

Court No. - 19

Case :- MATTERS UNDER ARTICLE 227 No. - 4420 of 2022

Petitioner :- Mrs. Anupama Dwivedi And Others

Respondent :- Bharti Axa Life Insurance Co. Ltd. Thru. Managing Director And Ceo, Mumbai And Others

Counsel for Petitioner :- Pradeep Kumar Shukla, Skand Bajpai

Counsel for Respondent :- Abhishek Bhatnagar, A.S.G.I., C.S.C., Saurabh Misra

Hon'ble Manish Kumar, J.

1. Heard Shri Skand Bajpai, learned counsel for petitioner, Shri Abhishek Bhatnagar, learned counsel for respondent as well as learned State Counsel and perused the record.

2. The present writ petition has been preferred for setting aside the order dated 21.10.2022 passed by Uttar Pradesh State Consumer Disputes Redressal Commission, Lucknow (hereinafter referred as UPSCDRC) in RP/73/2022 titled as Mrs. Anupama Dwivedi and others versus Bharti Axa Life Insurance Co. Ltd, through Managing Director and CEO, Mumbai and others; impugned order dated 15.10.2022 passed by learned District Court Disputes Consumer Redressal Commission (hereinafter referred as DCDRC) in CC/81/22 titled as Mrs. Anupama Dwivedi and others versus Bharti Axa Life Insurance Co. Ltd Through Managing Director and CEO and others; and with a further prayer to pass an order declaring the Consumer Protection Procedure Regulations, 2020 as mandatory and binding on the Consumer Commission and direct strict observance of all the regulations contained therein and pass an order fixing a short date for evidence of the complainant before the learned DCDRC with a direction to dispose the matter in a time bound manner on priority basis and in line with Regulation 26 of the Consumer Protection (Consumer Commission Procedure) Regulations 2020.

3. Learned counsel for petitioners has submitted that a complaint was filed by the petitioners before the DCDRC, against the respondents when the respondents have repudiated the insurance claim of the petitioners after the demise of husband of petitioner no. 1 and father of petitioner nos. 2 and 3, who was insured with the respondent company. In the said complaint case, the notice was issued on 01.04.2022 and the notice was served upon respondent no. 4 on 02.04.2022 and the respondent nos. 1, 2 and 3 on 05.04.2022. The first date was fixed thereafter on 13.05.2022, on that date, a counsel had put in appearance on behalf of respondents and filed Vakalatnama and the case was next fixed for 23.06.2022.

On the date fixed i.e. 23.06.2022, no one had either put in appearance or filed written statement on behalf of respondents and the court had passed an order closing the opportunity of filing of the written statement and fixed the case on 15.10.2022.

4. It is further submitted that on 15.10.2022, a recall application was preferred by the counsel along with the copy of the written statement which was allowed on the very same date by recalling the order dated 23.06.2022, the order by which the opportunity of filing the written statement was closed and accepted the written statement filed on behalf of the respondents. The said order was passed without providing any opportunity of hearing to the petitioners to file an objection against the recall application though the counsel was present and apprised the court that after the lapse of 45 days, as per Section 38(2)(a) of the Consumer Protection Act, 2019, written statement could be accepted and that there was no illegality in the order dated 23.06.2022.

5. It is further contended that against the order dated 15.10.2022, a revision under Section 47(1)(b) was preferred by the petitioners before the Commission taking all the pleas by placing reliance upon Section 13(1)(a) of the Act, 1986 and the judgments of the Hon'ble Supreme Court particularly on the point that after 45 days' period, the written submission could not be accepted.

6. The said revision preferred by the petitioners was dismissed by judgment and order dated 20.10.2022 by the State Commission without recording any finding on the legal plea raised by the petitioners regarding the jurisdiction of the DCDRC and dismissed the revision only on the point that the recall application was allowed after imposing cost, hence no interference is called for.

7. It is further submitted that as per Section 38(2)(a) of the Consumer Protection Act, 2019 (hereinafter referred as Act, 2019), 30 days' period is provided or such extended period not exceeding 15 days as may be granted to it. The same provision is in the earlier Act i.e. Section 13(1)(a) in Consumer Protection Act, 1986 (hereinafter referred as Act, 1986). Both the Sections are in verbatim the same. Section 13(1)(a) was interpreted by the Hon'ble Supreme Court in the case of ***New India Assurance Company Limited Vs. Hilli Multipurpose Cold Storage Pvt Limited reported in (2020) 5 SCC 757***, wherein it has been held that Consumer Commission did not have jurisdiction to accept written statement of opposite parties beyond 45 days of service of notice.

8. It is further submitted that the application for recall preferred on 15.10.2022 was signed by counsel and the same was not supported by an affidavit of the respondents i.e. the client or the party to the complaint case.

9. It is further submitted that in the judgment in the case of **New India Assurance (supra)**, it has been held that if the respondents have any objection regarding notice, it must be raised on the first date of hearing whereas no objection was raised on the first date of hearing when the counsel for the respondent had filed his vakalatnama on 13.05.2022.

10. It is further submitted that in the counter affidavit before this court, the respondents have come with a case that it had wrongly been mentioned in the order dated 23.06.2022 that no one had appeared on behalf of respondents whereas one Shri Arpit Pandey on behalf of Shri Abhishek Bhatnagar, Advocate was present and his signature is there on the order sheet but the said signature for appearance of Shri Arpit Pandey is subsequent to the passing of the order not of the same date for the reason the petitioners had obtained the certified copy of the order dated 23.06.2022, on the very same day, wherein no such endorsement or appearance signed by Shri Arpit Pandey on the order sheet dated 23.06.2022, copy of which has been enclosed as R.A. No. 1 and secondly, Shri Arpit Pandey could not appear on behalf of Shri Abhishek Bhatnagar as Shri Arpit Pandey was neither the counsel nor the party to the case as he has enrolled subsequently, as an advocate with the Bar Council on 31.12.2022 (R.A-3) which shows that manipulation or fraud has been played with the record of the court.

11. On the other hand, Shri Abhishek Bhatnagar, learned counsel for the respondents has raised a preliminary objection regarding maintainability of the present petition on the ground that the petitioners have an alternative remedy to file a review under Section 40 or an appeal under Section 51 (2) and Section 58 before the National Commission as such, the writ petition is not maintainable under Article 227 of the Constitution of India. In support of his submissions learned counsel for the respondent has relied upon the judgments of Hon'ble Supreme Court in the case of **Mohamed Ali Vs. V. Jaya and others passed in Civil Appeal No. 4113 of 2022**, judgment and order dated 11.7.2022 and judgment dated 13.10.2022 passed in the case of **Raj Shri Agarwal & Ram Shri Agarwal and another Vs. Sudheer Mohan and others (Civil Appeal No. 7266 of 2022)**, and in the case of **A.R.N. Infrastructure India Limited Vs. Hara Prasad Singh (Civil Appeal Diary Nos. 31182 of 2023)**, judgment and order dated 04.09.2023.

12. It is further submitted that this Court, under Article 227 of the Constitution of India, has no jurisdiction to look into the merits of the case.

13. It is further submitted that the notice was never received from the Court but the notices were sent by the petitioners that too incomplete as certain documents were

not enclosed with the notice.

14. In reply to the preliminary objections raised by the learned counsel for the petitioner has relied upon the judgment of this Court in the case of **Jodhey and others Vs. the State through Ram Sahai reported in AIR 1952 All 788**, where the scope of Article 227 of the Constitution of India has been discussed and it has been held that the powers under Article 227 cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by the Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law.

15. Learned counsel for the petitioner has submitted that the remedy of review under Section 40 of the Act, 2019 is not an bar for filing the present writ petition when the proceedings are wholly without jurisdiction and in violation of principles of natural justice and in support of his submission learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court in the case of **Godrej Sara Lee Limited Vs. Excise and Taxation Officer Cum Assessing Officers and others: 2023 SCC online Supreme Court 95** and judgment of the Hon'ble Supreme Court in the case of **V. Valla Swami Vs. Inspector General of Police, Tamilnadu Madras and another 1981 (4) SCC 246**.

16. It is further submitted that as far as availability of remedy to file an appeal under Section 51(2) of the Act, 2019 is concerned, it is also not available to the petitioner, as no substantial question of law is involved in the present case. The issue has already attained finality by the judgment of the Hon'ble Supreme Court and in support of his submission, learned counsel for the petitioner has relied upon the judgment of the the Hon'ble Supreme Court in the case of **Appaiya vs Andimuthu @ Thangapandi and others: 2023 SCC Online Supreme Court 1183**.

17. As far as availability of remedy to file an appeal under Section 58(1)(a)(iii) of the Consumer Protection Act, 2019 is concerned, is also not available, as the same is available, only if the State Commission has exercised its original jurisdiction under Section 47(1)(a)(i) and 47 (1)(a)(ii) and passed an order, as Section 58 of the Act, 2019 is subject to Section 51 of the Act, 2019. In support of his submission, learned counsel for the petitioner has relied upon a judgment of this Court in the case of **Principal Maharani Lal Kunwari Post Graduate College, Balrampur versus Stae Consumer Dispute Redressal Commission, U.P. Lko through its President and others**.

18. After hearing learned counsel for the parties, going through the record of the case and the judgments relied by the learned counsel for the respective parties, the issue

involved in this case is whether accepting the written statement filed by the respondents after 30 days and without moving any application for extension of 15 days time, it would amount to an unwarranted assumption of jurisdiction not possessed by the courts or a gross abuse of jurisdiction vested in them after expiry of 45 days period, as prescribed under the statute. It is necessary to first go through Section 38(2)(a) of the Act, 2019 and 13(1)(a) of the Act 1986 and for convenience both the provisions are quoted hereinbelow:-

Section 38 (2) (a) of the Act, 2019 :-

38. Procedure on admission of complaint.-(1) The District Commission shall, on admission of a complaint, proceed with such complaint.

(2) Where the complaint relates to any goods, the District Commission shall,-

(a) refer a copy of the admitted complaint, within twenty one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;

Section 13 (1) A of the Act, 1986

13. Procedure on admission of complaint.-

(1) The District Forum shall, on admission of a complaint, if it relates to any goods, refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum.'

19. The language of both the provisions are in verbatim the same and prescribed period for filing the written statement i.e. initially 30 days, which is extendable to 15 more days i.e. total 45 days. The said provision 13 (1) (a) of the Act, 1986 was considered by the Hon'ble Supreme Court in the case of ***New India Insurance Company Limited Vs. Hill Multi Purpose Cold Storage Pvt Ltd***. The relevant paras nos. 61 and 62 of the same are quoted herein-below:-

'61. Now reverting to the provisions of the Consumer Protection Act, a conjoint reading of clauses (a) and (b) of sub-section (2) of Section 13 would make the position absolutely clear that the commencing point of limitation of 30 days, under the aforesaid provisions, would be from the date of receipt of notice accompanied by a copy of the complaint, and not merely receipt of the notice, as the

response has to be given, within the stipulated time, to the averments made in the complaint and unless a copy the complaint is served on the opposite party, he would not be in a position to furnish its reply. Thus, mere service of notice, without service of the copy of the complaint, would not suffice and cannot be the commencing point of 30 days under the aforesaid section of the Act. We may, however, clarify that the objection of not having received a copy of the complaint along with the notice should be raised on the first date itself and not thereafter, otherwise if permitted to be raised at any point later would defeat the very purpose of the Act, which is to provide simple and speedy redressal of consumer disputes.

62. To conclude, we hold that our answer to the first question is that the District Forum has no power to extend the time for filing the response to the complaint beyond the period of 15 days in addition to 30 days as is envisaged under Section 13 of the Consumer Protection Act and the answer to the second question is that the commencing point of limitation of 30 days under Section 13 of the Consumer Protection Act would be from the date of receipt of the notice accompanied with the complaint by the opposite party, and not mere receipt of the notice of the complaint.'

20. From the perusal of the statutory provisions and judgments, it is clear that after 45 days, the written statement cannot be accepted meaning thereby after 45 days, D.C.D.R.C. is not having any jurisdiction to accept the written statement. In the present case, after about more than 168 days as far as it is related to the notice upon respondent no. 4 and after about more than 155 days as far as it is related to respondent nos. 1, 2 and 3 as notice was served upon respondent no. 4 on 02.04.2022 and the notice upon respondent no. 1, 2 and 3 were served on 05.04.2022 and the tracking report has been enclosed along with the writ petition which is on record, the written statement was permitted to be filed.

21. Hence, accepting the written statement after the expiry of 30 days period and more so, in absence of any application for extension of 15 days period before the DCDRC and accepting the written statement by the DCDRC after 45 days is nothing but amounts to an unwarranted assumption of jurisdiction not possessed or gross abuse of exercise of jurisdiction.

22. The submission of learned counsel for the respondent that the notice was not received from the District Commission, it was sent by the petitioners so it is no notice in the eyes of law. The another contention of the learned counsel for the respondent, that too the notice was with incomplete papers is not acceptable as per the law laid down by Hon'ble Supreme Court in the case of **New India Insurance (supra)**, wherein it has been held that if any

objection is to be made that is to be raised on the first date of appearance i.e. in the present case respondent had put in appearance before DCDRC on 13.05.2022 through their counsel and no such objection was raised by them. Hence, now at this stage, the respondents cannot take this plea. Apart from that in their recall application, the respondents have disclosed that they have received the complete notice on the previous date i.e. 23.06.2022. If the period is to be calculated from 23.06.2022, even the period of 45 days had expired on 08.08.2022 since written statement was filed on 15.10.2022. Even as per the case of the respondents, the written statement was not filed within 45 days.

23. The submission of learned counsel for respondents regarding availability of remedy of review before DCDRC under Section 40 of the Act, 2019, for that Section 40 of the Act, 2019 is quoted hereinbelow:-

'40. Review by District Commission in certain cases.
—*The District Commission shall have the power to review any of the order passed by it if there is an error apparent on the face of the record, either of its own motion or on an application made by any of the parties within thirty days of such order.'*

24. Section 40 of the Act, 2019 empowers DCDRC to review any of the order passed by it but in the present case, the challenge of the impugned order is on the basis that the order of DCDRC is without jurisdiction and in violation of principles of natural justice as no opportunity was given to file objections against the recall application. Under these circumstances and as per the settled law, the alternative remedy is not an absolute bar as held in the case of **Godrej Sara Lee Limited Vs. Excise and Taxation Officer Cum Assessing Officers and others: 2023 SCC online Supreme Court 95**. The relevant paragraphs are quoted hereinbelow:-

'6. At the end of last century, this Court in paragraph-15 of its decision report in (1998) 8 SCC 1 (Whirlpool Corporation versus Registrar of Trade Marks, Mumbai) carved out the exceptions on the existence whereof a writ Court would be justified in entertaining a writ petition despite party approaching it not having availed the alternative remedy provided by the statute. The same reads as under:

(i) where the writ petition seeks enforcement of any of the fundamental rights;

(ii) where there is violation of principles of natural justice;

(iii) where the order or the proceedings are wholly without jurisdiction; or

(iv) where the vires of an Act is challenged.'

25. The learned counsel for respondents has submitted regarding availability of alternative remedy under Section 51 (2) of the Act, 2019 for filing an appeal before the National Commission. For convenience, Section 51(2) is quoted hereinbelow:-

'Section 51(2) of the Act, 2019:- *An appeal shall lie to the National Commission from any order passed in appeal by any State Commission, if the National Commission is satisfied that the case involves a substantial question of law'*

26. A reading of Section 51 (2) clearly provides that if the National Commission is satisfied that the case involves substantial question of law only then an appeal is maintainable under Section 51(2) and the substantial question of law has been decided by the Hon'ble Supreme Court in the case of **Appaiya Vs. Andimuthu alias Thangapandi and others reported in 2023 SCC OnLine SC 1183**. The relevant paragraph nos. 13 and 14 are being reproduced hereunder :-

"13. In the decision in Lankeshwar Malakar v. R. Deka, it was held that in order to be substantial question of law, the test is whether it is of general public importance or whether it directly or substantially affects the right of the parties or whether the question is still open i.e.. it is not finally settled by the Supreme Court, Federal Court or Privy Council.

14. In fact, in Santosh Hazari v. Purushottam Tiwar while exploring the meaning of the phrase "substantial question of law" this Court held:

"12. The phrase "substantial question of law", as occurring in the amended Section 100 is not defined in the Code. The word substantial, as qualifying "question of law", means of having substance, essential, real, of sound worth, important or considerable It is to be understood as something in contradistinction with technical, of no substance or consequence, or academic merely However, it is clear that the legislature has chosen not to qualify the scope of "substantial question of law by suffixing the words "of general importance as has been done in many other provisions such as Section 109 of the Code or Article 13(1) (a) of the Constitution. The substantial question of law on which a second appeal shall be heard need not necessarily be a substantial question of law of general importance. In Guran Ditta v. T. Ram Ditta (AIR 1928 PC 172: (1927-28) 55 IA 235], the phrase "substantial question of law" as it was employed in the last clause of the then existing Section 110 CPC (since omitted by the Amendment Act, 1973) came up for consideration and their Lordships held that it did not mean a substantial question of general importance but a substantial question of law which was involved in the case as between the parties. In Sir Chunilal V. Mehta &

Sons Ltd. v. Century Spg, and Mfg. Co. Ltd. (1962 Supp (3) SCR 549] the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao v. Noony Veeraju AIR 1951 Mad 969]: When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court thought it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law. On the other hand, if the question was practically covered by the decision of the highest court or if the general principles to be applied in determining the question are well settled and the only question was of applying those principles to the particular facts of the case it would not be a substantial question of law." and laid down the following test as proper test, for determining whether a question of law raised in the case is substantial:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

27. The Hon'ble Supreme Court has held that where the issue is finally settled by the Court then it cannot be said that it is substantial question of law of general importance. Filing of written statement after a period of 45 days is not permissible under the law. Here it is only a question of applying the provision of law contained in Section 38(2)(a) of the Consumer Protection Act, 2019 and further applying the settled as laid down by the Hon'ble Supreme Court that the written statement cannot be accepted after lapse of 45 days. Here, no substantial question of law of general importance is involved. Hence the remedy under Section 51 (2) of the Act is not attracted in case of the petitioners.

28. As far as the submission regarding availability of remedy under Section 58(1)(a)(iii) of the Act, 2019 is concerned, for that, the submission raised by learned counsel for petitioner that the appeal under Section 58(1)(a)(iii) is only against the order passed by the State Commission in its original jurisdiction, which is subject to Section 51(1) of the Act, 2019 is not acceptable. For convenience, Section 47(1), 51(1) and 58 of the Act, 2019 are quoted hereinbelow:-

'47. Jurisdiction of State Commission.—(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction—

(a) to entertain—

(i) complaints where the value of the goods or services paid as consideration, exceeds rupees one crore, but does not exceed rupees ten crore:

Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration does not exceed ten crore rupees;

(iii) appeals against the orders of any District Commission within the State;'

51. Appeal to National Commission.— (1) Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) or (ii) of clause (a) of sub-section (1) of section 47 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

Provided that the National Commission shall not entertain the appeal after the expiry of the said period of thirty days unless it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited fifty per cent. of that amount in the manner as may be prescribed.

'58. Jurisdiction of National Commission. (1) 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 paid as consideration exceeds rupees ten crore: Provided that where the Central Government deems it necessary so to do, it may prescribe such other value, as it deems fit;

(ii) complaints against unfair contracts, where the value of goods or services paid as consideration exceeds ten crore rupees;

(iii) appeals against the orders of any State Commission'

(iv) appeals against the orders of the Central Authority; and'

29. A reading of these provisions makes it clear that the appeal is maintainable before the National Commission, for the reason Section 51(1) provides an appeal before the National Commission only against the orders passed under Section 47 (1)(a)(i) and Section 47 (1)(a)(ii). Section 47 (1) (a)(i) and Section 47(1)(a)(ii) deals with the matters where the orders are passed by the State Commission in its original jurisdiction and Section 47(1)(a)(iii) is for appeals against the order of any District Commission within the State against which the remedy of appeal is available under Section 58 (1) of the Act, 2019. But here, as discussed above, the order passed by the DCDRC is without jurisdiction in the light of judgment in the case of **New India Insurance (supra)**. Hence as per the law laid down in the case of **Godrej Sara Lee Limited (supra)** which has been passed by placing reliance upon the judgment in the case of **Whirlpool Corporation versus Registrar of Trade Marks, Mumbai, 1998, 8 SCC 1**, the writ petition under Article 227 of the Constitution of India is maintainable. The judgments relied upon by learned counsel for respondents with regard to the availability of alternative remedy and maintainability of the writ petition in the case of **Mohamed Ali Vs. V. Jaya and others passed in Civil Appeal No. 4113 of 2022**, judgment and order dated 11.7.2022 and judgment dated 13.10.2022 passed in the case of **Raj Shri Agarwal & Ram Shri Agarwal and another Vs. Sudheer Mohan and others (Civil Appeal No. 7266 of 2022)** are not applicable in the facts of the present case as in those cases no such question was involved as in the present case.

30. The judgment relied by the learned counsel for the respondent in the case of **ARN Infrastructure Indian Limited Vs. Hara Prasad** is not applicable, as argued and interpreted by the learned counsel for the respondents for the reason that in that case even opportunity of hearing was closed. The Hon'ble Supreme Court has held that the opposite party had a right to do so, even in absence of filing its written version against the complaint and the situation is the same in the present case as well. The opportunity of hearing is not closed. It will be open for the respondents to participate in the further proceedings before the DCDRC. That opportunity is not closed.

31. As far as submission of learned counsel for respondents that this Court under Article 227 of the Constitution of India cannot look into the merits of the case, which was replied by learned counsel for petitioner by placing reliance upon the judgment of this Court in the Case of **Jodhey and others (supra)** where the scope of Article 227 has been discussed and it has been held that the powers under Article 227 cannot be exercised unless it has been an unwarranted assumption of jurisdiction not possessed by

the Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law. The relevant paragraph no. 15 in the case of **Jodhey and others (supra)** is quoted hereinbelow:-

'15. The fact that these unlimited powers are vested in the High Court should however, make the High Court more cautious in its exercise. The self-imposed limits of these powers are established and laid down by the High Courts themselves. It seems to me that these powers cannot be exercised unless there has been an unwarranted assumption of jurisdiction not possessed by Courts or a gross abuse of jurisdiction possessed by them or an unjustifiable refusal to exercise a jurisdiction vested in them by law. Apart from matters relating to jurisdiction, the High Court may be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice which calls for remedy. Under this power, the High Court will not be justified in converting itself into a Court of Appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all, it should be remembered that this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party.'

32. Similarly, the above mentioned issue has also been dealt with by the Hon'ble Supreme Court in the case of **Achutananda Baidya versus Prafulla Kumar Gayen and others reported in AIR 1997 SC 2077** and which has been followed recently in the judgment of Hon'ble Supreme Court in the case of **Ajay Singh and others versus State of Chattisgarh and others reported in AIR 2017 SC 310**. The relevant paragraph no. 21 has been quoted hereinbelow:-

'21. In Achutananda Baidya MANU/SC/0498/1997 (1997) 05 SCC 76 a two-Judge Bench while dealing with the Prafulla Kumar Gayen power of superintendence of the High Court Under Article 227 has opined that the power of superintendence of the High Court Under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court Under Article 227 is essentially to ensure that the courts and tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere Under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law,

arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice.'

33. From the above mentioned judgments, it is clear that the power of High Court under Article 227 is not merely an administrative power but also has power of judicial review and in the present case as discussed above, that after the expiry of 45 days period, the DCDRC cannot accept the written statement in gross violation of specific statutory provision of the Act and by accepting the written statement by recalling its earlier order is nothing but erroneous assumption or acting beyond its jurisdiction and amounts to error of law apparent on record and exercise of such power is arbitrary or capricious exercise by the authority and patent error in procedure. The State Commission also failed to appreciate the legal position as discussed above and dismissed the appeal merely on expressing satisfaction that the written statement was accepted by imposing cost. There was total failure on the part of the State Commission to appreciate the legal position.

34. In view of the discussion made above, the writ petition is **allowed**.

35. The impugned orders dated 21.10.2022 and 15.10.2022 are hereby quashed.

36. The District Consumer Forum will hear the matter ignoring the written statement filed by the respondents. The respondents shall however participate in the further proceedings before the DCDRC.

Order Date :- 19.7.2024
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