

(1995) 03 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 9494 of 1995

K.R. Ramaswamy

APPELLANT

Vs

State Consumer Disputes Redressal Commission and others

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 15, 19, 2, 23

Citation : (1996) 87 CompCas 995 : (1996) 1 MLJ 26

Hon'ble Judges : S. Jagadeesan, J

Bench : Single Bench

Advocate : V. Raghavachari, for the Appellant; V. Subbarayan, for the Respondent

Judgement

Jagadeesan, J.—The petitioner's case is that the third respondent herein filed a petition C.D. 165 of 1994 on the file of the District

Consumer Disputes Redressal Forum, Dindigul Anna District, Dindigul, for return of certain amount deposited with the petitioner. The Consumer

Redressal Forum has allowed the petition by order dated January 11, 1995. The petitioner remained ex parte before the said Forum. The award

has been passed against both the petitioner and the fourth respondent. Against the said award only the petitioner preferred appeal in Appeal No.

437 of 1995 on the file of the State Consumer Disputes Redressal Commission. The said appeal was dismissed. The present writ petition has been

filed to quash the order of the State Consumer Disputes Redressal Commission dated May 31, 1995.

2. Learned counsel for the petitioner contended that the District Forum has no jurisdiction to entertain the petition. Now, pursuant to the orders of

the District Forum as well as the State Commission, the third respondent is taking steps to recover the amounts in accordance with the award.

Since the petitioner remained ex parte before the District Forum, the question of initial want of jurisdiction could not be raised. The State

Commission also did not go into the issue. Since the District Forum totally lacks jurisdiction, the award passed by the same is a nullity and hence

the validity of the same can be questioned under article 226 of the Constitution of India in this writ proceeding. Even though the order of the

District Forum has been confirmed by the State Commission, the State Commission being a Tribunal, is amenable to the writ jurisdiction. He also

referred to the judgment reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

3. I heard counsel. In the judgment cited by counsel for the petitioner, it has been held as follows (at page 480) :

It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected

by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record.

Where it is manifest or clear that the conclusion of law recorded by an inferior court or tribunal is based on an obvious misinterpretation of the

relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong

in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent

with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face

of the record.

4. There is no dispute with regard to the power of the High Court under article 226 of the Constitution of India to interfere with the orders of the

inferior Tribunals or lower courts. If the petitioner had approached this court against the award of the District Forum, I do not think there will be

any difficulty in entertaining the writ petition on the ground that the District Forum has no jurisdiction at all to entertain the claim. In this case, the

petitioner had filed an appeal against the order of the District Forum and invited a decision on the merits from the State Commission. Against the

order of the State Commission, section 19 of the Consumer Protection Act, 1986, provides a statutory appeal to the Consumer Protection Act,

1986, provides a statutory appeal to the National Commission. When a statutory appeal has been provided against the impugned order, is it

necessary for this court to entertain the writ petition, accepting the arguments of the petitioner ? My answer is ""no"".

5. First of all as the State Commission has found, the petitioner has no sufficient cause for remaining absent before the District Forum after the

receipt of summons. If really the petitioner is aggrieved with regard to the claim of the third respondent, he ought to have appeared before the

District Forum and contested the claim. He cannot sleep over the matter and allow the District Forum to pass an ex parte award and, thereafter, to

raise all technical pleas. When a party seeks for the exercise of extraordinary jurisdiction of this court, this court is entitled to take into

consideration the conduct of such party with regard to his bona fide claim. The award has been passed against the petitioner and the fourth

respondent herein jointly and severally. The petitioner alone has preferred the appeal before the State Commission. A perusal of the order of the

State Commission does not reveal that the petitioner had taken any objection with regard to the jurisdiction of the District Forum to entertain the

claim.

6. In the recent judgment reported in A.V. Georgekutty Vs. State of Kerala and Others, , it has been held as follows :

From a reading of the above provisions of the Act and the rules it is clear that separate Forums are constituted by the Legislature at the District

level, at the State level and at the National level. Complaints can be lodged before the District Forum and in certain types of cases before the State

Forum. Appeals against the orders of the District Forum lie to the State Forum. Against the orders of State Forum an appeal will lie to the National

Commission. A further appeal lies to the Supreme Court against the orders of the National Commission. Appeals are normally to be preferred

within 30 days. The complaints are to be disposed of within 90 days in cases where the dispute does not involve any analysis or testing. On the

other hand, if it involves any analysis or testing, the complaints have to be disposed of within 150 days. The intention of the Legislature appears to

be, to provide for a speedy and efficacious remedy by resolving consumer disputes. In fact, the Statement of Objects and Reasons clearly mentioned that the Act is intended to provide speedy and simple redressal to consumer disputes by providing a self-contained quasi-judicial machinery.

It is in the context of the prescription of hierarchy of separate Forums under the Act that we have to consider the question as to whether the parties

can move this court under article 226 of the Constitution of India for the issue of a writ of prohibition. It is true that whenever the Legislature

creates a separate tribunal with a hierarchy of appeals, the jurisdiction of the High Courts under article 226 of the Constitution of India to deal with

the orders passed by the said tribunals is not and cannot be ousted. It is also true that whenever questions of jurisdiction are raised, the High Court

normally permits such questions to be raised under article 226 of the Constitution and examines whether the applications or the other proceedings

filed before the Tribunal are within the jurisdiction of the said tribunal or not. But the High Court has a discretion to entertain the writ petitions. It is

not as if the High Court is bound to entertain every writ petition which raises a question of jurisdiction of a tribunal. In this connection reference is

to be made to the decision of the Supreme Court in *First First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd.*, . In that case, the Supreme

Court observed while dealing with the question of issue of writ of prohibition that issuance of a writ of prohibition is discretionary with the High

Court, particularly when the petitioner has an alternative remedy which is adequate and efficacious.

The Consumer Protection Act, 1986, has created a hierarchy of bodies under the Act with the power to hear appeals at every stage. The intention

of the Legislature appears to be that the District Forum or the State Commission as well as the National Commission should be allowed to perform

their duties speedily and without any interruption. The District Forum is presided over either by a District Judge or by a retired District Judge. The

State Commissions are presided over by a person who is a judge of a High Court or a retired judge of a High Court. Surely the litigant cannot be

permitted to say that the District Judge at the level of the District Forum or a sitting or retired judge of the High Court at the level of the State

Commission is not competent to decide a question of jurisdiction. The Presiding Officers of these bodies, having worked for a long period as either District Judges or High Court Judges, are fully experienced to decide questions of jurisdiction, however complicated. They are not like certain executive authorities who have no judicial experience. To say that the bodies presided over by such persons cannot be allowed to decide jurisdictional issues, cannot be accepted. It is well-settled that such bodies are entitled to decide whether they have jurisdiction to decide a dispute and whether the complainant before them is a consumer or not within section 2(d). The intention of Parliament will, in our opinion, be defeated if initially objections as to the jurisdiction are permitted to be raised before the High Court under article 226 of the Constitution. Merely because a question of jurisdiction arises in such cases, the High Court should not, in our opinion, feel it ordinarily imperative to admit such writ petitions. If the writ petitions are admitted merely because there is the question of jurisdiction of the District Forum or the State Commission or the National Commission, the proceedings before the said authorities are bound to be delayed and the very purpose of establishing these forums will be frustrated.

7. It may be pertinent to note that the Division Bench in the above judgment had further observed that if the writ petition is entertained, then the parties would necessarily avail of the further remedy by way of appeal to the Division Bench and then further appeal to the Supreme Court. The High Courts are already burdened with heavy arrears and that is the precise reason why separate hierarchy of bodies are created under the Consumer Protection Act.

8. In yet another case reported in K.V. Padmanabhan Vs. The Consumer Dispute Redressal Forum, Ernakulam and Others, , it has been held as follows (at page 180) :

The High Court is not a statutory appellate or revisional authority under the provisions of the Act. An order made by the District Forum is appealable u/s 15 only before the State Commission. An order passed by the State Commission is appealable only before the National Commission u/s 19 and the order of the National Commission could be challenged in appeal only before the Supreme Court u/s 23.

In view of these statutory remedies which could operate as efficacious alternative remedies, I do not think an O.P. under article 226 of the

Constitution will lie. Remedy under article 226 could be resorted to only in the absence of alternative efficacious remedies.

9. As stated already, if the original authority absolutely lacks jurisdiction, it is open to the parties to file the writ petition. When the petitioner had

chosen the appellate forum to challenge the order of the District Forum then he should follow the hierarchy of the authorities provided under the

statute. Moreover, whether the State Commission is a subordinate court or an inferior tribunal to the High Court, itself is doubtful. When the

petitioner has filed the appeal before the State Commission, nothing prevents him to file the further appeal to the National Commission, as provided

under the statute.

10. When there is an efficacious alternative remedy and in the absence of any material to show that the petitioner had raised the issue of jurisdiction

of the District Forum before the State Commission, I am of the view that the writ petition is not maintainable and hence the same is dismissed.