

(1999) 06 MAD CK 0046

In the Madras High Court

Case No : Writ Petition No"s. 17555 and 17556 of 1991 and W.M.P. No"s. 26372 of 1991

The Registrar, Madurai Kamarajar University and Another

APPELLANT

Vs

The State Consumer Disputes Redressal Commission and Others

RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

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

Citation : AIR 2000 Mad 222

Hon'ble Judges : Y. Venkatachalam, J

Bench : Single Bench

Advocate : R. Muthukumarasami, for the Appellant; K. Srinivasan, (for No. 3), for the Respondent

Final Decision : Dismissed

Judgement

Y. Venkatachalam, J.—Invoking Article 226 of the Constitution of India, the petitioners herein have filed these writ petitions. Since the subject matter Involved and also the parties to the litigation are one and the same in both the writ petitions, these writ petitions were taken up together and are disposed of by this common order with the consent of the parties concerned.

2. These writ petitions have been filed seeking for a Writ of Certiorari to call for the records of the first respondent made in A.P. Nos. 92/91 and 122/91 dated 30-9-91 and to quash the same.

3. In support of the writ petitions, the petitioners herein have filed separate affidavits wherein they have stated all the facts and circumstances that forced them to file the present writ petitions and requested this Court to allow these writ petitions as prayed for, per contra, though no counter affidavit has been filed, the learned counsel appearing for the respondents argued the matter and requested this Court to dismiss the writ petition for want of merits.

4. Heard the arguments advanced by the learned counsel appearing for the parties. I have perused the contents of the affidavit and all other relevant documents available on record in the form of typed set of papers. I have, also taken into consideration the various points raised by the learned counsel appearing for the respective parties during the course of their arguments.

5. In the above circumstances of the case, the only point that arises for consideration is, as to whether there are any valid grounds to allow these writ petitions or not.

6. The brief facts of the case of the petitioner as seen from their affidavits are as follows :

The 3rd respondent was a student of the Madurai Law College which is affiliated to the University. The 3rd respondent had appeared for the B. L. Degree examination held by the University in April 1989. The results of the said examination were published on 23-11-89 wherein the 3rd respondent was declared to have passed the said examination. Based on the said declaration, a provisional certificate dated 7-12-89 was also issued to the 3rd respondent. They state that every student of the B. L. Degree examinations has to secure 320 marks in the aggregate in the 4 divisions with a minimum of 70, 105, 40 and 79 marks in each one of the 4 divisions respectively. The 3rd respondent had secured a total of 312 marks in aggregate in all the 4 divisions. Taking into account the grace marks given to each one of the candidates, the 3rd respondent obtained the aggregate of 320 marks required for a pass, but however the 3rd respondent had obtained only 104 marks even after granting of the grace marks in the second division as against the minimum of 105 prescribed by the Regulations. The said defect was noticed by mistake of the computer as a consequence of which the 4th respondent was declared to have passed the examinations in the results announced in November 1989. The said fact came to light when the marks statement was issued to the various candidates including the 3rd respondent. Consequently the 3rd respondent was called upon to return the provisional certificate. The 3rd respondent also duly returned the provisional certificate. Thereafter the 3rd respondent made an application to the University for re-valuation of the papers in the second division by paying the requisite fee. The University entertained the application for revaluation and on revaluation by different examiners, the 3rd respondent was granted 105 marks including the grace marks which was just the minimum prescribed under the Regulations. Consequent upon such re-valuation, the 3rd respondent was declared to have passed the examination. The 3rd respondent who had thus passed on account of the revaluation, was issued with the provisional certificate afresh on the basis of which he had enrolled again before the Bar Council as an Advocate. After getting enrolled as an Advocate, the 3rd respondent filed a complaint before the 2nd respondent in petition No. 11/91 u/s 12 of the Consumer Protection Act claiming compensation of a sum of Rs. 25,000/- from the petitioners. The petitioners filed a reply to the above complaint contending that the said petition was not

maintainable under the provisions of the Consumer Protection Act on various grounds. The petitioners pointed out that the 3rd respondent was not a consumer in terms of the act nor the petitioners traders amenable to the jurisdiction under the aforesaid Act. That apart, the petitioners also pointed out that there was no case made out in favour of the 3rd respondent having regard to the facts stated above. However, the 2nd respondent by order dated 10-5-91 held that there had been a deficiency of service by the petitioners and directed the petitioners to pay a compensation of Rs. 5,000/- to the 3rd respondent and also directed the petitioners to correct the date of provisional certificate as 7-12-89 and issue to him. Aggrieved by the said order, the petitioners preferred an appeal in A.P. No. 122/91 before the first respondent and the third respondent also filed an appeal in A.P. No. 92/91 claiming enhanced compensation. The first respondent which heard the appeals together has passed a common order dated 30-9-1991 dismissing the appeal filed by the petitioners and allowing the appeal filed by the 3rd respondent and directed the petitioners to pay a sum of Rs. 11,145/- as compensation instead of Rs. 5,000/- as ordered by the 2nd respondent. Aggrieved by the said orders, the petitioners have come forward with these writ petitions.

7. The impugned orders have been challenged by the petitioners on several grounds. That apart it is the main contention of the petitioners that the Madurai Law College which was affiliated to the University is not a consumer within the meaning of the Consumer Protection Act, who alone could maintain complaint before the Forums contemplated by the Consumer Protection Act. The reasoning and findings of the first and second respondents are per se illegal and opposed to the provisions of the Consumer Protection Act and consequently the orders passed by the first and second respondents at the Instance of the 3rd respondent is without Jurisdiction. That being so, it is significant to note that the petitioners herein have subjected themselves to the two authorities under the Act and suffered orders against them and at the third stage they are still canvassing his issue. That apart it is also significant to note that in the reply filed by them before the 1 and 2 respondents, they have clearly stated thus (para 6) :

"Hence the entire cause of action arose only at Madurai. Hence the Consumers Disputes Redressal Forum at Madurai alone has got jurisdiction over the matter. Hence the petition has to be returned for representation to the proper forum".

In such circumstances, it is not now open to them to dispute over the jurisdiction of the respondents 1 & 2. Therefore once they subjected themselves to a particular jurisdiction and suffered orders also, now they cannot dispute over such jurisdiction of the respondents 1 and 2. Therefore, once they subjected themselves to a particular jurisdiction and suffered orders also, they cannot dispute over such jurisdiction of the said authorities. Further it is the admitted case of the petitioners that there is an appeal revision is provided against the order of the 1st respondent. However it is contended by them that since the question involved in the above writ petition relates to the scope of the

jurisdiction of the authorities constituted under the Consumer Protection Act and also since the question raised in the writ petition involves the jurisdiction/want of Jurisdiction on the part of the respondents 1 and 2 in having entertained and allowed the claims of the 3rd respondent, the effective remedy would be only to file these writ petitions. Such contention of the petitioner cannot at all be entertained. Because admittedly already the petitioners have subjected themselves to the jurisdiction of the two authorities under the Act and suffered orders against them also and are now raising this issue as they have been defeated in the hands of both the authorities and that therefore they don't want to exhaust (sic) the further appeal revision available and open to them under the Act itself and rushed to this Court. Therefore in the above circumstances of the case, I don't want to go into the merits of these cases.

8. From all the above aspects and facts and circumstance of the case. I am of the clear view that admittedly there is an appeal provisions open and available for the petitioners u/s 19 of the Act and want only they have not exhausted the said remedy and have rushed to this Court with these writ petitions and that therefore on the said ground alone the writ petitions are liable to be dismissed.

9. In the result, both these writ petitions are dismissed. No costs, It is open to the petitioners to exhaust the appeal remedy available as per the Act and the relevant rules, if they are so advised. In such a case, the pendency of these writs before this Court will not be a bar in preferring such appeal remedy. Consequently WMP. No. 26372/91 also is dismissed.