

(2000) 09 NCDRC CK 0006

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

K.PUDUR PRIMARY
AGRICULTURE CO.OP.
BANK LTD.

APPELLANT

Vs

STATE CONSUMER
DISPUTES REDRESSAL
COMMR.

RESPONDENT

Date of Decision: Sept. 20, 2000

Citation: 2001 1 CPC 514 : 2001 1 CPJ 37 : 2001 1 CPR 589

Hon'ble Judges: P.Sathasivam J.

Final Decision: Writ Petition dismissed

Judgement

1. 1. K. Pudur Primary Agriculture Cooperative Bank Limited, aggrieved by the order of the State Consumer Disputes Redressal Commission, Madras-4 in A.P. 54 of 1991, dated 1.7.1991, has filed the above writ petition.

2. HEARD the learned Counsel for the petitioner as well as contesting respondents 3 and 4.

Even at the outset, the learned Counsel appearing for the respondents 3 and 4, by drawing my attention to Section 21 of the Consumer Protection Act, 1986, would contend that inasmuch as there is an effective remedy by way of appeal to the National Commission under the enactment, the present writ petition filed before this Court under Article 226 of the Constitution of India cannot be maintained. With reference to the said contention, learned Counsel for the petitioner though fairly states that Section 21 enables the petitioner to file an appeal before the National

Commission, by relying on the decision of the Supreme Court reported in III (1996) CPJ 1 (SC)=(1996) 6 SCC 385, Fair Air Engineers Pvt. Ltd. & Anr. v. N.K. Modi, would contend that irrespective of the said provision it is open to this Court to consider the order passed by the first respondent.

Before considering the decision of the Supreme Court, it is worthwhile to refer Section 21 of the Act, which reads thus :

"21. Jurisdiction of the National Commission.-Subject to the other provisions of this Act, the National Commission shall have jurisdiction,- (a) to entertain,- (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees twenty lakhs; and (ii) appeals against the orders of any State Commission; and (b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity."

Sub-clause (ii) makes it clear that against the orders of the State Commission, an appeal lies to National Commission. It is not disputed that the impugned order has been passed by the first respondent and if that is so, as per Sub-clause (ii), the proper remedy for the petitioner is to file an appeal before the National Commission. In spite of the said provision, it is not clear how the Secretary of the petitioner Bank, who sworn to an affidavit, has stated in paragraph 4, namely, "No appeal or revision is provided for against the impugned order of the 1st respondent and the petitioner/Bank has no other alternate remedy except to approach this Hon"ble Court under Article 226 of the Constitution of India...". The assertion made by the Secretary is factually incorrect and contrary to Section 21 of the Act referred above.

3. THOUGH it is stated that at the relevant time National Commission was not functioning, admittedly, there is no such averment in the affidavit filed in support of the above writ petition, hence, such contention cannot be accepted.

In the decision referred above namely, (1996) 6 SCC 385, no doubt their Lordships of the Supreme Court, after referring various sections from the Consumer Protection Act, 1986, in paragraph 9 have observed as follows :

"....Section 24 attaches finality to every order of the District Forum, State Commission or of the National Commission if no appeal is preferred within a specified time. However, that is subject to any judicial review under Article 226 or 32

of the Constitution..."

By relying on the above observation, learned Counsel for the petitioner would contend that this Court can go into the merits of the order passed by the State Commission and it is open to this Court to review the orders by any Forum. Inasmuch as there is a specific provision for appeal in the enactment. I am of the view that by ignoring the said provision it would not be possible for this Court to entertain the writ petition, go into the merits of the order passed by the State Commission and pass an order as claimed by the petitioner. In case of certain circumstances, namely, if the Appellate Forum is not functioning for any other reason, etc., it may be open to the aggrieved person to approach this Court by passing the effective alternative remedy provided under the enactment. Accordingly, I am of the view that the observation made by the Supreme Court is not helpful to the stand of the petitioner.

4. IN the light of what is stated above, the writ petition is not maintainable and accordingly dismissed. No costs. It is made clear that the time taken by the petitioner in pursuing the writ petition before this Court may be excluded for the purpose of limitation. Writ Petition dismissed.