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**(2020) 03 PAT CK 0005**

**In the Patna High Court**

**Case No : Civil Writ Jurisdiction Case No. 4273 Of 2016**

Anil Kumar Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision : 02-03-2020**

**Acts Referred:**

Consumer Protection Act, 1986 — Section 10(2)  
Consumer Protection Rules, 1987 — Rule 12A

**Citation : (2020) 03 PAT CK 0005**

**Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J**

**Bench : Division Bench**

**Advocate : Nikhil Kumar Agrawal, Aditi, Sumit Kumar Pandey, P.K. Verma, S.K. Sharma, Ratan Kumar, Kanak Verma, Sanjay Singh Thakur**

**Final Decision : Disposed Of**

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## **Judgement**

Sanjay Karol, CJ

1. Petitioner has prayed for the following reliefs:-

â??(a) For directing the respondent to frame rules for appointment on the post of members in the District Consumer Disputes Redressal Forum in

terms of Proviso to Section 10 (2) of the Consumer Protection Act a like one under Rule 12(A) of the Consumer Protection Rules, 1987 and for

extension of the services of the members in the District Consumer Disputes Redressal Forum.

(b) For directing the respondents to constitute other bench of the District Consumer Disputes Redressal Forum in each and every district in State of

Bihar for fulfilling the object and purpose of the Consumer Protection Act in the light of directions issued by this Court in C.W.J.C. No. 22155 of 2015

and CWJC No. 150/2013.â??

We notice that with the passage of time, the present petition has outlived its purpose, inasmuch as the grievances, referred to in the writ petition, stands redressed.

However, it is seen that with the passage of time, the scope of the petition was expanded, which is reflected from the orders dated 08.02.2017,

05.03.2018, 28.03.2018 and 28.08.2018, passed in the instant petition. The said orders read as under:-

Order dated 08.02.2017

This Public Interest Litigation relates to the functioning of the State and the District Consumer Forum in this State. The Consumer Forums were

created with the object of providing quick and cheap justice to petty consumers in relation to their day to day dealings. For petty matters, people would

not go to courts because that would involve considerable expense and time and as such, the disputes would then remain unresolved. It is to overcome

that draw back in respect of petty litigations, to constitute domestic forums, the Consumer Protection Act, 1986 was framed. In this PIL, several

grievances have been raised, firstly, the absence of Presidents at the District Forum level. Almost one third of the District Forums are headless i.e.

without the President. The President is a retired Senior Judicial Officer. The appointment thereof has to be made by a Committee of the President of

the State Commission, the Law Secretary and the Principal Secretary of the Department of Food and Consumer Protection. The problem appears to

be that all the three are high dignitaries, they rarely have time to sit down together and the result is, the vacancy continues. In absence of the

President, the forum is defunct. In view of the aforesaid, we would first direct the President of the State Commission, the Law Secretary and the

Principal Secretary of the Department concerned to ensure that they meet regularly over the period of next 45 days and take all steps necessary to

complete selection and appointment of the President of the District Forums, who, as noted above, is a retired Senior Judicial Officer. Simultaneously,

this very Committee in the said very period, take up the cases of filling up the post of second Member of the District Forum which is occupied by a

retired officer of the Administrative Service, and the other Members. There is another problem in relation to those District Forums where there is no

President and, therefore, there cannot be recommendation by the District

Screening Committee for filling up the post of other two Members other than the Presidents.

2. This has been, to some extent, obviated by the State by tagging two Consumer Forums together. Once that is done, then the President is available for the other forum in this manner. In our view, in the next 45 days all vacancies of the President of the District Forum and the other two Members would be completed. Hopefully, they would all be functional within two months. This was the first problem. We direct accordingly.

3. The second problem is with regard to shortage of staff. A forum may have the Officers but if it does not have the staff, hardly any work can be done. This is where Staff Selection Commission comes into play. We have earlier noticed that the Staff Selection Commission is dragging its feet in matters of selection of Stenographers/P.A, LDCs and Bench Clerks. The time frame within which the vacancies would be filled up should be fixed keeping in view the number of vacancies category-wise when they had received the requisition. The SSC should realise its responsibilities and urgency in the matter. We would accordingly direct SSC to complete the selection process within the shortest period not later than 6 months from today.

4. The third problem is with regard to computerization on behalf of the State. It is pointed out that in 11 District Forums computer and other hardwares have been provided and they are functional. Daily cause list is being printed and in 11 more District Forums, hardware is being set. Our first attention would be that all the District Forums as also the State Commission have to be fully computerized at the earliest. This is for efficiency and transparency, both of which are equally important.

5. This Court would expect that within the first half of the next financial year, all the District Forums and the State Commission would be fully computerized with all hardware requirements. We would like to point out that supply of hardware for printing cause list is not the only requirement, for effective usage of hardware, there has to be a comprehensive software programme to handle the various aspects, right from filing of the cases to listing to the orders passed therein and their disposal. Once the programme is made then all the available data i.e. pending files and the old files as also the cases being filed, all have to be entered, orders passed on each day have to be entered and to make all this information available to the public at

various websites. This is by no means end of computerization but just a beginning because to man these equipments for data entry for day-to-day

working and its maintenance, adequate number of personnel have to be provided. We would like a separate affidavit to be filed by the Principal

Secretary of Food and Consumer Matters on this issue of computerization. The hardware, the software and the personnel requirements have to be

made available by the State in its entirety. It would be a different matter that the Central Government is ready to provide some assistance but that

would not absolve the State from its primary duty. The State cannot say that as the Central Government is yet to provide the same, it will not do it.

The Central Government and the State Government have to agree to a time bound programme to computerize all the Consumer Forum including the

State Commission at the earliest. Let the Principal Secretary file an affidavit in this behalf.

6. We have earlier noticed that there are certain District Forums where a number of cases are pending is quite large. That is causing delay in disposal

which is a self destructive feature which has arisen. To get over this, we had suggested that additional Members be appointed to such forums.

Learned counsel for the petitioner points out that there has been a report of the National Commission which points out that wherever pending cases

are more than 280, there should be an additional bench available which can be easily achieved by appointing two more Members on that station. State

would accordingly consider and seek to implement this recommendation. We would like to get the response of the Principal Secretary of the

Department concerned on this issue as well.

7. The last but not the least is the question of remuneration to the Members. So far as the Judicial Members who are the Presidents are concerned,

they virtually get their last drawn pay but so far as the other two Members are concerned, they are entitled to remuneration of only about Rs.12,000/-

to 15,000/-. They are expected to work 5 to 6 days in a week and in normal working hours and with additional work in absence of the President. In

our view, the remuneration paid to them is not commensurate to the work, which is only slightly more than an un-skilled labourer and it is less than

even the Court Peons. How can State or any one expect quality work from amongst those. State has to take a decision immediately to increase the

remuneration of the Members commensurate to the work needed to be done. If they are required to work in normal working hours throughout the week, they being in the higher supervisory category, their wages cannot be less than an administrative officer of that capacity. Let State respond to this as well.

8. Put up this matter on 02.03.2017 under the same heading retaining its position.

Order dated 05.03.2018

In our view, too much time is being taken and the matter is being dragged and stretched unnecessarily. Today, it is being stated that the District Magistrates have not sent the irrespective verification report.

Learned counsel for the petitioner submits that so many posts of the members of District Consumer Forums would become vacant in April due to

expiry of the tenure of the existing members. He submits that extension should be granted to them because the process of appointment of member is

taking too much time and non-availability of the members, due to expiry of their tenure, would hamper the working of the District Consumers Forum.

Accordingly, this issue should also be answered by the respondent State and full details should also be furnished as to how many posts would become

vacant in District Consumer Forums in the months of April or May and how the State proposes to fill up the posts and, in the meantime, till the posts

are filled up, is it going to extend the terms of existing members or it wishes that working of the District Forum should remain paralyzed due to non-availability of the members?

The State Government should also answer the stand taken by the Central Government in its affidavit filed today. If the view of the State Government

is that it is going to strengthen the present directorate itself then information should be given as to where the Directorate is running and how many

sittings have been there within the last six months because it would not be acceptable if the same person is occupying the post of Director also and

several other posts also as whole idea is to have separate wing to ensure smooth functioning of the State Consumer Forum as well as the District

Consumer Forums and timely steps are taken for filling up the vacancies.

As prayed on behalf of the State, put up on 21.03.2018.

This Court hopes and trusts that all the District Magistrates will send their reports expeditiously so that a decision could be taken by the State

Government without further delay.

Order dated 28.03.2018

The Director, Consumer Forums is present in person. He files affidavit. It is informed that on 8.2.2018 itself the District Magistrates described in

paragraph 4 have been communicated to send their respective verification reports with respect to the selected members. But it is stated that save and

except the District Magistrates of Munzaffarpur and East Champaran none has been available to send his report despite reminders have been sent.

Accordingly, we direct the District Magistrates of Patna, Aurangabad, Samastipur, Begusarai, Buxar, Darbhanga, West Champaran, Nawada, Supaul

and Saran to send their respective verification reports positively within a period of two weeks from today as much time has already wasted. They

must note that since the Consumer Fora, due to paucity of members, are not running properly in the State of Bihar, therefore, this Court is monitoring

the issue, thus, they should not take it lightly and submit their respective reports to the concerned authorities within the aforesaid period.

Another issue is the request of the Central Government to come up with a separate department for regulating the Consumer Fora upon which the

stand of the State is that a separate Directorate has already been created and, therefore, there is no requirements of a separate department. However,

it appears that only three posts were sanctioned and created for the Directorate in Food and Consumer Protection Department. The created posts are

Director, Personal Assistant and Driver. In which an Additional Secretary is holding the post of Director also and simultaneously performs the work of

all. A driver is working and the post of Personal Assistant is still vacant. Not only that the gentleman has to look after the work of Department of

Food also. In Paragraph 8 of the counter affidavit, it is stated that now the Director as stated above has one Principal Private Secretary and one

Section Officer, two assistants out of which one holds independent charge while others works with additional charge as they are belonging to

secretariat cadre. One Bench Clerk is working on deputation and furnishes financial / accounts work of the Directorate in the department. Besides,

one Data Entry Operator and I.T. boy are also working after deputation made

from BELTRON.

It appears from the above that all are from the Secretariat Cadre and additional charge has been given to them, therefore, working can never be

smooth and according to him the set up should be as stated in paragraph 9 of the counter affidavit.

Accordingly, this Court requests the Chief Secretary, Government of Bihar, to look into this aspect of the matter and come up with his suggestion after

two weeks.

As prayed, put up this matter on 11.4.2018. It is responsibility of the learned counsel for the State to communicate this order to all the concerned

District Magistrates immediately.

Order dated 28.08.2018

1. Heard learned counsel appearing on behalf of the respective parties at length and perused the earlier orders passed by the Division Bench.

1.1. It appears that earlier the number of posts of members of the District Consumer Forums were found vacant. After the various orders passed by

this Court, it appears that now the posts of members of the District Consumer Forums in each district have been filled in except three districts which

had fallen vacant recently.

1.2. From the earlier orders passed by this Court, it appears that for better functioning of the Consumer Forums, the Ministry of Consumer Affairs had

come with a scheme to provide hardwares, softwares, man-power and connectivity under the CONFONET Scheme. It appears that in the

CONFONET Scheme, the Union Government is to provide financial assistance including hardware, software, man-power and connectivity for

computerization of all the Consumer Forums in the State.

2. From the 14th Supplementary counter affidavit filed on behalf of the respondents, it appears that out of total 37 District Consumer Forums, 22

District Consumer Forums have been computerized and in 15 District Consumer Forums only hardwares have been supplied and while in rest of three

District Consumer Forums, even the hardwares are yet to be supplied.

2.1. It is required to be noted that the scheme is of the year 2014 and even after period of four years, Union of India has come out with a scheme and

has provided the finance etc., approximately in 50 per cent District Consumer

Forums work is required to be done to fully computerize the District

Consumer Forums.

2.2. Under the Scheme, one Manpower/Data Entry Operator is to be appointed by the Union of India and as per the direction issued by this Court, an

additional Data Entry Operator is to be appointed by the State Government. It is admitted position that the Data Entry Operators by the Union of India

as well as the State Government are not appointed as yet. Without Data Entry Operators, computerization of the District Consumers Forums shall not

be possible.

2.3. It is also reported that in most of the District Consumer Forums, there is no sufficient staff and most of the Consumer Forums are running by only

few staff members. It is further reported that even in one Consumer Forum, there is no staff at all. Without the staff how the Consumer Forum can

function? It appears that Bihar Staff Selection Board has failed to make appointment of the staff/sanctioned staff, due to which function of District

Consumer Forums and the object and purpose of constitution/establishment of Consumer Forums is being frustrated.

3. Considering the aforesaid facts and circumstances and so as to see that all the District Consumer Forums in the State are fully computerized and

made operational, while adjourning the matter, we give some further time to all concern and following interim directions are issued;

(i) Union of India, through Secretary, Ministry of Food and Consumer protection Department, New Delhi and its officers are, hereby, directed to

complete the process of the supply of hardwares, softwares and connectivity under the CONFONET scheme and see to it that all hardwares,

softwares are having connectivity and the purpose and object of CONFONET scheme is achieved. The Same shall be supplied to all concerned

District Consumer Forums within a period of two weeks from today.

(ii) That the Central Government-Union of India through the Ministry of Consumer Forums and the State Government to appoint the manpower-Data

Entry Operators within a period of four weeks from today so that the concerned District Forums do not face impediment in each and every district of

State of Bihar.

(iii) That Bihar State Selection Board to make recommendations and appointment to fill up all the vacant sanctioned posts in the respective District

Consumer Forums within a period of three months from today. First progress report by the Bihar State Selection Board to be submitted within a period of four weeks from today.

(iv) All efforts shall be made by the State Government to see that the post of members of the District Consumer Forums may not remain vacant.

4. The aforesaid interim directions are issued so as to see that the object and purpose of establishing the Consumer Forums is achieved and the

Consumers may not have to suffer any more.

5. Put up this case on 24.09.2018. All concerned including Union of India through Secretary, Ministry of Food and Consumer Protection Department,

New Delhi, State of Bihar through the Department of Food and consumer protection and the Bihar State Selection Board to submit a detailed further

compliance report on the next date of hearing.â??

We notice that the respondents have also taken some steps, though not fully complying with the directions of this Court.

However, taking a holistic view, we are of the considered opinion that the main object of filing the present petition stands served.

As such, we dispose off the present petition reserving liberty to the writ-petitioner/any other public spirited person, to first invite attention of the

authorities concerned about the surviving grievances, if any, and thereafter take appropriate action in accordance with law.