
(1995) 08 KL CK 0009
In the High Court Of Kerala
Case No : W.A. No. 766 of 1995

State of Kerala

APPELLANT

Vs

S. Samuel

RESPONDENT

Date of Decision : 28-08-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Ker 22 : (1995) 3 ILR (Ker) 685

Hon'ble Judges : K.T. Thomas, J;K.S. Radhakrishnan, J

Bench : Division Bench

Advocate : S. Venkitasubramonia Ayyar (Sr. Advocate) and V. Giri, for the Respondent

Final Decision : Allowed

Judgement

K.T. Thomas, J.—This appeal by the State of Kerala calls for interpretation of S. 10(2) of the Consumer Protection Act, 1986 (for short the Act). The sub section reads thus:- Every member of the "District Forum" shall hold office for a term of five years or up to the age of 65 years whichever is earlier, and shall not be eligible for re-appointment.

(Proviso is omitted).

Learned single Judge before whom this question came up first has held that the term of five years mentioned in the sub section is restricted to membership in one District Forum and if the same person is appointed in another District Forum he would become entitled to hold office for another term of five years on the strength of such subsequent appointment. As the said interpretation is not acceptable to the State of Kerala, this appeal has been filed u/s 5 of the Kerala High Court Act.

2. Facts of this case lie in a narrow compass. Respondent holds office as President of the Kottayam District Consumer Disputes Redressal Forum (for short the District Forum). He was appointed as member of the District Forum of some

other Districts on 2-2-1990 and he assumed charge as such on 5-3-1990. While so he was appointed as President of the District Forum of Kottayam on 3-10-1991 and he assumed office of the same on 25-10-1991. Government of Kerala have made certain entries in Ext.P7 which is the register containing "personal particulars of the president and Members of Kerala State Consumer Disputes Redressal Commission and Consumer Disputes Redressal Forum". In column No. 7 relating to "date of retirement" in Ext.P7 the date 4-3-1995 is shown as the date of retirement of the respondent. He questioned it. A representation was made by the respondent to the Government for correction of the said date as 24-10-1996. But Government declined to do so and hence he filed the Original Petition under Article 226 of the Constitution for a writ of mandamus directing the Government to effect such correction in Ext.P7.

3. Main contention of the respondent is that the term of five years should be (sic) in his case from 25-10-1991, when he assumed office as President of the Kottayam District Forum. According to him, the date of his initial appointment as member of the District Forum in other District in of no bearing for the purpose of his retirement. Learned single Judge allowed the O.P. and declared that respondent has the right to continue as President of the Kottayam District Forum till 24-10-1996. Direction was issued to the Government to carry out necessary corrections in Ext.P7.

4. In this appeal, the State contended that appointment of respondent as President of the Kottayam District Forum is only a continuation of his initial appointment as member of the District Forum pertaining to other Districts since a re-appointment is specifically banned under S.10(2) of the Act and hence respondent should have bowed out of office on 4-3-1995. The view adopted by the learned single Judge that respondent's appointment as President of Kottayam District Forum was in supersession of the previous appointment has been assailed by the State as contrary to law.

5. We heard learned Government Pleader and Senior Advocate Sri. S. Venkitasubramanya Iyer who was instructed for the respondent. Learned Senior Counsel laid emphasis on the definite article "the" which precedes the words "District Forum" in S.10(2) and strongly supported the view adopted by the learned single Judge on the promise that what is envisaged in the sub section is regarding appointment as a member of a particular District Forum whether the same person was earlier a member in any other "District Forum". Learned Government Pleader contended that the very intention of Parliament would be defeated if a person is allowed to hold office as member beyond the period of five years by shifting him as member or president to a different District Forum.

6. There can be no doubt that intention of the legislature must be given effect to. The dominating guidance to be adopted in interpretation of a statutory provision is to make an effort for giving effect to the legislative intent behind the particular provision. Viscount Simon L.C. has sounded the principle in *Nokes v. Doncaster Amalgamated Collieries Ltd.* (1940 AC 1014). "If the choice is between two

interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result". Lord Shaw has observed in *Shannon Realities Ltd.mv. Ville de St. Michel* (1924 AC 185) that "where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to be regulating". The above passages have been profitably quoted in "Maxwell on the Interpretation of Statutes" (Page 45 of the 12th edition).

7. Bearing in mind the duty of the court to interpret a statutory provision in the true intent of the legislation, we now proceed to understand the intention behind fixation of the term of five years in S.20(2) of the Act.

8. The Act was passed by Parliament in 1986 to provide for better protection of the interests of the consumers. It made provisions for establishment of authorities for settlement of consumer disputes. Chapter III of the Act contains provisions for establishment of consumer disputes redressal agencies. There are three tiers of such agencies, first at the district level known as "District Forum" and next at the state level known as "State Commission" and the last at national level known as National Consumer Disputes Redressal Commission (for short National Commission). A District Forum is given jurisdiction to entertain complaints up to a value of rupees five lakhs. State Commission has original and appellate and also revisional jurisdiction. For original jurisdiction it can entertain complaints value of which exceeds rupees five lakhs and below rupees 20 lakhs National Commission also has original appellate and revisional jurisdiction. It can entertain complaints for value above rupees 20 lakhs in exercise of its original jurisdiction. The first two forums are to be established by the State Government while the third can be set up only by the Central Government. The first two tiers shall each consist of a president and two other members while the National Commission shall consist of a president and four other members.

9. Different qualifications have been prescribed for the President of the three different tiers. When President of the District Forum can be a person who is or has been or is even qualified to be a District Judge, the qualification of the President of the State Commission is that he should either be a sitting or a former Judge of a High Court. As for National Commission, the President shall either be a sitting or a former Judge of the Supreme Court.

10. Legal position involved in this case has to be examined in the above back-drop. The Act as it originally stood was modified by Parliament through two subsequent enactments, one by Act 34/1991 and the other by Act 50/1993. We would refer to the provision of the Act as they are today.

11. A member is defined in S.2(1)(jj) of the Act as including the President and a member of any of the three tiers mentioned above. Under S.10(1) each "District

Forum" shall consist of : (a) a person who is, or has been, or is qualified to be a District Judge who shall be its President and (b) two other members who shall be persons of ability, integrity and standing with adequate knowledge in dealing with problems relating to subjects such as economics, law, commerce, accountancy, industry, public affairs or administration.

12. The term of office of the president and members of the District Forum is contained in S.10(2) which we have extracted in the first paragraph. The corresponding provision for the State Commission is the Act is almost identical. It is S.16(3) which reads thus:

Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for re-appointment.

Its corresponding provision as for National Commission is S.20(3) which is also nearly identical. It reads thus :--

Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re-appointment.

13. The only difference between the aforesaid three sub-sections relates to the upper age limit - otherwise they are identical. Two things are crystal clear now. First is that there is no difference between the President and other members so far as the term of office is concerned. Second is that one person cannot continue beyond five years in any one of the tiers whether it is district level or state level or national level. There is no doubt and it is not disputed also that State Government cannot extend the tenure of either the president or the member of the State Commission beyond five years. Even Central Government cannot extend the period of the tenure of office of the president or member of the National Commission beyond five years. Thus the period of five years is common for all the persons in the three tiers of forums. Legislative draftsman has used three different provisions for dealing with the term of office of members of those three tiers because of the difference in regard to the upper age limit. A reading of the above provisions makes it clear that Parliament would never have intended to confer power on the State Government to extend the period of five years as for the President or members of the District Forum through the process or strategy of the shifting him to another District Forum.

14. The argument of learned senior counsel is that since a definite article "the" has been used before the words "District Forum" in S.10(2) the implications could reasonably gathered that the term of five years is meant only in respect of one District Forum and it does not prevent the same person from holding office in another District Forum for another term of five years. We have noted that same definite article "the" has been employed in the corresponding provisions also at places just before State Commission and National Commission are mentioned. We have already pointed out that there is no scope for even

conceiving that the term of members of those two forums could be extended beyond five years in any eventuality. Could the use of a definite article (the) in relation to the District Forum in S.10(2) of the Act be of such assistance as to extend the period of five years as for the member of a District Forum by shifting him to another District? We cannot persuade ourselves to give such an interpretation which would frustrate the clear intention of the legislature in fixing the period of five years uniformly as for all the members in respect of all the three tiers of agencies. We may further notice in this context that there is a ban against re-appointment which is couched in peremptory tone i.e. "and shall not be eligible for re-appointment". This is yet another clear message that the period of five years is unextendable through any governmental or executive exercise.

15. Craies on Statute Law has stated thus at page 83 (of the Seventh Edition) : "The language of statutes is not always that which a rigid grammarian would use, it must be borne in mind that a statute consists of two parts, the letter and the sense". It is a rule of construction which gained general acceptance that the provisions of a statute are to be read together and given effect to "and that it is the duty of the court to construe a statute harmoniously", *State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another*, . The principle that literal meaning of the word in a statute is to be preferred is subject to the exception that if such literal sense would give rise to any anomaly or would result in something which would defeat the purpose of the Act, a strict grammatical adherence to the words should be avoided as far as possible. (*Management, S.S.L. RLY. Co. v. S.S.R.W. Union* (1969 (1) S.C.W.R. 1199). The above principles would help us to desist from affording undue stress on the definite article used just before the words "District Forum" in S. 10(2) of the Act. When the provision is understood thus, it is clear that duration of the term of office of a member of the District Forum would start from the date he assumes office in any District Forum and would end with the expiry of five years therefrom. A shifting given to him to another District Forum either as member or as president would not entitle him to reckon the period of five years afresh from the date of such shifting. In the above view, we declare that the term of office of the respondent had expired as early as 3.3.1995. Hence he was not entitled to continue thereafter.

In the result, we allow this appeal and set aside the judgment of the learned single Judge. We dismiss the O.P filed by the respondent. No costs.