

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition Nos.24209 and 24214 of 2019

Date: 06.11.2019

Between:

W.P.No.24209 of 2019

Smt.Hanumanthu Triveni
and another

...Petitioners

And

The District Consumer Forum,
Rep.by its Registrar,
Medak at Sangareddy
and another

...Respondents

W.P.No.24214 of 2019

Smt.Hanumanthu Triveni
and another

...Petitioners

And

The District Consumer Forum,
Rep.by its Registrar,
Medak at Sangareddy
and another

...Respondents

Counsel for the petitioners : Mr.V.Seetharama Avadhani

Counsel for the respondents : None appeared

The Court made the following:

COMMON ORDER: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Both these Writ Petitions are disposed of by this common order as the facts involved in both the Writ Petitions are similar.

2. The petitioners have filed the present Writ Petitions against the orders of the District Consumer Forum, Medak at Sangareddy (hereinafter, referred to, as 'the Forum'), passed in C.C.Nos.43 of 2016 and 44 of 2016 respectively, dated 13.08.2019.

3. The brief facts of the case are that the petitioners have approached the respondent No.2 representing that they are running a chit fund business and requested him to subscribe to the same. The respondent No.2, on the representation of the petitioners herein, had subscribed to a chit for a sum of Rs.25,00,000/- (Rs.1,00,000/- x 25 months) and also three chits for the value of Rs.5,00,000/- each (Rs.20,000/- x 25 months). In the month of October, 2015, he participated in the bid/auction of Rs.25,00,000/-. Being the highest bidder, the chit was knocked down in his favour. The petitioner No.1 issued a cheque for the bid amount, but asked him to wait till December, 2015, so as to arrange the necessary amount. In the last week of December, 2015, when the respondent No.2 approached the petitioners about presenting the cheque, they asked him to present the cheque on 01.01.2016. Accordingly, the said date was endorsed on the cheque. Subsequently, a request was made by the petitioners to present the cheque in March, 2016. In the meanwhile, the respondent No.2 came to know that the

petitioners did not have the necessary registration to run the chit business, and also that they were cheating other subscribers by not paying the bid amounts in time. Thus, number of police complaints were filed against them by the other chit subscribers. When he approached the petitioners to pay the bid amount, they flatly refused to pay the same. Hence, left with no other option, he has approached the Forum complaining about the deficiency in service and also directing the petitioners to pay the bid amount along with interest and other reliefs. The Forum, after going through the pleadings and the evidence adduced by the parties, has passed the Orders, dated 13.08.2019, directing the petitioners herein to pay the amounts due to the respondent No.2 herein.

4. The petitioners have filed the present writ petitions on the ground that the Forum has exceeded its jurisdiction and passed the impugned orders without any legal basis. Further it is the case of the petitioners that the Forum has wrongly held that the petitioners have indulged in unfair trade practices in the impugned orders without there being any pleadings to that effect. The petitioners in order to substantiate the maintainability of the writ petitions on the ground that the alternative and efficacious remedy of appeal provided under the Consumer Protection Act, 1986, is not efficacious or effective and that the jurisdiction of the High Court can still be invoked under Article 226 of the Constitution of India have relied on the decisions of the Hon'ble Supreme Court in WHIRLPOOL

CORPN. v. REGISTRAR OF TRADE MARKS¹ and
GURUVAYOOR DEVASWOM MANAGING COMMITTEE v.
C.K.RAJAN².

5. Heard Mr.V.Seetharama Avadhani, learned Counsel appearing for the petitioners.

6. Having heard the learned Counsel for the petitioners and perused the material placed on record, we do not find any infirmity in the orders passed by the Forum. The Forum while upholding the contention of the complainant-2nd respondent herein, among the other grounds, has observed that the petitioners are running the Chit Fund business without obtaining any permission, or getting themselves registered as mandated under law. Therefore, they have indulged in unfair trade practice, and to that effect, criminal case is also registered against them.

7. The other contention of the learned Counsel for the petitioners that the Forum has allowed the complaints solely on the ground that the petitioners are indulging in unfair trade practices is also totally misconceived and is incorrect.

8. The other ground urged by the learned counsel for the petitioners is that the writ petition against the order of the Consumer Forum is maintainable, is also misconceived for the reason that an alternative and efficacious remedy of appeal is provided under the Act; the petitioners are free to take all or any

¹ (1998) 8 SCC 1

² (2003) 7 SCC 546

of the grounds assailing the orders of the Forum in the said appeal. In catena of decisions, this High Court as well as the Hon'ble Supreme Court, it has been repeatedly held that where an alternative and efficacious remedy is available, the jurisdiction of the High Court under Article 226 of the Constitution of India should not be invoked.

9. In *L. Chandra Kumar v. Union of India and Ors.*³, the Hon'ble Supreme Court has held that *it will not be open to the employees to directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that (sic) 323B, jurisdiction of the High Court would be excluded. Negating the said contention, this Court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of inviolable basic structure of the Constitution and it cannot be said that such Tribunals are effective substitute of the High Courts in discharging powers of judicial review. It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extraordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly*

³ (1997) 3 SCC 261

approach the High Court even where the question of vires of the statutory legislation is challenged.

10. Even though the petitioners have relied on Whirlpool's case (1 supra), it is seen that the Hon'ble Supreme Court has held as under:

The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of Habeas Corpus, Mandamus, prohibition, Qua Warranto and Certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

A Constitution Bench of the Hon'ble Supreme Court in A. V. Venkateswaran, Collector of Customs. Bombay v. Ramchand Sobhraj Wadhwani and Anr., (AIR 1961 SC 1506) held as under:

"The passages in the judgments of this Court we have extracted would indicate (1) that the two exceptions which the learned solicitor General formulated to the normal rule as to the effect of the existence of an adequate alternative remedy were by no means exhaustive and (2) that even beyond them a discretion vested in the High Court to have entertained the petition and granted the petitioner relief notwithstanding the existence of an alternative remedy. We need only add that the broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the Court, and that in a matter which is thus pre-

eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the Court".

Another Constitution Bench of the Hon'ble Supreme Court in the decision reported in Calcutta Discount co. Ltd. v. Income Tax Officer Companies Distt, (AIR 1961 SC 372) observed as under:

"Though the writ of prohibition or certiorari will not issue against an executive authority, the High Courts have power to issue in a fit case an order prohibiting an executive authority from acting without jurisdiction. Where such action of an executive authority acting without jurisdiction subjects or is likely to subject a person to lengthy proceedings and unnecessary harassment, the High Court will issue appropriate orders or directions to prevent such consequences. Writ of certiorari and prohibition can issue against Income Tax Officer acting without jurisdiction Under Section 34 I.T. Act".

11. In Guruvayoor's case (2 supra), the Hon'ble Supreme Court held as under:

Power of the High Court and this Court under Articles 226 and 32 of the Constitution of India remain untrammelled despite existence of statutory provisions controlling the power of executive and, thus, it was argued that the High Court and this Court cannot be stripped of its constitutional powers to look into the omissions and commissions on the part of the administrators of the temple. A proceeding initiated as a public interest litigation would lie before the High Court or this Court, according to Mr. Subba Rao, when it is found that despite existence of statutory provisions the State or the other statutory functionaries were not taking recourse to the provisions thereof for remedying the grievances of the devotees. In any event, as a Hindu temple is a juristic person the very fact that Section 92 of the Code of civil Procedure seeks to protect the same, for the self-same purpose Articles 226 and 32 could also be taken recourse to.

12. Both the decisions relied upon by the petitioners are not applicable to the facts of the case and are of no help to the petitioners for the reason that none of the grounds which are enumerated in the above Judgments for entertaining a Writ under

Article 226 of the Constitution of India are found. When there is an alternative and efficacious remedy of appeal as contemplated under the statute, there is no compelling reason to invoke the jurisdiction of this Court under Article 226 of the Constitution of India. The Order of the District Forum is passed on merits and only after going through the evidence on record, the District Court has allowed the complaints filed by the complainant and on finding that the appellants did not have the permission or licence to run the chit fund business and a finding is given that they have indulged in unfair trade practice.

13. For the above mentioned reasons, both the writ petitions are devoid of merit; the same are, hereby, dismissed.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, HCJ

A.ABHISHEK REDDY, J

6th November, 2019
smr