

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P. No. 43564 of 2017

ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

This writ petition is filed seeking to declare the Docket Order dated 31.10.2017 in CCIA No. 784 of 2017 in Consumer Complaint No. 34 of 2016 passed by the A.P. State Consumer Disputes Redressal Commission, Hyderabad (for brevity "the State Commission"), as illegal, arbitrary, without jurisdiction and in violation of provisions of Consumer Protection Act, 1986.

The learned counsel for the writ petitioners submits that the State Commission adjourned the matter on two occasions and posted to 19.04.2017 as the learned counsel sought time citing an unusual situation. As a last chance, the State Commission posted the matter on 11.05.2017 on payment of costs of Rs.3,000/- . However, on 11.05.2017, after coming to know of the order imposing costs, the learned counsel for the petitioners before the Tribunal submitted that due to miscommunication he could not pay the costs and finally sought adjournment so as to enable him to pay the costs and file a chief affidavit, but the State Commission, while declining his request, passed the following order forfeiting the right of the petitioners to file chief affidavit.

“Despite granting sufficient time to the complainant to file evidence affidavit and marking documents, he did not even pay costs. As such, the right of the complainant is forfeited. Post on 07.07.2017 for filing evidence affidavit and for marking of documents on behalf of Ops.”

Thereafter, an application was filed on behalf of the petitioners before the State Commission explaining the mitigating circumstances for recalling the order dated 11.05.2017, however on 06.07.2017, the application was returned by the Registry in the State Commission with an endorsement that the same was not maintainable as the State Consumer Forum has no power to recall its own orders.

The learned counsel further submits that the petitioners' right to file evidence affidavit and get the documents marked, was forfeited vide order dated 11.05.2017, as such, they filed an application to withdraw the complaint with liberty to file fresh complaint on the same cause of action, and the petitioners were permitted, vide order dated 25.10.2017, however on payment of costs of Rs.25,000/- on or before 31.10.2017. As the costs have not been paid within the stipulated time, an application seeking extension of time for payment of costs was made, however, the same was not allowed by recording that since the costs were not deposited, the earlier order dated 25.10.2017 was recalled.

Now, the question arises for consideration before this Court is whether this Court has jurisdiction to entertain the present writ petition filed against the orders passed by the State Commission.

The learned counsel for the petitioners submits that if an order is passed by the State Commission without jurisdiction, this Court, in exercise of its jurisdiction under Article 226 of the Constitution, has power to interfere with the same. To buttress his contention, he has relied upon two judgments of the Supreme Court reported in *Jyotsana Arvindkumar Shah v. Bombay Hospital Trust*¹ and *Rajeev Hitendra Pathak v. Achyut Kashinath Karekar*².

The learned counsel for the respondents has relied upon the order passed by the Supreme Court in *Nevedita Sharma v. Cellular Operators Assn. of India*³ wherein the Apex Court has dealt with the issue of jurisdiction while referring to various judgments as under:

“Section 19 of the 1986 Act provides for remedy of appeal against an order made by the State Commission in exercise of its powers under sub-clause(i) of clause (a) of Section 17. If Sections 11, 17 and 21 of the 1986 Act which relate to the jurisdiction of the District Forum, the State Commission and the National Commission, there does not appear any plausible reason to interpret the same in a manner which would frustrate the object of legislation.

¹ (1999) 4 Supreme Court Cases 325

² (2011) 9 Supreme Court Cases 541

³ (2011) 14 Supreme Court Cases 337

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.

We also find that the High Court has taken cognizance of the statement made on behalf of the counsel for the petitioners that their clients would challenge Clause (iii) of para 38 of the State Commission's order by filing an appeal under Section 19 of the Act and the fact that one of the aggrieved parties, namely, American Express Bank Ltd. has already filed an appeal questioning para 38(iii) of the order of the State Commission. After having noticed that some of the petitioners were inclined to avail the remedy of appeal against the particular portion of the order passed by the State Commission, the High Court should not have entertained the writ petition filed under Article 226 of the Constitution and the miscellaneous petitions filed under Article 227 of the Constitution and directed them to avail remedy of appeal under Section 19 of the 1986 Act. The appeal is accordingly allowed and the impugned order is set aside.

However, liberty is given to respondent No. 1 and others to challenge the order of the State Commission by availing the alternative remedy of appeal under Section 19 of the 1986 Act. We also direct that if the respondents or any one of them file(s) an appeal within a period of 60 days from today, then the same shall be entertained by the National Commission and decided on merits. We also give liberty to American Express Bank Ltd. to amend the memo of appeal for the purpose of challenging the order of the State Commission on other grounds. It will also be open to Respondent No.1 and others to apply for stay of the order of the State Commission. If any such application is filed, the National Commission shall decide the same on its own merits without being influenced by the observations contained in the impugned order."

In view of the facts recorded above and the dictum laid down by the Apex Court in Nivedita Sharma's case (3rd cited supra), we are of the considered opinion that this Court has no jurisdiction to entertain the present writ petition.

Accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

29.01.2018

SURESH KUMAR KAIT, J

bcj

ABHINAND KUMAR SHAVILI, J

