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W.P.No.15189 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.15189 of 2005

and

W.P.M.P.No.16479 of 2005

Dr.M.R. Girinath,
Chief Consultant Cardio Vascular
And Thoracic Surgeon,
Apollo Hospitals,
21, Greams Lane, Off: Greams Road,
Chennai-600 006.

... Petitioner

Vs.

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

2. Atul Kumar Das,

3. District Consumer Disputes Redressal Forum,
Kamrup, Guwahati.

... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Prohibition, prohibiting the District Consumer Disputes Redressal Forum, Kamrup, Guwahati, the third respondent above named from proceeding with C.P.C. Case No.95 of 2004 filed by the second respondent.



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For Petitioner : Mr.C.Mani Shankar, Senior Counsel,
for S.Dayaleeswaran

For Respondents : Mr.G.Krishna Raja,
Additional Government Pleader (for R1)

No Appearance (for R2)

R3-Consumer Redressal Forum

ORDER

The writ of Prohibition has been instituted questioning the territorial jurisdiction of the State Consumer Disputes Redressal Commission, Kamrup, Guwahati.

2. Petitioner is the Chief Consultant Cardio Vascular and Thoracic Surgeon in Apollo Hospitals Chennai. The second respondent admittedly had taken treatment for his child in Apollo Hospital and the writ petitioner Dr.M.R.Girinath, provided treatment to the child of the second respondent. The second respondent filed a complaint under the Consumer Protection Act before the 3rd respondent Consumer Disputes Redressal Commission, Kamrup, Guwahati, alleging medical negligence and seeking compensation.



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3. On receipt of notice from the Consumer Disputes Redressal Commission, the petitioner has chosen to file the present writ petition 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.

4. The learned Senior Counsel for the petitioner would submit that the writ petition is 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 case. 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



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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



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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 case, the second respondent is residing at Dispur, Guwahati and the opposite party/ writ petitioner is residing at Chennai and is serving at, Apollo Hospital at Grems Road, Chennai. Admittedly, the treatment was provided to the son 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.



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

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 case, the second respondent, along with his wife, came over to Chennai and took treatment in Apollo Hospital with the assistance of the writ petitioner who was the Chief Consultant in the



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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 petitioner also ordinarily resides at Chennai. Thus, the complaint filed before the 3rd respondent is without jurisdiction and directly hit by Section 11 of the erstwhile Act. The amendment including the place of complainant 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 petitioner is 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 case, the cause arose prior to the amendment and therefore, the writ petition is 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



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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 petitioner is 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.

14. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is 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,



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Fort St.George,Chennai-9.

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2. District Consumer Disputes Redressal Forum,
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S.M.SUBRAMANIAM. J.,

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