
(2016) 01 BOM CK 0103
In the Bombay High Court
Case No : Writ Petition No. 5650/2015

State of Maharashtra and Others

APPELLANT

Vs

Vijaysing

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Consumer Protection Act, 1986 — Section 10, Section 10 (1-A), Section 10 (2),
Section 10 (3), Section 10(3), Section 2 (n), Section 30 (2), Section 30(2)

Citation : (2016) 162 AIC 311 : (2016) 2 AIRBomR 203 : (2017) 1 ALLMR 193 :
(2016) 2 BCR 339 : (2016) 2 CivilLJ 599 : (2016) 2 MhLJ 833

Hon'ble Judges : V.A. Naik and A.S. Chandurkar, JJ.

Bench : Division Bench

Advocate : N.S. Khubalkar, AGP, for the Appellant; Bharti Kale, Advocate, for the Respondent

Final Decision : Allowed

Judgement

V.A. Naik, J.—1. Rule. Rule made returnable forthwith. The petition is heard finally with the consent of the learned counsel for the parties.

Whether the Member of the District Consumer Forum is entitled to medical reimbursement from the State Government is the question that arises for consideration in this writ petition.

2. Few facts giving rise to the writ petition are stated thus:

"The respondent was appointed as a President of the District Consumer Forum in the year 2002 by the State Government under the provisions of Section 10 (1-A) of the Consumer Protection Act, 1986 (hereinafter referred to as the Act for the sake of brevity). After completing the term of five years, in terms of Section 10 (2) of the Act, the State Government reappointed the respondent as the President of the District Consumer Forum for a period of five years from 02.10.2007. The respondent retired as the President of the District Consumer Forum in June 2012. During his services as the President of the Forum, the

respondent had incurred medical expenses to the tune of Rs. 1,27,979/-. The respondent sought the reimbursement of the said amount from the State Government. The State Government, by the communication dated 15.12.2012 rejected the claim of the respondent. Since the respondent had claimed medical reimbursement on parity by making a reference to the cases in which it was granted, the State Government mentioned in the communication that medical reimbursement was wrongly made to the Members of the District Forum on the earlier occasions. Being aggrieved, the respondent challenged the communication dated 15.12.2012 in an Original Application before the Maharashtra Administrative Tribunal. The Maharashtra Administrative Tribunal, by the impugned order dated 15.01.2015 allowed the original application filed by the respondent and directed the petitioners to release the amount of Rs. 1,27,979/- to the respondent towards the claim for medical reimbursement within a period of three months. The order dated 15.01.2015 is impugned in the instant petition."

3. Shri N.S. Khubalkar, the learned Assistant Government Pleader appearing on behalf of the State Government submitted that the Tribunal was not justified in allowing the claim of the respondent for medical reimbursement solely on the ground of parity. It is submitted that if medical reimbursement was wrongly made to similarly situated persons, the respondent could not have claimed parity. It is submitted that the respondent would not have any right to seek medical reimbursement only on the ground that medical reimbursement was made to the other members of the District Forum on earlier occasions. It is submitted that the Tribunal has observed in the impugned order that the State Government is at liberty to take steps to avert re-occurrence of the mistake of making medical reimbursement. It is submitted that if re-occurrence is to be prevented, a direction could not have been issued to the State Government to release the amount towards medical reimbursement. It is submitted that when the Tribunal has observed in the impugned order that there are no rules to grant the claim of medical reimbursement, it was improper on the part of the Tribunal to allow the claim in the case of the respondent. It is stated that Section 10 (3) of the Act provides that the salary, honorarium and other allowances payable to the Members of the District Forum shall be such, as may be "prescribed" by the State Government. It is stated that the term "prescribed" is defined in Section 2 (n) of the Act and it means "prescribed" by the rules made by the State Government under the Act. It is submitted that in terms of the rule making power under Section 30 (2) of the Act to frame rules for carrying out the provisions of Section 10 (3), the State Government has framed the Maharashtra Consumer Protection Rules, 2000. It is submitted that the salaries and the allowances payable to the President and the other Members of the District Forum are prescribed by Rule 3 of the Rules of 2000. It is submitted that since the salary, allowances and the other terms and conditions of the service of the Members of the District Forum are governed only by the Rules framed by the State Government under the Act and since the Rules framed by State Government do not provide for medical reimbursement, the respondent does not have a right to seek the reimbursement

of the medical expenses incurred by him. It is submitted that the Tribunal rightly held that there were no Rules to grant the claim of medical reimbursement. It is submitted that in the absence of any Rules for medical reimbursement, the Tribunal could not have directed the petitioners to make payment towards medical expenses incurred by the respondent solely on the ground of parity, when the petitioner had, by a communication dated 15.06.2015 sought the recovery of the amount wrongly paid to the members of the District Forum. It is submitted that the order of the Tribunal is clearly illegal and is liable to be set aside.

4. Miss Bharti Kale, the learned Counsel for the respondent supported the order of the Tribunal and submitted that the Tribunal rightly directed the petitioners to pay an amount of Rs. 1,27,979/- to the respondent towards his claim for medical reimbursement. It is submitted that the respondent has based his claim for medical reimbursement on the Maharashtra State Services (Medical Attendance) Rules 1961. It is submitted that the respondent was appointed on full time basis by the State Government for a period of more than one year and therefore the Medical Attendance Rules apply to the case of the respondent. It is submitted that the State Government was liable to reimburse the medical expenses to the respondent in terms of the Medical Attendance Rules. It is submitted that the action on the part of the State Government to deny medical reimbursement to the respondent is unjust, specially when similar claims of the Members of the District Forum were granted in the past. It is submitted that the Tribunal rightly held that the respondent was entitled for medical reimbursement, on parity.

5. On a perusal of the Act and the Maharashtra Consumer Protection Rules framed by the State Government there under, it appears that the respondent does not have any right whatsoever to seek medical reimbursement. The appointment of the respondent as the President of the District Consumer Forum was made under Section 10 of the Act. Section 10 (3) of the Act, on which great reliance has been placed by the learned Assistant Government Pleader for denying the claim of the respondent, reads thus:--

"Section 10 (3): The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government."

It appears that the salary, honorarium and other allowances payable to the Members of the District Forum are such, as may be prescribed by the State Government. The term "prescribed" is thus defined in Section 2 (n) of the Act:--

"2(n): "prescribed" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act."

It is further clear that the terms and conditions of service of the Members of the District Forum shall be prescribed only by the Rules made by the State Government or as the case may be, by the Central Government, under the Act. The State Government is empowered under Section 30(2) of the Act to make

Rules for carrying out the provisions of Section 10(3) of the Act, which deal with the salary or honorarium and other allowances payable to the Members of the District Consumer Forum.

6. On a combined reading of the provisions of Sections 10 (3), 2 (n) and 30 (2) of the Act, it is clear that the salary or honorarium and other allowances payable to the Members of the District Forum shall be prescribed by the State Government by the Rules made by the State Government under the Act. The State Government has made the Consumer Protection Rules in the year 2000. Rule 3 of the Maharashtra Consumer Protection Rules, 2000 provides for salaries and other allowances and the terms and conditions of the President and the other Members of the District Forum. The said rule provides for the salary payable to the President of the District Forum, if he is appointed on full time or on part time basis. Rule 3 of the Rules also provides for the payment of consolidated honorarium to the President of the District Consumer Forum. A sitting fee is liable to be paid to the President for attending the sittings of the Forum. The President and the Members of the District Forum are entitled to conveyance allowance and daily allowance in terms of Rule 3 (2) of the Rules. We however, do not find anything in the Rules of 2000 that entitles the President or Members of the District Consumer Forum to an allowance in respect of medical reimbursement. We find on a reading of Sections 10 (3) and 2 (n) of the Act that the President or a Member of the District Consumer Forum is entitled to salary or honorarium and other allowances only in terms of the Rules framed by the State Government under Section 30 (2) of the Act. On a combined reading of the provisions of Sections 10 (3) and Section 2 (n) of the Act, it is clear that the salary or honorarium and other allowances payable to the Members of the District Consumer Forum are governed only by the Rules made by the State Government under Section 30 (2) of the Act and none other. It is clear from the provisions of Sections 10 (3), 2 (n) and 30 (2) of the Act that the conditions of service of the Members of the District Forum and their salary and other allowances would be governed by the Rules framed by the State Government under the Act and the civil services rules that are applicable to the State Government employees would not be applicable to the Members of the District Consumer Forum unless the Rules framed under Section 30 (2) so provide. In view of the aforesaid discussion, we hold that the Maharashtra State Services (Medical Attendance) Rules, 1961 would not be applicable to the Members of the District Consumer Forum as the said Rules are not made in pursuance of the rule making power under Section 30 (2) of the Act, that empowers the State Government to make rules for carrying out the provisions of Section 10 (3) of the Act, that relate to the payment of salary or honorarium and other allowances to the Members of the District Forum. The Tribunal appears to have rightly arrived at a conclusion that there are no Rules to grant the claim for medical reimbursement to the Members of the District Forum though the provisions of the Act and Rules were not considered by the Tribunal, while holding so.

7. Having held that the salary or honorarium or other allowances payable to the

Members of the District Forum would be such as are prescribed by the Rules made by the State Government under the Act i.e. under section 30 (2) of the Act, in our view the respondent could not have claimed medical reimbursement in the absence of any provision in regard to reimbursement of medical claim in the Consumer Protection Rules framed by the State Government in the year 2000. Though certain other allowances are payable to the Members of the District Consumer Forum, the Rules framed by the State Government under Section 30 (2) of the Act do not provide for medical reimbursement. In the absence of any right in the Members of the District Forum to seek medical reimbursement, the same cannot be granted only on parity, more so, when it is the case of the State Government that medical reimbursement was wrongly or mistakenly made in favour of the Members of the District Consumer Forum in the past. It is rightly submitted on behalf of the petitioners that a claim cannot be granted on parity, when the claimant does not have a right to make the claim and it is discovered by the State that similar claims were wrongfully granted in the past. The Tribunal was not justified in the circumstances of the case in allowing the claim of the respondent for medical reimbursement.

Hence, for the reasons aforesaid, the writ petition is allowed. The order of the Tribunal is quashed and set aside.

Rule is made absolute in the aforesaid terms with no order as to costs.