
(2001) 10 KL CK 0082
In the High Court Of Kerala
Case No : O.P. 19627 of 2000

Malabar Palace

APPELLANT

Vs

The Kerala State Consumer Disputes Redressal Commission
and Others

RESPONDENT

Date of Decision : 09-10-2001

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 11, 12, 13, 14
Consumer Protection Rules, 1987 — Rule 12, 15A, 4

Citation : (2001) 10 KL CK 0082

Hon'ble Judges : G. Sivarajan, J

Bench : Single Bench

Advocate : K.T. Sankaran, for the Appellant; T.G. Rajendran, for the Respondent

Final Decision : Allowed

Judgement

G. Sivarajan, J.—The matter arises under the Consumer Protection Act, 1986 (hereinafter referred to as "the Act"). The question arising for consideration is as to whether the State Commission functioning under the Act has got the power to transfer a case pending before one District Forum to another District Forum within the State.

2. The Petitioner herein is the Respondent in O.P. No. 612 of 1999 filed by the 3rd Respondent herein before the second Respondent. Alleging that the President of the second Respondent Forum is prejudiced against the Petitioner it filed transfer O.P. No. 2 of 2000 before the first Respondent praying for transfer of O.P. No. 612 of 1999 pending before the second Respondent to any other District Forum in the State of Kerala. The State Commission dismissed the said petition on the ground that the Act does not contain any provision conferring jurisdiction on the State Commission for the transfer of a complaint from one District Forum to another. The Petitioner challenges the Order passed by the State Commission. The Petitioner has sought for a declaration that the State Commission established u/s 9(b) of the Act has the jurisdiction to transfer a complaint from a Consumer

Disputes Redressal Forum (District Forum) to another District Forum. The Petitioner has also sought for a direction to the first Respondent to transfer O.P. No. 612 of 1999 pending before the second Respondent to any other District Forum in the State of Kerala.

3. Sri K.T. Sankaran, learned Counsel for the Petitioner submitted that the State Commission has got administrative control over all the District Forums within its jurisdiction in regard to the matters specified in Section 24B which includes the power to transfer a case in appropriate cases. He took me to the relevant provisions of the Act and also the decisions of this Court in Bhargavi Amma v. Ouseph Varkey 1967 KLT 317, Gopalan Bhavani v. Raghavan Aravindakshan and in Cheru Ouseph v. Kunjipathumma 1981 KLT 495 in support of the above. The Counsel submits that though the provisions of the CPC in regard to the transfer of cases are not strictly applicable to proceedings under the Act in the absence of any prohibition in the Act the power to transfer cases in appropriate circumstances, must be deemed to inhere in the State Commission. He also submitted that such a power is absolutely necessary to ensure justice to the parties.

4. Learned Counsel for the 3rd Respondent submitted that the reason stated by the Petitioner for getting O.P. No. 61.2/1999 pending before the District Forum, Kozhikode transferred to any other District Forum is only flimsy and that there is absolutely no justification for the Petitioner to seek such a transfer. He also submits that the Forums constituted under the Act have to act strictly within the powers conferred to them under the said Act itself. The counsel further submitted that the first Respondent Commission was fully justified in rejecting the application submitted by the Petitioner on the ground that the Commission has no power to transfer a case pending before one District Forum to another.

5. The Act, as could be seen from the preamble itself, is enacted to provide for better protection of the interest of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. Section 9 of the Act provides for establishment of Consumer Disputes Redressal Agencies. They are (1) A Consumer Disputes Redressal Forum known as "District Forum" established by the State Government in each District by notification, (2) A Consumer Disputes Redressal Commission known as "State Commission" and (3) A National Consumer Disputes Redressal Commission established by the Central Government by notification.--Section 10 of the Act provides the composition of the District Forum. It consists of a President and two other members. The President shall be a person, who is, or has been, or is qualified to be a District Judge. The members shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. One of the members shall be a woman. u/s 11 the District. Forum has jurisdiction to entertain complaints where the

value of the goods or services and the compensation, if any, claimed does not exceed rupees five lakhs and a complaint shall be instituted in a District Forum within the local limits of whose jurisdiction; (1) the opposite party or each of the opposite parties at the time of the institution of the complaint actually and voluntarily resides or carries on business or has a branch office or personally works for gain or (2) or the cause of action, wholly or in part arises. Section 12 provides for the manner in which complaint shall be made and Section 13 provides for the procedure to be followed on receipt of such a complaint. Section 14 provides for the finding of the District Forum. Section 15 deals with appeal. Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within the time specified and in the manner prescribed therefor. Section 16 deals with the composition of State Commission as per which 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 its President; two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman. Section 17 deals with the jurisdiction of the State Commission. The State Commission shall have jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees five lakhs but does not exceed rupees twenty lakhs and appeals against the orders of any District Forum within the State and to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity. Section 18 deals with the procedure applicable to State Commission. It is stated that the provisions of Sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission. Section 24 deals with finality of orders and Section 24A deals with limitation period. Section 24B confers administrative control. Section 24B(2) confers administrative control on the State Commission over all the District Forum within its jurisdiction in all matters referred to in Sub-section (1). Section 30 deals with the power to make rules. The Central Government as well as the State Government are given power to make rules for carrying out the provisions contained in the Act.

6. There is no specific provision in the Act conferring power on the State Commission to transfer a complaint instituted in one District Forum to another Jurisdiction of the State Commission, as already noted, is specified in Section 17 of the Act which confers original, appellate and revisional jurisdiction on the State Commission. Section 24B(2) of the Act, as already noted, confers the State

Commission with administrative control over all the District Forums within its jurisdiction in all matters referred to in Sub-section (1). Clause (iii) of Sub-section (1) of Section 24B gives power to the State Commission to generally oversee the functioning of the District Forum to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

7. Let me now consider the case put forward by the Petitioner before the State Commission in the Transfer O.P. The Petitioner alleged that the President of the District Forum, before starting cross-examination of the complainant, made remarks which exhibited a hostile and a pre-judicial attitude towards the Petitioner. It is the case of the Petitioner that the President is biased and that the Petitioner would not get justice from the President. The State Commission did not go into the merits of the said allegations as according to them the Act does not confer any jurisdiction for transfer of a complaint from one District Forum to another. I also do not propose to go into the merits of the allegation in this proceedings.

8. Let us now take a case where one of the members constituting the Forum-say the President has a disability, be that the complainant or the opposite party in a petition filed before the forum is closely related or enimically disposed. The District Forum as per Section 10 of the Act consists of the President and two members. It is this Forum which has to try and decide the complaint as provided under Sections 13 and 14 of the Act. Here it must be noted that there is no provision in the Act or the rules regarding sittings of the Forum, i.e. as to whether the sittings of the District Forum can be conducted with one or two members alone. The indication is that the complaint has to be decided by all the members constituting the Forum for, the Forum consists of a legally qualified person and two experts having experience in general subjects. Rule 15A of the Consumer Protection Rules, 1987, specifically mentions that every proceeding of the National Commission shall be conducted by the President (or the seniormost member authorised under Rule 12) and at least two members thereof sitting together. Rule 4 of the Consumer Protection (Kerala) Rules which provides for place of sitting and other matters relating to District Forum only states that sitting of the District Forum, as and when necessary, shall be convened by the President and that no act or proceeding of the District Forum shall be invalid by reason only of the existence of any vacancy among its members or any defect in its Constitution. From the above it is clear that the sitting of the District Forum has to be convened by the President and with the President only.

9. Thus in a case where the President of the District Forum is disabled from hearing a case what would be the position. Can he be compelled to hear the complaint? If he is allowed to decide the case, will it not be against the principles of natural justice? The larger principle that no man must be a judge in his own cause or that there should be total absence of any bias in the quasi-judicial or even the administrative field should not be lost sight of. The CPC provides for

transfer of a suit in similar circumstances from one court to another by the District Court and by the High Court depending on the territorial jurisdiction. The CPC as such is not applicable to the proceedings before the District Forum or before the State Commission. Only certain provisions in the CPC are made applicable (Sections 13 and 18 of the Act). Of course it must be noted that there is no specific prohibition in the Act in adopting procedure similar to that provided in the CPC in appropriate circumstances. It is necessary in this context to keep in mind certain principles regarding interpretation of the provisions of a statute.

10. It is true that the intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. *Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another*, . It is also settled as held by the Privy Council in *Crawford v. Spooner* (1846) 6 Moore P.C. 1, pp.8 and 869 "we cannot aid the Legislature's defective phrasing of an Act, we cannot add or mend and, by construction make up deficiencies which are left there". See *P.K. Unni Vs. Nirmala Industries and others* [OVERRULED], . It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. Similarly, a matter which should have been, but has not been provided for in a statute cannot be supplied by courts, as to do so will be legislation and not construction. However, there is no presumption that a *casus omissus* exists and language permitting the court should avoid creating a *casus omissus* when there is really none. Regarding *casus omissus* *Delvin, L.J. in Gladstone v. Bower* (1990) 3 All E.R. 353 (C.A.) observed thus:

The court will always allow the intention of a statute to override the defects of wording but the court's ability to do so is limited by recognised canons of interpretation. The Court may, for example, prefer an alternative construction which is less well fitted to the words but better fitted to the intention of the Act. But here, there is no alternative construction; it is simply a case of something being overlooked. We cannot legislate for *casus omissus*. I may be sure in this case that I know exactly what Parliament would do if it perceived a gap. But, if this rule were to be relaxed, sooner or later the court would be saying what Parliament meant and might get it wrong and thus usurp the law-making function.

It is also relevant to note certain observations of Denning, L.J. which reads as follows:

When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of parliament and then he must supplement the written words so as to give "force and life" to the intention of the Legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven but he can and should iron out the creases. (*Seaford Court in Estates Ltd. v.*

Asher (1949) 2 All E.R. 155, P. 164(CA).

This observation of Denning, L.J. has been cited with approval by the Supreme Court in *State of Bihar and others, etc. etc. Vs. Bihar Distillery Ltd., etc.,* . However, it must be noted that the aforesaid observations of Lord Denning was disapproved by the House of Lords. The Supreme Court also in *Petron Engineering Construction Pvt. Ltd. and Another Vs. Central Board of Direct Taxes and Others*, and 509 held that if a matter, provision for which may have been desirable, has not been really provided for by the Legislature, the omission cannot be called a defect of the nature which can be cured or supplied by recourse to the mode of construction advocated by Denning, L.J.

11. I will keep the aforesaid legal principles in mind while interpreting the provisions of Sections 17 and 24B of the Act. The situation requires a close look to the provisions of Section 17 and 24B(1)(iii) and (2) of the Act. Section 17 reads as follows:

17. Jurisdiction of the State Commission. - Subject to the other provisions of this Act, the State Commission shall have jurisdiction;

(a) to entertain

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees five lakhs, but does not exceed rupees twenty lakhs, and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity.

Section 24B(1)(iii) and (2) reads as follows:

24 B. Administrative Control. - (1) The National Commission shall have administrative control over all the State Commissions in the following matter namely:

(i) *** **

(ii) *** **

(iii) generally overseeing the functioning of the State Commission or the District Forum to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Forum within its jurisdiction in all matters referred to in Sub-section (1).

Section 17(b) requires consideration. It gives the power to the State Commission to call for the records and pass appropriate orders in any consumer dispute which is pending before any District Forum within the State (omitted irrelevant portions) where it appears to the State Commission that the District Forum has exercised a jurisdiction not vested in it by law, or has acted in exercise of its jurisdiction illegally or with material irregularity. If the President of the District Forum who cannot hear a complaint for the reason which I have already stated as an illustration proceeds with the complaint and takes a decision will it not be a case of exercise of a jurisdiction not vested in it by law or at any rate a case of acting illegally in exercise of its jurisdiction? According to me such a case falls under the latter if not under both the clauses. Deciding a case in gross violation of the principles of natural justice would affect the very jurisdiction of a quasi-judicial tribunal like the District Forum or at any rate it would amount to an illegality. The expressions "pass appropriate orders" used in Section 17(b) of the Act will take in the power to transfer such a case to another District Forum. In this view of the matter the State Commission has got the power u/s 17(b) of the Act to call for the records of a case pending before the District Forum and to pass orders transferring the same to another Forum within its jurisdiction provided the circumstances warrants.

12. Section 24B(2) of the Act also confers administrative control over District Forum in respect of matters specified under Sub-section (1) to the State Commission. Clause (iii) of Sub-section (1) confers the State Commission the power of generally overseeing the functioning of the District Forum to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial powers. The object and purpose of the Act as already stated is to provide for better protection of the interest of the consumers. If a biased member decides a complaint filed by a consumer will it subserve the better protection of the interest of the consumer? It is doubtful. The transferring of a complaint from one District Forum to another District Forum does not in any manner interfere with the quasi-judicial freedom of the District Forum. On the other hand it will only advance the cause of justice and uphold the prestige of the Forum in a given case. Thus the State Commission in exercise of the powers u/s 24B(2) read with Sub-sectional) (1)(iii) thereof can also transfer a case from one District Forum to another District Forum within its jurisdiction of course subject to the convenience of the parties provided the circumstances justify such transfer.

13. In this view of the matter I do not think it necessary to deal with the decisions of this Court rendered in the context of the provisions of the Kerala Land Reforms Act [1967 KLT 317, 1989 (2) KLT 118 and 1981 KLT 495] in regard to the power of the Land Tribunal to restore an O.A. dismissed for default. Suffice to say that this Court held that though there is no specific provision for dismissal of an O.A. for default and for restoration of the O.A. dismissed for default both the said powers must be deemed to inhere in the Land Tribunal as incidental and ancillary to the power to dispose of a case. The said decision as such has no

application on the question involved in the present case.

14. I accordingly hold that the first Respondent - State Commission has got the power to entertain the petition for transfer O.P. No. 2 of 2000 pending before it under the provisions of Section 17(b) and/or Section 24B(2) read with Sub-section (1)(iii) thereof of the Act. Since the first Respondent has dismissed the said petition on the ground that it has no jurisdiction to entertain the said petition I quash Ext. P-2 order passed by the first Respondent and direct the said Respondent to consider the said petition afresh and pass appropriate orders on merits expeditiously.

The Original Petition is allowed as above.