

(2016) 01 SC CK 0151

In the Supreme Court Of India

Case No : Civil Appeal No. 2740 of 2007 and Writ Petition (C) No. 164 of 2002

State of U.P. and Others

APPELLANT

Vs

All U.P. Consumer Protection Bar Association

RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Citation : (2016) 3 ALLMR 487 : (2016) 1 ApexCourtJudgments(SC) 676 : (2016) 1 ConLT 450 : (2016) 1 LawHeraldSC 713 : (2016) 1 RCRCivil 1024 : (2016) 1 RecentApexJudgments(RAJ) 708 : (2016) 3 Scale 172 : (2016) 11 SCC 606

Hon'ble Judges : T.S. Thakur, C.J.I., A.K. Sikri and R. Banumathi, JJ.

Bench : Full Bench

Advocate : Gaurav Dhingra and V.N. Raghupathy, Advocates, for the Appellant;

Final Decision : Disposed Of

Judgement

1. This appeal is directed against an order dated 8th October, 1998 passed by the High Court of Judicature at Allahabad in Writ Petition No. 968 of 1997 whereby the High Court has directed the State Government to set up five additional Consumer Fora at the State level in the State of Uttar Pradesh. The scope of the proceedings though initially limited has been in terms of a series of orders passed by this Court widened in public interest keeping in view the fact that the problem of deficiency in the infrastructure available to State Consumer Disputes Redressal Commissions and District Fora has over the years become endemic and a pan India affair. Writ Petition No. 164 of 2002 which came to be registered as a PIL on the basis of an affidavit filed by NCDRC Bar Association before this Court in public interest, also highlights deficiencies that are affecting the working of the National Commission, the State Commissions and the District Fora. Several orders as noted above have been passed in these proceedings from time to time over the past eight years or so. Reference to all those orders is in our opinion unnecessary. All that we need say is that when the matter came up before us on 30th July, 2015 we requested Mr. P.S. Patwalia, learned Solicitor

General to take instructions from the President, National Consumer Disputes Redressal Commission (for short "the National Commission") as to the nature and extent of deficiencies if any in terms of infrastructure available to the National Commission, State Consumer Disputes Redressal Commissions (for short "the State Commissions" and the District Consumer Disputes Redressal Fora (for short "the District Fora") in different States throughout the country. Mr. Patwalia offered to do the needful and to file a status report. He submitted that apart from paucity of staff and space several other deficiencies such as non-filling up of vacancies and poor/unsatisfactory conditions of service applicable to the staff and employees of the State Commissions and District Fora also deserved to be addressed.

2. An affidavit was accordingly filed by the Registrar of the National Commission which enumerates the nature and the extent of deficiencies in terms of infrastructure and staff available to the National Commission, State Commissions and District Fora in different States throughout the country. It was in the light of the averments made in the said affidavit that Mr. Maninder Singh, learned Additional Solicitor General was requested to accept notice on behalf of the Government of India and take instructions and look into the matter. Mr. Maninder Singh, learned ASG, has pursuant to the above filed an affidavit. He submits that the responsibility of providing adequate infrastructure and filling up of the vacancies and prescribing conditions of service applicable to those associated with the Consumer Fora lies with the State Governments concerned. It was in that view that we had by order dated 13th October, 2015 requested Mr. Maninder Singh to take instructions whether a Committee headed by a former Judge of this Court with such Member as may be recommended by the Government of India could be constituted to examine not only issues raised by the Appellant with regard to alleged deficiencies in the infrastructure, manpower and matters incidental thereto but also the need and feasibility of bringing about a broad, if not a complete, uniformity in the terms of employment of the Presiding Officers and other staff engaged for implementation of the provisions of the Act. Mr. Maninder Singh has accordingly taken instructions and filed an affidavit sworn by Shri Gokil Chandra Rout, Deputy Secretary in the Department of Consumer Affairs, Government of India, New Delhi. In paras 7 to 10 of the said affidavit the Government of India have stated thus:

"7. That in compliance with the order dated 08.09.2015 passed by this Hon"ble Court the Respondent Union of India has placed the foregoing submissions in response to the affidavit filed by the Registrar, National Commission, for the kind consideration of this Hon"ble Court.

8. It is further respectfully submitted that vide order 13/10/2015, this Hon"ble Court, had asked the Department of Consumer Affairs to inform whether a Committee headed by a former Judge of this Hon"ble Court with such other members as may be recommended by the Govt., of India can be constituted to examine all issues raised by the Appellants including issues relating to the

alleged deficiency in infrastructure, manpower and matters incidental thereto including but not limited to the need for bringing about some uniformity in terms of employment of the members of the Forum for an efficient implementation of the provisions of the Consumer Protection Act, 1986.

9. It is most humbly submitted that having regard to the orders passed by this Hon''ble Court, the issue of constitution of a Committee has been duly considered in this Department at the highest level after taking all aspects into consideration.

10. It is most humbly submitted that the concerns raised by the Registry of the National Consumer Forum regarding infra-structure, disposal of consumer complaints, conditions of service etc., needs to be discussed, deliberated handled and implemented by the Central Government, State Governments concerned and the Consumer Courts. To arrive at a suitable solution to these problems, it has been proposed that a Committee may be formed with the President, National Consumer Commission, who is a former Judge of this Hon''ble Court and fully conversant with the functioning of the Consumer Courts and the Secretary, Consumer Affairs, Government of India. They would visit selected States and interact with the Presidents of the State Commissions and the Chief Secretary of the respective States and study the problems and concerns. Road-maps will be prepared by the Committee for effective functioning of the State Commissions and the District and report will be submitted to the Hon''ble Supreme Court, on whose further directions, implementation will be carried out."

3. From a reading of the above, it is evident that the Government of India agrees to the issues touching the infrastructure at the disposal of consumer courts, conditions of service etc. being discussed and deliberated for appropriate recommendations by a Committee to be headed by the President of the National Commission who is himself a former Judge of this Court fully conversant with the functioning and difficulties faced by the consumer courts. The affidavit also indicates that the Secretary, Department of Consumer Affairs, Government of India, could be a Member of the Committee who shall have the mandate to visit selected States and interact with the Presidents of the State Commissions and the Chief Secretaries of the respective States while studying the nature and extent of problems, and preparing roadmaps necessary for an effective functioning of such Commissions and Fora and eventually to submit a report to this Court for appropriate directions.

4. When the matter came up for hearing before us today, Mr. P.S. Patwalia, argued that while it is true that the National Commission is headed by a former Judge of this Court, the proposal of the Government of India that he should head the proposed three-Members Committee does not appear to be feasible not only because the burden of judicial work which the President of the National Commission is currently handling would not permit him to do so but also because he may not be in a position to spare time for travelling to different States for extensive deliberations necessary for identifying the problems and suggesting solutions for the same. He submits that the affidavit all the same reflects an in

principle agreement that the issues concerning deficiencies and the mechanism for their removal need to be suitably addressed both at the central level as also in the States which can be done only if a designated Committee is asked to undertake that process. He urged that this Court could constitute such a Committee in larger public interest and with a view to making the consumer disputes redressal mechanism more effective, and formulate the terms of reference to be made to the Committee. He further urged that directions incidental to the constitution of the Committee like the facilities to be provided to them and the problems of accommodation could also be settled in the order of this Court so that the Committee starts working in the right earnest and completes the task within a reasonable time frame. He urged that the problems of deficiency in infrastructure, man power and working conditions as also improvement in the service conditions of those employed in such Consumer Commissions and Fora need a mechanism for reform which must be suitably addressed without any further delay.

5. Mr. Maninder Singh, learned ASG submits that if the President of the National Commission is, for any reason, unable to head the proposed Committee, this Court may make any other substitute arrangement and issue appropriate directions as proposed by Mr. P.S. Patwalia. He submitted that the Government of India would do whatever is required or deemed fit under the orders of this Court to make the Committee functional for an early submission of a detailed report to this Court.

6. The question of deficiency appears to be a country-wide phenomenon. The nature of deficiencies may vary from state to state but there is no doubt that facilities are inadequate in small or large measure in almost all the states. One of the options that we may have had was to examine the question of deficiency qua each State ourselves to issue such directions as were necessary. That exercise would, however, have been time consuming and difficult keeping in view the fact that the concerned States would have to respond to the queries that this Court may raise in the process delaying the whole exercise. It was for that reason that instead of undertaking any such exercise ourselves we thought of entrusting the same to a Committee which would then look into the matter more elaborately. The Committee would have the advantage of interacting with the officials from central/state governments concerned. We are happy to note that the Government of India have recognized the importance of removing the deficiencies in the Consumer Fora and Commissions to make them more effective and efficient for a speedier disposal of consumer disputes. This is evident from the fact that Mr. Maninder Singh has, at the Bar, agreed not only to the constitution of the Committee but also to the terms of reference being elaborately formulated so that all aspects including the desirability of creation of a separate cadre for staff are addressed by the Committee. With the assistance of learned Counsel for the parties we have been able to finalise the terms of reference to be made to the Committee. But, before we enumerate the terms of reference, we direct that the Government of India shall, by an appropriate

notification, constitute a three member committee comprising the following:

1. Hon"ble Dr. Justice Arijit Pasayat, Former Judge, Supreme Court of India.
2. Hon"ble Ms. Justice Rekha Sharma, Former Judge, High Court of Delhi.
3. The Secretary to Government of India, Department of Consumer Affairs.

OR

His nominee

7. We further direct that the Committee so notified shall be free to co-opt the President of the National Consumer Redressal Commission, while dealing with the affairs of the National Commissions and the Presidents of the State Commission of the States concerned while dealing with the affairs relating to such states. The Committee shall examine the following:

(1) The infrastructural requirements of the respective State Commissions in terms of office space for the Presiding Officer, members and supporting staff and whether the same has been provided for. In case the requirement is not satisfied, what is the extent of deficiency and possible ways and means of removing the same.

(2) The vacancy position of President/Members/Presiding Officers in the National Commission, State Commissions and the District Fora and the steps that need to be taken for ensuring that vacancies are filled-up on a timely basis.

(3) Need for additional benches of the National Commission, State Commissions and the District Fora in the States or in any one of them having regard to the workload and the difficulties/inconvenience which a consumer dispute litigant has to face to access the National Commission, State Commissions and/or District Fora.

(4) The conditions of eligibility, if any prescribed, for appointment as non-judicial members of National Commission, State Commissions and the District Fora. In case no such conditions of eligibility are prescribed whether there is a need for doing so and what could be the conditions of eligibility for such appointments having regard to the nature of work and the relevant provisions of the Consumer Protection Act, 1986.

(5) The nature and extent of Administrative Powers, if any, conferred upon the Presidents of the State Commissions and the President of the District Fora. In case no such powers have been conferred whether the same need to be conferred and if so to what extent and effect.

(6) The service conditions currently applicable including pay-scales admissible to President and Members, Judicial/Non-Judicial of the National Commission, State Commissions and the District Fora and in case no service conditions are stipulated what could be reasonable conditions of service applicable to such appointees.

(7) The minimum staff required for the National Commission and respective State Commissions/District Fora and in case no such standard is recognized or the staff provided is inadequate having regard to the nature and extent of work to be done by the concerned Commissions and Fora what could be the norms for providing the same.

(8) Desirability and feasibility of creating a separate cadre for staff in the National and State Commissions and the District Fora.

(9) Any other aspect that the Committee may consider relevant and helpful with a view to making the Consumer Disputes Fora/Com-missions more effective, efficient and their process speedy.

8. Upon completion of the deliberations qua each State, the Committee would forward its recommendations to the State Government concerned for the Government to take appropriate steps in the matter in a time-bound manner. A copy of the recommendations made shall also be submitted to this Court to enable this Court to issue appropriate directions should the recommendations made by the Committee be not accepted or be not implemented by the State Government.

9. Justice Pasayat and Justice Rekha Sharma shall, during the period they are engaged in the Committee, will be entitled to the same emoluments, facilities and perquisites as are admissible to their counterparts when engaged as Presiding Officers or Members of the National Commission. Since Government housing accommodation is scarce, the Hon"ble Judges comprising the Committee shall be entitled to reimbursement of HRA as per the relevant rules applicable to their counterparts.

10. We further direct that all incidental expenses including secretarial facilities which the Committee may require shall be provided by the Government of India and in case such assistance is not immediately available for any reason, the Committee shall be free to hire such services from such quarters as may be considered proper in which event the expenditure so incurred shall be borne by the Government. It goes without saying that the expenditure towards travel to and fro Delhi of the Chairman and Members of the Committee shall also be borne by the Government of India. While the Committee is travelling to the States, the State Governments shall provide suitable facilities to them towards transport, stay, boarding and lodging befitting the status of the Chairman/Members of the Committee. This can possibly be done by the State Governments by declaring the Chairman/Members of the Committee as State Guests while they are visiting the States.

11. We have asked Mr. Maninder Singh, learned ASG whether the Committee can be provided suitable office space wherefrom it can function. Mr. Maninder Singh submits that though it may not be possible to do so immediately, but the issue can be left open. In case the Committee makes a request to the Government for accommodation in Delhi, and in case there is any delay in providing any such

accommodation, the Committee need not defer its work till such time the accommodation becomes available. The Committee shall, in any such event, be free to look for alternative accommodation if the government is agreeable to pay the rental/hire charges for the same under the norms applicable to such situations. With the above observations and directions we adjourn these matters to be listed again on 28th April, 2016 for further directions. Any interim report which the Committee may choose to submit in regard to the work done by it or in regard to any other matter shall be put up for orders on that date.