

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.39236 of 2021

(Through hybrid mode)

TPWODL

....

Petitioner

Mr. P.K.Tripathy, Advocate

-versus-

***District Consumer Dispute
Redressal Commission, Sambalpur
and another***

....

Opposite Parties

Mr. P.C.Panda, Addl. Govt. Advocate

CORAM: JUSTICE ARINDAM SINHA

ORDER

15.02.2022

Order No.

01. 1. Mr. Tripathy, learned advocate appears on behalf of petitioner and submits, order dated 13th April, 2021 passed by District Consumer Disputes Redressal Commission, Sambalpur has been impugned in the writ petition. On Court pointing out that there is caution and bar against High Courts exercising constitutional writ jurisdiction in respect of operation of Consumer Protection Act, 1986 and now Consumer Protection Act, 2019, as said earlier by this Bench in **order dated 15th December, 2021 in WP(C) no.32749 of 2021 and order dated 9th February, 2022 in WP(C) no.36033 of 2021**, Mr. Tripathy requests audience.
2. He submits, his client is supplier. The complaint was in respect of assessment made under section 126 of Electricity

Act, 2003. He relies on judgment of the Supreme Court in **U.P.Power Corporation Ltd. v. Anis Ahmad**, reported in **AIR 2013 Supreme Court 2766**, paragraph 47 in which, inter alia, following was said.

“47. xx xx xx

(ii) A “complaint” against the assessment made by assessing officer under Section 126 or against the offences committed under Sections 135 to 140 of the Electricity Act, 2003 is not maintainable before a Consumer Forum.

xx xx xx”

He also relies on views expressed by a Division Bench of the Calcutta High Court in **judgment dated 18th February, 2019** dealing with, inter alia, **WP 23027 (W) of 2017 (M/s Universal Consortium of Engineers (P) Ltd. and another v. State of West Bengal and others)**, paragraph-93 onwards. He submits, the Division Bench interpreted the caution in **Cicily Kallarackal v. Vehicle Factory**, reported in **(2012) 8 SCC 524** to say that the bar and caution thereby issued by the Supreme Court was only in respect of orders made by the National Commission. Constitutional writ jurisdiction can be exercised by the High Courts against the District and State forums but not against the National Commission.

3. In paragraph-96 of **M/s Universal Consortium of Engineers (P) Ltd.** (supra), following was said.

“It has been contended by learned advocates for the home buyers that what applies to orders passed by the National Commission should ex proprio vigore apply to orders passed by the State Commission and the District Forum. In view of

appellate remedies made available by the CP Act, no challenge to the orders passed by the State Commission or the District Forum should be entertained by a bench of this Court under Articles 226/227 of the Constitution of India.”

The Division Bench also said, inter alia, in paragraph-100 as follows.

*“100. Be that as it may, in our humble view, the ruling in **Cicily Kallarackal** (supra) raises more questions than what is answered. Since the oath we have taken ordains us to uphold the Constitution and the laws, we cannot forget principles of law supported by decisions of high authority. The dicta in **Cicily Kallarackal** (supra) having appeared to us to be in stark contrast to the law on the point of entertainability of a writ petition when an alternative remedy is available but not exhausted by the party approaching the High Court, it made us embark on a study/research in relation to the scope of writ jurisdiction that the High Courts of the country exercise, having been conferred the power of judicial review of decisions of administrative authorities/quasi-judicial bodies not by an ordinary law but by the Constitution itself, as well as reference to decisions of the Supreme Court rendered earlier than **Cicily Kallarackal** (supra) which, unfortunately, do not appear to have been placed before the relevant Bench for consideration by the respondents.”*

4. It is clear from **U.P.Power Corporation Ltd.** (supra) that law declared thereby bars assessment under section 126 of Electricity Act, 2003 to be subject matter of complaints entertained under the Consumer Protection Act. Petitioner has moved Court under article 226 in the Constitution, to enforce the bar. **Cicily Kallarackal** (supra) is issuance of caution against the High Courts from exercising writ jurisdiction, the caution issued because the Division Bench of Kerala High

Court did so against the order passed by the National Commission. In making the interpretation, the Division Bench of Calcutta High Court in **M/s Universal Consortium of Engineers (P) Ltd.** (supra) relied on earlier decisions of the Supreme Court, as not taken note of in **Cicily Kallarackal** (supra). As such, **M/s Universal Consortium of Engineers (P) Ltd.** (supra) being a discussion regarding the caution issued by the Supreme Court, cannot bind this Bench to disobey the caution of the Supreme Court.

5. As already said in **M/s. Balimela Hydro Electric Project** (supra), it does not appear from **Cicily Kallarackal** (supra) that there was adjudication whether the Division Bench of the Kerala High Court entertained the writ appeal against the judgment and order passed by the National Consumer Redressal Commission, on a question within or without the scope of article 226 in the Constitution of India. There could not have been. The Special Leave Petition was dismissed without issuance of notice. In the premises, reliance on the interpretation by the Division Bench, restricting application of the caution may cause this Bench to commit violation of article 141 in the Constitution.

6. The writ petition is dismissed.

(Arindam Sinha)
Judge

RKS