
(2004) 11 KL CK 0028

In the High Court Of Kerala

Case No : Writ Petition (C) No. 33591 of 2003

Confederation of Consumer Vigilance Centre

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 15-11-2004

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 16

Citation : (2005) 1 ILR (Ker) 117 : (2004) 3 KLT 1073

Hon'ble Judges : C.N. Ramachandran Nair, J

Bench : Single Bench

Advocate : B. Harish Kumar, for the Appellant; V.K. Beeran A.A.G. and S. Gopakumaran Nair, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The Confederation of Consumer Vigilance Centre, a registered society formed to protect consumer interest represented by its General Secretary is the petitioner in the W.P. This petition filed under Article 226 of the Constitution of India is mainly for direction to the State Government and the President of the State Consumer Disputes Redressal Commission, respondents 2 and 3 herein to fill up the existing vacancies of the President and members of various District Consumer Fora. Directions are also sought to correct the functioning of the State Commission under the orders of its President who is declaring summer vacation for the State Commission every year contrary to Rules and has denied the room provided to the consumers by the State Government in the building constructed by it for the State Commission. There is also allegation that the President of the Commission is victimising the petitioner for raising issues pertaining to the malfunctioning of the State Commission. Separate counter affidavits are filed on behalf of the State Government and the President of the State Commission who is none other than a retired Judge of this Court.

2. Even though the State Commission for, Consumer Disputes Redressal may come within the meaning of "Tribunal" over which this Court can exercise

supervisory jurisdiction under Art. 227 of the Constitution of India, I do not think the statute expects such a role for the High Court as the same is specifically vested in the National Commission u/s 24B of the Consumer Protection Act (hereinafter called "the Act"). The said provision gives express authority to the National Commission to call for periodical returns regarding institution, disposal and pendency of cases, to prescribe uniform procedure to be followed by State Commissions and generally to oversee the functioning of the State Commissions and District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom. It is pertinent to note that the petitioner has in fact sent Ext.P3 petition to the National Commission which according to the petitioner remains unanswered. Apart from petitioner's allegations, even from the data furnished by the Secretary of the State Commission about pendency of cases. I feel the State Commission has to necessarily improve and achieve better disposal to reduce pendency. Parliament has conceived a separate Forum for redressal of consumer disputes not because Civil Courts do not have jurisdiction or authority under the existing laws, but for speedy redressal of consumers' grievances through special bodies constituted with people of right knowledge and experience. Therefore, under no circumstance a consumer forum, whether it be at District, State or National level, should allow accumulation of cases leading to delays defeating the very object of the statute. In order to achieve this, supervisory jurisdiction is conferred on the National Commission over State Commissions and on State Commissions over District Fora u/s 24B of the Act. In the course of arguments, the petitioner pointed out that most of the disposals shown in the data furnished by the Secretary of the State Commission are in respect of short matters, dismissals for default etc. Even though this is denied by counsel appearing for the third respondent, I am constrained to observe that lot of Writ Petitions are being filed in this Court seeking interim orders in matters pending before the State Commission which obviously show that there is delay in disposal of even interim applications by the State Commission. In any case this Court does not propose to go into the detailed functioning of the State Commission which is the jurisdiction solely vested in the National Commission u/s 24B of the Act. I am sure, the National Commission will not ignore the responsibility vested in it u/s 24B of the Act and will conduct enquiry and if necessary issue appropriate instructions to sloppy State Commissions and District Fora to gear up and work to achieve the objects and purpose of the Act.

3. Even though this Court does not propose to go into the functioning of the State Commission in regard to disposal of cases, I feel in view of the conflicting stand taken by the State Government and the President of the State Commission on various issues raised by the petitioner, interference by this Court under Art. 226 of the Constitution of India is called for and unless appropriate directions are issued, public interest will also suffer. Therefore, I proceed to go into the limited issues which require to be considered by this Court.

4. The main allegation raised by the petitioner is against the declaration of

summer holidays by the President of the State Commission during April-May every year. The petitioner has asserted that during April-May 2003 the President of the State Commission declared summer holidays in the same pattern as High Court and followed the same during April-May 2004 also. The President of the Commission in his counter affidavit has denied it in the following words:

"The statements contained in the Writ Petition (C) that there was declaration of holiday is not correct. There was no declaration of holidays as stated by the petitioner. The work was arranged during the said period enabling the President to conduct inspection of the various forums and in fact no inconvenience was caused to any of the consumers".

While the above is the statement of the President of the State Commission, the Additional Secretary to Government in his counter affidavit on this issue has stated as follows;

"The President of the State Commission has informed Government to the effect that the National Consumer Disputes Redressal Commission, New Delhi, the apex body of all the Forums/Commissions closes for summer vacation every year for more than one month following the Delhi High Court Calendar from the first week of June. It is further informed that various State Commissions all over India are also-availing summer vacation for a period of one month from the middle of April following the calendar of High Court of the concerned States. Accordingly the State Commission had also informed that he proposed to avail summer vacation from 14.4.2003 to 15.5.2003 following the calendar of High Court of Kerala. The said information had been given to the Government by the President as per his letter dated 10.4.2003. As there is no special rule framed by the State Government regarding the working of the State Commission/Forums there is no rule prescribing the summer vacation to be availed by the State Commission as well as the District Forums".

It is very unfortunate that the President has informed this Court that too in an affidavit that he has not declared any summer holidays as stated by the petitioner, when he had in fact informed the Government about the summer holidays declared by him for the State Commission in line with the High Court. Therefore, the annual declaration of summer holidays by the President for the State Commission is a fact and this Court has to necessarily consider whether it is permissible under the Act and Rules.

5. No doubt, the President of the State Commission has the authority to constitute Benches in terms of Section 16(1B) of the Act and can arrange sittings in exercise of powers conferred under Rule 5 of the Consumer Protection Rules. R.5 of the Kerala Consumer Protection Rules which is relevant in this regard is as follows:

"Rule 5. Location of office and other matters relating to State Commission:--

(1) The Office of the State Commission shall be at Thiruvananthapuram.

(2) The working days and office hours of the Office of the State Commission shall be the same as that of the Offices of the State Government.

(3) The Official seal and emblem of the State Commission shall be such as the Government may specify.

(4) The President of the State Commission shall be the Head of Office and shall have administrative control over the staff of the State Commission and Fora and shall have disciplinary control over the staff subject to the provisions contained in Rule 19 of the Kerala Civil Services (Classification Control and Appeal) Rules, 1960.

(5) Sittings of the State Commission shall be convened by the President. The sittings shall ordinarily be at the Office of the State Commission; provided however that sittings may also be convened to other centres also according to necessity.

(6) The State Government shall appoint such staff, as may be necessary, to assist the State Commission in its day-to-day work and perform such other functions as are provided under the Act of these rules or assigned to them by President.

(7) Where the opposite party admits the allegation made by the complainant in a complaint filed before it, the State Commission shall decide the complaint on the basis of the merit of the case, based on the documents presented before it.

(8) If during the proceedings conducted u/s 13 of the Act, the State Commission fixes a date for hearing of the parties, it shall be obligatory on the part of the complainant and the opposite party or other authorised agent to appear before the State Commission on such date or on any other date to which the hearing stands adjourned. When the complainant or his authorised agent fails to appear before the State Commission on such date, the State Commission may, in its direction, either dismiss the complaint for default or decide it on merits. Where the opposite party or his authorised agent fails to appear on the day of hearing, the State Commission may decide the complaint ex parte.

(9) 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 three adjournments shall ordinarily be given, and the complaint shall be decided within 90 days from the date of receipt of notice by the opposite party, where the complaint does not require analysis or testing of the goods and within 150 days, if analysis or testing of goods is required".

By virtue of sub-rule (2) of Rule 5 the State Commission has to work on all days which are-working days for the State Government. It is not as if the Commission should hold sittings every day and sittings will have to be held depending on filing and pendency of cases. In view of the admitted pendency, I see no justification why sitting should not be held on every working day. The essential duty of President and members of the Commission is to hear and dispose of

cases and administrative work is only subsidiary. It is upto the President or any member to avail holidays or even take leave in accordance with the conditions of service. However, there is no provision in the Act or Rules for declaring holidays during summer limiting sittings only on Tuesdays and Fridays in the pattern of High Court and Civil Courts which are controlled by separate statutes. Section 22D of the Consumer Protection Act authorises the senior-most member of the State Commission to function as President in the absence of the President. Therefore, the President availing holidays or leave should not affect regular sittings and functioning of the Commission. What the statute expects is regular sitting and functioning of the District Forum and the State Commission even in the absence of the President. In fact propriety demands that President and Members should as far as possible take leave alternatively so that regular sittings of the State Commission or District Forum are not affected. Therefore, I hold that the concept of summer holidays available to High Courts and Civil Courts is not visualised in the Act and Rules and the State Commission and District Fora are not entitled to avail any summer holidays. The view expressed by the State Government on this aspect in their counter affidavit is upheld.

6. The next issue raised by the petitioner is the failure of respondents 2 and 3 in co-ordination with each other to make appointment to the vacant posts of President and Members of various District Fora. It is reported that there is no President in the Consumer Fora in many Districts and in Malappuram, the District Forum is not functioning as it has only one member. It is obvious from the counter affidavits filed by the State Government and the President of the State Commission that there is no co-ordination between them and that the failure to make appointment of President and Members of the District Fora are on account of total lack of co-ordination between the State Government and the President of the State Commission. In this regard I feel there is justification in the stand of the President of the State Commission that he cannot approve the selections made by the State Government without following any fair norms of procedure. It is reported that the procedure hitherto followed was that the State Government will make selection and send it for approval by the President whose role is only to approve the proposal of the State Government. The procedure if any followed by the State Government in making selection of Members of the State Commission and President and Members of the District Fora is not stated in Court. In this regard it is useful to refer to Section 10 of the Act which provides for composition of District Fora which is as follows:

"Section 10. Composition of the District Forum: (1) Each District Forum shall consist of:

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:-

- i) be not less than thirty-five years of age,
- ii) possess a bachelor's degree from a recognised university,
- iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

7. It is clear from the above that the statute insists mandatory eligibility for candidates to be selected as President and Members of the District Fora. Ever so many candidates are eligible to be considered and a fair selection obviously means selection of the best among available candidates based on relative merit. This can be achieved only if a fair procedure is followed. Even though the President of the State Commission has stated in his affidavit that the State Government has not prescribed any Rules of procedure for the selection of Members, I do not think the absence of Rules of procedure will debar the Government to adopt a fair procedure for selection. Until Rules are framed it is for the concerned Department of the State to call for applications from eligible candidates possessing the mandatory qualifications prescribed in the statute, scrutinise the same and shortlist a reasonable minimum number of candidates for every post, call them for interview with their credentials before the selection committee who will make the selection for appointment. Therefore, the procedure hitherto followed by the Government to select candidates of their choice and present the candidates on the date of interview before the selection committee with the President of the State Commission as Chairman for approval is absolutely arbitrary, unfair and against the statute. For appointment as President of District Forum, the qualification prescribed is equivalent to that of a District Judge. In fact a serving or a retired District Judge or a person eligible to be appointed as a District Judge have to be appointed as President of the District Forum. Since District Judges are selected by the High Court and the High Court is closely monitoring their functions, there is nothing wrong in the Government taking the assistance of the High Court to prepare list of eligible serving or retired District Judges to be considered for selection as President of the District Forum. Even if lawyers who are eligible to be appointed as District Judges have to be also considered for appointment, then their names can be called for from District and Sessions Judges who will be in a position to effectively advise the Government. Of course, the alternative for the Government is to invite applications from eligible people, scrutinise the same, shortlist and leave selection committee to make selections based on their evaluation. So far as Members of the District Forum and the State Commission are concerned, sub-section (iii) of Section 10(1)(b) and Section 16(1)(b) respectively provides that selection from candidates with qualifications prescribed in sub-section (i) and (ii) should be made based on their ability, integrity, standing, knowledge and experience. Knowledge and experience should be in economics, law, commerce, accountancy, industry, public affairs or administration. Obviously experienced

persons are either people who are retired from service or who are in service. What is relevant is their personal integrity, knowledge, field of work and experience. Here again in order to get the best candidates, applications have to be called for from eligible candidates and selection has to be made based on relative merit of the candidates. The Government has no authority to pick up candidates of their choice and present them before the selection committee for approval. Appointment of members of District Forum and State Commission can be made only on the recommendation of the selection committee constituted u/s 10(1A) and Section 16(1A) of the Act and in the absence of Rules constituting secretariat for the selection committee for undertaking full selection process, the concerned Department of Government can call for applications as stated above, short list eligible candidates and present to the selection committee for selection.

8. The petitioner has raised certain grievances faced by it and similar organisations and individual consumers who appear before the State Commission personally. The allegation against the President is that the room provided in the building for parties, consumers, witnesses, visitors and practitioners is allotted for some other purpose leaving no facility to them. The President appears to have allotted an exclusive Chamber to the Court Master and has taken two rooms for himself. It is reported by the Government Pleader that the building is constructed by the State Government for housing the State Commission. If that be so, I am sure the design of the building would be such that at least one room is provided to the Advocates, parties, witnesses and other visitors to assemble and rest. Even though lawyers are engaged in most of the cases, "complainants" which includes consumer organisations u/s 2(1)(b) of the Act are entitled to conduct cases by themselves. Needless to mention that the Consumer Protection Act itself is made to protect consumer interest and unless basic amenities are provided to the complainants in every Forum and State Commission, they cannot effectively pursue their remedies. Therefore, one room has to be necessarily provided for the complainants, witnesses and Advocates to work and to rest. Since the building is obviously designed with such a provision, the President has to necessarily allot one room to the parties, visitors and witnesses. If sufficient space is available, a separate room can be provided to the Advocates or otherwise they will share the room with the parties. In any case whatever be the limitations in regard to space in the building, one room has to be provided for the consumers and parties for them to prepare for the case and to rest. Even though the petitioner has stated that the petitioner-organisation is victimised for filing complaints against the State Commission, the President of the Commission has denied it. I do not think the Commission can discriminate or victimise a counter organisation which has statutory right to petition to the Commission to ventilate the grievances of consumers.

9. Even though the petitioner has raised allegation against the President of the State Commission that he is claiming reimbursement of travelling expenses in violation of Rule 6(2) of the Consumer Protection Rules, I do not think this Court should look into the same as perquisites available to the President will be based

on contract of employment or conditions of service.

10. In the light of the foregoing observations and findings, the W.P.(C) is disposed of as follows:

(1) Until Rules are made, appointments will be made to the post of President of the District Fora and Members of State Commission and District Fora by following the procedure given below:

(a) There shall be direction to the second respondent to immediately advertise in newspapers calling for applications from persons with the required qualification and experience prescribed in the Act for appointment to the post of Presidents of District Fora and Members of State Commission and District Fora for the vacancies existing and for vacancies arising within a period of three months from now. For selection to the post of President of the District Fora, the second respondent can also collect names of eligible serving or retired District Judges from the High Court or names of lawyers from District Judges as stated above.

(b) The second respondent will in consultation with the Law Secretary scrutinise the applications and based on the relative merit and experience of the candidates, shortlist candidates for selection. A minimum of five candidates for every post should be shortlisted for selection by the Selection Committee.

(c) The list so prepared should be sent to the President of the State Commission who will scrutinise the same and if necessary, collect additional information about the candidates as he deems necessary for the purpose of selection.

(d) The President of the State Commission in consultation with the Secretaries to Government of both Departments of Civil Supplies and Law, being the other members of the Selection Committee will arrange meetings of the Selection Committee, make selection from the shortlisted candidates, if necessary, after conducting interview.

(e) If for any reason the President of the State Commission is unable to participate in the selection process, the State Government will refer the matter to the Chief Justice of High Court for nominating a sitting Judge of the High Court to preside over as Chairman of the Selection Committee in terms of proviso to Sections 10(1A) and 16(1A) of the Act.

(f) If there is any bottleneck in the selection on account of difference of opinion between the President and the Members, it would be open to the State Government with prior concurrence of the Chief Justice of the High Court to refer the matter to him instead of leaving the posts vacant as is done now.

(2) There shall be a direction to the third respondent to provide without any delay a suitable room with table and chairs in the State Commission-building as a resting place for parties and Advocates.