



W.P.Nos.27979 of 2004 & 6506 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.27979 of 2004 & 6506 of 2005

and

W.P.M.P.Nos.34000 of 2004 & 7108 of 2005

Dr.M.K.Mani
Chief Consultant-Nephrologist,
Apollo Hospitals Chennai.

... Petitioner in
W.P.No.27979 of 2004

Apollo Hospitals Enterprise Ltd.,
21, Greams Lane, off: Greams Road,
Chennai-6,
Rep. by their Legal Officer
Mr.S.M.Mohan Kumar.

... Petitioner in
W.P.No.6506 of 2005

Vs.

1. State of Tamil Nadu,
Rep. by Its Secretary.,
Department of Food and Civil Supplies -
Consumer Affairs,
Fort St.George, Chennai-9.

2. Sh.Khadir Mohideen

3. State Consumer Disputes Redressal Commission,
“Eruvaka” Buildings, Kairatabad,
Hyderabad, Andhra Pradesh.

... Respondents in
both writ petitions



W.P.Nos.27979 of 2004 & 6506 of 2005

Prayer in W.P.No. 27979 of 2004 :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Prohibition, prohibiting the State Consumer Disputes Redressal Commission, Hyderabad, Andhra Pradesh, the 3rd Respondent above named from proceeding with F.A.SR.No.6176/2003 filed by the 2nd Respondent so far as petitioner is concerned.

Prayer in W.P.No.6506 of 2005:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Prohibition, prohibiting the 3rd Respondent from proceedings with F.A.SR.No.6176/2003 filed by the 2nd Respondent and pending before the 3rd Respondent.

For Petitioners in
both the writ petitions : Mr.C.Mani Shankar, Senior Counsel,
for S.Dayaleeswaran

For Respondents in
both the writ petitions : Mr.G.Krishna Raja,
Additional Government Pleader (for R1)

No Appearance (for R2)

R3-Consumer Redressal Forum



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COMMON ORDER

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The writ of Prohibition has been instituted questioning the territorial jurisdiction of the State Consumer Disputes Redressal Commission, Hyderabad, Andhra Pradesh.

2. Petitioners in the present writ petitions are Dr.M.K.Mani, Chief Consultant-Nephrologist in Apollo Hospitals Chennai and Apollo Hospitals Enterprises Ltd., Chennai. The second respondent, in both the writ petitions, Sh.Khadir Mohideen, admittedly had taken treatment in Apollo Hospital and Dr.M.K.Mani provided treatment to the wife of the second respondent. The second respondent filed a complaint under the Consumer Protection Act before the 3rd respondent Consumer Disputes Redressal Commission, Hyderabad, Andhra Pradesh, alleging medical negligence and seeking compensation.

3. On receipt of notice from the Consumer Disputes Redressal Commission, the petitioners have chosen to file the present writ petitions mainly on the ground that the 3rd respondent lacks territorial jurisdiction under the provisions of the Consumer Protection Act and thus, the writ of prohibition is to be issued.



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4. The learned Senior Counsel for the petitioners in both the writ petitions would submit that the writ petitions are entertainable before the High Court of Madras under Article 226 (2) of the Constitution of India. It is not only part cause of action arisen but the complete cause arose here at Chennai and therefore, the complaint instituted before the 3rd respondent is without jurisdiction. The learned Senior Counsel relied on erstwhile Section 11 of the Consumer Protection Act of 1986, which is relevant for the purpose of considering facts in the present cases. In view of the subsequent amendment, the jurisdiction of the District Commission has been enumerated under Section 34 of the Consumer Protection Act 2019. Since the alleged medical negligence occurred prior to the amendment of the Act, the provisions of the old Act would be applicable for the purpose of determining the jurisdiction to entertain complaint by the 3rd respondent forum.

5. Erstwhile Section 11 of the Consumer Protection Act 1986 reads as under:

“11. Jurisdiction of the District Forum. - (1)
Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints



where the value of the goods or services and the compensation, if any, claimed [does not exceed rupees twenty lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction,

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or [carries on business or has a branch office], or personally works for gain, or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or [carries on business or has a branch office], or personally works for gain, provided that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or "[carry on business or have a branch office], or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises."



6. Accordingly, a complaint shall be instituted within the local limits of whose jurisdiction the opposite party or each of the opposite party resides or carries on business or has branded office or personally works for him.

7. In the present cases, the second respondent is residing at Hyderabad in Nellore, State of Andhra Pradesh and the opposite parties/ writ petitioners are at Chennai. Admittedly, the treatment was provided to the wife of the second respondent in Apollo Hospital at Chennai. That being so, the 3rd respondent consumer forum lacks jurisdiction under Section 11 of the erstwhile Consumer Protection Act and thus, the complaint filed before the 3rd respondent, as on that date was not maintainable and was without jurisdiction.

8. A writ of prohibition to prohibit Commission from proceeding with the adjudication can be issued only where there is -

- (a) lack of jurisdiction or excess jurisdiction,
- (b) violation of principles of natural justice or violation of basic rights,
- (c) acts unconstitutionally or lack of evidence in judgments or errors in law.



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9. On compliance of any one of the above principles alone, the writ of prohibition would lie and the scope of the writ of prohibition cannot be expanded since the writ has got certain wider implications and repercussions, restraining a forum or Commission from adjudicating issues on merits. High Court is expected to exercise restraint in issuing a writ of prohibition unless the grounds raised are sufficient enough to form an opinion that no further inquiry can be allowed to be conducted.

10. In the present cases, the second respondent, along with his wife, came over to Chennai and took treatment in Apollo Hospital with the assistance of Dr.M.K.Mani, who was the Chief Consultant in the Department of Nephrology. After taking treatment, they returned to their home state and instituted a complaint before the State Consumer Disputes Redressal Commission, alleging medical negligence. This being the factum found, prima facie no cause of action arose either at Nellore or at Hyderabad in the state of Andhra Pradesh. The cause of action arose at Apollo Hospital at Chennai and the writ petitioners also ordinarily reside at Chennai. Thus, the complaint filed before the 3rd respondent is without jurisdiction and directly hit by Section 11 of the erstwhile Act. The



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amendment including the place of complaint has been inserted only in the amended Act in the year 2020 and the said Act would have no application as far as the case of the writ petitioners are concerned.

11. The amended Section 34 came into effect from 15.07.2020. Thus, the cause arose after the amendment alone can be entertained with reference to the place of residence of the complainant and in the present cases, the cause arose prior to the amendment and therefore, the writ petitions are liable to be considered.

12. In view of the fact that the 3rd respondent lacks jurisdiction to entertain a complaint in view of the erstwhile Section 11 of the Consumer Protection Act and more so, the cause of action arose at Chennai and therefore, this Court is empowered to entertain a writ proceedings under Article 226 (2) of the Constitution of India. Thus, the petitioners are entitled for the relief.

13. Accordingly, a writ of prohibition is issued prohibiting the 3rd respondent State Consumer Disputes Redressal Commission, Hyderabad Andhra Pradesh (now in the State of Telangana) from proceeding with F.A.SR.No. 6176 of 2003, filed by the second respondent.



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14. Accordingly, the writ petitions stand allowed. No costs.

Consequently, connected miscellaneous petitions are closed.

30.01.2024

Index : Yes
Speaking Order
Neutral Citation : Yes
(sha)

To

1. State of Tamil Nadu,
Rep. by Its Secretary.,
Department of Food and Civil Supplies -
Consumer Affairs,
Fort St.George, Chennai-9.

2. Sh.Khadir Mohideen,
Police Quarters, Mulapet,
Andhra Pradesh.

3. State Consumer Disputes Redressal Commission,
“Eruvaka” Buildings, Kairatabad,
Hyderabad, Andhra Pradesh.



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S.M.SUBRAMANIAM. J.,

(sha)

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