

(2000) 02 NCDRC CK 0026

In the National Consumer Disputes Redressal Commission

DIVISIONAL MANAGER, LIC OF INDIA

APPELLANT

Vs

SUDHATAI S. AVACHITE

RESPONDENT

Date of Decision : 17-02-2000

Acts Referred:

Citation : 2000 2 CPJ 133

Hon'ble Judges : M.S.Rane , G.R.Bedge J.

Final Decision : Directions passed

Judgement

1. ALL-though we heard this appeal earlier on 8th February, 2000, we are required to reserve and defer our judgment for the reasons that the reference to the documents made by the Forum in its final judgment/order was not made with sufficient clarity. It also did not indicate whether in fact particular document which was most vital was in fact placed before the Forum. In fact, during the course of argument in the appeal, Advocates of both the parties were at variance as to actual production and availability of a particular document before the Forum which necessitated us to defer the judgment and entailed us to call for the record and proceedings from the District Forum, Latur.

2. NOW, record and proceedings of the District Forum, running into 233 pages has been received and placed before us. The manner in which Forum has maintained its proceedings is far from satisfactory. No indexing. No list of documents or marking of Exh. numbers Everything appears to be in mess. There is no system/method followed in arranging the record in sequence or in chronological order. We have to wade through the entire record requiring to devote considerable time. We are disposing of the said appeal on merits by a separate order. We experience and encounter various such difficulties in working out appeals, filed before this State Commission, against the orders of the District FORA. In particular for want of proper and systematic arrangement of the record in the proceedings in the complaints/applications at the level of District FORA, in number of such matters, that we think it appropriate to issue necessary directions to District Forum, Latur as also to all the District FORA in this State

(i.e. Maharashtra) by taking recourse to the provisions as contained in Section 24-B of the Consumer Protection Act, 1986 (hereinafter referred to as C.P. Act for brevity's sake).

Further, the Hon'ble High Court, in (i) suo motu Writ Petition No. 1352 of 1999; (ii) Writ Petition No. 3620 of 1998; (iii) O.S. Writ Petition No. 2078 of 1996, pending on its file has been pleased to pass order on 14th February, 2000, directing this Commission to take necessary corrective steps and/or decision in exercise of powers vested under Section 24-B of the C.P. Act, with a view to improving the working of the Consumer District FORA in the State of Maharashtra. It is to be noted that petitions at Sr. Nos. (i) and (iii) above have been filed, respectively by the Consumer Protection Society of India and Mumbai Grahak Panchayat, focussing on the unsatisfactory working/functioning of the Consumer Forums, inadequacy of infrastructural facilities, causing hardship and inconvenience to the consumers, culminating to the delay in disposal, etc. One of the serious grievances made is in respect of working hours of Forums. Paras 1 and 2 of the said order are reproduced herein-below, which are self-explanatory. "(1) All the above three matters are clubbed together. Heard the learned Counsels for the parties. Our attention was drawn by the learned Counsel for the petitioners in all these cases to the affidavit of Shri Narayan B. Karmaran, wherein it has been stated that none of the District Forums are working properly. One of the serious allegations is made that they are working for few hours only and not from 11 a.m. to 5 p.m. Many other serious deficiencies in the working of the District Forums have been pointed out. (2) We direct the Prothonotary and Senior Master/Registrar that a copy of the said affidavit alongwith other connected affidavits of different parties in regard to the deficiencies of the District Forums be forwarded to Justice M.S. Rane (Retired), the newly appointed President of the Maharashtra State Consumer Disputes Redressal Commission (State Commission), Mumbai with a request to take necessary corrective steps and/or decision in exercise of administrative control vested in him under Section 24-B of the Consumer Protection Act, 1986 with a view to improving the working of the Consumer District Forum in the State of Maharashtra. The report about the action taken and the improvements made may be submitted to this Court within six weeks from today."

3. FROM above extracted portion, it would be noticed that Hon'ble High Court has taken serious note of- (i) Forums working only for few hours in a day, and (ii) Serious deficiencies in the working of the District Forums. In such circumstances, directions have been issued to the State Commission to take necessary corrective steps and/or actions and decisions with a view to improving the working of the Consumer District Forums in this State.

We have gone through the pleadings/affidavits, etc. in the aforesaid High Court petitions. What we notice from the averments made therein and grievance made about working of the District Forums, we think it expedient with a view to ensure effective and efficient functioning of the Forums, to give directions as directed.

We hasten to add and clarify, in fairness, that these directions would not be taken as casting aspersions as such on particular Forum or Forums or any particular officer/s presiding over District Forums. Nevertheless, Forums are functioning under beneficent statute viz. C.P. Act, enacted to meet long-felt necessity of protecting the common man from exploitation. The Apex Court in the case of Lucknow Development Authority v. M.K. Gupta, reported in III (1993) CPJ 7 (SC)=1994 (1) SCC 243, has luminously posited the social philosophy underlying the enactment of the said Act and duty cast upon the Forums functioning thereunder to ensure speedy and inexpensive justice to the aggrieved consumers. The Act simplifies the procedure before the Forums, keeping it away from the rigidity of hard steel-frame procedural niceties of the ordinary Courts.

4. THE C.P. Act thus casts heavy responsibility and onerous duty upon the Forums, which have to eschew the technicalities to protect the interest of the consumers. Protection of interest of the consumers is given predominance. The Apex Court and National Commission, in their numerous pro-nouncements, have expanded the scope and ambit of the C.P. Act, bringing in its sweep various types of service - respecting Builders, Electricity, Post and Telegraph, Telephone, Pension, Provident Fund, Medical negligence, Insurance and many areas concerning consumers. Large number of affected citizens are taking recourse to the provisions of the C.P. Act and approaching the Forums established thereunder, with high hope and expectations. It has therefore, become necessary that Forums responsible to deal with such grievances modulate their working and functioning so as to obviate any inconvenience and hardship to the seekers of justice to ensure easy, smooth and speedy justice. Although C.P. Act itself states that Forums under the said Act are of quasi judicial nature, fact remains that the same decide and resolve the claims of the consumers, under different Statutes.

5. SUPREME Court in the case of Fair Air Engineers Ltd. & Ors. v. N.K. Modi, reported in III (1996) CPJ 1 (SC)=1996 (6) SUPREME Court Cases 385, corresponding to and 1996 (4) CTJ page 532 has occasions to consider as to whether the proceedings of the Forum created under C.P. Act are legal proceedings and such Forums/Commissions have the trappings of the Judicial Authorities or Courts. The Apex Court after examining various provisions of the C.P. Act has luminously posited and highlighted the character/status and authorities of the Redressal Forums functioning under the C.P. Act as under : [paras 8, 9 and 10] of 1996 (6) SCC 385 (supra). "8. The crucial question is whether the proceedings of the Forums created under the Act are legal proceedings and the authorities have the trappings of Judicial Authorities or a Court within the meaning of Section 34 of the Arbitration Act ? Before going into the decisions of this Court it is necessary to read the provisions of the Act so that we can have a clear picture of the conspectus of its operation. Section 3 envisages that "the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force". Section 10 speaks of constitution and composition of District Forums so as to consist of

persons specified in Clauses (a) and (b). They shall include a person who is, or who has been, or is qualified to be a District Judge, as its President, apart from other members envisaged in Clause (b) in Sub-section (1) thereof. Similarly, Section 16 of the Act speaks about composition of the State Commission. It provides that each State Commission shall consist of a person who is, or has been, a Judge of a High Court, appointed by the State Government, who shall be the President of the Commission, apart from other members envisaged under Clause (b) of Sub-section (1) thereof. Section 20 of the Act, similarly, envisages the composition of the National Commission and a person who is, or has been, a Judge of the SUPREME Court, to be appointed by the Central Government, shall be its President, apart from other members envisaged in Clause (b) of Sub-section (1) thereof. Thus, the Presiding Officers of the Forums are judicial officers and in the case of Commissions they are sitting or retired Judges of the High Courts or the SUPREME Court, as the case may be. A remedy of complaint has been provided to the aggrieved consumer defined under Section 2(d) of the Act. The expression "complaint" has been defined under Section 20 and "complaint" has been defined under Section 2(b) of the Act. Under Section 12 Commission, in addition to the remedy of appeal against the order of the District Forum, has original jurisdiction to entertain complaints if the matter is covered under its specified pecuniary jurisdiction. Under Section 18 of the Act, the procedure for the disposal of complaints provided in Sections 12, 13 and 14 of the Act and the rules made thereunder, is made available for the disposal of the complaint or the appeals by the State Commission. Similarly, the National Commission under Section 21 has been given, in addition to original jurisdiction, power to entertain an appeal against the order of the State Commission or to call for the records and pass appropriate orders, in circumstances enumerated under Clause (b) thereof, in any consumer dispute pending before or decided by any State Commission. By operation of Section 22, the power of a Civil Court as specified in Sub-sections (4), (5) and (6) of Section 13 of the Act are vested in the National Commission for disposal of any complaint or proceedings before it, the procedure to be followed by it shall be such as may be prescribed by the Central Government. Under Section 23 of the Act, remedy of appeal to this Court is made available to any person aggrieved by an order of the National Commission. Section 24 attaches finality to every order of the District Forum, State Commission or of the National Commission if no appeal is preferred within a specified time. However, that is subject to any judicial review under Article 226 or 32 of the Constitution. Section 25 gives teeth to the orders passed by the District Forum, State Commission and National Commission, every order can be enforced in the same manner as if it were a decree or an order made by a Court in a civil suit pending therein, it shall be lawful for the District Forum, State Commission or National Commission to send its orders, in case of its inability to execute it, for execution to the appropriate Executing Court. It is obligatory for the Executing Court to execute the order treating it to be a decree or order of a Court sent to it for execution. For specific enforcement of the Act, Section 27 gives sanction of the State for imposing penalties against the traders or persons

against whom a complaint is made who fail to comply with the order passed by the aforesaid District Forums, National Commission or State Commission, as the case may be."

Thus, it would be seen that the District Forums, State Commission and National Commission have all the trappings of a Civil Court and Judicial Authority. The proceedings before them are legal proceedings. Similar controversy was considered by this Court in *Bharat Bank Ltd. v. Employees*, and in *Associated Cement Companies Ltd. v. P.N. Sharma*. In *Sarojini Ramaswami v. Union of India*, one of us *K. Ramaswamy J* had dealt with this aspect of the matter and held thus- (SCC p. 601, para 139) "It is, therefore, settled law that all the trappings of the Court need not necessarily be present in a particular case to bring the authority as a Tribunal but the essential postulate must be that it must be the creature of the statute and the State should delegate its inherent power of judicial review to the Tribunal, all or some of the trappings of a Court may or may not be present in a given case. The Tribunal should adjudicate the dispute between the parties before it, after giving reasonable opportunity to the parties, consistent with the principles of fairplay and natural justice. It is not necessary that *proprio vigore* it is enforceable. The mere fact that it is subject to further orders does not take away the effect of the decision or findings recorded thereunder".

6. THE above enunciation of the Apex Court clearly and unequivocally brings forth fact that all Redressal Forums functioning under the C.P. Act are at par with Civil Courts and, therefore, legitimate to treat them as the Courts of Civil adjudication. It is, however, to be noted that Forums while functioning under the C.P. Act have not to get unduly stuck up and swayed with procedural rigorous and rigidity of rules of evidence. It follows that those who preside over such Forums, namely, President and Members, as natural corollary would follow, are at par with Judges. THE Apex Court in its one of the judgments [Refer case of *All India Judges' Association & Ors. v. Union of India & Ors.*, reported in AIR 1993 SC Page 2493) has laid down that the position and status of the Judge cannot be equated or compared with the other Government employees. It has further stated that independence of the judiciary and dignity of the Judges have to be maintained by all concerned. At the same time, the Supreme Court, in its another judgment [Refer case of *All India Judges' Association v. Union of India & Ors.*, reported in AIR 1992 State Commission Page (65), has laid down as to how Presiding Officers exercising judicial authority should conduct and before concluding we quote the same as it appears in para 58 of the said judgment : "58. THE conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity."

Now hereinbelow, we proceed to outline certain directions/guidelines which the Presiding Officers of the Consumer Disputes Redressal Forum would bear in mind and follow while discharging their functions.

(1) Reception of complaints, scrutiny, issuance of initial process to O.Ps. : (i) At the inception itself, the complaints filed and received by the Forum should be carefully scrutinized to ascertain maintainability, territorial, pecuniary jurisdiction/limitation, etc. (ii) It should also be ensured whether full and complete descriptions and addresses of the parties furnished/mentioned or not ? (iii) It should also be ascertained whether the complaint sets out a specific case. The directions are relevant in the context of provisions of Sections 12 and 13 of the Consumer Protection Act, 1986. (iv) Steps should be taken for the issuance of the process of the Forum to the O.Ps. promptly and without any delay. (v) Assistance should be extended to the parties appearing in person in filing as also further processing of the complaints in a proper manner. (vi) The President of the District Forum should specially ensure that concerned staff extends all required assistance to such parties. (2). (a) Maintenance of records : The Forums should ensure to maintain year-wise records in the form of a Register for complaints/applications noting particulars such as- (i) Serial Number, Complaint/Application Number. (ii) Name of the Parties and their Advocates (if any) in brief. (iii) Date of filing. (iv) Date of disposal. (v) Result : Whether claim allowed or dismissed/rejected. (vi) Date of supplying order.

(b) Documents/Exhibits, etc. : When the parties tender documents, the same should be received alongwith list of documents containing brief description of the documents and the party from which such documents are tendered. If the documents contain files or loose papers then it should be ensured that the same are received after indexing and proper pagination. This should be scrupulously followed since the Commission is receiving complaints about missing of documents. The documents produced/tendered by the parties should be given Numbers for identification, such as, in case of complaint's document, it be indicated as C-1, C-2 and so on and accordingly recited and described in the order.

(c) Preservation of records : It is necessary for every Forum to arrange in most systematic manner and maintain Forum Record in proceedings before it, as far as possible, as done in the Court proceedings, that is- (i) Part I should contain original complaint, order/Roznama sheets and affidavits, oral evidence and documents or copies of documents of the complaint. (ii) Part-II should contain written statements/affidavits and evidence and documents of O.Ps. (iii) Part-III should contain other miscellaneous papers in the proceedings. (iv) It is necessary to do the indexing and pagination of Part-I and Part-II in chronological order to be placed at the beginning of each part. (v) Each part should be properly stitched/tagged. (vi) The above arrangement of record should be followed strictly when required to be sent to the National/State Commission in Appeals.

(3) (a) Hearing of the complaints/applications by the Forums : (i) The Forum

should ensure to dispose of the matters expeditiously as required under the Consumer Protection Act, 1986 to obviate any inconvenience and hardship to the parties approaching the Forum and, importantly, undue delay. (ii) Unjustified and frequent adjournments should be discouraged. (iii) Before taking up for an inquiry, it should be ascertained whether all the concerned parties have been duly served with Forum notices or not ? The Forum should satisfy about the proof of service. (b) Pronouncement of Orders : (i) As far as possible, the order should be pronounced soon after the completion of the submissions of the parties preferably in the presence of parties and their Advocates. (ii) In case the order is required to be deferred and reserved for any reason, the adjourned date of the order should also be informed to the concerned parties. (iii) Efforts should be made to furnish certified copies of the orders to the parties on proper identification and their acknowledgements should be obtained. (iv) In case orders are transmitted through post then steps should be taken to dispatch the same at the proper addresses and postal certificates should be preserved. (v) The order, as statute mandates, has necessarily to be signed by the President of the Forum and the other Members being associated with the hearing of the matter. This should be scrupulously followed.

(4) Fixing and regulating sitting timings of the Forums : (i) In view of the grievances made before the High Court as noted in the order of the High Court, dated 14.2.2000, quoted above, the Presidents and Members of the Forums shall ensure and adhere to the strict sitting timings of the Forum and be punctual in that respect. It should be ensured that the parties are not put to any hardship and inconvenience. (5) The President of the District Forum should supervise and oversee that the aforesaid directions/guidelines are properly and diligently followed. (6) Forwarding of copies of judgments. We direct the Registrar of this Commission to forward copies of judgments to (i) The Secretary, Civil Supplies/ Consumer Protection Department, Mantralaya, Mumbai, (ii) The Secretary, Law and Judiciary Department, Mantralaya, Mumbai, (iii) all the Presidents of the District Forums. We also further direct the Presidents of the respective District Forums who should apprise about these directions to Members of the Forum and concerned staff members.

Directions passed.