

(2022) 07 OHC CK 0040

In the Orissa High Court

Case No : Writ Petition (C) No. 6202 Of 2017

Manoj Mohapatra And Another

APPELLANT

Vs

State Consumer Disputes Redressal Commission And Another

RESPONDENT

Date of Decision : 07-07-2022

Acts Referred:

Constitution of India, 1950 — Article 136, 141, 226

Consumer Protection Act, 2019 — Section 50

Consumer Protection Act, 1986 — Section 13(2)(a), 13(3), 107

Citation : (2022) 07 OHC CK 0040

Hon'ble Judges : Arindam Sinha, J

Bench : Single Bench

Advocate : A.N. Pattanayak, A.C. Panda

Final Decision : Allowed

Judgement

Arindam Sinha, J

1. Mr. Pattanayak, learned advocate appears on behalf of petitioners and submits, his clients have impugned orders dated 1st December, 2016 and 24th March, 2017 whereby his clients are deprived of presenting their case before the State Consumer Disputes Redressal Commission. He submits, on 22nd September, 2016 there was direction for filing written version of defence, on 24th October, 2016. His client had prayed for some more time on 24th October, 2016 and on 4th November, 2016, the date was extended till 25th November, 2016. On 25th November, 2016 there was direction to list on 1st December, 2016, for filing written version. By impugned order dated 1st December, 2016, by reason of his clients going unrepresented, the case was set ex-parte against them. His clients made Misc. Case no.1132 of 2016 for recalling the ex-parte direction but the same was dismissed by second impugned order dated 24th March, 2017, on ground that the Commission has no power of review. He submits, only one adjournment was sought by his clients and thereafter on intervening dates there were administrative orders as there was no proceeding in the Commission on

those dates. The next date was 1st December, 2016, when unfortunately, his clients were not represented.

2. He relies on section 50 in Consumer Protection Act, 2019 to submit, the new Act provides for power of review to the Commission. He submits, there is error on face of the record because there was no extension granted by the Commission up to 45 days. The extension granted on 24th October, 2016 up to 4th November, 2016 did not comprise of 45 days inasmuch as the direction to file written version was made on 22nd September, 2016. He submits further, the dispute has been settled between the parties. Unless this is allowed to be brought on record in the Commission, his client will suffer injustice.

3. Mr. Panda, learned advocate appears on behalf of opposite party no.2 (complainant). He submits on reliance of *Cicily Kallarackal v. Vehicle Factory* reported in (2012) 8 SCC 524, the writ petition is not maintainable. Without prejudice he points out, direction to file written version was given by order dated 23rd August, 2016. The Act of 2019 came into effect on 20th July, 2020. By section 107 on repeal and savings, the Consumer Protection Act, 1986 stood repealed. The earlier Act did not have provision for review, to be invoked by the Commission.

4. The first submission is that the writ petition is not maintainable on reliance upon *Cicily Kallarackal* (supra). This Bench by order dated 15th December, 2021 in W.P.(C) no.32749 of 2021 (*M/s. Balimela Hydro Electric Project vs. District Consumer Redressal Commission and another*), following *Cicily Kallarackal* (supra) had held that writ petitions are not maintainable against working of the Consumer Protection Act. That position stood altered on subsequently the Supreme Court having declared the law to be that interference under article 226 of the Constitution is possible. This was by Judgment dated 13th May, 2022 in Civil Appeal no.3072 of 2022 (*Ibrat Faizan v. Omaxe Buildhome Pvt. Ltd.*). *Cicily Kallarackal* (supra) and *Ibrat Faizan* (supra) are both decisions of the Supreme Court through Benches of equal strength (DB). *Ibrat Faizan* (supra) is to be followed because that is a later decision rendered in a civil appeal, on the special leave petition being admitted. Thus, it is a judgment made to be binding on all Courts by article 141 in the Constitution. *Cicily Kallarackal* (supra) was an order dismissing the special leave petition. As such, the order was made under article 136 in the Constitution. Hence, the writ petition is found to be maintainable.

5. Procedure provisions are in section 13 of the 1986 Act. Clause (a) in sub-section (2) provides for maximum of 45 days given to opposite parties in filing defence version. Sub-clause (ii) under clause (b) mandates the Commission to proceed to settle the consumer dispute ex-parte on basis of evidence brought to its notice by complainant, where the opposite party omits or fails to take any action to represent his case within the time given. It appears from orders commencing with order dated 23rd August, 2016 and up to order dated 1st December, 2016, more than 45 days time was given to petitioners for filing written version.

6. Impugned order dated 1st December, 2016 is a procedural order setting down the case ex-parte against opposite parties. That would exclude petitioners from filing written version and sub-section (3) in section 13 of the 1986 Act bars any question being brought to Court on compliance of the procedure, alleging principles of natural justice have not been complied with. Petitioners say there has been settlement and a duly executed agreement is proof of it.

7. Evidence to be brought before the Commission by complainant must be tested. In event documentary evidence is filed by complainant, the document has to be proved. For the purpose of proof of oral and documentary evidence, cross-examination must be allowed. Petitioners will have opportunity to confront complainant with the terms of settlement/agreement in the cross-examination.

8. The writ petition is allowed as above.

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