
(2003) 11 AHC CK 0031
In the Allahabad High Court
Case No : C.M.W.P. No. 50320 of 2003

R.K. Kulshrestha	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 12-11-2003

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 24B
Uttar Pradesh Consumer Protection Rules, 1987 — Rule 9
Uttar Pradesh General Clauses Act, 1904 — Section 16

Citation : (2004) 1 AWC 323 : (2004) 102 FLR 514 : (2004) 1 UPLBEC 919

Hon'ble Judges : U. Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : Ranjit Saxena, for the Appellant;

Final Decision : Dismissed

Judgement

M. Katju and U. Pandey, JJ.—Learned standing counsel may file counter-affidavit within three weeks.

2. Issue notice to respondent Nos. 2, 3 and 4 returnable at an early date.

3. 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).

4. We are prima facie of the opinion that the President of the State Consumer Disputes Redressal Commission has no such powers, and hence, prima facie 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.

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

6. 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.

7. It is a well settled legal principal 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."

8. 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.

9. 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 President 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.]"

10. 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 Fora within its jurisdiction in all matters referred to in Sub-section (1)."

11. 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.

12. 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 mentioned in Sub-section (1) of that provision, and these do not include the power of taking disciplinary action against the President of the District Forum.

13. For the reasons given above, we are of the opinion that the impugned orders dated 4.9.2003 and 10.9.2003 are prima facie, illegal, and hence, we stay these orders till further orders.

14. A copy of the order will be given to the learned counsel for the petitioner on payment of usual charge, today. A copy will also be given to the learned standing counsel today free of charge, and he shall communicate it to the State Government as well as the President of the State Consumer Disputes Redressal Commission, Lucknow.