
(2017) 02 JH CK 0039
In the Jharkhand High Court
Case No : WP(PIL) No. 5458 of 2014

Sunil Oraon

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 13-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JLJR 377

Hon'ble Judges : D.N. Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Mr. Ashutosh Anand, Advocate, for the Petitioner; M/s. Rajiv Ranjan Mishra, Arbind Kumar, Advocates, for the State

Final Decision : Disposed Off

Judgement

D.N. Patel, J. (Oral)—Learned counsel appearing for the petitioner has argued out the case at length and submitted that there is lack of bare minimum infrastructure in the Jharkhand State Consumer Disputes Redressal Commission and in the District Consumer Forums in all the 24 districts. There are no Peon, no Stenographer, no Bench Clerk etc. The High Court s retired Judge is working as a Chairman of the Jharkhand State Consumer Disputes Redressal Commission. He is working as a Chairman-cum-Bench Clerk-cum-Stenographer-cum-Peon-cum-bailiff (for service of notice) also. This cannot be tolerated because the State of Jharkhand is not taking care of such type of Consumer Commission and Consumer Forums.

2. After several orders passed in this Public Interest Litigation when we called the Secretary of Food, Civil Supply and Consumer Affairs Department, now, on paper, principally the decision has been taken to give some staff to the Consumer Commission as well as to the District Consumer Forums, but, as the Government is busy with the function on 16th and 17th of February, advertisement will be given in the last week of February, Advertisement for the posts, for which, the decision has been taken by the Government dated 9th February, 2017 shall

invariably be published latest in the week commencing from 27th March, 2017, failing which, we hereby, direct the Chief Secretary of the State of Jharkhand not to pay salary to-

(a) Secretary. Food, Civil Supply and Consumer Affairs Department, Government of Jharkhand, Ranchi; and

(b) Mr. Thomas Dungdung, son of late Joseph Dungdung, Deputy Secretary. Food, Civil Supply and Consumer Affairs Department, Government of Jharkhand, Ranchi.

If these officers are self-drawing officers, they shall not prepare the bills of their salary, if the latest advertisement in a week commencing from 27th March, 2017, for filling up vacancies is not advertised. Interlocutory application is permitted to be filed by the State, if any step forward in the direction for appointment is taken by the State.

3. Learned counsel appearing for the petitioner further submitted that Jharkhand State Consumer Disputes Redressal Commission as well as District Consumer Forums in all 24 districts are not having sufficient electricity supply and. hence it hampers the work culture in the Consumer Commission and the District Consumer Forums. The public at large is sufferer and consequently in justice delivery dispensation, there is bound to be delay.

4. It has been held by the Hon"ble Supreme Court in the case of State of U.P. v. All U.P. Consumer Protection Bar Assn., reported in (2016)11 SCC 606 in paragraphs 7, 8 and 9, which read as under:

"7. 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 States concerned 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 the Central/State Governments concerned. We are happy to note that the Government of India have recognised 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 the 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

8. 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:

8.1. 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.

8.2. 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.

8.3. 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.

8.4. The conditions of eligibility, if any prescribed, for appointment as Non-Judicial Members of the 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.

8.5. 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.

8.6. The service conditions currently applicable including pay scales admissible to the 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 the reasonable conditions of service applicable to such appointees.

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

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

8.9. Any other aspect that the Committee may consider relevant and helpful with a view to making the Consumer Disputes Fora/Commissions more effective, efficient and their process speedy.

9. 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."

(emphasis supplied)

It has been held by the Hon"ble Supreme Court in the case of State of Uttar Pradesh and Others v. All Uttar Pradesh Consumer Protection Bar Association, reported in (2017)1 SCC 444 in paragraphs 2, 3, 12, 22 and 27, which read as under:

"2. The facts which have emerged from the interim report submitted by the Committee on 17.10.2016 constitute a sobering reflection of how far removed reality lies from the goals and objectives which Parliament had in view while enacting the Consumer Protection Act. 1986. The Committee has observed that the fora constituted under the enactment do not function as effectively as expected due to a poor organisational set up, grossly inadequate infrastructure, absence of adequate and trained manpower and lack of qualified members in the adjudicating bodies. The Benches of the State and District Fora sit, in many cases for barely two or three hours every day and remain nonfunctional for months due to a lack of coram. Orders are not enforced like other orders passed by the civil courts. The State Governments have failed to respond to the suggestions of the Committee for-streamlining the state of affairs.

3. The pathetic state of infrastructure is made evident in the following findings in the report of the Committee:

"The Committee, during its visits to states, has found that there are no proper court-rooms with lights and fans, chairs and tables. The condition of Chambers of

the Presiding Members is pathetic. They do not have adequate or trained staff. They do not have stenographers for taking dictations. At some Consumer Fora, there are no peons to retrieve the files from the record room. The record-rooms are, also, either too small and have no almirah, shelves or compactors to keep the files. The files are kept in open and get misplaced or eaten by termites. The Central Government provides funds for construction of the new buildings, carrying out additions/alterations/ renovations of existing buildings and grant for acquiring non-building assets such as furnitures, office equipments etc. The State Governments have to provide the land for construction of new buildings for the Consumer Fora. The Committee has noted that the State Governments have not been quick enough to allot land for construction of Consumer Fora in their respective States. It has, also, come to the notice of the Committee that the State Governments-responsible for timely filling up of the vacancies of the Presidents and Members in the State Commissions and District Fora of the States, have failed to keep the time limit. The Committee has come across instances where the State Governments have taken upto 7/10 months to approve the recommendations of the Selection Committee."

12. The interim report of the Committee provides an unfortunate reflection of the state of affairs in the consumer fora at the district, State and National level. That these bodies which are vested with important functions of a judicial nature continue to work conditions and in the face of the apathy of the Governments both at the National and State level is a matter which requires immediate intervention by this Court. A systemic overhaul of the entire infrastructure is necessary if the Consumer Protection Act, 1986 is (sic) to become a dead letter. With the proliferation of goods and services in a rapidly growing economy, Parliament envisaged the enactment to be the cornerstone of a vibrant consumer movement. Reality has been distant from the aspirations of the law. Since the state of affairs which has been revealed before the Court warrants systemic changes, we propose to initially issue directions on certain specific issues in the present order within a judicially manageable framework.

22. In these circumstances, we hold that Section 24-B vests administrative control over the State Commissions in the President of the National Commission and over the implementation of the recommendations of the District Fora in the Presidents of the State Commissions. The extent of the administrative control shall be in all matters relating to the administrative functioning of the forum concerned including but not limited to assignment of judicial and administrative work, posting, transfer and control over member selection, appointment and disciplinary matters relating to the staff of the district fora and State Commissions and in relation to provisioning and meeting the infrastructural requirements of those bodies. The requirements of infrastructure shall be met in coordination with the Departments of Consumer Affairs of the States concerned and, in relation to the National Commission in coordination with the Union Ministry of Consumer Affairs, Food and Public Distribution.

27. The Committee has annexed to its report at Annexures-B to M copies of the letters issued by it to the Chief Secretaries to the Governments of Orissa, NCT of Delhi, Haryana, Punjab, Union Territory of Chandigarh, Bihar, Jharkhand, Maharashtra, Tamil Nadu, Andhra Pradesh and Telengana on 14.10.2016 for rectification of deficiencies in infrastructure and resolution of various aspects. By the order of this Court dated 14.1.2016 the Committee was permitted to forward its recommendations to each State Government concerned for appropriate steps in a time-bound manner. A copy of the recommendations was directed to be submitted to this Court to enable it to issue directions should the recommendations not be implemented by the State Governments. Since the recommendations have been made after a detailed inspection and in the interests of facilitating a proper implementation of the provisions of the Act, we hereby direct each of the State Governments concerned to Committee within a period of three months. The Secretary to the Committee is requested to forward a copy of this order to the Chief Secretaries. concerned to secure compliance as directed."

(emphasis supplied)

5. Thus, from the aforesaid arguments, judicial pronouncements and from the fact that the required capacity of Diesel Generator Set (D.G. Set) is also not available, it appears that there is non-application of mind of the high ranking administrative officers of the concerned Department. To awake the senses of the Government, we hereby, direct the Secretary. Department of Energy. Government of Jharkhand, Ranchi as well as Secretary Food. Civil Supply and Consumer Affairs Department Government of Jharkhand, Ranchi to install, if the report of Energy Department has obtained. they will be installed as per the report, minimum 50 KWs capacity Diesel Generator Set in Jharkhand State Consumer Disputes Redressal Commission as well as in District Consumer Forums in all 24 districts shall be installed within a period of two months from today. The D.G. Set of such capacity which is sufficient for effective functioning of the Consumer Commission as well as all the Consumer Forums, as per report of Energy Department of Government of Jharkhand. If no such report has been sought for, by now, as an immediate measure, looking to the pressing need of the Consumer Commission and all the Consumer Forums, the undertakings shall be filed by both the aforesaid Secretaries of the different Departments before this Court that the Diesel Generator Set with the aforesaid minimum capacity shall be installed, failing which, strict action shall be initiated by this Court upon both the aforesaid Secretaries.

6. Where there is a will, there is always a way, but, it appears that there is lack of will and wish on the part of the aforesaid Secretaries and Deputy Secretary in the Government Department. This matter is going on from the year 2014 onwards. Principally, all the decisions ought to have been taken by the respondents much earlier. It has become fashion with the respondents that unless and until drastic orders are being passed by the High Court, perhaps the

decisions are not being taken by the respondents. Enough is enough. Every now and then, we cannot take executive type decisions. We are constrain to take these decisions because the officers of the Government are not taking decisions and they are turning deaf ear to the request of the judiciary. The request of the judiciary, in a mildest tone, is an order of the Court.

7. Photocopy of the minutes of the meeting dated 9th February, 2017 is tendered by the Government Advocate which is signed by the Chairman of the Jharkhand State Consumer Disputes Redressal Commission as well as the Secretary, Food, Civil Supply and Consumer Affairs Department and the President of the District Consumer Forum, Ranchi is taken on record.

8. It appears that after calling the Secretary of Food, Civil Supply and Consumer Affairs Department in the Court, this decision has been taken.

9. The officer viz. Mr. Thomas Dungdung, son of late Joseph Dungdung, Deputy Secretary, Food, Civil Supply and Consumer Affairs Department is present in the Court. This order is dictated in the open Court and it shall be communicated by the Deputy Secretary to the high ranking administrative officers of the State of Jharkhand.

10. This matter is adjourned on 7th March, 2017.