

(1995) 07 MAD CK 0097
In the Madras High Court

K.R. Ramaswamy

APPELLANT

Vs

The State Consumer Disputes Redressal Commission and
Others

RESPONDENT

Date of Decision : 27-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 19

Citation : (1996) 1 MLJ 26

Hon'ble Judges : Jagadeesan, J

Bench : Division Bench

Judgement

Jagadeesan, J.—The petitioner's case is that the third respondent herein filed a petition C.D. 165/94 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 11.1.1995. 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 alone 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 Redressal Commission dated 31.5.1995.

2. The 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 has also did not go into the issue. Since the District Forum totally lacks jurisdiction, the award passed by the same is 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 writ jurisdiction. He also referred to the judgment reported in Syed Yakoob Vs. K.S. Radhakrishnan and Others, .

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

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 mis-interpretation 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.

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 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 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".

4. First of all as the State Commission has found that 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 bona fides of his 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 do not reveal that the petitioner had taken any objection with regard to the jurisdiction of the District Forum to entertain the claim.

5. 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 type 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 Commission 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 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 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 complaint 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 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.

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 the further remedy by way of appeal to the Division Bench and then further appeal to 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.

6. In yet another case reported in K.V. Padmanabhan Vs. The Consumer Dispute Redressal Forum, Ernakulam and Others, , it has been held as follows:

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

7. 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.

8. 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.