

**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

08.03.2022
Item No.9
Court No. 01
Saswata & akd

C.O. 110 of 2021

**Avik Sanyal & Anr.
Versus
Subrata Dhar & Ors.**

Mr. Sunil Kumar Sarkar
Ms. Smita Sinha
...for the petitioners

Mr. Balai Banerjee
Mr. Ajit Ghosh
Mr. Dipayan Pathak
... for the opposite parties

The petitioners in the instant revisional application is beleaguered between the powers conferred under Articles 226 and 227 of the Constitution of India.

According to the petitioners, the order passed by the State Commission, in exercise of its original jurisdiction is amenable to be challenged before the High Court under Articles 226 and 227 of the Constitution of India. It is submitted that after the new Act has come into force, an application was taken out seeking order directing the witness to appear in the witness box for the purpose of examination or cross examination, as the case may be, which has been turned down by the State Commission. Such order has inculcated a sense that it tantamounts to a manifest injustice on the face of it and there is no deter on the part of the High Court in entertaining the application under Article 227 of the Constitution of India.

There is an apparent distinction between the provisions contained under Articles 226 and 227 of

the Constitution of India. The power of judicial review enshrined under Article 226 of the Constitution of India is susceptible to be exercised by the High Court against the order of administrative quasi-judicial authorities. However, the powers under Article 227 of the Constitution of India is exercised to keep the Courts and the Tribunals subordinate to it within the precincts of law as any attempt to travel beyond the circumference thereof is liable to be interfered with.

Since, both the powers are conferred upon the High Court, I do not find any difficulty in converting one proceeding into another, as there is no limitation period provided for such proceedings. The emphasis was put on the powers of judicial review enshrined under Article 226 of the Constitution of India that the High Court, in appropriate cases, may issue a writ of mandamus or certiorari if the order causes manifest injustice or is passed by an authority having not conferred with the powers or in flagrant violation of the power so on and so forth. The aforesaid eventualities are some of the illustrations which are not exhaustive as there may be other instances which may invite the High Court to exercise jurisdiction under Article 226 of the Constitution of India.

Article 227 of the Constitution of India has not expanded its horizon beyond the Courts and the Tribunals and, therefore, such powers are to be exercised sparingly and only to keep the Courts and Tribunals within the boundaries of law. Even, there is an alternative statutory remedy provided in a statute, yet there is no fetter on the part of the High Court to entertain a proceeding under Article 227 of the Constitution of India, provided the impugned order manifests injustice apparent on the face of the record. Any roving enquiry or the assimilation of facts or the

interpretation of various documents may not be suitable for exercising the powers under Article 227 of the Constitution of India when the exhaustive remedy by way of a statutory appeal is provided in the Act itself.

The Appellate Court exercises the jurisdiction where the entire issue is writ-at-large and even the evidence can be scanned with more precession than in the truncated manner. Though the question incidentally falls whether the Consumer Forum has a trapping of the Court or the Tribunal but I do not delve to go into such nuances of the provisions but proceed on the basis of the undisputed facts that Section 51 of the Consumer Protection Act, 2019 provides a remedy by way of an appeal before the National Commission. If there is a complete remedy by way of a statutory appeal provided in the Act, the High Court should be slow and circumspect in exercising the power under Article 227 of the Constitution of India except when the order inculcate an impression that it has resulted into a manifest injustice apparent on the face of the record. The findings or the opinion on a proposition of law which can be corrected by an Appellate Authority, cannot be squeezed within the peripheral of the manifest injustice apparent on the face of the record.

I, therefore, do not find the instant case to be of such nature warranting entertainability of an application under Article 227 of the Constitution of India.

It is made clear that the disposal of the instant revisional application shall not stand in the way of the petitioners in exhausting the remedy provided in the statute before the appropriate forum. If such

approach is made, the Appellate Authority shall consider the same in accordance with law.

Since the certified copy of the impugned order has been annexed with the instant revisional application, which is found to be not entertainable, the office is directed to return the same to the advocate-on-record of the petitioners upon replacement with a photocopy thereof.

With these observations, the revisional application being C.O.110 of 2021 is ***dismissed***.

There shall be no order as to costs.

(Harish Tandon, J.)