



C.R.P.(MD)No.179 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 30.08.2024

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.179 of 2023

and

C.M.P.(MD)No.996 of 2023

Karthic Ramachandran

... Petitioner / Petitioner / 1st opposite party

Vs.

V.Paulraj

... Respondent / Respondent / Complainant

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records and set aside the order dated 11.10.2022 passed in C.M.P.No.49 of 2022 in C.C.No.73 of 2021 on the file of the District Consumer Disputes Redressal Commission, Tirunelveli.

For Petitioner : Mr.K.Jeyamohan

For Respondent : no appearance

ORDER

Heard the learned counsel appearing for the revision petitioner. Though the respondent has been served, there is no representation on his behalf.



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2.The respondent herein filed C.C No.73 of 2021 before the District Consumer Disputes Redressal Commission, Tirunelveli against the revision petitioner and the Zonal Manager, Indian Bank, Tirunelveli. Summon was served on the petitioner herein on 04.05.2021. Since the written version was not filed, he was set ex parte on 14.06.2022. The petitioner filed C.M.P No.49 of 2022 for revoking the ex parte order and for reception of his written version. The CMP was dismissed on 11.10.2022. Questioning the same, this civil revision petition has been filed.

3.The District Consumer Disputes Redressal Commission, Tirunelveli relied on the decision of the Hon'ble Supreme Court reported in **(2011) 9 SCC 541 (Rajeev Hitendra Pathak v. Achyud Kashinath Karekar)** wherein it was laid down that District Forums and State Consumer Commissions do not have power to set aside or recall their own ex parte orders. The approach of the District Commission in dismissing CMP No.49 of 2022 is technically correct. But, there is a larger issue. The learned counsel appearing for the revision petitioner pointed out that the order setting the petitioner ex parte on 14.06.2022 was passed by the President sitting singly. In other words, it was an order by a single member bench. This is clearly contrary to the statutory scheme governing the Consumer Protection Act, 2019.



4. Section 36(1) of the Act is as follows :

“Every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together”.

Section 39(4) of the Act is as follows :

“Every order made by the District Commission under sub-section (1) shall be signed by the President and the member who conducted the proceeding :

Provided that where the order is made as per majority opinion under sub-section (3), such order shall also be signed by the other member ”

It is relevant to refer to Section 39(3).

“In any proceeding conducted by the President and a member and if they differ on any point or points, they shall state the point or points on which they differ and refer the same to another member for hearing on such point or points and the opinion of the majority shall be the order of the District Commission:

Provided that the other member shall give his opinion on such point or points referred to him within a period of one month from the date of such reference.”



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The Consumer Protection Act, 1986 which was repealed by the 2019 Act contained similar provisions. They were considered by the Hon'ble High Court of Rajasthan in ***Divisional Manager NIC Ltd., Jodhpur v. Rajasthan State Consumer Disputes Redressal Commission (2019) 1 RLW (Raj) 90***. It was held therein that the bench/benches of State Commission must be constituted by at least two members of the commission, one of whom may be the president and that orders passed by a single member of the State Commission are without jurisdiction. Sandeep Mehta, J. (As His Lordship then was) took the very same view in ***Kamal Travels Kokks International v. The State of Rajasthan*** (SB Civil Writ Petition No.18 of 2012, dated 14.03.2018). The order impugned therein was quashed since the quorum of the State Consumer Commission was not complete. This decision was upheld by the Division Bench (DB Spl Appl Writ No.1779 of 2018). When the matter was taken to Supreme Court in SLP (C) No.4969 of 2020, the following order was passed :

“We heard learned counsel for the petitioners for quite some time and taken into consideration Section 16(1B) of the Consumer Protection (Amendment) Act, 2002 which was inserted by an amendment no.62 of 2002, which is given below:

“(1B)(i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.



(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.”

Taking note of the provision afore-stated, we do not find any error in the order impugned dated 04.07.2019 passed by the High Court of Judicature for Rajasthan at Jodhpur which may call for our interference under Article 136 of the Constitution. The Special Leave Petition is, accordingly, dismissed.”

Though the aforesaid decision arose under the Consumer Protection Act, 1986, in view of the similarity of the statutory scheme obtaining under the 2019 Act, I can safely hold that if the proceedings are conducted by the President alone or by a member alone, it would be without jurisdiction.



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5. In the case on hand, the summon was served on the petitioner on 04.05.2021. He should have filed his written version within thirty days or at the most 45 days. But during the relevant time, there was no President presiding over the bench. There were two members, one of whom presided over the bench. This is not in consonance with the statutory provision. Section 36(1) of the Act clearly states that every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together. When the provision is clear and categorical, it will not be open to the members to constitute a bench in the absence of the president. That is why, the bench had been adjourning the matter from time to time. By 14.06.2022, when the petitioner herein was set ex parte, a president had been appointed for the District Commission. But then, there were no members to sit with him. Earlier, there were members but no president. Now there was president but no members. In these circumstances, the petitioner could not have been set ex parte. The petitioner as the opposite party ought to have filed his written version within the time limit set out in Section 38(2)(a) of the Act. I am conscious that the corresponding provision in the 1986 Act was held to be mandatory by the Constitution Bench of the Supreme Court in *New India Assurance Company Limited v. Hilli Multipurpose Cold Storage Private Limited (2020) 5 SCC 757*. The question



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if the time line stipulated in Section 38 (2) (a) of the Act will operate even if there is no regular bench is left open. Considering the fact that there was no regular bench during the relevant period, invoking the supervisory jurisdiction conferred on this Court under Article 227 of the Constitution of India, I set aside the ex parte order passed against the petitioner herein. The District Commission is directed to receive the petitioner's written version and also allow him to participate in the proceedings.

6.The Civil Revision Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

30.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

The District Consumer Disputes Redressal Commission, Tirunelveli.



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G.R.SWAMINATHAN, J.

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