

(2017) 07 MAD CK 0042
In the Madras High Court
Case No : 18372 of 2017

**M/s.Prist University Vs State Consumer Disputes Redressal?Commission
& ANR.**

Date of Decision : 28-07-2017

Acts Referred:

Consumer Protection Act, 1986, Section 21, Section 19, Section 2, Section 23, Section 22, Section 18,</p>
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Rs. 85,500/-

(3) Compensation for loss of two years as student in Writ Petitioner/University :
Rs. 50,000/-

(4) Compensation for holding the School Transfer Certificate and preventing the
2nd Respondent (Complainant) from getting :

admitted in Anna University, [thereby wasting the Complainant's best efforts for
M.Tech admission in Anna University Rs.50,00,000/-

(5) For having wasted the 2nd Respondent's /Complainant's preparation for Anna
University M.E./M.Tech entrance exams : Rs. 39,500/-

(6) For having spoiled the 2nd Respondent/ Complainant's career prospects, [on
account of which the 2nd Respondent's life and :

job prospects were permanently affected for the rest of his life Rs.20,00,000/-

(7) Compensation for spending atleast three years to recollect his Engineering
Knowledge and prepare for IIT or Anna University :

M.E./ M.Tech entrance exams 2018 and waste atleast another two years for
completion of M.Tech Studies Rs.19,00,000/-

:

Total

Rs.91,00,000/-

3. The Learned Counsel for the Petitioner contends that the complaint of the 2nd
Respondent was numbered as C.C.No.18 of 2015 on the file of

the 1st Respondent/Commission and for the said complaint, the Writ Petitioner/
University had filed a detailed reply. In this connection, it is the

stand of the Writ Petitioner/University that the 2nd Respondent/Complainant had
filed the Complaint before the 1st Respondent/Commission for

compensation and return of certificates and that the said complaint in C.C.No.18
of 2015 on the file of the 1st Respondent/Commission is not

maintainable either in Law or on Facts.

4. At this juncture, the Learned Counsel for the Petitioner/ University projects an
argument before this Court that the Petitioner/University filed

C.M.P.No.274 of 2015 before the 1st Respondent/Commission seeking the relief
of dismissal of the complaint pending before it. As a matter of

fact, the 1st Respondent/ Commission had simply closed the said petition, by means of an order dated 03.04.2017, on merits by mentioning that

the Petitioner's/University's objection will be considered only at the time of trial.

5. The primordial plea taken on behalf of the Petitioner/ University is that the complaint in regard to the return of fees as well as the testimony of

certificates are not maintainable before the 1st Respondent/Commission and that the 1st Respondent has no jurisdiction to entertain the complaint

and the same is liable to be dismissed in limini.

6. Advancing his arguments, the Learned Counsel for the Petitioner submits that the Full Bench of the National Consumer Disputes Redressal

Commission, New Delhi in the decision Homoeopathic Medical College's case reported in 1995 (3) CPR 467, had held that "Fora constituted

under the Consumer Protection Act have no jurisdiction to declare any rule in the prospectus of any institution providing for non-refund of tuition

fee as unconscionable or illegal one etc."

7. Continuing further, the Learned Counsel for the Petitioner seeks in aid of the order passed by this Court in batch of Writ Petitions in W.P.

(MD).Nos.13992 to 13995 and 15058 of 2012 dated 09.01.2015 [between Shanmuga Arts Science and Technology Research Academy

(Sastra University) V. The District Consumer Disputes Redressal Forum, Thanjavur 613 002 and another], whereby and whereunder at

paragraphs 37 to 39, it is observed and laid down as follows:

37.At this juncture, it is noteworthy to refer the decision of the Hon"ble Supreme Court in the case of K.K.Modi v. K.N.Modi and others

reported in Indian Kanoon[http:// indiankanoon. org/doc/1777887](http://indiankanoon.org/doc/1777887), wherein, the Apex court held that frivolous or vexatious proceedings may also

amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop

such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of courts" discretion

whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should

be sparingly exercised and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding. While

observing so, the Apex Court has at page 12 of its judgment referred to the

Supreme Court practice 1995 published by Sweet & Maxwell in

paragraph 18/19/33 (page 344) which explains the phrase ""abuse of the process of the court"" thus: This term connotes that the process of the

court must be used bona fide and properly and must not be abused. The court will prevent improper use of its machinery and will in a proper case,

summarily prevent its machinery from being used as a means of vexation and oppression in the process of litigation.

38.Thus, for the discussions held above, the petitioner being unaided institution, is entitled to claim full fee either for the entire course or for the

particular year, as the case may be, when the students left the college in the mid stream, as such, the grievance raised by the students in the

impugned complaints, does not make out any prima facie case against the petitioner University to subject the same to face the ordeal of trial. When

the complaints are both legally and factually unsustainable, the same cannot be, in the interest of justice allowed to go on, so as to cause serious

prejudice to the petitioner University and the complaints are hence liable to be quashed.

39.In the result, all the writ petitions are allowed and the proceedings in CC Nos.31, 32, 33 and 48 of 2012 pending on the file of the District

Consumer Disputes Redressal Forum, Thanjavur stand quashed. The third respondent in WP.No.15058 of 2012 by name Srinivasa Murthy

Cherukupally is directed to pay the second semester fee and the petitioner is directed to hand over the certificates to the third respondent within

three days from the date of receipt of payment of second semester fee. No costs.

8. The Learned Counsel for the Petitioner brings it to the notice of this Court that W.A.(MD).No.689 of 2015 has been filed by the 2nd

Respondent therein as an Appellant before the Madurai Bench of this Court as against the order dated 09.01.2015 in W.P.(MD).No.15058 of

2012 wherein a notice was ordered on 14.06.2017 returnable by 03.07.2017. Also that, W.A.(MD).Nos.426 to 428 of 2016 were filed as

against W.P.(MD).Nos.13993 to 13995 of 2012. The 2nd Respondent in the said Writ Petitions figures as an Appellant in all the Writ Appeals. In

W.A.(MD).Nos.426 to 428 of 2016, fresh notice was ordered to the 2nd Respondent.

9. The Learned Counsel for the Petitioner seeks in aid of the Division Bench order

of this Court in W.P.No.4288 of 2016 dated 04.02.2016

wherein at paragraph 2 and 3, it is observed as under:

2.The learned counsel submits that since fresh warrant would have to be issued now that the old one remains unexecuted, he seeks not to press

the writ petition at present and seeks to withdraw the same and on the constitution of the Commission, he would place his application seeking to recall the warrant. Endorsement has also been made.

3.The writ petition is dismissed in terms aforesaid. No costs. Consequently, WMP.No.3637 of 2016 is closed.

10. Heard the Learned Counsel for the Petitioner on the aspect of "Maintainability of Writ Petition" in W.P.Sr.No.55236 of 2017. Later on, the

Registry was directed to number the Writ Petition subject to maintainability and if the papers are otherwise in order.

11. The Learned Counsel for the Petitioner takes a fervent plea that since the C.M.P.No.274 of 2015 filed by the Petitioner/ University for seeking

dismissal of the complaint to the 2nd Respondent pending before the 1st Respondent was simply closed by the 1st Respondent on the ground that

the objection of the Writ Petitioner/University would be considered only at the time of trial.

12. It is to be pointed out that definition Section 2(c) of the Consumer Protection Act, 1986 [Act No.68 of 1986] deals with "Complaint" which

runs as under:

Complaint"" means any allegation in writing made by a complainant that -

Substituted by Act No.50 of 1993 [(i) an unfair trade practice or a restrictive trade practice has been adopted by Substituted for the words ""any

trader"", by Act No.62 of 2002, dated 17-12-2002, w.e.f. 15-3-2003. [any trader or service provider;]

Substituted for the words, ""the goods mentioned in the complaint,"" by Act No.50 of 1993 [(ii) the goods bought by him or agreed to be bought by

him] suffer from one or more defects;

Substituted for the words, ""the services mentioned in the complaint,"" by ibid [(iii) the services hired or availed of or agreed to be hired or availed of

by him] suffer from deficiency in any respect;

Substituted by Act No.62 of 2002, dated 17- 12-2002, w.e.f. 15-3-2003. [(iv) a

trader or the service provider, as the case may be, has charged

for the goods or for the services mentioned in the complaint, a price in excess of the price -

(a) fixed by or under any law for the time being in force ;

(b) displayed on the goods or any package containing such goods;

(c) displayed on the price list exhibited by him by or under any law for the time being in force;

(d) agreed between the parties;

(v) goods which will be hazardous to life and safety when used are being offered for sale to the public -

(A) in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in

force;

(B) if the trader could have known with due diligence that the goods so offered are unsafe to the public ;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by the service provider

which such person could have known with due diligence to be injurious to life and safety;]

with a view to obtaining any relief provided by or under this Act;

13. Section 2(g) of the Act refers to the meaning of ""deficiency"". Section 2(e) points out the meaning of ""consumer dispute"". In fact, Section 2(o)

of the Act relates to the meaning of ""service"". Of course, Section 2(b) ""complainant"" means -

(i) a consumer ; or

(ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force;

or

(iii) the Central Government or any State Government;

(iv) Substituted by Act No.50 of 1993 [one or more consumers, where there are numerous consumers having the same interest;]

(v) Inserted by Act No.62 of 2002, dated 17-12-2002, w.e.f. 15-3-2003 vide S.O. No.270(E). [in case of death of a consumer, his legal heir or

representative]. who or which makes a complaint.

14. Besides the above, Section 17 of the Act speaks of "Jurisdiction of the State Commission". Section 18 pertains to "Procedure applicable to

State Commission". Indeed, Section 19 speaks of "Appeals" - Any person aggrieved by an order made by the State Commission in exercise of its

powers conferred by subclause (i) of Clause (a) of Section 17 may prefer an appeal against such order to the National Commission within a period

of thirty days from the date of order in such form and manner as may be prescribed.

15. Section 19A of the Act refers to "Hearing of appeal", an appeal filed before the State Commission or the National Commission shall be heard

as expeditiously as possible and further that, an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the

date of its admission.

16. Section 21 of the Act confers "Jurisdiction of the National Commission" which runs as under:

Subject to the other provisions of this Act, the National Commission shall have jurisdiction, -

(a) to entertain, -

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds Substituted for the words ""rupees twenty lakhs

by Act No.62 of 2002, dated 17-12-2002, w.e.f. 15-3-2003 [rupees one crore] ; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State

Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has

failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

17. Section 22 of the Act concerns with the ""Power and procedure applicable to the National Commission"". Section 22-A enjoins ""Power to set

aside ex parte orders"" passed by the National Commission. Section 23 deals with ""Appeal"". Any aggrieved person by an order made by the

National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 21 may prefer an appeal against such order to

the Supreme Court within a period of thirty days from the date of the order.

18. It is to be noted that "Appeal is a substantive right. Admittedly, it is a creation of Statute. No wonder, there can be no "Right of Appeal" unless

it is specifically conferred by a Statute. There is no two opinion of a vital fact that a Consumer Forum is required to follow the rules of natural

justice, although it is not bound by the strict rules of Civil Procedure Code. It cannot be gainsaid that there is no fetter in the Consumer Protection

Act, 1986 that any additional evidence cannot be brought on record before the State Consumer Commission while hearing the "Appeal" as per

decision Khivraj V. Chandra Babu reported in 2002 (1) CPR 111 (NC).

19. It is to be noted that the insertion of Section 22(2) of Consumer Protection Act, 1986 confers power on the "National Commission" to refer

any order made by it, when there is an "Error Apparent on the face of Record".

20. It is to be borne in mind that the machinery/hierarchy provided under the Consumer Protection Act, 1986 should be availed under Article 226

of the Constitution of India. An appeal can be filed by an aggrieved party before the Higher Commission against any order and not only against the

final Judgment, as per decision Dr.Jagannath Mondal V. Soma Roji reported in 1996 (2) CPR 129. Also that, during the pendency of the

Consumer Dispute or in a decided case, if any of the parties is affected by any order or proceedings, it can be assailed by way of "Revision" which

lies against any order of District Forum to State Commission and from any order of the State Commission to the National Commission.

21. One cannot brush aside a very vital fact that the challenge in "Revision" may be that the "Forum concerned" had exercised jurisdiction not

vested in it by Law or acted in exercise of the jurisdiction illegally or with material irregularity. Indeed, Article 14(1)(i) of the Consumer Protection

Regulations, 2005 provides limitation of ninety days from the date of order or date of receipt of the order in preferring the Revision.

22. At this stage, this Court worth recalls and recollects the decision of the Hon"ble Supreme Court in Civil Appeal No.10706 of 2011 decided

on 07.12.2011 between Nivedita Sharma V. Cellular Operators Association of India and Others reported in (2011) 14 Supreme Court Cases

337 at special page 338, whereby and whereunder, it is observed and laid down as follows:

An alternative remedy is not a bar to the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute are under challenge. The Court has recognised some exceptions to the rule of alternative remedy. However, the High Court will not entertain a petition under Article 3226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievances still holds the filed.

23. Also, this Court aptly points out the decision of the Hon"ble Supreme Court in *Cicily Kallarackal V. Vehicle Factory* reported in (2012) 8

Supreme Court Cases 524 at special pages 525 & 526, (SLPs(C)Nos.24228-29 of 2012 (Ccs Nos.12891-92 of 2012) decided on 06.08.2012

[arising out of the Judgment and Order dated 16.09.2008 and 17.12.2009 of the High Court of Kerala at Ernakulam in W.A.No.2518 of 2017

and RP.No.380 of 2009] wherein at paragraphs 4 and 9, it is observed and held as under:

4.Despite this, we cannot help but state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226

of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the

provisions of the Consumer Protection Act, 1986. Once the legislature has provided for statutory appeal to a higher court, it cannot be proper

exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers

under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law.

The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this

petition on other grounds.

9.While declining to interfere in the present special leave petition preferred against the order passed by the High Court in exercise of its

extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the orders of the Commission are incapable

of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section-27-A(a)(c) lies to this Court. Therefore,

we have no hesitation in issuing a direction of caution that it will not be a proper exercise of jurisdiction by the High Courts to entertain writ

petitions against such orders of the Commission.

24. Moreover, this Court cites the decision of this Court K.S.Sornam V. Minor S.Venkatasubbaian and another, (2004) 2 M.L.J. 629 at page

630 wherein it is observed as under:

When a specific remedy is available by way of appeal as contemplated under Section 19 of the Consumer Protection Act, 1986, civil revision

petition under Art. 227 of the Constitution is not maintainable.

25. As far as the present case is concerned, the Writ Petitioner /University as against the order dated 03.04.2017 in closing the C.M.P.No.274 of

2015 [seeking the relief of dismissal of complaint was reportedly closed by the 1st Respondent/Commission without considering the matter on

merits and to the effect that the Petitioner's/University's objection would be considered only at the time of trial] has not taken any further

proceedings except filing of the present Writ Petition, seeking to call for the records in C.C.No.18 of 2015 dated 28.01.2015 on the file of the 1st

Respondent/Commission and to quash the same.

26. On a careful consideration of the contentions advanced on behalf of the Petitioner/University and also this Court, taking note of the entire

conspectus of the attendant surrounding facts and circumstances of the present case in an wholesome manner, is of the considered opinion that the

"Machinery/Hierarchy" provided under the Consumer Protection Act, 1986 ought to be followed by the Writ Petitioner/University in true letter

and spirit without any deviation whatsoever. Without exhausting the said machinery/ hierarchy enshrined under the Act, 1986, it is not open to the

Petitioner/University to file the present Writ Petition praying for calling for the records relating to C.C.No.18 of 2015 dated 28.01.2015 pending

on the file of the 1st Respondent and to quash the same. Suffice it for this Court to point out that when the Consumer Protection Act provides for

adequate remedy of approaching the competent forum at various levels, then, in C.C.No.18 of 2015, pending on the file of the 1st Respondent,

the filing of the instant Writ Petition by the Writ Petitioner/University is per se,

not maintainable. Further, the Writ Petition is a premature and Otiose one. Viewed in that perspective, the Writ Petition fails.

27. In fine, the Writ Petition is dismissed and connected WMP No.19945 of 2017 is closed. There shall be no order as to costs. It is abundantly

made quite clear that the dismissal of the present Writ Petition filed by the Petitioner/ University will not preclude it from seeking appropriate

remedy before the competent Higher forum as specified under the Consumer Protection Act, 1986 of course, raising all factual and legal pleas in

the manner known to Law and in accordance with Law, if it so desires/advised.