

(2012) 05 AHC CK 0159
In the Allahabad High Court
Case No : Writ Petition No.3334 of 2008

Medical Superintendent, Vivekananda Polyclinic	APPELLANT
Vs	
State consumer dispute redressal commission, Lko.And others	RESPONDENT

Date of Decision : 01-05-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 12

Citation : (2012) 05 AHC CK 0159

Hon'ble Judges : Saeed-Uz-Zaman Siddiqi, J

Final Decision : Dismissed

Judgement

SaeedUzZaman Siddiqi, J.—By means of both the writ petitions under Article 226 of the Constitution of India, the petitioner has approached this court for quashing of the orders passed by the District Consumer Disputes Redressal Forum, Lucknow O.P. No. 2 and orders passed by the State Consumer Disputes Redressal Forum, Lucknow O.P. No. 1.

2. Brief facts, for the purposes of deciding the said petitions, are that O.P. No. 3 filed a complaint under Section 12 of the Consumer Protection Act, 1986 against the petitioner and O.P. No. 4 on 10.01.2007 before the District Consumer Disputes Redressal Forum I Lucknow.

3. Notices were issued to the petitioner and O.P. No. 3. They appeared before the forum but absented thereafter, and ultimately the claim for Rs.3,75,000/(Three Lakhs and Seventyfive thousand rupees) was awarded vide judgment and order dated 18.03.2008. The petitioner filed an appeal before the State Consumer Disputes Redressal Forum, Lucknow, U.P. which was registered as Appeal No. 777 (S/C) of 2008. The appeal was heard and dismissed on merits vide judgment and order dated 30.5.2008. The petitioner did not take recourse to the legal remedy available to him under Act 68 of 1986 before the National Consumer Disputes Redressal Forum, but has preferred this writ petition. The poor sufferer O.P. No.

3 is running from pillar to post since then without getting the compensation.

4. Heard learned counsel for the petitioner and have gone through the records.

5. It was vehemently argued by the learned counsel for the petitioner that both the authorities under Section 12 of the Consumer Protection Act, 1986, who are O.P. Nos. 1 and 2 committed fraudulent violation of law. Ultimately, several arguments were placed before this court to justify nonapproaching the National Consumer Forum and; attention of the court was drawn towards the observations made by the Apex Court in *Martin F. D'Souza versus Mohd. Ishfaq* 2009 3 SCC page 1, wherein it was laid down as under:

6. We, therefore, direct that whenever a complaint is received against a doctor or hospital by the Consumer Fora (whether District, State or National) or by the criminal court then before issuing notice to the doctor or hospital against whom the complaint was made, the Consumer Forum or the criminal court should first refer the matter to a competent doctor or committee of doctors, specialized in the field relating to which the medical negligence is attributed, and only after that doctor or committee reports that there is a prima facie case of medical negligence should notice be then issued to the doctor/hospital concerned. This is necessary to avoid harassment to doctors who may not be ultimately found to be negligent. We further warn the police officials not to arrest or harass doctors unless the facts clearly come within the parameters laid down in *Jacob Mathew Case* reported in *Jacob Mathew versus State of Punjab*, (2005) 6 SCC 1 : 2005 SCC (Cri) 1369, otherwise the policemen will themselves have to face legal action.

7. This proposition of law as laid down by the Apex Court, may or may not be having prospective or retrospective affect, it was incumbent upon the petitioner to place the legal position through statutory remedy, otherwise it shall be encroachment by this court over the provisions contained in the Act wherein entire procedure has been laid down and Consumer Protection Act is a complete code, in itself.

8. In *S.L.P. No (s).: 1706817069/2010, M/S Advance Scientific Equip. Ltd. & another versus West Bengal Pharmaceuticals and Photochemical Development Corporation Ltd.*, Hon"ble the apex court has held as under:

"We are further of the view that the petitioners" venture of filing petition under Article 227 of the Constitution was clearly an abuse of the process of the Court and the High Court ought not to have entertained the petition even for a single day because an effective alternative remedy was available to the petitioner under Section 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction."

9. In *L. Chandra Kumar versus UOI & others* reported in AIR 1997 SC 1125, a seven Judges Constitution Bench of Hon"ble Supreme Court has held under:

"Though judicial review in the basic feature of the Constitution, the vesting of

power of judicial review in an alternative institutional mechanism, after taking it away from the High Courts, would not do violence to the basic structure so long as it was ensured that the alternative mechanism was an effective and real substitute for the High Court."

10. In view of this authority, the framework of the Act would indicate that it was intended by the Parliament to provide a selfcontained, almost wholly exclusive forum for adjudication of consumer disputes quickly. Needless to say that the "Statement of Objects and Reasons" of the Consumer Protection Act, 1986 seeks to provide for better protection of the interest of consumers and for the purpose, the forum provides the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers. For the said purpose the Act has made adequate provisions to provide speedy and simple redressal to consumer dispute, a quasijudicial machinery is sought to be set up at the District, State and Central levels to observe the principles of natural justice.

11. I find that the writ petition has been filed with an intention to defraud the claim granted to the O.P. No. 3 by O.P. Nos. 1 and 2. I do not find any merits in these writ petitions which are, hereby, dismissed with special costs of Rs.1,000,00/(One Lakh rupees). It shall be paid by the petitioner within 30 days from today failing which the same shall be recoverable as arrears of land revenue.

12. With these observation both the writ petitions are dismissed.