

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

926 WRIT PETITION NO.3652 OF 2021

MAHARASHTRA STATE ROAD TRANSPORT CORPORATION THR
DIVISIONAL CONTROLLER ..PETITIONER

VERSUS

THE STATE OF MAHARASHTRA THR ITS SECRETARY AND
OTHERS ..RESPONDENTS

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Mr. M. K. Goyanka, Advocate for the Petitioner.
Mrs. V. S. Choudhari, AGP for Respondents-State.

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**CORAM : S. V. GANGAPURWALA &
SHRIKANT D. KULKARNI, JJ.**

DATED : 24th FEBRUARY, 2021.

PER COURT:-

1. Mr. Goyanka, learned counsel submits that the District Consumer Forum has passed the impugned order without jurisdiction.

2. According to Mr. Goyanka, learned counsel for the petitioner the District Consumer Forum did not possess the jurisdiction to entertain the complaint. The respondent no.2 is not a consumer. He was the employee of the present petitioner. The District Consumer Forum under the impugned judgment has directed the payment of the amount of Provident Fund. The respondent no.2 is not a consumer nor it was case of deficiency in service. The District Consumer Court did not possess the jurisdiction and as such the

said judgment is assailed before this Court under Article 226 of Constitution of India. The learned counsel relies on the following judgments:

1. Surya Dev Rai Vs. Ram Chander Rai and Ors. in Civil Appeal NO.6110 of 2003 dated 07.08.2003.
2. Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai & Ors. dated 26.10.1998.
3. Jagmittar Sain Bhagar & Ors. Vs. Director, Health Services, Haryana & Ors. reported in (2013) 10 Supreme Court Cases 136.
4. M/s Advance Scientific Equip. Ld. & Anr. Vs. West Bengal Pharma & Photochemical Dev&An in SLP No.17068-17069/2010 dated 09.07.2010.

3. The petitioner in effect is seeking Writ of Certiorari with regard to the judgment and order passed by District Consumer Forum.

4. The Consumer Protection Act is a complete Code in itself. The Act provides for Appeal and Revisional remedy. The petitioner in a way is seeking invocation of the writ jurisdiction of this Court under Article 227 of the Constitution of India by assailing the judgment of the District Consumer Forum.

5. We are aware that rule of alternate remedy is a rule of self restrain. At the same time when a Statute provides for remedy and the said remedy is an efficacious remedy, this Court would not

venture to exercise its plenary powers under Article 226 of the Constitution of India.

6. The Apex Court in the case of M/s Advance Scientific Equip. Ld. & Anr. Vs. West Bengal Pharma & Photochemical Dev&An in Special Leave Petition No.17068-17069/2010 observed thus:

"We are further of the view that the petitioners' venture of filing of petition under Article 227 of the Constitution was clearly an abuse of the process of the Court and the High Court ought not to have entertained the petition even for a single day because an effective alternative remedy was available to the petitioner under Section 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction."

7. In the said case, the Appellants before the Apex Court had challenged the order passed in Execution raising objections to the very maintainability of the complaint by contending that respondent no.1 does not fall within the definition of the consumer. The State Commission overruled the objection and held that the complaint was maintainable. The said order passed by the State Commission was challenged by filing writ petition before High Court instead of filing proceeding before the National Commission. In that context, aforesaid observations were made by the Apex Court.

8. In light of the above, we refrain from exercising our writ jurisdiction under Article 226 of the Constitution of India.

9. Writ Petition as such is disposed of. No costs.

10. The petitioner is at liberty to avail alternate Statutory remedy available to it.

(SHRIKANT D. KULKARNI)
JUDGE

(S. V. GANGAPURWALA)
JUDGE

Devendra/February-2021