

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR

TUESDAY, THE 28<sup>TH</sup> DAY OF SEPTEMBER 2021 / 6TH ASWINA, 1943

WP(C) NO. 18091 OF 2021

PETITIONERS:

- 1 P AND N CERAMICS (PAN MARKETING)  
PANDARAKALAM BUILDINGS, KUMARANALLOR JUNCTION,  
PIN-686 016, KOTTAYAM DISTRICT, REPRESENTED BY  
ITS MANAGING PARTNER JOY PAUL
- 2 JOY PAUL  
P AND N CERAMICS (PAN MARKETING), PANDARAKALAM  
BUILDINGS, KUMARANALLOR JUNCTION, PIN-686 016,  
KOTTAYAM DISTRICT
- 3 RAK CERAMICS INDIA PVT LTD.,  
THIRUVANANTHAPURAM REPRESENTED BY ITS SENIOR  
SALES EXECUTIVE , RAHUL RAJAN, RAK CERAMICS  
INDIA PVT LTD, THIRUVANANTHAPURAM, PIN-695 035

BY ADV JOHN JOSEPH VETTIKAD

RESPONDENT:

ISSAC SEBASTIAN  
KADAVIL HOUSE, VALIYAKULAM, I.E.NAGAR P.O.,  
CHANGANACHERY, PIN-686 101

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 28.09.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**C.R.**

**P.B.SURESH KUMAR, J.**

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**W.P.(C) No.18091 of 2021**  
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**Dated this the 28<sup>th</sup> day of September, 2021**

**J U D G M E N T**

Petitioners are the opposite parties in a consumer complaint filed by the respondent before the District Consumer Disputes Redressal Commission, Kottayam. The complaint aforesaid is one filed against the petitioners alleging deficiency in service in the matter of the first petitioner selling ceramic floor tiles to the respondent. The case set out in the complaint in essence, is that the ceramic floor tiles delivered by the first petitioner to the respondent were not the tiles shown to him and purchased by him. The petitioners refuted the allegation in the complaint in their versions filed in the proceedings. In the course of the proceedings, the respondent preferred Ext.P4 application for issuance of a commission for local inspection. The petitioners objected to the prayer in the application mainly on the ground that the District Consumer

Disputes Redressal Commission (the Commission) constituted under the Consumer Protection Act, 2019 (the Act) does not have jurisdiction to issue a commission for local inspection. The Commission repelled the objection of the petitioners and allowed Ext.P4 application by Ext.P6 order holding that in the light of sub-section (8) of Section 38 of the Act, it has jurisdiction to issue a commission for local inspection. Ext.P6 order is under challenge in the writ petition as one passed without jurisdiction.

2. Heard the learned counsel for the petitioners.

3. Placing reliance on sub-section (9) of Section 38 of the Act, it was argued by the learned counsel for the petitioners that the provisions of the Code of Civil Procedure, except those which are specifically mentioned in sub-section (9) are not made applicable to the proceedings before the Commission and that in terms of the said provision, the Commission is empowered to issue commissions only for examination of witness or document. It was also argued by the learned counsel that had the intention of the legislature been that the Commission should have the authority to issue commission for local inspection, the same would have certainly been mentioned in sub-section (9) of Section 38. According to

the learned counsel, insofar as the power to issue commission for local inspection has not been conferred on the Commission in terms of the provisions of the Act, the order impugned is liable to be treated as one passed without jurisdiction. The learned counsel has relied on the decisions of the High Court of Andhra Pradesh in **Yogendra Builders (M/s.) and Another v. Vidya Paradise Owners' Welfare Association and Another**, 2008 KHC 7403 and **Sivashakthi Builders, Hyderabad and Another v. A.P. State Consumer Disputes Redressal Commission, Hyderabad and Others**, 2009 KHC 6391, in support of the said contention.

4. I have examined the arguments advanced by the learned counsel for the petitioners.

5. The short question that falls for consideration is as to whether the Commission constituted under the Act is empowered to issue commissions for local inspection. Sub-section (5) of Section 2 of the Act which defines "complainant" reads thus:

(5) "complainant" means—

- (i) a consumer; or
  - (ii) any voluntary consumer association registered under any law for the time being in force; or
  - (iii) the Central Government or any State Government;
- or

- (iv) the Central Authority; or
- (v) one or more consumers, where there are numerous consumers having the same interest; or
- (vi) in case of death of a consumer, his legal heir or legal representative; or
- (vii) in case of a consumer being a minor, his parent or legal guardian;

Sub-section (6) of Section 2 of the Act which defines “complaint” reads thus:

(6) “complaint” means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—

- (i) an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
- (ii) the goods bought by him or agreed to be bought by him suffer from one or more defects;
- (iii) the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency;
- (iv) a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price—
  - (a) fixed by or under any law for the time being in force; or
  - (b) displayed on the goods or any package containing such goods; or
  - (c) displayed on the price list exhibited by him by or under any law for the time being in force; or
  - (d) agreed between the parties;

(v) the goods, which are hazardous to life and safety when used, are being offered for sale to the public—

(a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force;

(b) where the trader knows that the goods so offered are unsafe to the public;

(vi) services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety;

(vii) a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be;

A perusal of the definitions aforesaid would show that any allegation made by a person falling within the scope of the definition of 'complainant' for obtaining any relief provided by or under the Act that the goods bought by him or agreed to be bought by him suffer from one or more defects or that the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency would constitute a complaint in terms of the provisions of the Act.

6. Section 38 of the Act dealing with the procedure to be followed by the Commission in the matter of resolving the dispute in a complaint reads thus:

**38. Procedure on admission of complaint**

(1) The District Commission shall, on admission of a complaint, or in respect of cases referred for mediation on failure of settlement by mediation, proceed with such complaint.

(2) Where the complaint relates to any goods, the District Commission shall,--

(a) refer a copy of the admitted complaint, within twenty-one days from the date of its admission to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by it;

(b) if the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) if the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, obtain a sample of the goods from the complainant, seal it and authenticate it in the manner as may be prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory to make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect and to report its findings thereon to the District Commission within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by it;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), require the complainant to deposit to the credit of the Commission such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, it shall forward a copy of the report along with such remarks as it may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, require the opposite party or the complainant to submit in writing his objections with regard to the report made by the appropriate laboratory;

(g) give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 39.

(3) The District Commission shall, if the complaint admitted by it under sub-section (2) of section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,—

(a) refer a copy of such complaint to the opposite party directing him to give his version



of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;

(b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute—

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained in the complaint, or

(ii) ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission;

(c) decide the complaint on merits if the complainant fails to appear on the date of hearing.

(4) For the purposes of sub-sections (2) and (3), the District Commission may, by order, require an electronic service provider to provide such information, documents or records, as may be specified in that order.

(5) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(6) Every complaint shall be heard by the District Commission on the basis of affidavit and documentary evidence placed on record:

PROVIDED that where an application is made for hearing or for examination of parties in person or through video conferencing, the District Commission may, on sufficient cause being shown, and after recording its reasons in writing, allow the same.

(7) Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

PROVIDED that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission:

PROVIDED FURTHER that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations:

PROVIDED ALSO that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

(8) Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is

just and proper in the facts and circumstances of the case.

(9) For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;

(b) requiring the discovery and production of any document or other material object as evidence;

(c) receiving of evidence on affidavits;

(d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(e) issuing of commissions for the examination of any witness, or document; and

(f) any other matter which may be prescribed by the Central Government.

(10) Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(11) Where the complainant is a consumer referred to in sub-clause (v) of clause (5) of section 2, the provisions of Order I Rule 8 of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference

therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Commission thereon.

(12) In the event of death of a complainant who is a consumer or of the opposite party against whom the complaint has been filed, the provisions of Order XXII of the First Schedule to the Code of Civil Procedure, 1908 shall apply subject to the modification that every reference therein to the plaintiff and the defendant shall be construed as reference to a complainant or the opposite party, as the case may be.

The provision aforesaid would show that in the event of a dispute as regards the allegation made in a complaint, the Commission is bound to adjudicate the same in the manner provided for in Section 38. It can also be seen from the extracted provision that in order to facilitate the said adjudication, sub-section (9) of Section 38 confers on the Commission, the powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the matters specified therein. It can also be seen from the extracted provision that for the purpose aforesaid, sub-section (8) of Section 38 confers on the Commission power to pass interim orders also as is just and proper in the facts and circumstances of the case.

7. True, sub-section (9) of Section 38 does not

specifically confer on the Commission powers to issue commission for local inspection as are vested in a civil Court under the Code of Civil Procedure. The object of the Act is to protect consumers from all kinds of exploitation by providing a summary mechanism for timely and effective settlement of consumer complaints, for which, but for the Act, the aggrieved persons had to approach a civil Court. It is seen that it is having regard to the said objective that the provisions in the Code of Civil Procedure, except those mentioned in sub-section (9) of Section 38, which if made applicable would delay the disposal of the complaint, have not been made applicable to the proceedings before the Commission. The pointed question is whether the Commission is precluded from issuing a commission for local inspection in a proceedings initiated on a complaint without there being a provision in sub-section (9) of Section 38 conferring on the Commission power to issue a commission for local inspection as are vested in a civil court under the Code of Civil Procedure. Merely for the reason that the powers as are vested in a civil court under the Code of Civil Procedure to issue a commission for local inspection have not been specifically made applicable to the proceedings before the Commission on a complaint, according to me, it cannot be

said that the Commission is precluded from exercising that power. As noted, the provisions of the Code of Civil Procedure except those which are mentioned in sub-section (9) of Section 38 have not been made applicable to the proceedings before the Commission on a complaint to achieve the object of the statute, viz, timely and effective disposal of consumer complaints. Needless to say, insofar as the Commission is conferred in terms of the provisions of the Act with the powers to adjudicate complaints and insofar as power is conferred on it to pass any order during the pendency of the proceedings as is just and proper in the facts and circumstances of the case, it should necessarily have all the incidental powers for adjudication of consumer disputes, for otherwise, the Act would not secure its objective, especially when no one can dispute that complaints in the nature of one on hand cannot be resolved effectively based on the oral and documentary evidence alone. Even otherwise, it is now trite that a forum constituted to adjudicate a dispute is presumed to have the necessary powers to do so and it can exercise all such powers except the powers, the exercise of which are expressly prohibited in terms of the provisions of the Act [See **N.K.Dharmadas v. State Transport Appellate Tribunal of**

**Kerala, and others**, AIR 1963 Kerala 73 and **Deputy Conservator of Forests, Nemmara v. K.S.Sarojini**, AIR 1981 Kerala 44]. Identical is the view taken by the Madras High Court in **Ramaniyam Real Estates Ltd. v. Triveni Apartments Owners Welfare Association**, AIR 1999 Madras 24 in the context of the identical provision contained in the Consumer Protection Act, 1986.

8. It is seen that in **Yogendra Builders** and **Sivashakthi Builders**, the High Court of Andhra Pradesh has construed strictly the corresponding provisions in the Consumer Protection Act, 1986 to hold that the forums under the said statute cannot exercise the power to issue a commission for local inspection in the absence of the said power as are vested in a civil court under the Code of Civil Procedure being not specifically conferred on it. With due respect, I disagree with the view aforesaid. That apart, even in **Yogendra Builders**, the Court observed that having regard to the object of the statute, there will be cases where noting down of the physical features may be very essential and the interpretation given to the provision in the said case will not preclude the forums in calling for report from experts, specialists, skilled persons or any other persons for the

purpose of taking an appropriate decision in the matter. The relevant portion of the judgment reads thus:

“24. x x x x x It is pertinent to note that if the object of the Act be carefully examined, there may be cases where the noting down of the physical features may be very essential and any amount of oral evidence may not be able to replace such noting down of the physical features by a competent person. O.26, R.9 of the Code of Civil Procedure, as such, may not be applicable but if the Consumer Fora, the State Commission or the National Commission as the case may be, these are satisfied that opinion of an expert, specialist, skilled person or any other person of a like nature and their opinion may be essential for proper adjudication of the dispute, definitely, they can exercise such powers for the purpose of appropriate decision making in relation to the disputes.”

In the light of the discussion aforesaid, there is no merit in the case put forward by the petitioners that the Commission constituted under the Act does not have jurisdiction to issue commission for local inspection. The writ petition is therefore, without merits and the same is, accordingly, dismissed.

Sd/-

**P . B . SURESH KUMAR**

**JUDGE**

Mn



APPENDIX OF WP(C) 18091/2021

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE COMPLAINT DATED  
17.08.2020 FILED BY THE RESPONDENT  
BEFORE THE CONSUMER DISPUTES REDRESSAL  
COMMISSION, KOTTAYAM
- Exhibit P2 TRUE COPY OF THE VERSION DATED  
16.09.2020 FILED BY THE PETITIONERS 1  
AND 2
- Exhibit P3 TRUE COPY OF THE VERSION FILED BY THE  
3RD PETITIONER DATED 03.11.2020
- Exhibit P4 TRUE COPY OF THE APPLICATION FILED BY  
THE RESPONDENT IN IA NO.33/2021 IN CC  
NO.112/2020 OF THE CONSUMER DISPUTES  
REDRESSAL COMMISSION, KOTTAYAM
- Exhibit P5 TRUE COPY OF THE COUNTER AFFIDAVIT  
FILED BY THE OPPOSITE PARTIES DATED  
19.02.2021
- Exhibit P6 TRUE COPY OF THE ORDER DATED  
12.04.2021 IN IA NO.33/2021 IN CC  
NO.112/2020 OF THE CONSUMER DISPUTES  
REDRESSAL COMMISSION , KOTTAYAM