
(2004) 04 AHC CK 0219
In the Allahabad High Court
Case No : C.M.W.P. No. 50320 of 2003

R.K. Kulshrestha

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-04-2004

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(1), 24B, 24B(2)
Uttar Pradesh Consumer Protection Rules, 1987 — Rule 3(5), 6(5), 9
Uttar Pradesh General Clauses Act, 1904 — Section 16

Citation : (2004) 5 AWC 3838 : (2004) 3 UPLBEC 2440

Hon'ble Judges : R.S. Tripathi, J;M. Katju, J

Bench : Division Bench

Advocate : Ranjit Saxena, for the Appellant;

Final Decision : Allowed

Judgement

M. Katju, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed against the impugned order of suspension dated 10.9.2003, passed by the President, State Consumer Disputes Redressal Commission, U.P., copy of which is Annexure-11 to the writ petition, and the order dated 4.9.2003, appointing Sri Roop Singh, respondent No. 4 as the inquiry officer to conduct the inquiry against the Petitioner. The Petitioner has also prayed for salary.

3. The Petitioner was in the U. P. Judicial Service who retired as A.D.J., Moradabad. Thereafter he was appointed by the State Government as President, District Consumer Forum, Etah (vide appointment letter dated 2.2.2001, Annexure-5 to the writ petition).

4. The Petitioner joined on 15.2.2001 as President of District Consumer Forum, Etah. He continued till he was suspended by order dated 10.9.2003 (vide Annexure-11 to the writ petition) passed by the President, State Consumer Disputes Redressal Commission, Lucknow (vide Annexure-11 to the writ petition).

5. The important question of law involved in this petition is whether the President of the State Consumer Disputes Redressal Commission, U.P., has power to suspend or order any inquiry against the President of a District Consumer Disputes Redressal Forum (also known as the District Forum).

6. We are of the opinion that the President of the State Consumer Disputes Redressal Commission has no such powers, and hence the impugned orders dated 4.9.2003 (Annexure-10 to the writ petition) and 10.9.2003 (Annexure-11 to the writ petition) are illegal.

7. Section 10(1A) of the Consumer Protection Act, 1986, states that "every appointment under Sub-section (1) shall be made by the State Government".

8. Section 10(1) refers to the District Forum, and hence appointment of the President of the District Forum can only be made by the State Government.

9. It is a well-settled legal principle that ordinarily the power to appoint includes power to suspend (unless there is a statutory provision to the contrary). This principle has in fact been incorporated in Section 16 of the U. P. General Clauses Act which states:

Where, in any Uttar Pradesh Act, a power to make any appointment is conferred then, unless a different intention appears, the authority having for the time being power to make the appointment shall also have the power to suspend, dismiss, remove or otherwise terminate the tenure of office of any person appointed, whether by itself or any other authority, in exercise of that power.

10. Neither the Consumer Protection Act, 1986, nor the U. P. Consumer Protection Rules, 1987, contain any specific provision stating which authority is entitled to suspend the President of the District Forum. Hence the general principle will apply, namely, that the authority which has power to appoint has power to suspend. It follows from this that only the State Government can suspend the President of the District Forum, and the President of the State Consumer Disputes Redressal Commission, U.P., has no such power.

11. Similarly, Rule 9 of the U. P. Consumer Protection Rules, 1987, states:

(1)(a) On complaint received against the full time President, member of District Forum and the State Commission, an enquiry shall be held by Principal Secretary or Secretary as the case may be to Government of Uttar Pradesh, Food and Civil Supplies Department or by an officer of Government nominated by him.

(b) On complaint received against such Part-time Presidents who are working District Judge or Additional District Judge inquiry shall be held by the High Court.

(c) The complaints received against the President of the State Commission shall be inquired into by any retired Chief Justice of any High Court nominated by the State Government.

(2) On being found guilty on the basis of the findings of the aforesaid inquiry the

State Government may remove the President or member of the District Forum and the State Commission from their office on grounds specified in Sub-rule (5) of Rule 3 and Sub-rule (5) of Rule 6 as the case may be of the said Rules.

12. We may also refer to Section 24B(2) of the Consumer Protection Act, 1986, which states:

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

13. Sub-section (1) mentions the power to call for periodical returns regarding the institution, disposal, pendency of cases ; issuance of instructions regarding adoption of uniform procedure and other procedural rules ; and generally overseeing the functioning of the District Fora to ensure that the objects and purposes of the Act are best served.

14. In our opinion the power u/s 24B(2) does not include the power to suspend or order any inquiry, because the powers of administrative control u/s 24B are limited and specifically mentioned in Sub-section (1) of that provision, and these does not include the power of taking disciplinary action against the President of the District Forum.

15. In the counter-affidavit which has been filed by respondent No. 4 it has been alleged that the inquiry against the Petitioner was instituted under order of the State Government. This has been denied in para 4 of the rejoinder-affidavit. It may be noted that the State Government has been impleaded as respondent No. 1 to this writ petition but it has not filed any counter-affidavit in this case. There is no evidence to show that the inquiry against the Petitioner which is being held by the respondent No. 4 has been instituted under the order of the State Government. No order of the State Government has been annexed with the counter-affidavit.

16. It may be noted that the averment that the inquiry against the Petitioner was instituted under the order of the State Government is contained in paragraph 3 of the counter-affidavit, but paragraph 3 has been sworn on the basis of perusal of the papers. No paper has been annexed with the counter-affidavit showing that the State Government directed an inquiry to be held against the Petitioner or directed the Petitioner to be placed under suspension. Hence, in our opinion, the averment in para 3 (A) of the counter-affidavit that the inquiry was instituted under the order of the State Government is merely the ipse dixit of respondent No. 4, and is not believable.

17. It may be that there were some complaints against the Petitioner but as stated above it is only the State Government which can suspend him or order an inquiry against him. In this case we are satisfied that there is no order of the State Government ordering an inquiry against the Petitioner or ordering his suspension.

18. It has also been alleged in para 3 (C) of the counter-affidavit that the

respondent No. 3, President, State Consumer Disputes Redressal Commission, U.P., has been conferred with power of the head of department and head of office by virtue of notification of the State Government dated 25.9.2002 (vide Annexure-C.A. 1). In our opinion, merely conferring power of head of department or head of office does not automatically mean that the respondent No. 3 has power to suspend or order an inquiry against the President of the District Consumer Forum. As already mentioned above, u/s 10(1) read with Section 10(1A), the power of appointment of the President of the District Forum is only with the State Government, and hence only the State Government can suspend or order an inquiry against the President of the District Forum. Unless there is amendment in Section 10 of the Consumer Protection Act the respondent No. 3 cannot rely on a mere G.O. to assume to himself the power of suspending or ordering an inquiry against the President of the District Forum. It is well-settled that a G.O. cannot override the statute.

19. Apart from that, even the G.O. dated 25.9.2002, does not give that power. A similar view was taken by the Punjab High Court in *Varinder Pal Kashyapa Vs. State Consumer Disputes Redressal Commission, Punjab and Another*, .

20. In view of the above the petition is allowed. Impugned orders dated 10.9.2003 and 4.9.2003 are quashed. The Petitioner will be treated in service throughout, and shall be paid salary regularly. He shall also be paid arrears along with interest at 12% per annum from the date of his suspension to the date of his reinstatement, and the back salary with interest must be paid to him within two months from today. He shall be reinstated forthwith.