

10.03.2022
Ct. 21
D/L 06

C.O. 42 of 2020
With
Can 1 of 2022
(Via Video Conference)

Sanjay Kumar Sinha
-Vs-
Sri Thakur Singh & Ors.

Mr. Debdatta Sen,
Ms. Suchismita Chatterjee,
Mr. Malay Kr. Seal,

... for the petitioner

Mr. Srikantha Paul,

...for the opposite party no. 1

The present application under Article 227 of the Constitution of India read with Section 151 of CPC is at the instance of the employer being aggrieved by the order passed by the State Consumer Forum holding that the opposite party no. 1 as a consumer and thereby directing the employer not to cause any hindrance to the opposite party from enjoying electricity service 24X7 at his quarter being no. 7/785 K.C. Mills, Garden Reach Road in Appeal No. A/359/2018 on 19.11.2019.

Facts necessary for determination of the present revisional application in gist is that works in employer Kesoram Textile Mills Limited at Metiabruz is under

suspension since 1999. The opposite party Sri Thakur Singh was appointed as a Staff Trainee.

The appellants have contended that the opposite party was never provided with any official quarter. The petitioner has wrongly occupied one of the vacant quarters at Kesho Colony by breaking pad lock and thereby illegally using the electricity beyond the free 100 units.

On the contrary it is the case of the employee, the employer at its own whims and decision supply electricity in quarters located at Kesho colony putting the occupiers in a great hardship. In order to overcome the difficulties faced by him due to non-supply of regular electricity in his quarter he intend to take connection from CESC, but due to non-issuance of NOC by the employer he is unable to get any connection.

However, it appears that employee has moved District Consumer Forum for redressal of his cause. The District Consumer Forum, South 24 Parganas, has held that opposite party being an employee of the mill and who is enjoying free 100 units of electricity from the mills is not a consumer. Since, the employee is being provided with the free electricity up to 100 units in a month by the employer against contract of personal service in the official quarter does not come within the definition of service as provided under Section 2 (1) (o) of the Consumer Protection Act, 1986. Thereby the

District Consumer forum has been pleased to dismiss the case.

Being aggrieved the employee moved the State Consumer Forum. However, State Consumer Forum held that employee to be a consumer and as such he is entitled to get 24 hours electricity supply in his quarter and directed the employer to provide electricity service 24X7 hours to the quarter of the employee and also imposed litigation cost of Rs. 25,000/-.

After considering the argument advance by the learned Advocates for the parties this Court intends to determine whether the present revisional application is maintainable under Article 227 of the Constitution of India when there is alternative remedy available to the petitioner by way of an appeal before the National Commission?

Petitioner has referred to following decision;-

- 1-Tej Bahadur Thapa vs. Branch Manager of District Central Co-Operative Bank & Anr., reported in (2017) 1 Cal LT Page 437
- 2- Chandra Kumar vs. Union of India & Ors., reported in (1997) 3 SCC 261
- 3- The Operation Manager, Auto Loan Consumer Service Dept vs Praveen Khaitan., reported in 2012 SCC Online Cal 2482

- 4- L&T Finance Ltd vs Anup Kumar Bera and Anr., reported in 2014 SCC Online Cal 1447.
- 5- Bhaskar Jalan and Anr vs. M/S Housing Estates Pvt. Ltd and Ors., reported in 2016 SCC Online Cal 1806.
- 6- Indian Medical Association vs. V.P. Shantha & Ors., reported in (1995) 6 SCC 651
- 7- Laxman Kini, A. Vs. The Chairman and Managing Director, Indian Overseas Bank and Ors., reported in (1995) 6 SCC 651.
- 8- H.B.Gandhi vs Gopi Nath & Sons., reported in 1992 Supp (2) SCC 312.
- 9- Dharamveer & Ors. vs. State of Uttar Pradesh., reported in (2010) 4 SCC 469.
- 10- Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil., reported in (2010) 8 SCC 329.

On the other hand the opposite parties refer to the following decisions;-

- 1- Central Board of Dawoodi Bohra Community & Anr. vs. State of Maharashtra & Anr., reported in (2005) 2 SCC 673.
- 2- Babu Verghese & Ors. Vs. Bar Council of Kerala & Ors., reported in (1999) 3 SCC 422.

3- Anil Kumar Neotia & Ors. Vs. Union of India & Ors., reported in (1988) 2 SCC 587.

4- Suganthi Suresh Kumar Vs. Jagdeeshan., reported in AIR 2002 SC 681.

5- Supreme Court Bar Association & Ors. Vs. B.D. Kaushik., reported in (2012) 6 SCC 152.

Prima facie it appears the employer being aggrieved by the order passed by the State Consumer Forum has come before this Court with an application under Article 227 of the Constitution of India.

Section 21 (a) (ii) of the Consumer Protection Act, 1986, clearly provides that appeals against order of any State Commission shall lie before National Commission.

Therefore, if a party aggrieved by an order passed by the State Commission his remedy is to file an appeal before National Commission. But in the present case the petitioner the manager of the employer instead of moving the National Commission has come with the application under Article 227 of the Constitution of India.

Hon'ble Supreme Court in *Shalini Shyam Shetty & Anr. Vs. Rajendra Shankar Patil.*, reported in (2010) 8 SCC 329 having pleased to hold "Article 227 can be Another (supra) Article 227 can be invoked by the High

Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievances. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline. The object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. The jurisdiction under Article 227 is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence.

In *Cicily Kallarackal vs. Vehicle Factory.*, reported in (2012) 8 SCC 524., the Hon'ble Supreme Court held "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".

Similar views has been expressed by this Hon'ble High Court in *National Insurance Company Ltd. Vs. Consumer Dispute Redressal Forum.*, reported in 2014 (3) CHN (CAL) 57.

The Hon'ble Co-ordinate Bench of this Hon'ble High Court in *Nurul Huda Layek vs. Tapas Kumar Sen & Anr.*, reported in 2011(1) CHN (CAL) 665 held the order passed by State Commission is appealable before the National Commission under section 21(a)(ii) of the Consumer Protection Act, 1986 and as such the aggrieved party cannot be said to be remediless. The scope of the appeal is much wider than the superintendence jurisdiction of the High Court under Article 227 of the Constitution of India.

It has further held High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power, act as a Court of appeal over the orders of Court of tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restrain on the exercise of this power by the High Court.

It may be true that a statutory amendment of a rather cognate provision, like section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power is discretionary and has to be exercised on equitable principle.

On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

Therefore, in view of the decisions of the Hon'ble Supreme Court as well as decision of this Hon'ble High Court as discussed above the remedy for the petitioner against the order of the State Commission is to file an appeal or revision before the National Consumer Forum as provided in section 21(a) (ii) of the Consumer protection Act, 1986 and not a revisional application under Article 227 of the Constitution of India. Since, an alternative remedy is available under the statute, this Court refuses to entertain the present application under Article 227 of the Constitution of India.

Accordingly, C.O. 42 of 2020 is dismissed.

Consequently, CAN 1 of 2022 is also disposed of.

Interim order, if any, stands discharged.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

Urgent Photostat certified copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Kesang Doma Bhutia, J.)