

(1996) 01 AHC CK 0039

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 146 of 1996

Anil Sethi and others

APPELLANT

Vs

President, Consumers Protection District Forum and others

RESPONDENT

Date of Decision : 03-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 13, 14, 15, 19, 27

Citation : AIR 1996 All 287 : (1996) 1 AWC 446

Hon'ble Judges : V.P. Goel, J;Palok Basu, J

Bench : Division Bench

Advocate : K.L. Grover, for the Appellant;

Judgement

Palok Basu, J.—Anil Sethi, Senior Manager, Punjab National Bank, Branch Office Surya Nagar, Agra in his personal capacity as also in his official capacity as Senior Manager of the said Branch of the Bank are the to petitioners in this writ petition filed under Article 226 of the Constitution of India. The opposite parties are the President, Consumers Protection District Forum, Agra, the National Insurance Company Limited, Agra and one Shri Surendra Singh a resident of Agra. The challenge in this writ petition is extended to the order dated 14-12-1995 Annexure-7 to the writ petition whereby the petitioners have been asked by the District Forum's President to show cause by personally presenting himself on 5-1-1996 why order u/s 27 of the Consumers Protection Act 1986 (for short the Act) be passed against the petitioner Anil Sethi for having willfully flouted the directions contained in the order of the District Forum dated 20-12-1994.

2. The facts lie in a very narrow compass. The aforesaid Surendra Singh had made a complaint before the President District Forum on certain allegations which has been disposed of by the aforesaid order dated 20-12-1994. It was directed that National Insurance Company should pay Rs. 73,000/- and odd with interest at the rate of 18% from 15-10-1989 along with Rs. 5,000/- as damages.

It appears that the Insurance Company did not comply with the said directions whereupon in execution an order was passed by the President of the District Forum on 4-11-1994. This order contained certain directions to be followed by the Punjab National Bank Branch Office. By the show cause notice impugned in this writ petition the view taken by the Forum is that by the inaction on the part of the Bank in spite of the order dated 4-11-1995 a cause for issuing a show cause notice u/s 27 of the Act has been made out.

3. National Insurance Company however, preferred an Appeal in the meantime before the State Forum and the following interim order has been passed in the said Appeal.

"National Insurance Co. Ltd. Surendra Singh 27-11-1995

Having heard Shri A.K. Mittal, Advocate, for the appellant we direct issue of notice of the appeal the application to condonation in delay in its presentation and the stay application to the respondent on 26-4-1996. We also direct that if within a month from today the applicants pay to the complainant a sum of Rs. 5,000/- awarded as compensation by the District Forum and deposit the remaining amount due from then in the form of a F.D.R. of a Nationalised Bank in favour of the President of the District Forum and valid for 27 months, further execution proceedings in respect of the order under challenge in the appeal shall remain stayed till orders to the contrary by the Commission,

Put up the appeal on the date.

Sd/-(Member)"

4. It is further relevant to mention here that in the Official capacity the Bank informed the President District Consumer Forum that it has already taken steps in pursuance of the aforesaid interim order passed by the State Forum. Copy of the said letter has been filed as Annexure-4 to the writ petition.

5. It is interesting to note that the President, District Forum while issuing show cause notice has taken due note of the fact that the State Forum has passed the interim order.

6. Shri K. L. Grover, learned counsel for the petitioner vehemently argued that the action of the President District Forum appears to be accentuated by bias and mala fides inasmuch as there was no authority with the District Forum to take steps u/s 27 of the Act even by issuing a show cause notice particularly when there was a stay order which in terms had stayed the main order wherefrom the execution proceedings may have commenced. It was further argued that since the petitioners have been advised that against the aforesaid show cause notice an Appeal may not be maintainable before the State Forum, the petitioners have no other remedy except to approach this Court under Article 226 of the Constitution of India and therefore the reliefs claimed should be entertained and favourably decided.

7. The question therefore which requires interpretation and decision in this writ petition is whether the petitioner has a right of Appeal under the Act even against the order proposing to show cause why action u/s 27 of the Act be not taken against the petitioners. It cannot be and has not rightly been disputed that if statutory appeal is held to lie, petitioner may not be normally permitted to approach this Court under Article 226 of the Constitution of India. 8. This necessitates a look at some of the Sections contained in the Act. Section 14 permits the District Forum conducting proceedings u/s 13 of the Act to pass certain orders. Section 15 provides as under:

"S. 15. Appeal.--Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed :

Provided that the State 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."

9. Section 27 however prescribed penalties for intentionally disobeying or flouting orders of various forums created under the Act. For ready reference Section 27 is also quoted below :

"S. 27. Penalties.-- Where a trader or a person against whom a complaint is made fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

Provided that the District Forum, the State Commission or the National Commission, as the "case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than the minimum term and the amount lesser than the minimum amount, specified in this section."

10. Before proceeding further with the discussion it may be mentioned that in the case of Lucknow Development Authority Vs. M.K. Gupta, the Hon"ble Supreme Court has also gone into the question of reliefs which can be granted by various forums under the Act. In paragraphs 10 and 11 of the said judgment even persons who may be made available to make payment of the compensation have been delineated. A complete reading of the judgment indicates therefore that any matter which falls or comes up for decision before the District Forum is made appealable u/s 15. Likewise, any decision of the State Commission is appealable u/s 19 and similarly any order passed by the National Commission shall be subject to an Appeal before the Hon"ble Supreme Court. It goes without saying that the three forums at the three different stages have to exercise the

powers as stand conferred by the various sections in the Act.

11. Therefore, when Section 15 permits "any aggrieved person" to "prefer an Appeal" it obviously refers to the orders which are made subject matters of challenge on the ground that the affected person feels aggrieved thereby. It cannot be said even for a moment that the petitioners in this Appeal are not feeling aggrieved against the aforesaid notice which has been issued by the District Forum taking it to be in continuity of the execution proceedings initiated before it by the complainant, particularly when against the mentioned order, the Insurance Company has already exercised the right of appeal which has been entertained by the State Commission in which the aforesaid interim order has been passed. It is difficult to see any person why the petitioner shall not have a right of appeal against the aforesaid order dated 14-12-1995 passed by the District Forum.

12. In the latest case law on the topic Laxmi Engineering Works Vs. P.S.G. Industrial Institute, the Supreme Court has fully defined the meaning of the word "Consumer" as also the word "Commercial purpose". The amendment brought about in the year 1993 has been extensively dealt with in this ruling. In paragraph-10 the different appellate powers of the different forums (State Commissions and National Commission inclusive) has been noted. In paragraph-11 certain observations have been made which will lend support to the reasoning that under the provisions of the Act word "Appeal" also should be interpreted liberally. For ready reference, paragraph-II of the said judgment is quoted below at page 1431 of AIR :

"A review of the provisions of the Act discloses that the quasi-judicial bodies/ authorities/ agencies created by the Act known as District Forums, State Commissions and the National Commission are not Courts though invested with some of the powers of a Civil Court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/ commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services. The forum so created is uninhibited by the requirement of Court fee or the formal procedures of a Court. Any consumer can go and file a complaint. Complaint need not necessarily be filed by the complainant himself, any recognized consumers association can espouse his cause. Where a large number of consumers have a similar complaint, one or more can file a complaint on behalf of all. Even the Central Government and State Government can act on his/their behalf. The idea was to help the consumers get justice and fair treatment in the matter of goods and services purchased and availed by them in a market dominated by large trading and manufacturing bodies. Indeed, the entire Act revolves round the consumer and is designed to protect his interest. The Act provides for "business-to-consumer" disputes and not for "business-to-business" disputes. This scheme of

the Act, in our opinion, is relevant to and helps in interpreting the words that fall for consideration in this appeal."

13. It may be mentioned that in Morgan Stanley Mutual Fund Vs. Kartick Das, it has been held that a consumer Court has no power to grant any interim relief, not even ad-interim relief and that only final relief could be granted.

14. In view of the aforesaid three pronouncements of the Hon"ble Supreme Court it has to be held as a matter of law that after final adjudication has been done, the aggrieved party has a right of appeal. In the instant case it is in the execution proceedings after the final order was passed that the petitioner was asked to follow certain directions. The appeal against the main order has already been filed in which the order of the District Forum has been stayed as noted above. Therefore, when the impugned order asks the petitioner to personally appear and show cause, why order u/s 27 of the Act be not passed, the petitioner must be held to have a right of appeal before the State Commission. Holding otherwise is likely to result in duplicity of proceedings. It would be anomalous to hold that while on the one hand the main order has been stayed by the superior commission, a third party to the proceeding is made answerable concerning certain directions in execution of the said main order.

15. Therefore, it has to be held that the petitioner has statutory right of appeal which, if advised, the petitioner may avail. For this reason the writ petition under Article 226 of the Constitution of India is not maintainable.

16. Shri K. L. Grover was apprehensive that since it is likely to take some time for the appellants to file an appeal before the State Forum, some action or the other may necessarily be taken by the District Forum if the petitioner No. 1 does not present himself personally as directed under the impugned order. This argument also is not acceptable because the Court does not see any reason why making of an application before the District Forum by the petitioner or his counsel intimating that an appeal is to be filed should not be enough for the President, District Forum to await for a reasonable period of time to enable the petitioner to file the appeal and obtain necessary orders, if any, from the Appellate Forum.

17. With the aforesaid directions, the writ petition is dismissed. Let a copy of this judgment be furnished to the learned counsel for the parties on payment of usual charges within 24 hours for doing the needful.

18. Petition dismissed.