the respondent as mentioned above.

4. Learned counsel for the petitioners submits that petitioners have raised so

many objections including the objection that the District Consumer Forum has no jurisdiction to try such a complaint. Secondly, it is settled view of various High Courts that education is not a commercial activity and therefore, District Forum has no jurisdiction over the educational institutions. In support of his contention, learned counsel for the petitioners has placed his reliance upon the order passed by single Bench of Calcutta High Court in case of Smt. N. Taneja and another Vs. Calcutta Distt. Forum and others, . It was also submitted that this Court has jurisdiction to entertain the present petition though an alternate remedy of appeal is available. In support of this contention, learned counsel for the petitioners has placed his reliance upon the judgments passed by the Apex Court in case of L.K. Verma Vs. H.M.T. Ltd. and Another, and the judgment passed in case of "State of Karnataka v. Vishwasbharthi House Building Coop. Society and others", [(2003) 2 SC 412].

6. After considering the submissions made by the learned counsel for the petitioners, it appears that an opportunity of contest was given to the petitioners by District Consumer Forum. Consumer Protection Act, 1986 prescribes provision of appeal to approach State Commission under Section 15 of the C.P. Act and if the litigant has grievance against the order passed by the State Commission then, he could approach to the National Commission under Section 21 of the C.P. Act. The petitioners have a grievance that they raise the question of jurisdiction, which was not decided by the District Forum. It is true that District Forum did not make any question for determination of this point and therefore, nothing was discussed on that point. However, the petitioners have an opportunity to raise such objections before the State Commission and on the basis of evidence adduced by the parties, the State Commission may decide the point or remand the case to the District Forum to decide such an objection. When all the documents are filed by both the parties before District Consumer Forum and a decision is given then, it is for the petitioners to file an appeal as prescribed under C.P. Act.

7. In judgment passed by the Apex Court in case of Vishwasbharthi Housing Coop. Society (supra), Hon"ble the Apex Court has considered a civil appeal against the order passed by the High Court of Karnataka and no specific question was to be decided by the Apex Court in that case that if alternate remedy is available then, a writ petition shall be entertained. In that matter, vires of the C.P. Act was challenged and Hon"ble the Apex Court found that provisions of the Act are not ultra vires. However, the petitioners did not get any advantage in the present matter of that Vishwasbharthi's case (supra). Similarly, in case of L.K. Verma (supra), the matter was dependent upon the relation of employer and employee and in so many cases, to save the time of the employee, such type of petitions are entertained and accepted but, no law has been laid down that without any specific reason, such writ petition shall be entertained by the High Court, though a right of appeal is available to the concerned party.

8. In the present case, question of jurisdiction can be raised before the State

commission and all such points, which were raised before the District Forum can be raised before the State commission and therefore, no cognate reason has been shown by the petitioners, so that the present petition may be entertained though they have a right to file an appeal against the order passed by the District Forum. In absence of any acceptable reason, if such type of petitions are entertained then, the litigants shall start filing such petitions before the High Court instead of filing appeals and all the appellate authorities, which are functioning under various laws shall be defunct and entire work load would come upon the High Courts. The Apex Court did not give such a direction in any of the case.

8. When the petitioners have a right to file an appeal against the impugned order before the State commission then, merit of the case is not required to be discussed in the present matter and therefore, it is not necessary to discuss the order passed by the single Bench of Calcutta High Court.

9. On the basis of the aforesaid discussion, there is no cognate ground to entertain the present petition filed by the petitioners. They have an opportunity to file an appeal against the order passed by the District Consumer Forum, therefore, there is no ground to entertain the present petition. Consequently, the present petition is hereby dismissed at motion stage.