(1993) 03 KL CK 0050

In the High Court Of Kerala

Case No : O.P. No. 2929 of 1993 W

A.V. Georgekutty APPELLANT

Vs

State of Kerala and Others RESPONDENT

Date of Decision : 10-03-1993

Acts Referred:
Consumer Protection Act, 1986 — Section 2, 26, 9

Citation : AIR 1994 Ker 19 : (1995) 83 CompCas 772

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : Thampan Thomas, for the Appellant; Jose K. Kochupappu, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Jagannadha Rao, C.J.—This petition is filed for the issue of a writ of certiorari to quash Ext. P9 notice dated 26-11-1992 issued by the Consumer Dispute Redressal Forum, Kottayam to the petitioner under the provisions of the Consumer Protection Act 1986 and further for the issue of a writ of prohibition restraining the Consumer Dispute Redressal Forum from proceeding on the basis of Ext. P 9. A writ of mandamus is also sought to direct the State of Kerala to frame rules to safeguard the interests of persons like the petitioner.

2. The contention of the petitioner is that the Consumer Dispute Redressal Forum, the second respondent, has no jurisdiction to issue the said notice inasmuch as the complainants (respondents 3 to 5) before the said Forum are not consumers vis-a-vis the petitioner Sri. A. V. Georgekutty, who is the President of a Co-operative Bank. The following facts have to be stated for a proper understanding of the point raised in this case. The writ petitioner is the President of the Mulakkulam Panchayat Co-operative Bank, Peruva, which is registered as a Society under the Kerala Co-operative Societies Act, 1969. Respondents 3 to 5 in the writ petition filed O.P. No. 891 of 1992 before the District Consumer Dispute Redressal Forum, Kottayam (2nd respondent) for

grant of compensation of Rs. 10,000/ - for refusal of the Bank to grant loans each of Rs. 5,000/-, even after sanction. Byelaws 48, 49, and 50 (marked as Ext. P2) permit the Directors to recommend loan applications and the Board, after due inquiry, is empowered to take a decision in the interests of the Bank and in accordance with the byelaws. The Board has also power to cancel loans already granted if the loan is not for a bona fide requirement. In the present case the loans applied for by respondents 3 to 5 have not been granted because of the petitions filed by the son of the 3rd respondent and the father of the 4th respondent etc. The Board submitted a report on 29-6-1992 (Ext. P5) that if loans are granted to respondents 3 to 5, that will result in losses to the Bank. The Board refused to grant the loans and then respondents 3 to 5 filed the O. P. 891 of 1992 before the District Forum claiming compensation on the ground that they were ''consumers'' within Section 2(d) of the Act. The writ petitioners filed two counter affidavits (Exts. P 6 and P 7) and the matter was heard and Judgment reserved. At that stage, respondents 3 to 5 filed a petition to implead the Directors of the Bank. The petition is Ext. P8. The District Forum ordered notice as per Ext. P9. The petitioner objected stating that the main case itself is not maintainable and the same may be decided as a preliminary point. But without deciding the same the case was posted to 5-3-1993. Then the present writ petition is filed for questioning Ext. P 8 petition and Ext. P 9 notice and for the issue of a writ of prohibition etc.

3. The main contention of the writ petitioner is that the respondents 3 to 5 to whom grant of loan is refused by the Bank, are not ''consumers'' within Section 2(d) of the Consumers Protection Act, 1986 as they have neither purchased any article nor hired any service from the Bank. Service, unless it is rendered for consideration, cannot fall within Section 2(d). The respondents 3 to, 5, being share-holders of the Bank, cannot have a claim as consumers, Their remedy is only by raising a dispute before the Registrar of Co-operative Societies u/s 69 of the Co-operative Societies Act. When the jurisdiction of the Civil Court is ousted under the Co-operative Societies Act, the District Forum cannot have jurisdiction under the Consumer Protection Act. The motive of respondents 3 to 5 is said to be to obtain a conviction from the District Forum and disqualify the Directors as members of the Bank which is a Co-operative Society. It is stated that the members of the District Forum, other than the retired District Judge, are appointed on political considerations.

4. The point that arises for consideration in this writ petition is whether persons who are impleaded as respondents before the District Forum or the State Commission can be permitted to move the High Court under Article 226 of the Constitution of India for the issue of a writ of certiorari or prohibition or other reliefs?

5. The preamble to the Act provides that the Act is intended for the protection of the interests of the consumers and for that purpose to make provisions for the establishment of consumer Councils and other authorities for the settlement of

consumer disputes and for matters connected therewith. The Statement of Objects and Reasons attached to the Bill states :

"The Consumer Protection Bill 1986 seeks to provide for better protection of the interests of consumers and for that purpose, to make provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.

....

To provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the District, State and Central levels. These quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumers. Penalties for non-compliance of the orders given by the quasi-judicial bodies have also been provided."

5A. Section 2 of the Act defines ''complaint'', ''consumer'', ''consumer dispute'' etc. Section 2(h) defines ''District Forums'' as the one established u/s 9(a). Section 2(k) defines ''National Commission'' as the forum established u/s 9(c). Section 2(o) defines ''service''. Section 2(3) provides that the provisions'' of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Chapter II provides for the establishment of the Central Consumer Protection Council. Section 7 provides for establishment of the State Consumer Protection Council. Chapter III deals with redressai of consumer disputes. u/s 9, Consumer Dispute Redressai Forum known as ''District Forum'' is to be established by the State Government with the prior approval of the Central Government in each district of the State. Similarly, at the State level, the Consumer Dispute Redressal Commission is to be established u/s 9(b) and is to be known as the ''State Commission''. We then have the National Consumer Dispute Redressai Commission to be established by the Central Government u/s 9(c). So far as Andhra Pradesh is concerned, the District Forum and State Commission have been established. The National Commission has also been established by the Central Government. Section 12 provides for the manner in which a complaint is to be made, while Section 13 deals with the procedure to be followed on receipt of the complaint. Section 13(4) applies a few provisions of the CPC to the District Forum. Section 14 deals with the finding to be given by the District Forum. An appeal is provided to the State Commission against the orders of the District Forum. The appeal is to be filed within thirty days from the date of the order of the District Forum. Section 17 deals with the jurisdiction of the State Commission, while Section 18 deals with the procedure applicable thereto. Section 19 provides for a further appeal to the National Commission against the orders passed by the State Commission in exercise of its powers conferred under sub-clause (i) of Sub-section (a) of Section 17. An appeal to the National Commission is also to be filed within thirty days. Power is given to the State Commission as well as to the National Commission to entertain the appeal beyond thirty days. Section 21 deals with the jurisdiction of the National

Commission, while Section 22 deals with the procedure applicable thereto. Section 23 is important and it provides that any person aggrieved by an order made by the National Commission in exercise of its powers conferred under Sub-clause (i) of subsection (a), Section 21 may prefer an appeal against such an order to the Supreme Court within a period of thirty days from the date of the order. However, the Supreme Court will entertain appeals after thirty days is sufficient cause is shown. Section 24 provides that every order of the District Forum, the State Commission or the National Commission shall, if no appeal has been filed against such an order under the Act, be final.

5-B. Coming to the question of execution of the orders, there is a separate provision u/s 25 for enforcement of the orders of the District Forum, State Commission and the National Commission as if they were decrees or orders made by the court in a suit. Section 26 provides for dismissal of frivolous and vexatious complaints. Section 27 provides for penalties and states that where a trade 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 and which may extend to three years or with fine which shall not be less than Rs. 2,000/-, but which may extend to Rs. 10,000/- or the punishment may be by way of imprisonment as well as fine.

5-C. The Rules also provide for speedy and efficacious disposal of the matters.

Consumer Protection (Kerala) Rules, 1987 provides in sub-rule (9) of R. 7 as follows :--

"While proceeding under sub-rule (8), the State Commission may, on such terms as it may think fit and at any stage, adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint should be decided within 90 days from the date of notice received by the opposite party where complaint does not require analysis of testing of the goods and within 150 days if it requires analysis or testing of the goods."

Similarly so far as the State Commission is concerned, it is provided in Sub-rule (8) of Rule 8 as follows :

"State Commission may, on such terms as it may think fit and at any stage, adjourn the hearing of appeal, but not more than one adjournment shall ordinarily be given and the appeal, should be decided within 90 days from the first date of hearing."

From a reading of the above provisions of the Act and the Rules it is clear that separate Forums are constituted by the Legislature at the District level, at the State level and at the National level. Complaints can be lodged before the District Forum and in certain type of cases before the State Forum. Appeals against the orders of the District Forum lie to the State Forum. Against the orders of State

Forum an appeal will lie to the National Commission. A further appeal lies to the Supreme Court against the orders of the National Commission. Appeals are normally to be preferred within 30 days. The complaints are to be disposed of within 90 days in cases where the dispute does not involve any analysis or testing. On the other hand, if it involves any analysis or testing, the complaints have to be disposed of within 150 days. The intention of the Legislature appears to be, to provide for a speedy and efficacious remedy by resolving consumer disputes. In fact, the Statement of Objects and Reasons clearly mentioned that the Act is intended to provide speedy and simple redressal to consumer disputes by providing a self-contained quasi-judicial machinery.

6. It is in the context of the prescription of hierarchy of separate Forums under the Act that we have to consider the question as to whether the parties can move this court under Article 226 of the Constitution of India for the issue of a writ of prohibition. It is true that whenever the Legislature creates a separate tribunal with a hierarchy of appeals, the jurisdiction of the High Courts under Article 226 of the Constitution of India to deal with the orders passed by the said Tribunals is not and cannot be ousted. It is also true that whenever [questions of jurisdiction are raised, the High ''Court normally permits such questions to be raised under Article 226 of the Constitution and examines whether the applications or the other proceedings filed before the Tribunal are within the jurisdiction of the said Tribunal or not. But the High Court has a discretion to entertain the writ petitions. It is not as if the High Court is bound to entertain every writ ''petition which raises a question of jurisdiction '' of a tribunal. In this connection reference is to be made to the decision of the Supreme Court in First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd., In that case the Supreme Court observed while dealing with the question of issue of writ of prohibition that issuance of a writ of prohibition is discretionary with the High Court, particularly when the petitioner has an alternative remedy which is adequate and efficacious.

7. The Consumer Protection Act, 1986, has created a hierarchy of bodies under the Act with the power to hear appeals at every stage. The intention of the Legislature appears to be that the District Forum or the State Commission as well as the National Commission should be allowed to perform their duties speedily and without any interruption. The District Forum is presided over either by a District Judge or by a retired District Judge. The State Commissions are presided over by a person who is a Judge of a High Court or a retired Judge of a High Court. Surely the litigant cannot be permitted to say that the District Judge at the level of the District Forum or a sitting or retired Judge of the High Court at the level of State Commission is not competent to decide a question of jurisdiction. The Presiding Officers of these bodies, having worked for a long period as either District Judges or High Court Judges, are fully experienced to decide questions of jurisdiction, however complicated. They are not like certain executive authorities who have no judicial experience. To say that the bodies presided over by such persons cannot be allowed to decide jurisdictional issues, cannot be accepted. It is well settled that such bodies are entitled to decide

whether they have jurisdiction to decide a dispute and whether the complainant before them is a consumer or not within Section 2(d). The intention of Parliament will, in our opinion, be defeated if initially objections as to jurisdiction are permitted to be raised before the High Court under Article 226 of the Constitution. Merely because a question of jurisdiction arises in such cases, the High Court should not, in our opinion, feel it ordinarily imperative to admit such writ petitions. If the writ petitions are admitted merely because there is the question of jurisdiction of the District Forum or the State Commission or the National Commission, the proceedings before the said authorities are bound to be delayed and the very purpose of establishing these Forums will be frustrated.

8. If writ petitions are entertained and ultimately dismissed by the High Court, then the parties would necessarily avail the further remedy by way of appeal to a Division Bench and then a further appeal to the Supreme Court under Articles 133 and 136 of the Constitution of India. If the writ is not issued, then, the complaint before the Forum would have to be heard. This will entail lot of delay. The High Courts are already burdened with heavy arrears and that is the precise reason why separate hierarchy of bodies is created under the Consumer Protection Act. It is therefore not wise for this court ordinarily to undertake the burden of deciding such disputes, even if they relate to jurisdiction.

9. What we have stated above is to be the normal rule. There may indeed be rare cases which are expressly excluded by the very provisions of the Consumer Protection Act or other rare cases which may warrant interference by the High Court. But that should be la rare exception and not the rule.

10. At the same time we wish to add that the District Forum and the State Commission must be careful in entertaining complaints. They must see that their jurisdiction is not abused. They must not give scope for complainants harassing persons who do not come within the scope of the Act. When the High Court is acting with restraint in entertaining writ petitions as stated above, there is a greater responsibility of the District Forum and the State Commission to see that their jurisdiction is not invoked without sufficient justification.

11. We are in agreement with the decision of the Andhra Pradesh High Court in Tulasi Enterprises v. Andhra Pradesh State Consumer Commission, Hyderabad AIR 1991 A&P 326 to which one of us was a party. We respectfully dissent from the decision of the Calcutta High Court in The Calcutta Metropolitan Development Authority Vs. Union of India and others, We agree with the decision of the Delhi High Court in M/s. Ansal Properties and Industries (P) Ltd. v. Shri Chander Bhan Kohli I (1991) CPJ 679(SC) wherein it has been held that when the Consumer Protection Act provides a machinery, including an appeal to the Supreme Court, it would not be proper for the High Court to entertain a writ petition.

12. Coming to the facts of this case, we are of the view that the question of jurisdiction raised in this case can very well be (decided by the District Forum. The case is not one where the express provisions of the Act exclude entertaining

such a complaint. Nor is the case one which can be treated as a rare case in which this court should intervene. We therefore consider it not necessary to entertain the question of jurisdiction raised before us in this writ petition.

13. So far as the allegation that the members are appointed on political considerations is concerned, the same cannot be accepted. So far as the framing of new rules is concerned, the Consumer Protection (Kerala) Rules, 1987 has been made by the Government in exercise of the powers conferred by Sub-section (2) of Section 30 of the Consumer Protection Act, 1986 (Central Act 68 of 1986), for the smooth and efficient functioning of the various bodies under the Act and therefore no mandamus need be issued to the State Government to make further rules.

The writ petition is accordingly dismissed.

