
(1993) 10 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 258 of 1991

Kerala Public Service Commission and Another	APPELLANT
Vs	
Consumer Disputes Redressal forum and Others	RESPONDENT

Date of Decision : 15-10-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 315, 316, 317, 318
Consumer Protection Act, 1986 — Section 2

Citation : (1993) 10 KL CK 0014

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

Bench : Division Bench

Advocate : T.P. Ketu Nambiar and P.C. Sasidharan, for the Appellant; Jose K. Kochupappu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Jagannadha Rao, C.J.—This writ petition is filed by the Kerala Public Service Commission and its District Officer, Palghat questioning the notice issued by the Consumer Disputes Redressal Forum, Ernakulam upon an application filed before it by the second Respondent, one P.P. Raveendran. The State of Kerala is impleaded as third Respondent.

2. The second Respondent, the said P.P. Raveendran filed a complaint before the above said Consumer Court alleging that he was an applicant for the post of peon in the Panchayat Common Service, Palghat District in response to a notification issued by the Service Commission and that selection to the post was finalised by a written test followed by interview. Second Respondent-complainant was called for interview and his name was included at rank No. 5 in the supplimentary list for Ezhavas. The short list of candidates eligible to be called for interview on the basis of their success in the written examination was published on 3rd April 1990 and the second Respondents name was included therein. The ranked list for the post was finalised and brought into force with effect from 12th September 1990. According to the above said complainant, his name should have been included in

the main ranked list itself and not in the supplementary list. He felt that a re-checking of the marks would reveal that he should have been included in the main ranked list. Therefore, he applied to the Commission by paying Rs. 10 for re-checking. This he did on 26th September 1990 5 months and 22 days after the publication of the short list and 14 days after the publication of the ranked list. The said application was rejected by the Service Commission on the ground that the complainant should have been filed an application for re-checking within 30 days of the publication of the short list of candidates eligible to be called for interview. Thereafter, the complainant again moved the District Officer saying that he was under the impression that the period prescribed was one month after the publication of the short list or two months after the publication of the ranked list. This assumption on the part of the second Respondent is, according to the Service Commission, factually wrong. In cases where short list is published, the period is 30 days from the publication of the short list. That is the only period during which application for re-checking could be filed. The period fixed with reference to the ranked list applies only to cases where the ranked list is prepared on the basis of written test alone without interview. Therefore, the second Respondent was given a further reply by the District Officer by letter dated 16th October 1990. Thereafter, the second Respondent filed a complaint before the Consumer Court on 20th October 1990 claiming to be a consumer who has hired the services of the Service Commission. The Consumer Court issued notice to the Service Commission. Questioning the said notice this writ petition is filed by the Service Commission on 7th January 1991 and stay was granted. Thereafter the matter was referred to a Division Bench for consideration. In this matter, the second Respondent has been served, but has not filed any counter affidavit nor has he appeared through counsel. We are, therefore, proceeding to decide the matter on merits.

3. At the outset, we have to mention that normally this Court is not entertaining writ petitions wherein notice of the Consumer Courts or preliminary orders of the Consumer Courts are questioned. In an elaborate judgment in *Georgekutty v. State of Kerala* 1993 (2) K.L.J. 644 we stated that inasmuch as the hierarchy of appellate authorities have been created under the Consumer Protection Act, 1986, this Court will not entertain a parallel litigation on the question of jurisdiction of Consumer Courts. The said Courts are competent to decide the questions of jurisdiction. Having said so, we observed that, however, in very rare cases this Court could still interfere. In the above said judgment we mentioned in paragraph 9 as follows:

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 a rare exception and not the rule.

In so doing, we followed an earlier decision of the Andhra Pradesh High Court in *Tulasi Enterprises Vs. Andhra Pradesh State Consumer Commission*, Hyderabad

and Another, and of the Delhi High Court in *M/s Ansal Properties and Industries (P) Ltd. v. Shri Chander J. Bhan Kohli* 1991 (1) C.P. 679 and we dissented from the decision of the Calcutta High Court in *The Calcutta Metropolitan Development Authority Vs. Union of India and others*, . Recently, we have disposed of a batch relating to doctors in hospitals in O.P. 869 of 1991 and connected cases on 6th October 1991 wherein we refused to interfere. In yet another batch filed by the Central Board of Secondary Education in O.P. 4847 of 1991 and connected cases, we again refused to interfere.

4. The first question before us is whether the case on hand wherein the Kerala Public Service Commission and its District Officer, who were the Respondents before the Consumer Court (writ Petitioners before us) can be treated as an exceptional case falling within the rare exceptions mentioned in our above said judgments. Having heard learned Counsel for the Service Commission, we have come to the conclusion that this case must be treated as falling within the rare exceptions.

5. Article 315 of the Constitution of India provides that there shall be a Public Service Commission for the Union and a Public Service Commission for each State. The said Article and Articles 316 and 317 provide for the method of appointment and removal of members of the Service Commission, Article 318 enables the President of India or the Governor of the States to make regulations as to the conditions of service of members and staff of the Service Commission. Article 319 deals with the prohibition as to the holding of offices by members of Commission on ceasing to be such members. Then comes Article 320 which deals with the functions of the Public Service Commissions. The said Article provides that it shall be the duty of the Union and the State Public Service Commissions to conduct examinations for appointments to the services of the Union and the services of the State respectively. Further, the Union Service Commission or the State Service Commission, as the case may be, shall have to be consulted on all matters relating to method of recruitment to civil services and civil posts and in the matter of principles to be followed in making appointments to civil services and posts and also in making promotions and transfers from one service to another as also on the question of suitability of candidates for such appointments, promotions or transfers. The Service Commissions will have to be consulted in regard to all disciplinary matters affecting a person serving under the Government of India or the Government of a State in a civil capacity etc. The regulations made by the President or the Governor, as the case may be, will have to be placed before the House of Parliament or the House of concerned Legislature as stated in Article 320. Article 321 deals with the power to extend functions of Public Service Commissions. Article 322 provides for expenses of Public Service Commissions. It states that the expenses of the Union or a State Service Commission, including any salaries, allowances and pensions payable to the members of staff shall be charged on the Consolidated Fund of India or as the case may be Consolidated Fund of the State. It is then provided in Article 323 that the reports of the Service Commissions shall be submitted to the

President of India or to the Governor, as the case may be.

6. It is, therefore, clear that recruitment to the Union and State services made by the various Service Commissions are based on the mandate in the Constitution of India, in regard to which no other authority can recruit to any civil service or civil post under the Union of India or under any State. The Constitution gives such a special status to the Service Commissions. As pointed out by the Calcutta High Court in *Mira Chatterjee v. Public Service Commission* AIR 1952 Cal. 435 "Public Service Commission is a constitutional body charged with certain constitutional rights, duties and obligations. In our view, it was never intended by the Parliament to treat Service Commissions as rendering any service within the meaning of Section 2(c) of Consumer Protection Act. Nor can we say that the second Respondent herein who sought recruitment through the Service Commission as a peon is in the position of a "consumer" within the meaning of the said word in Section 2(d) of the above said Act. Under Sub-clause (ii) of Section 2(d), second Respondent can be a consumer only if he can be said to have "hired" any service of the Service Commission for a consideration. (We are here concerned with the above said definition before the amendment by the Ordinance of 1993). Emphasis here should be made on the word "hire". In our view," even though the second Respondent had paid Rs. 10 to the Service Commission for re-checking of the marks, he cannot be said to have hired the services of the Service Commission. As already stated, the Service Commission is exercising functions laid down in the various regulations made according to the provisions of the Constitution. It derives the said obligations, duties, responsibilities and rights to the said regulations made under the Constitution. We are, therefore, unable to hold that services, if any, rendered by it can be said to be hired by the candidate. As already stated for recruitment to any posts coming within the purview of the Service Commission, no other body or authority in the State can recruit any person and it is the exclusive prerogative of the Service Commission to deal with the said recruitment. It cannot be said that its services have been "hired" by the candidate.

7. For the aforesaid reasons, we hold that this is an exceptional case in which this Court should interfere, in exercise of its discretion, under Article 226 of the Constitution of India. The notice issued by the Consumer Court-first Respondent is, therefore, quashed and it is directed to drop all proceedings pursuant to the complaint filed by the second Respondent herein (Petitioner before it).

The writ petition is accordingly allowed.