

(1999) 03 OHC CK 0012

In the Orissa High Court

Case No : Original Jurdn. Case No. 673 of 1995

Orissa Consumers' Association

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 22-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Ori 237 : (1999) 2 OLR 8

Hon'ble Judges : Susanta Chatterji, Acting C.J.; D.M. Patnaik, J

Bench : Division Bench

Advocate : K.N. Jena, for the Appellant; B. Ray and A. Mohapatra, Additional Government Advocate, for the Respondent

Judgement

Susanta Chatterji, A.C.J.

1. The Orissa Consumers' Association has filed the present writ application seeking relief as under;--

"It is, therefore, prayed that this Hon'ble Court may be graciously pleased to issue Writ/Writs/ Order under Articles 226 and 227 of the Constitution and more particularly to issue-

1. Writ of Mandamus directing the State Government to constitute full time District Forums in all the districts of the State within specified time;

2. A writ of Mandamus directing opp. party No. 1 to provide necessary accommodation, staff, infrastructure facilities and funds for its effective and regular functioning of the forums in the State;

3. Writ of Mandamus directing the opp. party No. 1 to set up a consumer welfare fund for the implementation of the provisions of the Act;

4. Writ of Mandamus directing the opp. parties to furnish all information to this Hon'ble Court as regards the functioning of the District Forums and State Commission before the final hearing of the case so that this Hon'ble Court may

give effective direction to the opposite parties for their functioning;

5. Writ of Mandamus directing the opp. parties District Forums to hold their sittings regularly and punctually and submit monthly return to the State Commission about the disposal and functioning of the District Forum;

6. Writ of Mandamus directing the State and National Commissions to issue necessary instructions regarding adoption of uniform procedure and proper functioning of District Forums within a specified time as empowered u/s 24B of the Act to carry out object and purpose of the Act; and

7. To allow this application with costs and pass any other order or orders as this Hon"ble Court deems fit and proper."

2. This is a comprehensive writ petition seeking direction of this Court to provide a proper infrastructure and to release funds to implement the entire scheme for success of the Consumers Disputes Redressal Forums.

3. It is alleged that opposite party Nos. 1 and 2, respectively the State of Orissa represented through its Secretary in the Food and Civil Supplies Department, and the Director of Consumers Affairs in the Department of Food, Supplies and Consumers' Welfare of the Government of Orissa, have not properly discharged their statutory duties and obligations to fulfil the object of the Consumers' Protection Act. It is placed on record that in spite of specific direction of this Court in O. J. C. No. 9754 of 1993 disposed of on 6-7-94 and the decision of the Hon"ble Supreme Court dated 8-9-93, reported in Common Cause, A Registered Society With Consumer Education and Research Society Vs. Union of India and others, , the opposite parties have not taken proper steps to comply with the directions as indicated therein and are alleged to have taken up the matter in a very casual manner and have wilfully disobeyed the directions.

4. It is brought to the notice of the Court that Section 10 of the Consumer Protection Act, 1986 empowers the State Government to appoint the Members of the District Forums on the recommendation of the Selection Committee and it is highlighted that seven of the District Forums have not been properly constituted and some posts of Presidents of District Forums are lying vacant not being filled-up.

5. There is strong allegation as to lack of proper accommodation for the functioning of the District Forums and the State Commission. Adequate space is not available and in fact some of the District Forums are functioning symbolically in one room. It is highlighted that the Central Government has released funds since 1995-96 for construction of buildings for the District Forums and State Commission, but the same are lying unutilised. It is placed on record that about Rs. 140 lakhs is lying unutilised and the State Government is dealing with the matter in a very casual manner.

6. Regard being had to the facts as disclosed in the writ application and the counter affidavit, this Court by order dated 30-10-1996 was of the view that

either the Chief Secretary to the Government or the Secretary-in-charge of Finance Department should personally cause an inspection and file a report for better appreciation and effective adjudication of the matter. Subsequently, by order dated 12-11-98 this Court after hearing the learned counsel for the petitioner and the learned Advocate-General for the State recorded that in order to file a factual report to this Court in compliance with the earlier order, it was difficult on the part of the Secretary, Finance Department to move to different parts of the State and file the report as he was otherwise pre-occupied in view of the Assembly sessions which was to commence then. There was a prayer by the Secretary, Finance Department that for compliance with the Court's order, the Secretary may be permitted to depute a batch of senior officers to inspect all the District Consumer Forums under his direct supervision within the shortest possible time. Appreciating the prayer, this Court permitted the Secretary, Finance Department to take effective steps in consultation with the Secretary in charge of consumer affairs for the State to appoint officers to inspect different District Forums as indicated in the letter No. 46941 dated 10-11-1996 and to file a report within six weeks hence, steps were directed to be taken expeditiously as there was great suffering by the people of Orissa at large.

6A. By order dated 1-5-97 it was recorded that the Inspection Report about the functioning of the District Consumer Disputes Redressal Forums in the State has since been filed pursuant to order dated 12-11-1996. Mr. Jena submitted that a report might be called for from the State Commission for proper appreciation and adjudication.

7. By order dated 5-9-97 this Court having considered the magnitude of the grievances, directed a fresh affidavit to be filed by the Principal Secretary to Government, Finance Department indicating clearly as to release of funds by the Central Government and utilisation of the same district-wise as also the funds released by the State Government and its utilisation district-wise. There was direction to file the affidavit within a specific period.

8. In terms of the order dated 4-2-98, it was also recorded that the President, State Consumer Dispute Redressal Commission had filed a report. An affidavit had also been filed by the Deputy Secretary to Government of Orissa, Finance Department in terms of the earlier order of the Court. Thereafter a lengthy argument was made on behalf of the petitioner and opposite parties 1 and 2. Considering all the aspects and taking note of the allegations and the report filed by the concerned officers of the State Government after visit to different District Forums as also the report of the President, State Consumer Dispute Redressal Commission, Orissa, we find that u/s 24-B of the Act and Rule 6(7) of the State Rules, the State Commission and National Commission have the power to issue instructions regarding adoption of uniform procedure. In absence of such instructions it is alleged that the District Forums are adopting different novel procedures in disposing of matters which cause severe harassment to the parties.

9. On perusal of the report and on appreciation of the averments of the parties

as also in view of the provisions of law as to the statutory duties and functioning of the District Consumer Redressal Forums, we dispose of the writ application with the following directions and observations :--

(i) The State should take a proper decision in the matter within a period of three months of communication of writ to take all effective steps to provide accommodation for the District Consumer Disputes Redressal Forums in the State taking note of the report filed by the President, State Consumer Disputes Redressal Commission and to utilise the Central Government fund released and lying with the State Government. It is placed on record that a sum of Rs. 140 lakhs has since been released by the Central Government which is lying unutilised. The State Government should take all effective steps for building projects to utilise the said sum by framing a proper scheme and implementing the same within one year of communication of writ.

(ii) The State should take all effective steps to appoint supporting staff for proper functioning of the District Consumer Disputes Redressal Forums and also the State Commission as per Rules 4 and 6 of the State Rules. This should also be done within one year of communication of writ.

(iii) The State Commission receives the salary applicable to a Judge of the High Court. There is no reason as to why the District Consumer Disputes Redressal Forums which are manned by retired District Judges should not be paid the salary of a District Judge like that of the State Commission. The State Government may consider this within a period of three months. The State shall take appropriate steps to fix the remuneration of the above forums regard being had to the nature of their duties and the time consumed in performance of such duties.

(iv) A proper Scheme should be framed by the State Government to build right infrastructure taking note of the expenditure on account of service of notices and effective steps should also be taken to complete the ministerial jobs to get the cases heard, adjudicated and disposed of as per the rules and necessary funds be provided for the said purpose.

(v) The communication made by the President of the State Commission should properly be considered and at least six meetings a year should be held between the President of the State Commission, the Chief Secretary of the State and the Finance Secretary for discussing about the difficulties, "if any, in running the Consumer Forums and take all necessary steps in that regard. Such meetings should be arranged as per the convenience of the aforesaid three authorities.

(vi) A comprehensive report as to compliance with these directions should be immediately filed to this Court. Liberty is granted to mention if any eventuality arises.

We make no order as to costs.

D.M. Patnaik, J.

10. I have gone through the succinct leading judgment of my learned brother Chatterji, J. and concur with the same. I agree with the directions given in the judgment to the government. However, considering the nature of the issues involved I feel it appropriate to elaborate the directions issued as mentioned below :

11. On hearing counsel for the parties and on going through the counter-affidavits as well as the report of the Finance Secretary and that of the President of the Orissa State Redressal Consumer Commission, there is no doubt that an unhappy and some how or other a chaotic situation prevails in implementing the provisions of the Act and the Rules. The main reason for such unhappy state of affairs is the defective, cumbersome administrative set up and the manner of working of the whole system.

12. The State Commission under the statute is supposed to be manned by either a sitting or a retired Judge of a High Court. The State Commission is supposed to be in over all charge of the District Forums in the State. The day to day administration of the State Commission assumes great importance not only with regard to the cases pending before it, but the day to day control and administration of the District Consumer Dispute Redressal Forums too. A District Judge of a district is the Head of the Department with all administrative, disciplinary and financial power as per the government prescribed code. When the State Commission is manned by a sitting or a retired Judge of a High Court, there is no reason as to why the State Commission should not be declared as the Heads of the Department both in regard to the administrative and financial matters, and also in relation to appointment and control of its own staff as well as the staffs working under the District Consumer Dispute Redressal Forums. The government is therefore directed to consider this within three months from the date of communication of the order for declaring the State Commission as the Heads of the Department like all other Heads of the Departments under the State.

13. The District Forums are presided over by retired District Judges who by their experience in past as the administrative head of the judiciary in the district are experienced in managing their own administration. Admittedly the District Forums have been already declared as the Heads of the Office. But there is no reason as to why they should not be also declared as the drawing and disbursing officers in respect of the recurring and the non-recurring expenditure for their own establishment made available to them from time to time subject to over all control of the State Commission. From Annexure XII at page 129 of the brief I find the "Head of Account" has been prescribed and the Civil Supplies Officers have been notified by the government as the drawing and disbursing officers. The government should consider conferring such powers on the President of the District Forums to avoid unnecessary administrative bottleneck for the day to day working of the District Consumer Dispute Redressal Forums. The government shall consider this within a period of three months. The government may further consider to declare them as the controlling authority in respect of the staff

working under them for the purpose of maintaining discipline subject to final control of the State Commission as the Heads of the Department.

14. From the counter-affidavit of the opposite parties and the report of the Finance Secretary as well as the President of the State Commission we find no substantial progress as has been made to locate land for buildings of the respective District Consumer Dispute Redressal Forums. The government is hereby directed to take steps to allot sites for permanent office buildings of the said District Forums within a period of six months from the date of the communication of the order.

15. It is found from the report of the Finance Secretary that no "norms" have been prescribed for scale of furniture to the State Commission as well as the District Consumer Dispute Redressal Forums. This the government may consider prescribing scale of furniture respectively same as in the cases of Heads of the Departments and the Head of the Office under the State Government.

16. Once the government consider to declare the State Commission as the Head of the Department and the District Consumer Dispute Redressal Forums will be under the direct administrative control of the State Commission, therefore government may consider forming a common cadre of the employees of both the forums as per government rules.

17. In para 15 of the counter-affidavit the State admit of creating a consumer welfare fund but have explained stating that the concerned authority i.e. the Finance Department has already been moved for amendment of the appropriate provisions in the Sales Tax and Entertainment Tax Acts. The State is directed to take these steps within a period of six months from the date of receipt of the order.

18. It is found from the records particularly the report of the Finance Secretary that at some places no staffs even according to the present staffing pattern have been appointed. We direct that wherever the posts are still lying vacant the State shall take appropriate steps to fill up the posts within a period of six months from the date of communication of the order.