

**IN THE HIGH COURT OF HIMACHAL PRADESH AT
SHIMLA**

**CMPMO No.337 of 2012-F with
CMPMO No.338 of 2012-F, CMPMO
No.339 of 2012-F & CMPMO No.340
of 2012-F**

Date of decision: 30.11.2012

CMPMO No.337 of 2012-F

The Bilaspur District Truck Operators Co-operative Transport Society Ltd., through its General Secretary Sh. Raj Pal Gautam, Office at Barmana, Tehsil Sadar, District Bilaspur, H.P.

..Petitioner.

Versus

1. The District Consumer Redressal Forum, Bilaspur, District Bilaspur, through its President.
2. Sh. Lekh Ram S/o Sh. Saligram R/o Village Kaloh, P.O. Naswal, Tehsil Ghumarwin, District Bilaspur, H.P.

..Respondents.

3. The Registrar Co-operative Societies State of H.P., SDA Complex, Kasumpti, Shimla-2, H.P.
4. The Assistant Registrar, Co-operative Societies, Bilaspur, H.P.

...Proforma Respondents.

CMPMO No.338 of 2012-F

The Bilaspur District Truck Operators Co-operative Transport Society Ltd., through its General Secretary Sh. Raj Pal Gautam, Office at Barmana, Tehsil Sadar, District Bilaspur, H.P.

..Petitioner.

Versus

1. The District Consumer Redressal Forum, Bilaspur, District Bilaspur, through its President.

2. Sh. Piar Singh S/o Sh. Munshi Ram R/o Village and P.O. Saloan, Tehsil Ghumarwin, District Bilaspur, H.P.

..Respondents.

3. The Registrar Co-operative Societies State of H.P., SDA Complex, Kasumpti, Shimla-2, H.P.
4. The Assistant Registrar, Co-operative Societies, Bilaspur, H.P.

...Proforma Respondents.

CMPMO No.339 of 2012-F

The Bilaspur District Truck Operators Co-operative Transport Society Ltd., through its General Secretary Sh. Raj Pal Gautam, Office at Barmana, Tehsil Sadar, District Bilaspur, H.P.

..Petitioner.

Versus

1. The District Consumer Redressal Forum, Bilaspur, District Bilaspur, through its President.
2. Sh. Ashwani Kumar S/o Sh. Shyam Lal R/o Village Badoa, P.O. Auhar, Tehsil Ghumarwin, District Bilaspur, H.P.

..Respondents.

3. The Registrar Co-operative Societies State of H.P., SDA Complex, Kasumpti, Shimla-2, H.P.
4. The Assistant Registrar, Co-operative Societies, Bilaspur, H.P.

...Proforma Respondents.

CMPMO No.340 of 2012-F

The Bilaspur District Truck Operators Co-operative Transport Society Ltd., through its General Secretary Sh. Raj Pal Gautam, Office at Barmana, Tehsil Sadar, District Bilaspur, H.P.

..Petitioner.

Versus

1. The District Consumer Redressal Forum, Bilaspur, District Bilaspur, through its President.

2. Sh. Ashok Kumar S/o Sh. Hari Ram R/o Village Gasaod, P.O. Jukhala, Tehsil Sadar, District Bilaspur, H.P.

..Respondents.

3. The Registrar Co-operative Societies State of H.P., SDA Complex, Kasumpti, Shimla-2, H.P.

4. The Assistant Registrar, Co-operative Societies, Bilaspur, H.P.

...Proforma Respondents.

All the Petitions under Article 227 of the Constitution of India.

Coram

The Hon'ble Mr. Justice V.K. Sharma, J.

¹ Whether approved for reporting? Yes.

For the petitioner (s): Mr. Ashwani Pathak, Advocate.

V.K. Sharma, J. (*Oral*).

Since common questions of fact and law have been raised in all these petitions under Article 227 of the Constitution, the same are being disposed of by a common judgment.

2. The petitioner-society is seeking a direction to respondent No.1-The District Consumer Redressal Forum (in short 'DCRF'), not to entertain the complaint filed by respondent No.2 against it, *inter alia* amongst others, being C.C. No.171/2010, on the ground of want of jurisdiction. According to the petitioner, respondent No.2 is one of its shareholders. It being so, he does not fall within the definition of consumer under Section 2 (1) (d) of the Consumer Protection Act, 1986 (in short the 'the Act').

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

3. Copy of the complaint filed by respondent No.2 before DCRF has been placed on record as Annexure-P.1 and reply thereto filed on behalf of the petitioner-society and its President as Annexure-P.2, meaning thereby that the complaint stands already entertained and the petitioner has also entered upon reply.

4. In the facts and circumstances of the case, when the petitioner-society has an alternative effective remedy of revision under Section 17 of the Act, the present petitions cannot be entertained in exercise of the power under Article 227 of the Constitution, as has been laid down by the Hon'ble Supreme Court, vide order dated **9.7.2010, in *Petition (s) for Special Leave to Appeal (Civil) No(s).17068-17069/2010, titled M/s Advance Scientific Equip. LD. & Anr. vs. West Bengal Pharma & Photochemical Dev. & Anr.***, operative part whereof is as under:-

“We are further of the view that the petitioners’ venture of filing petition under Article 227 of the Constitution was clearly an abuse of the process of the Court and the High Court ought not to have entertained the petition even on a single day because an effective alternative remedy was available to the petitioner under Section 23 of the Act and the orders passed by the State Commission did not suffer from lack of jurisdiction.

With the above observations, the special leave

petitions are dismissed.”

5. The above proposition of law has further been reiterated by the Hon’ble Supreme Court, vide order dated **7.12.2011, in Civil Appeal No.10706 of 2011 (arising out of SLP(c) No.17213 of 2010), titled Nivedita Sharma vs. Cellular Operators Assn. of India & Ors.** The relevant portions of the order are extracted below:-

“We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of *Habeas corpus, certiorari, mandamus, quo warranto* and *prohibition* under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - L. Chandra Kumar vs. Union of India (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.....

Section 17(1) of the 1986 Act which outlines the jurisdiction of the State Commission and Section 19 which provides for an appeal against the order of the State Commission read as under:

“Section 17. Jurisdiction of the State Commission-

(1) Subject to the other provisions of this Act, the State 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 but does not exceed rupees one crore; and

(ii) appeals against the orders of any District Forum within the State; 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 District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A complaint shall be instituted in a State Commission within the 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 State Commission is given or the opposite parties who do not reside or carry on business or have a

branch office or personally works for gain, as the case may be, acquiesce in such institution; or (c) the cause of action, wholly or in part arises.

Section 19. Appeals- Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of Section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form or manner as may be prescribed:

Provided that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

Provided further that no appeal by a person, who is required to pay any amount in terms of an order of the State Commission, shall be entertained by the National Commission unless the appellant has deposited in the prescribed manner fifty percent, of the amount or rupees thirty-five thousand, whichever is less.”

A reading of the plain language of Section 17 shows that every State Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds Rs.20 lacs but does not exceed Rs.1 crore. By Section 18 the provisions of Sections 12 to 14 and the Rules made thereunder, for the disposal of complaints by the District Forum, have been made applicable for deciding the disputes by the State Commission. Section 19 provides for remedy of appeal against an order made by the State Commission in exercise of its powers under sub-clause (i) of Clause (a) of Section 17. If Sections 11, 17 and 21 of the 1986 Act which relate to the jurisdiction of the District Forum, the State Commission and the National Commission, there does not appear any plausible

reason to interpret the same in a manner which would frustrate the object of legislation.

What has surprised us is that the High Court has not even referred to Sections 17 and 19 of the 1986 Act and the law laid down in various judgments of this Court and yet it has declared that the directions given by the State Commission are without jurisdiction and that too by overlooking the availability of statutory remedy of appeal to the respondents.

We also find that the High Court has taken cognizance of the statement made on behalf of the counsel for the petitioners that their clients would challenge clause (iii) of para 38 of the State Commission's order by filing an appeal under Section 19 of the Act and the fact that one of the aggrieved parties, namely, American Express Bank Limited has already filed an appeal questioning paragraph 38 (iii) of the order of the State Commission. After having noticed that some of the petitioners were inclined to avail the remedy of appeal against the particular portion of the order passed by the State Commission, the High Court should not have entertained the writ petition filed under Article 226 of the Constitution and the miscellaneous petitions filed under Article 227 of the Constitution and directed them to avail remedy of appeal under Section 19 of the 1986 Act."

6. In view of the latest legal position on the subject enunciated by the Hon'ble Supreme Court in the aforesaid judgments, the petitioner-society cannot seek any support from the authorities relied upon its behalf, reported as, **(1) *Thakur Jugal Kishore Sinha vs. Sitamarhi Central Co-operative***

Bank Ltd. and another AIR 1967 Supreme Court 1494, (2) Securities and Exchange Board of India vs. Arihant Contsyn Ltd. and others (2005) 13 Supreme Court Cases 498 and (3) Om Prakash Saini vs. DCM Limited and others (2010) 11 Supreme Court Cases 622.

7. In view of the above, the petitions as also applications for interim directions are dismissed. However, it is made clear that dismissal of these petitions would not come in the way of the petitioner-society to seek its remedy, if any, before an appropriate forum in accordance with law, if so advised.

**(V.K. Sharma)
Judge**

November 30, 2012
(rkv)