

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO. 3940 OF 2015

1. The Executive Engineer,  
Maharashtra State Electricity  
Distribution Company Limited  
Through  
Mansing s/o Laxmanrao Jadhav  
Age 56 years, Occ. Service  
at O & M Division, Beed
  2. The Assistant Engineer,  
(Incharge)  
Maharashtra State Electricity  
Distribution Company Limited  
Through  
Madan s/o Bhagwan Deshpande,  
Age 53 years, Occ. Service  
at O & M Division, Beed
- ...Petitioners

Versus

Kisan Maruti Ajbe,  
Age 65 years, Occ. Agriculture,  
R/o. Ashti, Tq. Ashti,  
District Beed

...Respondent

.....  
Mr. S.C. Arora, advocate for the petitioners  
Mr. S.D. Tawashikar with Mr. A.S. Pawase, advocates for respondent  
.....

**CORAM : V. K. JADHAV, J.**

**Date of Reserving  
the Judgment : 07.12.2017**

**Date of pronouncing  
the Judgment: 21.12.2017**

**JUDGMENT:-**

1. Rule. Returnable forthwith. By consent, heard finally at

admission stage.

2. Being aggrieved by the order dated 20.01.2015 passed by the learned Presiding Member of Maharashtra State Consumer Dispute Redressal Commission, Mumbai, Circuit Bench at Aurangabad (hereinafter for the sake of brevity called as the "State Commission") in first appeal No. 105 of 2014, the original appellants have preferred this writ petition.

3. Brief facts giving rise to the present writ petition are as follows:-

a) Being aggrieved by the judgment and order dated 17.12.2013 passed by the District Consumer Dispute Redressal Forum in complaint No. 165 of 2012, the petitioners have preferred an appeal bearing first appeal No. 105 of 2014 before the State Commission. The respondent herein lodged the said complaint No. 165 of 2012 before the District Consumer Redressal Forum, Beed, alleging therein that due to sparking of power lines, installed on the boundaries of the agricultural land belonging to the respondent-complainant, the banana grove alongwith the irrigation installations caught fire and due to which the complainant sustained loss of more than Rs.10 to 12 lacs and the petitioners herein are liable to pay the same. Learned Presiding Officer, Consumer Dispute Redressal

Forum, Beed, by judgment and order dated 17.12.2013 allowed the said complaint and thus the petitioners herein preferred the aforesaid first appeal No. 105 of 2014 before the State Commission.

b) The learned Presiding Member of the State Commission by the impugned order dated 20.01.2015 dismissed the appeal for default on the ground that none appeared for the appellants even though the matter was adjourned for many times. Though the last chance was given by the State Commission to the appellants, none appeared for the appellant. As the respondent was proceeded ex parte, State Commission expressed that the matter would be heard finally at the admission stage and even then the appellants and their counsel remain absent and no written note of arguments was submitted as assured. Hence, this writ petition.

4. Learned counsel for the respondent-original complainant has raised preliminary objection that the present writ petition under Article 226 r.w. 227 of the Constitution of India is not to be entertained since the alternate efficacious remedy of appeal/revision is available before the National Commission. The petitioner has not made out any exceptional circumstance to entertain the writ petition despite the availability of efficacious alternate remedy before the Forum, which have been established under the provisions of Consumer Protection

Act 1986 (hereinafter for the sake of brevity referred to “the Act of 1986”).

5. Learned counsel for the petitioners submits that in terms of provisions of sub-Section (1) of Section 17 of the Act of 1986, the State Commission shall have jurisdiction to entertain (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs but does not exceed rupees one Crore and (ii) appeals against the orders of any District Forum within the State. In terms of provisions of Section 19 of the Act of 1986, any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 17 may prefer an appeal against such order to the National Commission. In terms of provisions of Section 17 (1) (b), the State Commission may exercise jurisdiction in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. Similarly, in terms of provisions of section 21(b) the National Commission may exercise the revisional jurisdiction with regard to any consumer dispute which is pending before or has been decided

by the State Commission. Learned counsel submits that in absence of any other provision in the Act of 1986, in terms of aforesaid provision, against the order of dismissal of appeal in default passed by the State Commission, no remedy is provided. Learned counsel submits that the National Commission would have no jurisdiction if the order is passed in exercise of the appellate or revisional jurisdiction exercised by the State Commission.

6. Learned counsel for the petitioners submits that this Court (Coram: Ravindra V. Ghuge, J.) in writ petition No. 10144 of 2013 and writ petition No. 3985 of 2012, by order dated 02.04.2014 and 22.03.2016, respectively, observed that such an order of dismissal of appeal in default can be set aside by this Court by entertaining the writ petition.

Learned counsel for the petitioners, in order to substantiate his contentions, placed reliance on the Judgment of this Court in the case of ***R.B. Upadhayay vs. State Commission for Consumer Disputes, Mumbai, reported in AIR 2010 Bombay 139.***

7. Learned counsel for the respondent submits that the Act of 1986 is a complete Code itself. It is provided for establishment of Consumer complaints adjudicating forums at the District, State and

National levels. The learned counsel submits that the National Commission in many such identical cases entertained the revision applications and set aside the order of dismissal in default passed by the State Commission in the appeal. Learned counsel submits that the revisional powers of the National Commission are derived from the provision of Section 21(b) of the Act of 1986. In view of the same, when the alternate efficacious remedy is available to the petitioners, in absence of extra ordinary circumstances, this writ petition cannot be entertained.

8. Learned counsel for the respondent, in order to substantiate his contentions, placed his reliance on the judgment in the following cases:-

- i) Bajirao Dagduji Sirsath vs. Sanjay Prakashchand Kothari and others, reported in (2015) (1) Mh.L.J. 278,
- ii) Arenja Industries Ltd. Mumbai and Anr. vs. Jagdish C. Shah, reported in 2011 (5) Mh.L.J. 904,
- iii) Om Prakash Shaini vs. DCM Ltd. and Ors reported in AIR 2010 SC 2608,
- iv) Lourdes Society Snehanjali Girls Hostel and Ors. vs. H and R Johnson (India) Ltd. and others, reported in AIR 2016 SC 3572,

- v) Rubi (Chandra) Dutta vs. United India Insurance Company Limited, reported in (2011) 11 SCC 269.

9. In view of above submissions, I deem it necessary to refer to the provisions of Sections 17, 19 and 21 of the Act of 1986, which read as under:-

**“17. Jurisdiction of the 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 and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any District Forum within the State; 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 District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

[(2) A complaint shall be instituted in a State Commission within the limits of whose jurisdiction,—

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or has a branch office or personally works for gain; or

(b) any of the opposite parties, where there are more than one, at

the time of the institution of the complaint, actually and voluntarily resides, or carries on business or has a branch office or personally works for gain, provided that in such case either the permission of the State Commission is given or the opposite parties who do not reside or carry on business or have a branch office or personally works for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part, arises.]

19. **Appeals.**— Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (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 the order in such form and manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if 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 in the prescribed manner fifty per cent of the amount or rupees thirty-five thousand, whichever is less.]

21. **Jurisdiction of the National Commission.**—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 [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.”

10. In the instant case, being aggrieved by the judgment and order dated 17.12.2013 passed by the Consumer Dispute Redressal Forum Beed, in complaint No. 165 of 2012, the petitioners herein preferred first appeal No. 105 of 2014 before the State Commission. Obviously, the said appeal has been preferred under Section 17 (1) (a) (ii) of the Act of 1986. In terms of provisions of Section 19, the appeal is provided against the order made by the State Commission in exercise of its powers conferred by sub clause (i) of clause (a) of of sub-section (1) of Section 17. In terms of sub-clause (ii) of clause (a) of Section 21 the National Commission shall have jurisdiction to entertain the appeal against the order of State Commission. The provisions of sub-clause (ii) of clause (a) of Section 21 is necessary to be read with the provisions of section 19 of the Act of 1986. In terms of provisions of Section 19 of the Act of 1986, the aggrieved person may prefer an appeal against the order passed by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of sub-section (1) of Section 17 alone.

In terms of clause (b) of sub-section (1) of Section 17 and in

terms of clause (b) of Section 21, the State Commission or the National Commission, respectively, can exercise the revisional jurisdiction only if the District Forum has failed to exercise the jurisdiction so vested or has acted in the exercise of its jurisdiction illegally or with material irregularity (if the revisional jurisdiction is to be exercised by the State Commission) and in case the State Commission has exercised the jurisdiction not vested in it by law or has failed to exercise the jurisdiction so vested and has acted in the exercise of its jurisdiction illegally or with material irregularity (if the revisional jurisdiction is to be exercised by the National Commission).

11. In the case of ***R.B. Upadhyay vs. State Commission for Consumer Disputes, Mumbai (supra)*** relied upon by learned counsel for the petitioners, in para 10 of the judgment, the Division Bench of this Court has made the following observations:-

"10. Before we answer the main questions, we may first deal with the preliminary objection raised on behalf of the respondent No.2 that as a Revision is available before the National Commission, this Court ought not to exercise its extra ordinary jurisdiction. Section 21(b) on which reliance is placed, reads as under:-

"21. Jurisdiction of the National Commission

(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"

Thus from the clear and literal language of Section 21(b) the revisional jurisdiction can only be if a consumer dispute is pending before or has been decided by the State Commission. In other words the National Commission would have no jurisdiction if the order is passed in exercise of the Appellate power or Revisional jurisdiction exercised by the State Commission under Section 17(b). The power under Section 21(b) is in respect of a complaint filed before the State Commission. In our opinion, therefore, the first contention as urged is devoid of merit."

12. Even in the case of ***Rubi (Chandra) Dutta vs. United India Insurance Company Ltd. (supra)*** relied upon by learned counsel for the respondent, in para 23 of the judgment, the Supreme court has observed that the revisional power of National Commission are derived from Section 21(b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside.

13. In case of ***Lourdes Society Snehanjali Girls Hostel and others vs. H and R Johnson (supra)***, relied upon by learned counsel for the respondent, in para 18 of the judgment, the Supreme Court has concluded the issue by observing that the National

Commission has exceeded its jurisdiction in exercising its revisional power under Section 21(b) of the Act of 1986 by setting aside the concurrent finding of fact recorded by the State Commission in first appeal wherein the finding of fact recorded by the District Forum was affirmed.

14. In view of above discussion and observation made by the Division Bench of this Court and ratio laid down by the Supreme Court, it is clear that no alternate efficacious remedy is provided under the Act of 1986 to entertain any appeal or revision against the order passed by the State Commission in the like nature which is under challenge in the instant writ petition. Thus, this writ petition can be entertained and appropriate orders can be passed in the interest of justice.

15. In the instant matter, the petitioner and their counsel remained absent before the State Commission inspite of the fact that the State Commission has expressed that the matter will be heard finally at the admission stage and even though the counsel appearing for the petitioners assured the State Commission to file written notes of arguments, failed to submit the same. However, considering the issue involved in the matter, I deem it appropriate to set aside the impugned order passed by the State Commission subject to payment

of costs. Hence, the following order:-

## O R D E R

- I. Writ petition is hereby allowed.
- II. The order dated 20.01.2015 passed by the Presiding Member, Maharashtra State Consumer Disputes Redressal Commission, Mumbai, Circuit Bench at Aurangabad, in First appeal No. 105 of 2014 is hereby quashed and set aside with following directions:-
  - a) The First appeal No. 105 of 2014 be restored to its original number.
  - b) The petitioner shall appear before the State Commission on 22.01.2018.
  - c) The petitioner shall deposit the costs amount of Rs.10,000/- (Rupees Ten thousand only) on the date of appearance before the State Commission i.e. on 22.01.2018 and the State Commission to pass an appropriate orders with regard to the said costs amount.
- III. Writ petition is accordingly disposed of.
- IV. Rule made absolute in the above terms.

**( V. K. JADHAV, J.)**