

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

917 WRIT PETITION NO.1624 OF 2014

THE EXECUTIVE ENGINEER, MAHARASHTRA STATE
ELECTRICITY DISTRIBUTION CO. LTD., LATUR.

VERSUS

DNYANOBA VYANKATRAO PATOLE AND ANOTHER

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Advocate for Petitioner : Mr. Avishkar S. Shelke.

Advocate for Respondent No.1 : Mr. Anand D. Wange.

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CORAM : **T. V. NALAWADE, J.**

DATE : 13th February, 2019.

PER COURT:

. The petition is filed to challenge the order made by the State Commission of this State under the Consumer Protection Act, 1986 (hereafter referred to as "the Act") in Appeal No.503 of 2011. By order dated 24th December, 2013, the State Commission dismissed the appeal by making the following order:

"1. Neither appellant nor their counsel Shri. A. S. Shelke is present. On 05.09.2013 none appeared for appellant, therefore matter was adjourned to 24.12.2013. Today also none appeared for appellant. We have perused the impugned judgment and order, same is just and proper. As

nobody appeared for appellant, it seems that the appellant is not interested in pursuing the appeal. Hence appeal is dismissed.”

2 In view of the objection taken by the learned counsel for Respondent and reliance placed by him on the observations made by the Apex Court in the case reported as (2012) 8 Supreme Court Cases 524, (*Cicily Kallarackal Vs. Vehicle Factory*), the learned counsel for Petitioner was asked to make out a case on tenability of the writ petition.

3 The learned counsel for Petitioner took this Court through the scheme of the Act. He took this Court specifically through the provisions of Sections 17, 19 and 21 of the Act. The part of provision of Section 17 of the Act, which is relevant for the present purpose is Section 17(1)(a) and it is as follows:

“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;”

4 This provision shows that the State Commission has jurisdiction of two different kinds. First jurisdiction is original, to entertain the complaints of a particular value and second jurisdiction is appellate jurisdiction, which is in respect of orders made by any District Forum within the State. In view of this provision, it needs to be presumed that Appeal No.503 of 2011 was filed before the State Commission under this provision.

5 The provision of Section 19 of the Act with regard to appeal is as follows:

“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.”

This provision shows that if a person is aggrieved by an order made under sub-clause(i) of clause (a) of Section 17 of the Act, he may prefer appeal before the National Commission against that decision. The provision of Section 17 (1)(a)(i) is quoted and it is in respect of original jurisdiction of the State Commission, which is the complaint involving particular value of the thing involved. Thus, this provision is apparently not in respect of the decision given by the State Forum under Section 17 (1)(a)(ii), decision of the appeal. Here only this Court wants to make it clear that the decision is a decision. Appeal may be decided or disposed of in any manner like decision on merits, dismissal for default or dismissal for non-prosecution. In the present matter, in view of the wording of the order of State Commission already quoted, it can be said that the appeal was dismissed due to non-prosecution. However, one thing becomes

apparently clear that Section 19 of the Act is not in respect of the order of dismissal made by the State Commission in appeal.

6 Section 21 of the Act is with regard to jurisdiction of National Commission and it runs as under:

“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.”

7 Section 21 of the Act shows that the National Commission has three kinds of jurisdiction. It has original jurisdiction, to entertain complaints where the value of goods or services exceeds limit given in the Act like rupees one crore, the appellate jurisdiction, which is against the orders of any State Commission and the third is the revisional jurisdiction of the National Commission, which is in respect of the matters mentioned in Section 21(b) of the Act and it can be said on the basis of the wording of clause (b) of Section 21 of the Act that such orders, which are to be reviewed are the orders in consumer dispute, which is pending or which has been decided by the State Commission. Thus, from the wording, it can be said that this provision relates to the original jurisdiction of the State Commission.

8 The learned counsel for Petitioner placed reliance on some observations made by this Court in the case reported as **AIR 2000 Bombay 139**, (*R. B. Upadhyay Vs. State Commission for Consumer Disputes, Mumbai*). In that case also, this Court had occasion to consider the scope of the provision of Section 21(b) of the Act and this Court interpreted the provision in the manner, which is mentioned by this Court above.

9 The learned counsel for Petitioner submitted that when specific provision like Section 19 of the Act is there with regard to appeals, one needs to go with the presumption that the provision of Section 21 (a)(ii) relates to the appeals mentioned in Section 19 of the Act. This proposition is not at all acceptable. This is because once we say that any order made by the State Commission in dispute is covered by Section 21(b) of the Act, it is not possible to presume that the provision of Section 21 (a)(ii) relates only to the appeals mentioned in Section 19 of the Act. There are other reasons also for the same.

10 When interpretation of the provision of such special enactment is required to be done by the higher Courts, it is the duty of the higher Courts to go with the presumption that the Legislature had given necessary thought and it was the intention of the Legislature to create such a scheme that would be complete in itself. Further, considering the object of the special enactment, which was to give expeditious remedy to the consumer, the Court interpreting the provision needs to find out first as to whether any scope was left to the High Court to interfere or intervene in such matters by exercising the provisions of Article 226 or Article 227 of the Constitution of India. It is needless to mention that this Court has no supervisory jurisdiction over

the Consumer Forums in view of the scheme of the Act. The scheme of the Act shows that after getting decision from the National Forum, one is required to go directly to the Supreme Court and no other way is provided in the special enactment. Thus, to see that the things are expedited, only one opening is given and by using that opening, the matter can be taken to Supreme Court only. If this logic is used, then it can be said that there is no scope left to the High Court even to use the provision of Article 226 of the Constitution of India. Ordinarily, submissions are made that even when there is alternate remedy provided, the High Court can exercise the jurisdiction under Article 226 of the Constitution of India, but when in a case like present one, a particular scheme is prepared by the Legislature, the High Court needs to first ascertain as to whether there is any scope left by the scheme to entertain the proceeding under Article 226 of the Constitution of India.

11 Returning back to the observations made by the Apex Court in the Case *Cicily Kallarackal Vs. Vehicle Factory* (supra) this Court holds that the observations made by the Apex Court in paragraph No.4 of the case are relevant for the present purpose and the observations are as under:

“4. Despite this, we cannot help but to state in absolute terms that it is not appropriate for the High Courts to entertain writ petitions under Article 226 of the Constitution of India against the orders passed by the Commission, as a statutory appeal is provided and lies to this Court under the provisions of the Consumer Protection Act, 1986. Once the legislature has provided for a statutory appeal to a higher court, it cannot be proper exercise of jurisdiction to permit the parties to bypass the statutory appeal to such higher court and entertain petitions in exercise of its powers under Article 226 of the Constitution of India. Even in the present case, the High Court has not exercised its jurisdiction in accordance with law. The case is one of improper exercise of jurisdiction. It is not expected of us to deal with this issue at any greater length as we are dismissing this petition on other grounds.”

12 In that matter, the decision of the National Commission was challenged in High Court under Article 226 of the Constitution of India. The observations made by the Apex Court show that it is not open to consider the order made by the National Commission by High Court under Article 226 of the Constitution of India. Though the matter involved decision of National Commission, the same analogy needs to

be used in respect of the decision given by the State Commission and it needs to be presumed by this Court that the Apex Court has laid down that the said ratio is applicable in respect of the decisions or orders made by the State Commission.

13 The learned counsel for Petitioner placed reliance on the decision given by the learned Single Judge of this Court in **Writ Petition No.2106 of 2015**, (*Dwarkadas Mantri Nagri Sahakari Bank Ltd. Vs. Haridas s/o. Vithalrao Karde*) dated 29th November, 2017. The learned counsel for Petitioner also placed reliance on some other orders made by this Court like decision given in **Writ Petition No.3940 of 2015**, (*Executive Engineer, Maharashtra State Electricity, Distribution Company Ltd, Beed and another Vs. Kisan Maruti Ajbe*) decided on 21st December, 2017, case reported as **2016 (6) All.M.R. 14**, (*Divisional Controller, Maharashtra State Road Transportation Corporation Vs. Baban Sonasa Khandare*) and **2014 (4) Mh.L.J. 757**, (*Arun Sudamrao Modale Vs. Sangmeshwar Tractor Authorised dealer Ahmedpur and another*). There is one case of the Division Bench of this Court like decision given in **Letters Patent Appeal No.7 of 2018** arising out of Writ Petition No.2950 of 2010, (*Sunil Sudhakar Fegde and another Vs. Kishor Devram Rane and others*) decided on 23rd

January, 2019. In this case, this Court has laid down that the High Court has no jurisdiction to entertain the proceedings, which are arising out of the provisions of the Act even under Article 226 of the Constitution of India. The aforesaid decisions on which reliance was placed by the learned counsel for Petitioner were rendered by the learned Single Judge. In view of the aforesaid discussion, this Court holds that the present petition is not tenable. So the petition stands dismissed.

14 The learned counsel for Petitioner submitted that stay was granted by this Court during pendency of this matter and he requested for continuation of the stay. It is refused.

[T. V. NALAWADE, J.]

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