

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 318 OF 2009

1. Tripura State Electricity Corporation Ltd.,
(Represented by its Chairman-Cum-Managing
Director), Banamalipur,
P.S.-East Agartala,
Dist.-West Tripura.
2. The Executive Engineer, Electrical,
(Presently Dy. General Manager),
Ambassa Power Division,
Dist.-Dhalai Tripura.

..... **Petitioners.**

- V e r s u s -

1. The State of Tripura,
(Represented by the Secretary),
Government of Tripura,
Food, Civil Supplies & Consumer
Affairs Department,
Civil Secretariat, Agartala.
2. Shri Ratan Das,
S/O. Lt. Bhupendra Das,
Vill-Katashewla,
P.O. Jogendranagar,
P.S. East Agartala,
District: West Tripura.
3. Smt. Bipula Das,
W/O. Sri Ratan Das,
Vill-Katashewla,
P.O. Jogendranagar,
P.S. East Agartala,
District: West Tripura.

..... **Respondents.**

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the petitioners : Mr. A. Sengupta, Advocate.

For the respondent No.1 : Mr. T.D. Majumder, G.A.

Date of hearing and
delivery of judgment
and order : 18.03.2015.

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

(Deepak Gupta, C.J.)

This writ petition is directed against the order dated 11-09-2009 passed by the State Consumer Disputes Redressal Commission, Tripura in appeal No. F.A. 16 of 2009 whereby it allowed the appeal of the private respondents No.2 and 3 and awarded compensation of Rs.5,00,000/- (rupees five lakhs) along with costs and interest in favour of the claimants and against the present petitioner, the Tripura State Electricity Corporation Ltd. (hereinafter referred to as TSECL).

2. The only issue before us is whether we have jurisdiction to decide this dispute. Therefore, we are only narrating those facts which are essential to decide this matter. The complainants before the District Consumer Redressal Forum were the parents of a young man Kajal Das. It was alleged that when Kajal was trying to drive out cattle who had entered the fields and was damaging the crops, he was electrocuted when he touched a wire which had been connected from the top of the electric pole to fix the post to the ground.

3. The claimants filed the claim petition claiming compensation for the death of their son. The District Forum held that the claimants were not the consumers and this was not a consumer dispute falling within the meaning of the Consumer Protection Act, 1986 and hence, dismissed the claim petition. At

this stage, it would be pertinent to mention that the District Forum had only partly recorded the evidence of the parties and while the case was still at the stage of recording of evidence, the District Forum decided to treat the issue of jurisdiction as a preliminary issue.

4. Aggrieved by the order of the District Forum, the claimants filed an appeal to the State Consumer Disputes Redressal Commission. The Commission held that the claimants were consumers since they had an electricity connection and that there was negligence on the part of the present petitioner and, therefore, directed compensation.

5. It is urged by Mr. Abhijit Sengupta, learned counsel appearing on behalf of the TSECL, that the order of the State Commission is wholly without jurisdiction because there is no consumer dispute involved. His second submission is that since the District Forum had not even completed recording evidence, even if the issue of jurisdiction was to be decided in favour of the complainant, the matter should have been remitted back to the District Forum to enable the petitioner-Corporation to lead evidence to prove that it is not at fault. On these grounds, it is submitted that since the order is without jurisdiction and the principles of natural justice have not been followed, this Court should interfere in the matter.

6. We may make it clear that we are not commenting on the merits of the case. When a party invokes the jurisdiction of any

Court or Tribunal and the jurisdiction of that Court or Tribunal is denied by the opposite party, that Court or Tribunal has the right to decide the issue whether it has jurisdiction or not. The matter was decided in favour of the petitioner by the Tribunal. The State Commission has decided the issue against the petitioner. We are of the view that this is not a case of total lack of jurisdiction but this is a case where on the evidence of the parties it will have to be decided whether there is any deficiency of service and whether there is a consumer dispute or not.

7. As far as the second issue raised by learned counsel is concerned, that to our mind is an important issue because no party should be condemned unheard. However, at the same time we have to keep in mind the restrictions imposed by the Apex Court on the various High Courts in exercise of the extraordinary writ jurisdiction in cases relating to the Consumer Protection Act.

8. In this behalf, we may make reference to the judgment of the Apex Court in ***State of Karnataka vrs. Vishwabarathi House Building Co-op. Society and others [2003 AIR SCW 558]*** wherein the Apex Court dealing with the provisions of the Consumer Protection Act, 1986 held that the Act provides for a hierarchy of Courts and is virtually a complete code in itself. Thereafter the Apex Court held as follows:

“39. The rights of the parties have adequately been safeguarded by reason of the provisions of the said Act inasmuch as although it

provides for an alternative system of consumer jurisdiction on summary trial, they are required to arrive at a conclusion based on reasons. Even when quantifying damages, they are required to make an attempt to serve the ends of justice aiming not only at recompensing the individual but also to bring about a qualitative change in the attitude of the service provider. Assignment of reasons excludes or at any rate minimizes the chances of arbitrariness and the higher forums created under the Act can test the correctness thereof.

40. *The District Forum, the State Commission and the National Commission are not manned by lay persons. The President would be a person having judicial background and other members are required to have the expertise in the subjects such as economics, law, commerce, accountancy, industry, public affairs, administration etc. It may be true that by reason of sub-section (2-A) of Section 14 of the Act, in a case of difference of opinion between two members, the matter has to be referred to a third member and. in rare cases, the majority opinion of the members may prevail over the President. But, such eventuality alone is insufficient for striking down the Act as unconstitutional, particularly, when provisions have been made therein for appeal thereagainst to a higher forum.*

41. *By reason of the provisions of the said Act, the power of judicial review of the High Court, which is a basic feature of the Constitution. has not been nor could be taken away.”*

9. The Apex Court in ***Nivedita Sharma vrs. Cellular Operators Association of India and others [(2011) 14 SCC***

337] also dealt with the issue as to whether the High Court should exercise its extraordinary writ jurisdiction in those cases where efficacious alternative remedy is available under the provisions of the Consumer Protection Act, 1986. The Apex Court held as follows:-

“15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad : AIR 1969 SC 556, it has been held that 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 is under challenge.

16. It can, thus, be said that this Court has recognized some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Superintendent of Taxes : AIR 1964 SC 1419 and other similar judgments that the High Court will not entertain a petition under Article 226 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 grievance still hold the field.

25. What has surprised us is that the High Court has not even referred to Sections 17 and 19 of the 1986 Act and the law laid down in various judgments of this Court and yet it has declared that the directions given by the State Commission are

without jurisdiction and that too by overlooking the availability of statutory remedy of appeal to the respondents.”

10. As far as the power of superintendence vested in this Court are concerned, there can be no manner of doubt that those powers cannot be taken away by any statute. Powers vested in this Court by the Constitution are not subject to statutory curtailment but can only be curtailed by amendment of the Constitution, if any. Even with regard to amendment by the Constitution the Apex Court in ***L. Chandra Kumar Vrs. Union of India and others : (1997) 3 SCC 261*** held that the power of judicial review is part of the basic structure of the Constitution and, therefore, the power of judicial review cannot be taken away. As such Mr. Sengupta is absolutely right that this Court always has the power of superintendence over any Court or Tribunal which is subordinate to it. These powers are not in any way restricted by the provisions of the statutory Act.

11. However, there is also another well known doctrine that where an efficacious alternative remedy is available to the party, the High Court will not exercise its extraordinary powers nor will it exercise its powers of superintendence unless it is shown that the remedy is not efficacious or not easily available to the party.

12. As far as this aspect of the matter is concerned against the order of the State Consumer Commission a revision or appeal

lies to the National Consumer Commission. The Consumer Protection Act, 1986 provides for a hierarchy of fora at different levels. At the bottom is the District Forum and orders passed by the District Forum can be challenged before the State Consumer Commission. The State Consumer Commission exercises original side jurisdiction in addition to appellate and revisional powers. Any party aggrieved by the orders passed by the State Consumer Commission can either file an appeal or a revision to the National Consumer Commission. The National Consumer Commission again enjoys both original side jurisdiction and appellate and revisional jurisdiction. Against an order passed in the exercise of its original jurisdiction an appeal lies to the Supreme Court. Can it be said that even when an appeal is provided to the Supreme Court the orders passed by the National Consumer Commission on the original side would be subject to the power of superintendence of the High Court. In our opinion that is a highly debatable question.

13. Having held that this Court has the powers of Superintendence over the Consumer Commission, the question is when should this Court exercise these powers. We are of the considered view that those powers should be exercised only in those cases where the Court is clearly of the view that the order of the State Consumer Commission or the District Consumer Forum are wholly without jurisdiction. If the order is passed by the Forum or the Commission in exercise of its jurisdiction merely because the order is right or wrong is no ground for the High Court to interfere

in the matter and then the party must approach the National Consumer Commission and cannot approach the High Court.

14. As far as the present case is concerned, it cannot be said that the Consumer Forum totally lacks jurisdiction. This will depend on the evidence led before the Consumer Forum as to whether the complainants are consumers within the meaning of the Consumer Protection Act and whether there is lack of deficiency in service. This is an issue which the Consumer Forum and the Consumer Commission can decide and if any party is aggrieved by the order of the State Consumer Commission, then that party must approach the National Consumer Commission and cannot come to this Court. Even with regard to the second submission raised by Mr. Sengupta that the State Consumer Commission erred in not remanding the case back, we are of the view that this also does not affect the jurisdiction of the Commission and as held by us earlier, merely because the order passed by the State Commission is right or wrong does not give this Court jurisdiction to interfere in the matter. The order will have to be rectified by the National Consumer Commission.

15. In view of the above discussion and the law laid down by the Apex Court, we are clearly of the view that the present petition should not be entertained by us since there is an efficacious alternative remedy available to the petitioner. However, we make it clear that we have not expressed any opinion on the merits of the case. While rejecting the petition we further

direct that in view of the judgment passed by the Apex Court in ***Nivedita Sharma's*** case in case the petitioner avails the alternative remedy of filing an appeal/revision under the Consumer Protection Act, 1986 before the National Consumer Commission within 60(sixty) days from today then the same may be entertained by the National Consumer Commission and decided on merits.

16. With these observations, the petition is disposed of. No order as to costs.

JUDGE

CHIEF JUSTICE