

(2012) 05 KL CK 0032

In the High Court Of Kerala

Case No : Writ Petition (C) No. 22362 of 2007

Kerala Hotel and Restaurant Association

APPELLANT

Vs

Thrissur District Consumer Disputes Redressal Forum

RESPONDENT

Date of Decision : 29-05-2012

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 13, 14(1), 19A

Citation : (2012) 4 KLJ 833 : (2012) 3 KLT 277

Hon'ble Judges : S. Siri Jagan, J

Bench : Single Bench

Advocate : C.S. Ajith Prakash, T.D. Salim and K. Rajakrishnan, for the Appellant; K.P. Vijayan, V.M. Syamkumar, P.G. Surah, T.R. Rajesh and Government Pleader, for the Respondent

Judgement

S. Siri Jagan

1. The petitioner in this Writ Petition is the Kerala Hotel and Restaurant Association represented by its Secretary. They are aggrieved by the action of the District Consumer Disputes Redressal Forum, Thrissur in entertaining a complaint filed by the Kerala Consumer Education Society, the second respondent herein, complaining about the steep increase in prices of food articles in hotels and restaurants in Kerala and seeking, appropriate directions to the Corporation, the District Collector and the District Supply Officer to regulate the prices of food articles in restaurants and hotels by appropriate classification of the hotels and fixing the prices of food articles to be sold in hotels and restaurants. Their contention is that Ext. P1 complaint is not maintainable at all under the Consumer Protection Act, 1986. They would submit that Ext. P1 complaint is not filed by a consumer or on behalf of a consumer or consumers who only can file an application before the C.D.R.F. Secondly they would contend that the complaint is based on a newspaper report and a complaint based on a newspaper report is not maintainable. Thirdly they would contend that before entertaining a complaint, the CDRF is bound to consider whether the complaint is maintainable

and entertaining of a complaint is not automatic. In support of that contention, they rely upon the decision of this Court in *Fon-ESS India Private Ltd. Vs. State of Kerala and Others*, . They would further contend that the pricing of food articles in hotels and restaurants cannot be regulated by either the Government or the Corporation and it is the absolute discretion of the restaurants to fix the price of food articles sold by them, in the absence of any law authorising them to do so, which has been held so by this Court in *Kerala Hotel and Restaurant Assn., Thrissur and Others Vs. State of Kerala*, . The petitioner therefore seeks the following reliefs:

(i) to call for the records relating to Ext P1 consumer complaint, C.C. No. 156/2007 pending before the Trichur Consumer Dispute Redressal Forum and quash the same declaring that the Forum lacks jurisdiction to decide the issue as the complaint does not fall within the purview of the "complaint" as defined under the Consumer Protection Act.

(ii) to declare that the first respondent Forum cannot entertain and proceed with Exhibit P1 complaint which is in the nature of a public interest litigation representing an unascertainable number of so called consumers who take food from the hotels.

(iii) to declare that the first respondent Forum can function and entertain only within the statutory framed work of the Consumer Protection Act, 1986 and rules framed thereunder and as such no jurisdiction to entertain Exhibit P1 complaint.

None of the respondents have chosen to file any counter affidavit.

2. In the present day context, the complaint filed by the 2nd respondent has great relevance. The price of food articles is rising day-by-day. The common people is unable to cope up with the sudden increase of prices of food articles. The floating population in cities cannot but depend on hotels and restaurants for their food. They are helpless in the matter of pricing of food articles insofar as they are bound to pay whatever the owner of the hotel or restaurant demands as price for the food articles without relevance to the profit margin of the restaurant and hotel however low the production cost may be. In fact whenever the Government revises the pay of employees or the price of petroleum products or raw materials increases, prices of food articles are also revised disproportionately. In such a context, the second respondent should be congratulated in taking up the case of the public.

3. But that does not mean that Ext. P1 complaint is legally maintainable. A complaint before the C.D.R.F. can be filed only in accordance with the Consumer Protection Act. Section 12 of the Consumer Protection Act, 1986 lays down the manner in which a complaint shall be made. The said Section reads as follows:

12. Manner in which complaint shall be made.-- (1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by -

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;

(b) any recognised consumer association whether the consumer to whom the goods sold or delivered or agreed to be sold or delivered or service provided or agreed to be provided is a member of such association or not;

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of all consumers so interested; or

(d) the Central Government or the State Government, as the case may be, either in its individual capacity or as a representative of interests of the consumers in general.

(2) Every complaint filed under sub-section (1) shall be accompanied with such amount of fee and payable in such manner as may be prescribed.

(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act:

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other Court or Tribunal or any authority set up by or under any other law for the time being in force.

Explanation: For the purposes of this section, "recognised consumer association" means any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956) or any other law for the time being in force.

Going by the same, a complaint can be filed only by a consumer or a recognized consumer association on behalf of a member of such association or one or more consumers where there are numerous consumers having the same interest for the benefit of consumers so interested with the permission of the District Forum or by the Central or the State Government.

4. The complainant in Ext. P1 complaint is the Kerala State Education Society. That complainant may be a consumer association. But a consumer association cannot in the public interest file a complaint before the Forum unless the same is on behalf of a member of such association. Ext. P1 is not drafted as a complaint on behalf of a member of the 2nd respondent Consumer Association. That being so, prima facie Ext. P1 complaint is not maintainable.

5. Further the Forum can grant only the specific reliefs enumerated in S. 14(1) of the Act and not a sweeping general relief or direction. S. 14(1) reads thus:

14. Finding of the District Forum.-- (1) If, after the proceeding conducted under S. 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

(a) to remove the defect pointed out by the appropriate laboratory from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit;

(e) to remove the defects in goods or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in nature;

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilised in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

6. In Ext. P1 complaint, the reliefs prayed for is as follows:

Going by S. 14(1), clearly the reliefs prayed for are not those which the Forum can grant.

7. In Fon-Ess India (P) Ltd's case a learned Judge of this Court has held as follows in paragraph 6:

6. S. 19A provides for the procedure in the matter of disposal of appeals which reads as follows:--

19A. Hearing of appeal. An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission.

It is clear from the Scheme that the legislature has intended expeditious disposal of the disputes. Even otherwise the very object of establishment of Tribunals or such alternate redressal forums is expeditious settlement of disputes. The Consumer Protection Act, 1986 is a piece of legislation where the procedure with regard to expeditious disposal of the cases and appeals has been meticulously prescribed. Not only that endeavour should be made to dispose of cases in time, in the unlikely event of the delay beyond the prescribed period the District Forum or the State/National Commission, as the case may be, both in the case of disputes and appeals are to state reasons for the delay, if any, in keeping the schedule. Even for the adjournment reasons are to be recorded in the proceedings. Provision for costs to the opposite party is also made in the Act. In the above circumstances this Writ Petition is disposed of as follows:-

(1) Admission of a complaint before the District Forum or the State/National Commission and appeal before the Commission under the Consumer Protection Act, 1986 is not automatic. The Forum and the Commissions have to consider whether the complaint/appeal requires admission, as to whether it is frivolous or vexatious. The maintainability has to be considered before admitting the complaint/appeal and issuing notice to the opposite party.

(2) The District Forum or the Commissions shall not reject a complaint/appeal unless an opportunity of being heard has been given to the complainant/appellant.

(3) A decision as to the admissibility of the complaint/appeal shall be taken by the Forum/Commission ordinarily within 21 days of the filing.

(4) Every complaint before the District Forum/State Commission shall be decided within three months from the date of receipt of notice by the opposite party where the complaint does not require analysis or testing of commodities and within five months if the same requires analysis or testing of commodities.

(5) The District Forum and State Commission in the unlikely event of delay beyond the period specified above shall record in writing the reasons for the delay.

(6) No adjournment shall ordinarily be granted by the District Forum or the State Commission unless there is sufficient cause. In case the matter is adjourned sufficient cause for the adjournment is to be reflected in the order of adjournment.

(7) The Forum and the Commission should also consider the entitlement of costs to the opposite party on any adjournment.

(8) The State Commission shall ordinarily dispose of the appeal within 90 days of its admission.

(9) The Commission shall not ordinarily grant any adjournment in the matter of hearing of appeals unless there is sufficient cause. That sufficient cause should be shown in the order of adjournment. The entitlement of the opposite party for costs should also be considered by the Commission. In the unlikely event of an appeal being disposed of after three months of the admission, the State Commission shall record the reasons for the delay in disposing the appeal.

8. In this case, the Forum has not taken the trouble of first examining whether the complaint is maintainable before admitting the same and issuing notice to the opposite parties and also whether the reliefs are those which the Forum is competent to grant. Instead they have simply issued notice to the respondent in the complaint as if whenever a complaint is filed they are bound to issue notice to the respondent automatically, without complying with the direction in the judgment of this Court.

9. Even apart from that, in the decision in Kerala Hotel and Restaurant Association's case a learned Judge of this Court has categorically held that the State has no power to impose restrictions on the price of food articles sold by hotels. In paragraph 5, 6, 7 & 8 of that judgment held as follows:

5. In spite of the above submissions, I find it difficult to accept the stand that any of these are enabling provisions for imposing restriction in the matter of price of food articles sold by an eating house. It may be in public interest to restrict the price, but such powers, if at all, are circumscribed by the requirement to recognise the fundamental rights of a person to carry on an industry or business to his liking. The District Authorities might be getting complaints about the prices levied by the establishments, but only in authorised matters, it may be possible for them to exert themselves. The issue is far too complex for them to issue edicts. There is no case that the licences issued to the petitioners by the Local Authority contain a stipulation that they would be subjected to such restrictions. The orders referred to also do not authorise the Administration to impose upper limit in the price. What is contemplated there is only publication of price. The respondents have also no case that there is any supply of rationed

articles at concessional prices to the hotel owners and they are reaping profits forfeiting the trust or violating any undertakings given by them.

6. Price of a food item may depend on various factors. To cite a few, the investment that is there for starting up or running the same will be one. The expenditure that is incurred for running an establishment vary from place to place and locality. The quality of food stuff also will necessarily require the caterer to fix a price, if he is keen to make a profit. Above all, there is no compulsion of whatever nature for a person to go and take food from any public eating house, which is not to his taste. A person can avoid a hotel which charges higher prices, if price alone is his concern.

7. In the matter of services, unless there is law in operation (e.g. bus fare, taxi fare etc.), it may be difficult for the Administration to prescribe prices, be it personal service or professional service. Imagine the situation where the District Administration is of opinion that fee charged by a hospital or a chartered accountant or even a lawyer is excessive. The theory of demand and supply is a time tested concept. It may not be possible for them to suggest a control in such areas, unless the State applies its mind and bring in legislation, which authorizes restriction, thereby fettering the freedom of an entrepreneur. Therefore, the hotelier will have the absolute discretion as of now at least to prescribe the price of his ghee roast, parotta or pulavu, if the business is not situated in restricted places or areas.

8. I find that the petitioners are justified in contending that Ext. P3 and similar orders issued by the District Supply Officer/District Administration suffer from want of jurisdiction. Consequently, impugned orders in these Original Petitions stand set aside.

The ratio of that judgment squarely applies to the facts of the present case. Therefore, there cannot be two views on the question as to the maintainability of Ext. P1 complaint. Ext. P1 complaint is not maintainable under the Consumer Protection Act. Accordingly, Ext. P1 complaint is quashed. The 1st respondent-Thrissur District Consumer Disputes Redressal Forum is directed not to proceed further with Ext. P1 complaint and to reduce the same from the files. this Court is of opinion that, in the present day context it is only desirable that there should be some law which would save the common man from unreasonable and arbitrary pricing of food articles by hotels and restaurants in the State by establishing a machinery for regulating prices of food articles to ensure that the consumers are unjustly fleeced. Of course that can only be by enacting appropriate legislation by the legislature if such legislation is permissible under the Constitution. Those are all matters which should gain the attention of the Government and the legislature. In this connection I may also note that the preparation of food in many hotels and restaurants are in unclean and unhygienic surroundings. Whenever officers of the Public Health Department or Local Authority seizes food which are unfit for consumption the media who report those incidents zealously guards the names of the hotels and restaurants from

where the seizure is made denying the public the right to know the culprits. The officers also do not publish the names of the culprits to enable the public to avoid such establishments. The media thus abdicates their duty to the public. With a pious hope that the powers that be would take into account the above opinions of this Court in that regard and take appropriate action in accordance with law to at least minimise the miseries of the common man who depend on hotels and restaurants for his necessities for food, I dispose of this Writ Petition as above.