

(2007) 05 SC CK 0085

In the Supreme Court Of India

Case No : Civil Appeal No. 2740 of 2007 (Arising out of Special Leave Petition (Civil) No. 6928 of 1999)

State of U.P. and Others

APPELLANT

Vs

Jeet S. Bisht and Another

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 10(3)
Constitution of India, 1950 — Article 141, 142, 21, 229, 254
Consumer Protection Act, 1986 — Section 10(3), 16, 16(2), 9

Citation : (2007) 4 AWC 3241 Supp : (2008) 1 LW 424 : (2008) 4 MLJ 551 : (2007) 8 SCALE 35 : (2007) 6 SCC 586 : (2007) 8 SCR 705

Hon'ble Judges : Markandey Katju, J

Bench : Single Bench

Advocate : Amarendra Sharan, ASG, Sonam P. Wangdi, A.G., Rachna Srivastava, A.K. Rathore, Aruneshwar Gupta and J.S. Attri, A.A.G., R.G. Padia, M.N. Krishnamani and Shobha Dixit, Pradeep Misra, K.K.S. Yadav, Kiran Bharadwaj, V.K. Verma, S. K. Sharma, V.N. Raghupathy, Ashok K. Srivastava, N.S. Bisht, U. P. Sharma, M.P.S. Tomar, Sandhya Goswami, Arun K. Sinha, Anil Katiyar, Anis Subrawardy, C.K. Sucharits, Hemantika Wahi, Shivangi, MBRS. Raju, S. Sudeen, S. Balaji, S. Sunita, S. Srinivasan, Ranjan Mukherjee, Ravindra Kumar, B.V. Balaram Das, Riku Sarma and Angshuman, for Corporate Law Group, Kavita Wadia, Pallav Shishodia, Naveen Kumar Singh, Kukul Sood, Shashwat Gupta, Kamini Jaiswal, Shomila Bakshi, Sumita Dwivedi, Suparna Srivastava, Pooja Matlani, Rajesh Srivastava, Vivek Singh, Ajay Siwach, T.V. Goorge, Manjit Singh, Harikesh Singh, V.G. Pragasam, S. Vallinayagam, S. Prabhu Ramasubramanian, P.V. Dinesh, D. Bharathi Reddy, U. Hazarika, Sarya Mitra, Sumita Hazarika, Pinky Anand, D.N. Goburdhun, Rajesh Pathak, Kuldip Singh Singh, R.K. Pandey, Sanjay Katyal, T.P. Mishra, Gopal Singh, Rituraj Biswas, Nishakant Pandey, S.S. Shinde, V.N. Raghupathy, T.C. Sharma, Neelam Sharma, Ranjan Mukherjee, Anil Srivastava, Janaranjan Das, Swetaketu Mishra, K.N. Madhusoodhanan, R. Sathish, Ashok Bhan, Kiran Bhardwaj, R.C. Kathai, Anil Katiyar, Sunita Sharma, D.S. Mehara, Kh. Nobin Singh, A. Subhashini, A. Mariaputham, Aruna Mathur, for Arpputham, Aruna and Co., Sunita Sharma, Rajeev Sharma, C.D. Singh, Merusagar Samantaray, Sanjay R. Hegde, Javed Mahmud Rao, Prakash Shrivastava, Radha Shyam Jena, Revathy Raghavan, T. Mahipal, Pramod Dayal, T.V. Ratnam and Ashok Mathur, for the Appellant;

Judgement

Markandey Katju, J.—Leave granted.

2. This appeal furnishes a typical instance of a widespread malady which has infected the judicial system in India, namely, the tendency in some courts of not exercising judicial restraint and crossing their limits by encroaching into the legislative or executive domain, contrary to the broad separation of powers envisaged under our Constitution.

3. Heard learned Counsel for the parties as well as Shri Amarendra Sharan, learned Additional Solicitor General and Shri M.N. Krishnamani, Sr. Advocate.

4. This appeal arises out of a writ petition filed in the Allahabad High Court in which the grievance of the writ petitioner was of charging excessive electricity bills by the U.P. State Electricity Board. In para 19 of the writ petition it was also mentioned that the petitioner had, before filing the writ petition, approached the District Consumer Forum, Chamoli but the same was not decided because the term of two members of the District Consumer Forum had expired and till the filing of the petition new members were not appointed and hence the District Consumer Forum, Chamoli was not working.

5. In the counter affidavit to the writ petition it was stated by the Special Secretary, Department of Food and Civil Supplies, U.P. Government, that appropriate steps were being taken to fill up the vacancies of the District Consumer Forum, Chamoli vide paragraphs 4 to 12 of the counter affidavit. In the said counter affidavit mention was also made about the grants given by the State Government for the State Consumer Forum and also mentioned the statistics about the number of cases filed and disposed off.

6. By the impugned judgment dated 8.1.1998 the High Court apart from making observations on the merits of the controversy issued the following directions:

We direct the State Government to constitute at least five State Consumer Forums at State level as used u/s 16 of Consumer Protection Act by making necessary amendment. The State Government can also make law by making local amendment with the prior consent of the President of India under Article 254 of Constitution of India if it falls under concurrent list and the Benches can be constituted at "Commissioner level" at the beginning with at five places on the pattern of Benches constituted under Administrative Tribunal Act. We further direct that the Presiding Officer of a Bench will be a retired High Court Judge who would enjoy the same facilities and amenities as enjoyed by a sitting High Court Judge as in Vice Chairman of Administrative Tribunal. At present the President of State Commission is not enjoying the facilities of a Judge of High Court.

We are also of the view that the infrastructure facilities of proper building and

recruitment powers of staff be given to the Presiding Officer of State Commission or Vice President and be given proper budgetary power to regulate the budget within the allocated sufficient budget so that he has not to run to the administrative department off and on.

We make it clear that in case if it does not fall within the jurisdiction of State Government to issue ordinance by local amendment or enact law then the State Government is to approach immediately in view of the above discussion to the Central Government for making necessary infrastructure facilities regarding constitution of Benches and proper staff, building etc. so that the functioning starts within four months to mitigate the suffering of the consumers.

7. Against the aforesaid judgment of the High Court the State of U.P. and others filed this appeal before us in which a ground inter alia taken was that the aforesaid directions issued by the High Court were contrary to the provisions of the Consumer Protection Act. It was also urged that the court cannot issue a direction that the law be amended. It was further contended that the various directions of the High Court related to policy matters in which the judiciary cannot interfere.

8. When the appeal was taken up for hearing on the earlier occasions this Court passed interim orders expressing its anguish that the very purpose of the Consumer Protection Act was frustrated and the Act was becoming non functional due to the indifference of the State Government in filling up vacancies at the State and District Levels and providing in sufficient funds for salaries of members and the staff, and for the infrastructure without which the State and District Consumer Fora cannot operate. By the order dated 8.1.2001 this Court requested the Solicitor General of India to assist the Court and seek instructions. Thereafter, on 16.4.2001 the learned Solicitor General submitted that he had discussed the matter with the Chairman of the National Consumer Forum with a view to find out the difficulties being faced by the various Fora created at the National level, State level and District level so that effective steps can be taken to make these Fora functional and the object of the Act achieved.

9. Thereafter by an interim order dated 26.11.2001 this Court observed:

After hearing learned Counsel for the parties we direct the Union of India to file, within two weeks from today, a comprehensive scheme with regard to the structuring of Consumer Forums at all the three levels. The emphasis has to be with regard to service conditions, not only of the members of the District, State and the National Consumer Forums but also with regard to the staff in each of the said Forums. In formulating the scheme, the report of the Bagla Commission may be taken into consideration.

On the scheme being filed in Court, notices will then be issue to all the State Governments for their comments. The effort has to be to see that these Consumer Forums become effective institutions where the consumers can give vent to their grievances rather than their going to the courts of law. List for

further orders on 11th December, 2001.

10. Thereafter it appears that a series of interim orders have been passed by this Court (including issuance of notices to all State Governments) relating to various matters concerning the Consumer Fora at the National, State and District level. It appears that the scope of the writ petition in the appeal before us has been expanded so as to cover not only the State and District Consumer Fora in U.P., but also of those all over India. Thus the initial controversy relating to the District Forum, Chamoli was expanded by the Allahabad High Court to the State level, and further expanded by this Court to the National level.

11. It was contended before us by Shri Amarendra Sharan, Additional Solicitor General of India that this Court should fix the salaries and allowances of members of the State Consumer Dispute Redressal Commission in all States of India as well as the salaries and allowances of the District Fora all over India.

12. We pointed out to learned Additional Solicitor General that this cannot be validly done as it would be contrary to the provisions of the Act. Thus, Section 10(3) of the Consumer Protection Act states:

The salary or honorarium and other allowance 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.

Similarly, Section 16(2) of the Act states:

The salary or honorarium and other allowances payable to, and the other terms and conditions of service (including tenure of office) of, the members of the State Commission shall be such as may be prescribed by the State Government.

13. We pointed out to the learned Additional Solicitor General of India that the salaries and allowances of the members of the State Commissions as well as the District Consumer Fora can only be prescribed by the State Government and not by this Court. When Parliament in its wisdom has nominated a particular authority (in this case the State Government) to fix the salaries and allowances of the members of the State and District Fora, this Court cannot override the clear language of the statute and substitute the words "the Supreme Court" for the words "the State Government" u/s 10(3) and Section 16(2). It is a well settled principle of interpretation that the Court cannot add or substitute words in a statute.

14. No doubt the Court can make a recommendation to the State Governments that the salaries and allowances of the members of the State and District Fora are inadequate and should be increased, but that is about as far as the Court can go. It can only make recommendations but it cannot give binding directions in this connection. By a judicial verdict the court cannot amend the law made by Parliament or the State Legislature.

15. Learned Additional Solicitor General submitted that such a direction can be

given, and for this proposition he relied on the decision of this Court in 291417 .

16. We have carefully gone through the above decision. We fully agree with the observations in this judgment that Judges should get adequate salaries and allowances to enable them to function impartially and with a free mind, but we do not agree that that decision has laid down any principle of law that the salaries, allowances and other conditions of Judges should be fixed by the judiciary.

17. The salaries, allowances and other conditions of service of Judges are either fixed by the Constitution (e.g. the age of superannuation and salaries of Supreme Court and High Court Judges) or by the legislature or the executive. In fact this is the position all over the world.

18. No doubt in the aforesaid decision various directions have been given by this Court but in our opinion that was done without any discussion as to whether such directions can validly be given by the Court at all. The decision therefore passed sub silentio. The meaning of a judgment sub silentio has been explained by this Court in 290330 (vide paras 11 and 12) as follows:

A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

In *General v. Worth of Paris Ltd. (k)* (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in *Lancaster Motor Co. (London) Ltd. v. Bremith Ltd.* (1941) 1 KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.

19. The principle of sub silentio has been thereafter followed by this Court in

294283 , 291195 , 284638 , 293366 and 265507 .

20. The direction to increase the age of superannuation is really the function of the legislature or executive. It has been held in several decisions of this Court that the Court cannot fix the age of superannuation e.g. 295080 .

21. It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent.

22. In 286404 , the Supreme Court observed that only a statement of law in a decision is binding. In 265423 , this Court observed that everything in a decision is not a precedent. In 295577 , the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In 293366 , this Court observed as follows:

...The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle, upon which the case was decided....

23. In 267300 , this Court held that the directions issued by the court from time to time for regularization of ad hoc appointments are not a ratio of this decision, rather the aforesaid directions were to be treated under Article 142 of the Constitution of India. This Court ultimately held that the High Court was not right in placing reliance on the judgment as a ratio to give the direction to the Public Service Commission to consider the cases of the respondents for regularization. In that decision this Court observed:

11. This Court in 294371 , gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before October 1, 1984. It is a direction under Article 142 on the particular facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 power is confided only to this Court. The ratio in 270959 , is also not an authority under Article 141.

24. In the present case there are clear statutory provisions in Sections 10(3) and 16(2) of the Consumer Protection Act which prescribe that it is the State Government which alone can fix the salaries and allowances and conditions of service of the members of the State and District Consumer Fora. How then can the court fix them?

25. If this Court itself fixes such salaries and allowances, it will be really amending the law, and it is well settled that the Court cannot amend the law vide 272687 and 293997 .

26. This Court cannot direct legislation vide 287698 (vide para 29) and it cannot legislate vide Sanjay Kumar v. State of U.P. 2004 ALJ 239, JT 2006(2) SC 361, 301320 (vide para 5) and 280674

27. The Court should not encroach into the sphere of the other organs of the 291176 .

28. Thus in 293997 (vide para 55) this Court observed:

...There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly the President of India cannot be directed by the Court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India....

29. In 272687 (vide para 21) this Court observed:

At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules.

30. If we issue the direction as prayed for by learned Additional Solicitor General in this case, we would be issuing a direction which would be wholly illegal being contrary to Section 10(3) and Section 16(2) of the Consumer Protection Act. This Court is subordinate to the law and not above the law.

31. When it is said "Be you howsoever so high, the law is above you" this dictum applies even to the Supreme Court, since the law is above the Supreme Court and the Supreme Court is not above the law. The Judges of the Supreme Court and High Court should have the modesty and humility to realize this.

32. In 287698 (vide para 29) this Court observed:

Under our constitutional scheme the Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In 293997 (para 51) it has been held that no Court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority. This view has been reiterated in 289372

33. In 280674 this Court observed:

It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not

been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts should decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature, but it could not legislate itself. To invoke judicial activism to set at naught the legislative will is subversive of the constitutional harmony and comity of instrumentalities vide 277014 , 288273 , 280769 , 261454 , 267344 , 273322 , 290885 , 273431 , 283340 and 291741 . Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power.

34. Thus the above decision clearly lays down that in the garb of affirmative action or judicial activism this Court cannot amend the law as that would be a naked usurpation of legislative power. This Court must exercise judicial restraint in this connection.

35. We regret to say that the directions of the High Court (which have been quoted in this judgment) are really an encroachment into the legislative and executive domain. Whether there should be one State Consumer Forum or five or more State Consumer Fora is entirely for the legislature and executive to decide. The High Court has directed that the State Government should constitute at least five State Consumer Forums at the State level by making necessary amendments in the Act. In our opinion such a direction was clearly illegal. The Court (including this Court) cannot direct amendment of an Act made by the legislature. The establishment of the District, State and National level Consumer Fora is done u/s 9 of the Consumer Protection Act by the authorities mentioned in that Act. The composition of these Fora is also prescribed in that section, and so are the salaries and allowances and other conditions of service of the members. It is only the authorities mentioned in the Act who can do the needful in this connection, and this Court cannot arrogate to itself the powers given by the Act to the said authorities.

36. For instance, the salaries and allowances of member of the State and District Fora can only be prescribed by the State Government. We have been informed that in some States these salaries and allowances are very low. Be that as it may, this Court cannot arrogate to itself the powers and functions of State Government in this connection. Different State Governments have different constraints and considerations e.g. financial constraints, the number of cases, etc. and it is entirely for the State Governments to exercise the powers prescribed to them by the Act. Similarly it is entirely for the Central Government to perform the functions given to it by the Act, and this Court cannot interfere with the Central or State Government in the exercise of their functions. At best

this Court or the High Court can make recommendations for increase of salaries, allowances and betterment of working conditions, etc. but there its jurisdiction ends. It cannot give binding directions in this connection.

37. We regret to say that even the interim order of this Court dated 26.11.2000 by which it directed the Union of India to file a comprehensive scheme with regard to the structuring of the Consumer Forums at all the three levels does not seem to be within its jurisdiction as it is contrary to the clear provisions of the Consumer Protection Act.

38. It has been nowhere provided in the Consumer Protection Act that the Central Government has a duty, or power, to prepare a comprehensive scheme with regard to the structure of Consumer Fora at all the three levels.

39. No doubt the High Court, as well as this Court, are concerned that the Consumer Fora in many parts of the country are not functioning properly, but the Court could at most have given some recommendations to the Central and State Government in this connection, and it is entirely upto the Central and State Governments whether to accept those recommendations or not, at their discretion. This Court cannot amend the Consumer Protection Act by issuing directions contrary to the clear provisions of the Act nor can the High Court do so.

40. The High Court apart from directing that there should be five Consumer Fora in U.P. has also directed that the Presiding Officer of a Bench will be a retired High Court Judge who would enjoy the same facilities and amenities as enjoyed by a sitting High Court Judge. This again is contrary to the provisions of the Act. Section 16(2) of the Act (which we have quoted above) clearly states that the salaries, allowances and conditions of service of the members of the State Commission shall be such as may be prescribed by the State Government. Hence it was not open to the High Court to practically amend Section 16(2) by its judicial verdict and prescribe the salaries or conditions of service of the members of the State Commission. Such salaries or conditions of service can only be prescribed by the State Government and not by the High Court as is clear from Section 16(2).

41. We are constrained to make these strong observations because in recent years it has been noticed that the judiciary has not been exercising self restraint and has been very frequently encroaching into the legislative or executive domain. We should do introspection and self criticism in this connection.

42. It is true that there is no rigid separation of powers under our Constitution but there is broad separation of powers, and it not proper for one organ of the State to encroach into the domain of others.

43. In this connection, this Court in 281149 observed (vide para 17 to 19) :

Before advertng to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not

been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. The Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. The Legislature and executive, the two facets of the people's will, have all the powers including that of finance. The Judiciary has no power over the sword or the purse, nonetheless it has power to ensure that the aforesaid two main organs of the State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of powers is the self imposed discipline of judicial restraint.

Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of *Trop v. Dulles* (1958) 356 US 86 observed as under:

All power is, in Madison's phrase, "on an encroaching nature". Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint....

Rigorous observance of the difference between limits of power and wise exercise of power - between questions of authority and questions of prudence - requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do.

When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in

matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.

44. Courts have to maintain judicial self-restraint and they should not try to take over the functions of the Executive or the Legislature. In the present case, we can understand the concern of the High Court that the District Consumer Forum, Chamoli and other Consumer Fora in U.P. were not functioning properly, but then it could not and should not have overstepped its limits and taken over the functions of the authorities prescribed in Section 9 and other provisions of the Act.

45. It is well settled that the High Court cannot takeover the function of the statutory authorities under an Act, vide 283102 , 296959 , 288979 (paragraph 12) and 282230 .

46. For instance, this Court in G. Veerappa Pillai's case (supra) held that the High Court cannot direct the Regional Transport Authority to grant a permit, because in that event, the High Court itself will be acting as the permit granting authority. Similarly, in State of U.P. and Anr. v. Raja Ram Jaiswal and Anr. (supra) this Court observed:

The High Court was, of course, clearly in error in issuing a mandamus directing the District Magistrate to grant a licence. Where a statute confers power and casts a duty to perform any function before the power is exercised or the function is performed, the Court cannot in exercise of writ jurisdiction supplant the licensing authority and take upon itself the functions of the licensing authority. The High Court was hearing a writ petition praying for a writ of certiorari for quashing the order of remand. The High Court could have quashed the order of remand if it was satisfied that the order suffers from an error apparent on the record. But there its jurisdiction would come to an end. The High Court cannot then proceed to take over the functions of the licensing authority and direct the licensing authority by a mandamus to grant to licence.

47. Under our Constitution the Judiciary, the Legislature and the Executive have their own broad spheres of operation. It is important that these organs do not encroach on each other's proper spheres and confine themselves to their own, otherwise there will always be danger of a reaction. Of the three organs of the State, it is only the judiciary which has the right to determine the limits of jurisdiction of all these three organs. This great power must therefore be exercised by the judiciary with the utmost humility and self-restraint.

48. The judiciary must therefore exercise self-restraint and eschew the temptation to encroach into the domain of the legislature or the administrative or statutory authorities. By exercising self-restraint it will enhance its own respect and prestige. Of course, if a law clearly violates some provision of the Constitution, it can be struck down, but otherwise it is not for the Court to sit in appeal over the wisdom of the legislature, nor can it amend the law.

49. The Court may feel that the law needs to be amended or the Forum created by an Act needs to be made more effective, but on this ground it cannot itself amend the law or take over the functions of the legislature or executive. The legislature and the executive authorities in their wisdom are free to choose different methods of solving a problem and the Court cannot say that this or that method should have been adopted. As Mr. Justice Cardozo of the U.S. Supreme Court observed in *Anderson v. Wilson* 289 U.S. 20:

We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it.

50. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing Inter branch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of Inter branch equality.

51. Second, judicial restraint tends to protect the independence of the judiciary. When courts encroach into the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored. If judges act like legislators or administrators it follows that judges should be elected like legislators or selected and trained like administrators. This would be counterproductive. An essential feature of an independent judiciary is its removal from the political or administrative process. Even if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

52. The constitutional trade - off for independence is that judges must restrain themselves from the areas reserved to the other separate branches. Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

53. As observed by the Supreme Court in 281327 , the Court must presume that the legislature understands and correctly appreciates the need of its own people. The legislature is free to recognize degrees of harm and may confine its restrictions to those where the need is deemed to be the clearest. In the same decision it was also observed that the legislature is the best judge of what is good for the community on whose suffrage it came into existence, and it is for the legislature to amend the law, if it so wishes. The court can at most make a recommendation to the legislature in this connection, but it is upto the legislature to accept the recommendation or not.

54. The function of a judge has been described thus by Lawton LJ:

A Judge acts as a referee who can blow his judicial whistle when the ball goes out of play, but when the game restarts he must neither take part in it nor tell the players how to play" (vide *Laker Airways Ltd. v. Department of Trade* (1977) QB 643(724).

55. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote:

It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism - by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest. (See 'Essays on Legal History in Honour of Felix Frankfurter' Edited by Morris D. Forkosch).

56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the Judges preferences. The Court must not embarrass the legislature or the administrative authorities and must realize that the legislature and authorities have to take into account various considerations, some of which the court may not even be aware of. In the words of Chief Justice Neely:

I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financier, banker, stockbroker or system management analyst. It is the height of folly to expect Judges" intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator.

57. In *Lochner v. New York* 198 US 45 (1905), Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment criticized the majority of the Court for becoming a super legislature by inventing a "liberty of contract" theory, thereby enforcing its particular laissez-faire economic philosophy. Similarly, in his dissenting judgment in *Griswold v. Connecticut* 381 U.S. 479, Mr. Justice Hugo Black warned that "unbounded judicial creativity would make this Court a day-do-day Constitutional Convention". In "The Nature of the Judicial Process" Justice Cardozo remarked : "The Judge is not a Knight errant, roaming at will in pursuit of his own ideal of beauty and goodness". Justice Frankfurter has pointed out that great judges have constantly admonished their brethren of the need for discipline in observing their limitations (see Frankfurter's "Some Reflections on the Reading of Statutes").

58. However, the Central and State Governments are requested to consider fixing adequate salaries and allowances for members of the Consumers Fora at all

three levels, so that they can function effectively and with a free mind. They are also requested to fill up vacancies expeditiously so that the Fora can function effectively.

S.B. Sinha, J

1. Leave granted.

2. Although I agree with my learned Brother Katju, J. that having regard to the question involved in the present appeal, we should request the Central Government as also the respective State Governments to consider the desirability of fixing appropriate salaries and allowances for members of the consumer fora at all three levels so that they can function effectively and with a free mind, I deeply regret my inability to agree with various observations made by my learned Brother for whom I have the highest respect.

3. The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of the consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. The said Act is in addition to and not in derogation of the provisions of any other law for the time being in force. The following Statement of Objects and Reasons preceding the Act are clear pointers to show the purport and object for which the Act was enacted:

2. It seeks, inter alia, to promote and protect the rights of consumers such as -

(a) the right to be protected against marketing of goods which are hazardous of life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;

(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;

(e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) right to consumer education.

3. These objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State level.

4. The Act not only provides for new rights for the citizens of India in their capacity as consumers, it envisages their empowerment in this behalf. The same, in my opinion, deserves due consideration in the matter of determination.

5. It is indisputably the solemn duty of the executive of both the Government of India as also the Governments of States to implement the provisions of the Act in true letter and spirit.

6. In my opinion, in a situation of this nature where the action or inaction on the part of the executive government of a State or Union Territory would lead to virtual closure and/ or non-functioning of such an important judicial fora created under the Act, it is permissible for the Superior Courts, and particularly this Court, while exercising its constitutional functions, to issue necessary directions for proper and effective implementation of the provisions thereof.

7. The public interest litigation which was filed in the High Court of Allahabad was not in the nature of an adversarial litigation. It was filed for a specific purpose and to serve a public cause. The directions issued by the High Court in its impugned judgment were, of course, at one point of time challenged by the State of Uttar Pradesh, but the same had not only since then been complied with, but also this Court from time to time, on the intervention of several bodies, had issued various directions. Brother Katju, J. in the accompanying judgment has noticed some of them.

8. Indian Supreme Court has achieved world-wide acclaim in fashioning new rights under Part III of the Constitution and also using Directive Principles as interpretive devices for giving a contemporaneous meaning to Part III. Innovations in the field of PIL or Social Interest Litigation as some people like to call it, have been institutionalized; methods and rules in that regard have been streamlined to a great extent through later directives of this Court. The journey of PIL from rhetoric to a trusted court procedure showcases in ample the potential of constructive exchange between organs of polity, remaining well within their limits. At the same time, we are not unmindful of some decisions which have brought disrepute to the institution as well the innovation itself. James Madison once when similarly situated remarked, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. As has been mentioned, subsequent directives of SC have come down heavily on such instances.

9. Although this phase has been widely documented but the last such mention was in Public Law, 2006 Autumn, Human Rights Transformed: Positive Duties and Positive Rights (P.L. 2006, AUT, 498-520 at pg. 513) where the author (Sandra Fredman) sees inspiration in the wide-ranging work of Indian SC for European Court of Justice. It was noted therein:

Two points should, however, be noted (about Indian Supreme Court's record on Public Interest Law). First, the Court has adapted its procedure to enable it to adjudicate polycentric issues more appropriately. Wide standing rules require the court to conduct some of its own fact-finding, sometimes through establishing its own commissions. It has also fashioned its own remedial orders to provide

ongoing management. For example, in the "Right to Food" case, it has issued a continuing mandamus to require states to fully implement specific schemes including mid-day meals at school. Secondly, affirmation of wide duties is often used to counter maladministration rather than to initiate new projects. Thus the right to livelihood of payment dwellers gave rise only to a duty to consult before removing them; and the right to a road gave rise only to a duty to complete a project for which funds had already been allocated. In the right to food case, a primary problem was maladministration: the Court found that about half of the food subsidy was being spent on holding excess stocks; reducing stocks would free up large resources to distribute food and provide hot midday meals for school children.

The Indian approach is relevant to the domestic scene in that there are clear signs that the principles in the EU Charter of Fundamental Rights will be used as interpretative aids by the European Court of Justice, and thereby have a direct influence on domestic law.

(Emphasis supplied)

10. The matter at hand also involves consideration of a PIL. A different set of expectations stares us in the face, and significantly, we are also anchored with a unique sense of responsibility. Judicial apathy with a value-neutral outlook would neither help the functioning of consumer fora nor our self-belief. We attend to the matter with a similar approach.

11. We, however, would fail in our duties if we do not acknowledge the extent of cooperation which had been rendered to us not only by Mr. A. Sharan, learned Additional Solicitor General of India but almost all counsels appearing for different States in assisting us to issue directions from time to time which indisputably have served greater positive purpose.

12. Brother Katju, J. has noticed that even the learned Additional Solicitor General appearing on behalf of the Union of India had been more than fair in taking a bold stand agreeing for effective implementation of the provisions of the Act, this Court's intervention is necessary.

13. It may be true that the salary, honorarium or other allowances of the members of the District Forum as also those of the State Commission are ordinarily to be prescribed by the State Governments in terms of the provisions of the Act but even in that behalf, most of the State Governments have taken a very reasonable stand by agreeing to pay reasonable salaries and other allowances to the Chairman and members of the different fora.

14. In this context, we agree that the provisions of Consumer Protection Act envisage the role of the executive in laying down the particulars of pay-scale as also the associated benefits, but the fact situation as agreed on record by both the sides, portends a rather grim future for consumer fora at different levels. It will not be the spirit of any statute for that matter to put forward a framework of

narrow rules which will impede issuing of directions to set in motion the machinery with respect to that law. Consumer Protection Act embodies a certain value in protecting the interests of consumers in the age of consumerism, and the institution of consumer for a has a specific mission in that behalf. Instant order needs to be seen in the perspective of achieving that "point behind the law".

15. With the advent of globalization, we are witnessing a shift from Formalism to a Value-laden approach to law. In the contemporary scholarship, especially with the decimation of law as purely an autonomous discipline (with the emergence of cross-cutting realms such as Law and Economics, Law and Philosophy, Law and Society, IPR et al), we see that laws embody a goal, which may have its provenance in sciences other than law as well. It is no more the black letter in the law which guides the interpretation but the goal which is embodied by the particular body of law, which may be termed as the rationality of law.

16. Law, in its value-laden conception, is not entirely endogenous in its meaning and purpose: the construction thereof also depends on the statement of purport and object. There is a spill-over of the aforementioned shift in philosophy of law to statutory interpretation. Purposive interpretation of lately, has gained considerable currency, which is relevant for the sake of maximizing the efficiency in respect to the point behind the rule. There may be a situation when purposive interpretation is required even in the context of deciphering the Constitutional mandate by invoking the notion of active liberty discovered by Justice Stephen Breyer of American Supreme Court. This is the precise role which was exhorted by Bruce A. Ackerman in the famous Storrs Lecture:

If we are to make sense of our constitution, we must cut ourselves off from the Framers' theory of democracy. The Least Dangerous Branch opens with a second declaration of independence, not an effort at constitutional interpretation. The beginning of constitutional wisdom, apparently, is that Hamilton, Marshall, and the rest were utterly mystified by representative government.

17. The ultimate justification for the creation of new rights and renewed emphasis on implementation of statutory rights is that they have to be made justifiable, simply because of their primacy in living a life with dignity and the matching recognition thereof with the values that our constitution inheres. Following this philosophy the SC has developed new methods and new remedies. The same is to be considered to be a part of wider civilization.

(See Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution*, (2005) Knopf; Ronald Dworkin, *Taking Rights Seriously* (1977); Ronald Dworkin, *A Matter of Principle* (1985); Bruce A. Ackerman, 93 *Yale Law Journal* 1013 (May 1984), *The Storrs Lectures: Discovering the Constitution*)

18. In this situation, this Court had only been considering the matter relating to better implementation of the provisions of the Act so as to uphold the dignity and impartiality of the Chairman and members of the fora which would help them in

discharging their judicial functions.

19. It is a matter on record that even the salary and other allowances payable to the members of the National Consumer Commission, as directed by this Court, have been accepted by the Union of India and an appropriate notification in this behalf has been published.

20. Separation of power is a favorite topic for some of us. Each organ of the State in terms of the constitutional scheme performs one or the other functions which have been assigned to the other organ. Although drafting of legislation and its implementation by and large are functions of the legislature and the executive respectively, it is too late in the day to say that Constitutional Court's role in that behalf is non-existent. The judge made law is now well recognised throughout the world. If one is to put the doctrine of separation of power to such a rigidity, it would not have been possible for any superior court of any country, whether developed or developing, to create new rights through interpretative process.

21. Separation of power in one sense is a limit on active jurisdiction of each organ. But it has another deeper and more relevant purpose: to act as check and balance over the activities of other organs. Thereby the active jurisdiction of the organ is not challenged; nevertheless there are methods of prodding to communicate the institution of its excesses and shortfall in duty. Constitutional mandate sets the dynamics of this communication between the organs of polity. Therefore, it is suggested to not understand Separation of Power as operating in vacuum. Separation of power doctrine has been reinvented in modern times.

22. It is interesting to note here the decision in *Youngstown Sheet & Tube Co. v. Sawyer* 343 U.S. 579, 635 (1952) wherein court commented on the utility of separation of power within the constitutional scheme to maximize good governance:

The actual art of governing under our Constitution does not and cannot conform to judicial definitions of the power of any of its branches based on isolated clauses or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

(emphasis supplied)

23. The modern view, which is today gathering momentum in Constitutional Courts world over, is not only to demarcate the realm of functioning in a negative sense, but also to define the minimum content of the demarcated realm of functioning. Objective definition of function and role entails executing the same, which however may be subject to the plea of financial constraint but only in exceptional cases. In event of any such shortcoming, it is the essential duty of the other organ to advise and recommend the needful to substitute inaction. To this extent we must be prepared to frame answers to these difficult questions.

24. John Rawls in *Political Liberalism* (1996) at pg. 231 notes in relation to a similar situation;

By applying public reason the court is to prevent that (higher) law from being eroded by the legislation of transient majorities, or more likely, by organized and well-situated narrow interests skilled at getting their way. If the court assumes this role and effectively carries it out, it is incorrect to say that it is straightforwardly antidemocratic.

This perspective helps us all towards the wholesome realization of the democratic ideal of good governance and rule of law.

25. In the American context, it will be in the fitness of the discussion to quote from an illuminating piece by Cass R. Sustain (*Constitutionalism After The New Deal* 101 HVLR 421):

In the New Deal period, the original constitutional framework was thus reformulated in three fundamental ways. The New Deal set out a different conception of legal rights, rejecting common law and status quo baselines for deciding what constituted governmental "action" and "inaction"; it proposed a dramatically different conception of the presidency and a novel set of administrative actors; and it rejected traditional notions of federalism. The term "New Deal constitutionalism" describes the resulting structure.

(Emphasis supplied)

26. If we notice the evolution of Separation of Power doctrine, traditionally the checks and balances dimension was only associated with governmental excesses and violations. But in today's world of positive rights and justifiable Social and Economic entitlements, hybrid administrative bodies, private functionaries discharging public functions, we have to perform the oversight function with more urgency and enlarge the field of checks and balances to include governmental inaction. Otherwise we envisage the country getting transformed into a state of repose. Social engineering as well as Institutional engineering therefore forms part of this obligation.

27. In this context, Bruce A. Ackerman in *We, the People* (1991) refers to constitutional moment in the lives of nations in which foundational premise of system finds seminal turnaround guided by popular awareness. A decision of change in the background of a constitutional moment has a Transformative constitutional power, equivalent to a constitutional amendment.

28. 291417 is an instance to show that in appropriate cases the Judiciary may step in even for the purpose of making recommendations in regard to the scale of pay and other allowances payable to the judicial officers. While making its suggestion to the state, this Court noted:

These are only suggestions which are made and it will be more appropriate for each State, taking into consideration the local requirements, to adopt appropriate

nomenclatures. It would be appropriate to mention at this stage that in some States, the entry point to the judicial service was at the level of a munsiff or a subordinate Judge. Those are nomenclatures which are also to be considered but what is important is that in respect of each scale, the nomenclature should be different. In this way, a judicial officer will get a feeling that he has made progress in his judicial career with his nomenclature or designation changing with an upward movement within the service.

29. We may notice that the Shetty Commission appointed to go into these matters had submitted its report and the same has been accepted by almost all the States.

30. It is also interesting to note that the Central Government evidently accepted the recommendations of the Shetty Commission and deleted the consideration in respect of the pay scales of the judicial officers from the terms of the reference of the Fifth Pay Commission.

31. A further order was passed in the said decision on or about 21st March, 2002 by a Three-Judge Bench of this Court in 275193 . Apart from referring to Article 50 of the Constitution of India, the Three-Judge Bench of this Court in repelling the contention of some of the States that this Court should not interfere in such matters raised constitutional questions in regard to the increase in retirement age from 60 to 62 years. The court went into the merits of the recommendations, sifted through them and also in the end gave suggestions to various State Governments. We may place on record that the Three-Judge Bench is still monitoring implementation of the report of the Shetty Commission and the various directions issued by this Court.

32. A Three-Judge Bench of this Court in 279048 , while opining that all complaints filed before different fora constituted under the Act should be required to be determined as expeditiously as possible with regard to purport and object of the Act, observed:

35. From the proposed amendment in the Act, it is apparent that Parliament is alive to the problems faced by the consumers and the consumer forums and, therefore, further directions are not required to be given.

36. However, apart from the contemplated legislative action, it is expected that the Government would also take appropriate steps in providing proper infrastructure so that the Act is properly implemented and the legislative purpose of providing alternative, efficacious, speedy, inexpensive remedy to the consumers is not defeated or frustrated.

37. Similar action is also expected from the National Commission as well as State Commissions. Hence, for avoiding delay in disposal of complaints within the prescribed period, the National Commission is required to take appropriate steps including:

(a) By exercise of administrative control, it can be seen that competent persons

are appointed as members on all levels so that there may not be any delay in composition of the Forum or the Commission for want of members.

(b) It would oversee that the time-limit prescribed for filing the defence version and disposal of complaints is strictly adhered to.

(c) It would see that the complaint as well as the defence version should be accompanied by documents and affidavits upon which parties intend to rely.

(d) In cases where cross-examination of the persons who have filed affidavits is necessary, suggested questions of cross-examination be given to the persons who have tendered their affidavits and reply may be also on affidavits.

(e) In cases where the Commission deems it fit to cross-examine the witnesses in person, video conference or telephonic conference at the cost of the person who so applies could be arranged or cross-examination could be through a commission. This procedure would be helpful in cross-examination of experts, such as doctors.

33. We have only noticed a different approach of the Court with the changing times. In a given case, the court may or may not issue any direction but the Supreme Court of India in an appropriate case should not stop its journey to creative interpretation of the constitutional provisions vis-a-vis the independence of judiciary.

34. Even if we, for the time being, do not take note of the Constitution Bench decision of this Court in 279971 apart from 266615 and 258997 and several other judgments following the same, there are cases and cases where this Court had, on one occasion or the other, dealt with the question of fixation of pay-scale not only with regard to judicial officers but also of other employees connected with the justice delivery system.

35. This Court in *Union of India and Ors. v. All Gujarat Fed. of Tax Consultants and Ors.* (SLP Nos. 6904-6905 of 1998) disposed of on September 16, 2003, issued directions in regard to various amenities and perks to be given to the members of the Income Tax Appellate Tribunal. The manner in which transfers and postings of the members of the Income Tax Appellate Tribunal should be effected was the subject matter of the decision of this Court in 280697 .

36. In 282064 , a Three-Judge Bench of this Court again considered the question of jurisdiction of the Chief Justice in fixing the scale of pay of the various officers of the Delhi High Court. This Court opined:

49. The matter as regards fixation of scale of pay of the officers working in the different High Courts must either be examined by an expert body like the Pay Commission or any other body but in absence of constitution of any such expert body the High Court itself is to undertake the task keeping in view the special constitutional provisions existing in this behalf in terms of Article 229 of the Constitution of India.

50. We agree with the submission of the learned Additional Solicitor General to the effect that the decision of the High Court had been rendered having its origin in A.K. Gulati (CWP No. 289 of 1991) which had a spiralling effect, particularly in the case of Assistant Registrars. That was more a reason why a competent authority of the appellant should have taken immediate steps in holding a meeting with the Chief Justice or an authorized officer of the High Court.

51. Having regard to the aforementioned authoritative pronouncements of this Court, there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed themselves on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question as regards fixation of a revision of the scale of pay of the High Court being within the exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons.

37. Yet again recently in High Court Employees' Welfare Association, Calcutta and Ors. v. State of West Bengal and Ors. , this Court made a reference in context of institutional exchange holding:

Though the power to make rules in regard to pay and allowances of the High Court employees is vested in the Chief Justice subject to any law made by the Parliament, the Constitution has advisedly made the power of the Chief Justice to make such rules conditional upon approval of such rules by the Governor of the State, that is the State Government. The requirement of approval under the proviso Clause 2 of Article 229 is not a mere formality. We find that the State has approved all provisions except one clause. It has expressed its inability to agree to para 2 of Rule 4 as it provides for a general increase in pay of all existing employees by two stages, after fixation of pay in the revised pay scale. The non-approval is in consonance with the Minutes of the meeting dated 13/18.4.2005 between the Chief Justice and the Ministers representing the State. But for the unfortunate misunderstanding relating to second para of Rule 4 of the modified draft Pay Rules, the High Court and the State Government have shown understanding of each other's problems and by exchange of views and discussions, sorted out the outstanding issues, thereby maintaining the high constitutional traditions. Therefore there is no need for any interference.

(Emphasis Supplied)

38. We have only referred to some of the decisions of this Court which are binding on us, where pay scales have been fixed or amenities have been granted by the Courts or at least strong recommendations have been made.

39. In the instant case, Mr. M.N. Krishnamani, learned Amicus Curiae and the

learned Additional Solicitor General of India have made the following common submissions:

- 1) Court is competent to issue directions when State has either failed to perform its duty conferred on it under a statute or has exercised its power arbitrarily or on irrelevant considerations.
- 2) The pay fixation of Members is not directly related to the work load but it is a matter of status and dignity.
- 3) Nature of duties performed by the Members being judicial in nature, is entirely different from the other Govt. Services and, therefore, different considerations come into play.

40. It is also interesting to note that expanding citizen's right to food as envisaged under Article 21 of the Constitution of India, a Division Bench of this Court in 257396 inter alia directed the Government to sanction and operationally minimum of 14 lakh AWCs under ICDS.

41. If financial constraint was not considered to be a criterion for issuing a direction to create and sanction a huge number of posts by one Bench, it would be inappropriate for us to restrain ourselves from doing so in respect of judicial officers and other members of different fora created under the Act who perform judicial functions. The consumer courts, it must be borne in mind, in effect and substance, are virtual substitutes for the civil court in respect of certain categories of cases.

42. As has already been mentioned, although functional tests and positive tests have not yet been fully evolved in the context of new separation of power doctrine, undoubtedly their application would, in appropriate cases, be necessary so as to consider the institutional balance between various branches of the polity. It will be wholly inappropriate if we fail to consider the expanding jurisdiction. It is worth noticing that the Superior Courts of various other countries including Israeli Supreme Court and South African Constitutional Court, apart from those of the developed countries, have marked the beginning in this behalf.

43. For the views been taken herein, I regret to express my inability to agree with Brother Katju, J. in regard to the criticisms of various orders passed in this case itself by other Benches. I am of the opinion that it is wholly inappropriate to do so. One Bench of this Court, it is trite, does not sit in appeal over the other Bench particularly when it is a coordinate Bench. It is equally inappropriate for us to express total disagreement in the same matter as also in similar matters with the directions and observations made by the larger Bench. Doctrine of judicial restraint, in my opinion, applies even in this realm. We should not forget other doctrines which are equally developed viz., Judicial Discipline and Respect for the Brother Judges.

44. I would, therefore, while concurring with the conclusion of my learned Brother Kaju, J. for whose learning and erudition, I have the highest respect,

differ with all his reasonings in support thereof.

45. List the matter after vacations, before another bench to be nominated by Hon"ble the Chief Justice of India.