

(1993) 10 KL CK 0020
In the High Court Of Kerala
Case No : O.P. No. 4847 of 1991-B

The Central Board of Secondary Education	APPELLANT
Vs	
The Consumer Dispute Redressal Forum, Ernakulam and Others	RESPONDENT

Date of Decision : 06-10-1993

Acts Referred:

Consumer Protection Act, 1986 — Section 13, 17

Citation : AIR 1994 Ker 153 : (1993) 1 ILR (Ker) 798

Hon'ble Judges : M. Jagannadha Rao, C.J;K. Sreedharan, J

Bench : Division Bench

Advocate : P. Radhakrishnan, for the Appellant; Jose K. Kochupappu, Govt. Pleader and N. Haridas, for the Respondent

Final Decision : Dismissed

Judgement

Sreedharan, J.—These Original Petitions have come before us on a reference made by a learned single Judge of this Court. Substantially similar questions arise for consideration. So, we are disposing of these petitions by a common judgment.

2. Petitioner in these writ petitions is the Central Board of Secondary Education. This Board has educational institutions affiliated to it. It holds examinations for the students who are studying in those affiliated schools and institutions. Among the various examinations conducted by the petitioner are the All India Senior School Certificate Examination (Class XII) and the All India Secondary School Examination (Class X). Alleging that the said examinations were not properly held, that results of supplementary examinations were not announced in time, and that in the case of some of the students results were not announced at all, aggrieved students approached the Consumer Dispute Redressal Forum, Ernakulam for getting reliefs provided by the Consumer Protection Act, 1986, hereinafter referred to as "the Act". On getting notice from the Forum, writ petitioner filed objections disputing the jurisdiction of the Forum to entertain

petitions filed by the students. The preliminary objection raised by the Central Board of Secondary Education regarding the jurisdiction of the Forum was turned down. The Forum thereupon held that it has jurisdiction to entertain and adjudicate the complaint filed by the students-petitioners before them. This order of the Forum is questioned in the first four Original Petitions.

3. On getting notice on the petitions filed by the students before the Forum, the Central Board of Secondary Education has come up in the latter five cases challenging the action of the Consumer Dispute Redressal Forum, Ernakulam in entertaining those petitions.

4. According to the learned counsel representing the writ petitioner, namely the Central Board of Secondary Education, education is not an activity coming within the ambit of the definition "service" as defined in Section 2(1)(o) of the Act. The orders passed by the Consumer Dispute Redressal Forum holding that it has jurisdiction to entertain complaints filed by the students, which are under challenge in the earlier mentioned four Original Petitions, are not now open to challenge before the State Forum because the period of limitation prescribed by the Act has expired. These Original Petitions were allowed to pend before this Court for more than two years. At this juncture if those Original Petitions are disposed of holding that petitioner has not exhausted the alternate remedy provided by the Act, it will result in injustice to the petitioner. On these basis it is submitted that this Court is to give a verdict as to whether the alternative of the petitioner will fall within the scope and ambit of the provisions contained in the Act.

5. The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of consumers and to achieve that it provides for establishment of Consumer Redressal Forums for settlement of consumers' disputes and for matters connected with it. That Act is a complete code by itself. Depending on the claim, the consumer is to approach the District Forum, State Commission or the National Commission. Orders passed by the District Forum are made appealable to the State Commission u/s 15 of the Act. Such an appeal has to be preferred within a period of 30 days from the date of the order of the District Forum. As per the proviso to that Section, the State Commission can entertain an appeal after the expiry of the period of 30 days, if it is satisfied that there was sufficient cause for not filing the appeal within the period of 30 days. u/s 17(b) of the Act, the State Commission is having jurisdiction to call for the records in cases pending before the District Forum, where it appears to the Commission that the District Forum has exercised jurisdiction illegally or with material irregularity. No time limit is fixed under the Act for exercising this supervisory power. Orders passed by the State Commission are appealable to the National Commission. The National Commission has the power to call for the records of any dispute pending before the State Commission to satisfy itself as to whether the State Commission has exercised its jurisdiction illegally or with material irregularity. A person aggrieved by any order made by the National

Commission may prefer, an appeal against that order to the Supreme Court within a period of 30 days from the date of the order. The Supreme Court may entertain an appeal after the expiry of the said period of 30 days if it is satisfied that there was sufficient cause for not filing it within that period. When such a hierarchy of authorities are provided by the Act, we have to consider the question as to whether the parties can move this Court under Article 226 of the Constitution for the issuance of a writ of prohibition to prevent the District Forum or the State Commission from proceeding with the matter pending before it. As observed by us in O.P. 2929/ 1993, it is true that whenever Legislature creates a separate Tribunal with a hierarchy of appeals, the jurisdiction of the High Court under Article 226 of the Constitution of India to deal with the orders passed by the said Tribunal is not and cannot be ousted. Whenever questions of jurisdiction are raised, the High Court normally permits such questions to be raised under Article 226 of the Constitution. But, it is to be noted that the High Court is not bound to entertain every writ petition which raises a question of jurisdiction of a Tribunal (vide First Income Tax Officer, Salem Vs. Short Brothers (P) Ltd., .

6. In O. P. 2929/1993, we stated :--

"If writ petitions are entertained and ultimately dismissed by the High Court, then the parties would necessarily avail the further remedy by way of appeal to a Division Bench and then a further appeal to the Supreme Court under Articles 133 and 136 of the Constitution of India. If the writ is not issued, then, the complaint before the Forum would have to be heard. This will entail lot of delay. The High Courts are already burdened with heavy arrears and that is the precise reason why separate hierarchy of bodies is created under the Consumer Protection Act, it is therefore not wise for this court ordinarily to undertake the burden of deciding such disputes, even if they relate to jurisdiction".

No argument has been advanced before us to doubt the correctness of this statement of the law. In the instant case, in four cases the District Forum found the petitions filed by the students against the Central Board of Secondary Education is maintainable. The Board could have challenged the said finding before the State Commission. If the decision went against the Board, they could have taken up the matter before the National Commission and then to the Supreme Court. Instead of availing of the rights as provided under the Act, this Court has been moved by filing petitions under Article 226 of the Constitution. In the latter mentioned five cases, even before approaching the District Forum, this Court has been moved for the issuance of a writ of prohibition restraining the District Forum from proceeding with the case.

7. The District Forum took the view that the petitions filed by the students are maintainable and can be proceeded with. Petitioner Board has no case that the Forum has acted in violation of the principles of natural justice. Its only case is that education is not a service coming within the purview of the Act and the District Forum should keep its hands off. If the petitioner is aggrieved by the view taken by the Forum, it can challenge the same in appeal u/s 15 of the Act

or in revision u/s 17 of the Act before the State Commission. The decision of the State Commission is open to challenge before the National Commission and then before the Supreme Court. In such a situation, according to us, this Court is not to go into the question of jurisdiction of the Forum under Article 226 of the Constitution.

8. According to the learned counsel representing the writ petitioner, the Central Board of Secondary Education is conducting examinations for the students who undergo education in the institutions affiliated to it. The contention runs as follows : --

It is an educational activity. Education cannot be considered as a commercial service. To become "service" as defined under the Act, it must have an element of commerce. Since educational activity is not in any manner connected with commercial activity, actions of the Board are not to be challenged before the District Forum, State Commissioner or National Commission. In support of this argument, reliance was placed on the decision in Smt. N. Taneja and another Vs. Calcutta Distt. Forum and others, In that case, question was whether imparting education to student is "service" as defined under the Act. The learned single Judge, while interpreting Section 2(1)(o) of the Act, observed (at p. 107 of AIR) :--

"The definition of service u/s 2(o) if read with Sections 2(c)(iii) and 2(d)(ii) and 2(g) of the Act, it becomes apparent that the relationship of teacher and student of an educational institution is not a service on hire because student is not such a consumer which is linked any way with the buyer of any economic goods and hire has not been linked with education, teacher and student. The contract as referred to in Section 2(g) certainly is not the contract as defined in Section 2(o) because the very conception of the contract cannot be forced into the Consumer Protection Act so far as education, teacher and student are concerned".

For coming to this conclusion, the learned Judge took the view that education does not come under the purview of banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, entertainment, amusement or the purveying of news or other information and so not service. We find it difficult to agree with this opinion expressed by the learned Judge. "Service" has been defined u/s 2(1)(o) of the Act. It is an inclusive definition. It takes within its ambit service of any description which is made available to potential users. Service which may not fall within this meaning, are taken within the ambit of "service" by the inclusive provision which follow the above words. According to us, the definition of "service" does not limit to what are specifically mentioned in the clause. The concept of service is wide and exhaustive, taking within its purview services of every description not only those which are specifically mentioned therein. The scope of the definition cannot be limited to the services which are specifically mentioned in the clause. Thus the definition of "service" u/s 2(1)(o) brings within its ambit service of any description which is made available to potential users and embraces matters

which are not specifically enumerated in the definition as well. In this view, the fact that education is not mentioned in the clause does not make it anything other than "service" if on facts it falls within the main definition. The Central Board of Secondary Education conducts examination for the students who are sent up by the institutions affiliated to it. The students are to pay required fee for taking the examination. On account of this, it has to be closely scrutinised as to whether the activities of the Board would amount to service. In interpreting this definition, the Courts will have to resort to a purposive interpretation. The Supreme Court in *The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd.*, observed (at p. 690 of AIR):--

"The language of a statutory provision is not static vehicle of ideas and concept and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning and content of the statutory provision undergo a change. It is elementary that law does not operate in vacuum. It is not an antique to be taken down, dusted, admired and put back on the shelf, but rather it is a powerful instrument fashioned by society for the purpose of adjusting conflicts and tensions which arise by reason of clash between conflicting interests. It is, therefore, intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate. It is here that a Judge is called upon to perform a creative function. He has to inject flesh and blood in the dry skeleton provided by the legislature and by a process of dynamic interpretation, invest it with a meaning which will harmonise the law with the prevailing concepts and values and make it an effective instrument for delivering justice".

While interpreting Clause (2)(1)(o) of the Act, the purpose for which the Act was enacted cannot be forgotten. Since this issue is one to be decided by the State Commission, National Commission and the Supreme Court, we leave it there without expressing any final opinion on it.

9. Kerala State Commission has now taken the view that Kerala University is rendering service to the students and complaints filed by students against University are maintainable under the Act. Other State Commissions have also taken the same view. In *Manisha Samal v. Sambalpur University* (1992) 1 CPR 215, the National Commission held that negligence committed by University in the conduct of examination will amount to deficiency in service coming under the Act. We cannot go into the correctness of this view. Any opinion of ours will amount to exercising appellate jurisdiction on the decision of the National Commission in *Manisha Samal*'s case. Such a power is conferred only on the Supreme Court under the Act. In these circumstances also, we do not consider it advisable to pronounce on the jurisdiction of the District Forums to entertain petitions filed by students alleging deficiency in the service of the Board of Secondary Education.

10. These original petitions were admitted by a learned single Judge nearly two

years back. It was kept pending during this period. Thereafter is this Court to dismiss them on the ground that petitioner is having an alternate remedy of challenging the action of the District Forum before the State Commission, National Commission and the Supreme Court? According to learned counsel, the orders passed by the District Forum are now not open to challenge because the period of 30 days fixed for challenging them in appeal have expired long back. Even though the State Commission has got the power to condone the delay, there is no certainty that the delay will be condoned and the appeal entertained. Therefore petitioner is not having an effective alternate remedy. We are not impressed with this argument. The order passed by the District Forum is challenged under Article 226 of the Constitution of India. So also the jurisdiction of the District Forum to entertain the petition filed by the students is under challenge. The jurisdiction sought to be exercised by this Court is one of judicial review. In exercise of this power, this Court has to consider the availability to the petitioner of another remedy which is equally convenient and efficacious. If the alternative remedy is to be exercised by public bodies other than judicial tribunals, the High Court will, in exercise of its discretionary jurisdiction, examine the legality or propriety of the order challenged before it. Where Parliament in its wisdom has provided a form of appeal which is equally convenient, in the sense that the appellate tribunal can deal with the injustice which is highlighted by the petitioner, according to us, this Court should as a rule allow the appellate machinery to take its course. This Court's power under Article 226 of the Constitution is not to be used merely as an alternative form of appeal when other and adequate jurisdiction exists. The Act provides for a hierarchy of appellate bodies. Ultimately appeal lies to Supreme Court as of right. In cases where there is an ultimate appeal to the Supreme Court, that will be appropriate means to challenge the decision of the subordinate authorities rather than applying for judicial review. Viewed in this light, decisions which take the view that a writ petition seeking judicial review of an order passed by a public body is not to be dismissed on the ground of availability of alternate remedy, after keeping it pending in the High Court for years, will not apply to the instant case.

11. The Act provides a hierarchy of authorities to decide the issue. Those authorities are competent to go into the issues raised by the petitioner. The State Commission has not only got the appellate jurisdiction over the decisions rendered by the District Forum, but also revisional and supervisory powers. No time limit is fixed for exercising that revisional jurisdiction. In the first mentioned four petitions, orders were passed by the District Forum in 1991. Those orders are also amenable to the supervisory jurisdiction of the State Forum u/s 17(b) of the Act. No period of limitation is fixed for the exercise of such a power. Therefore, we do not find any merit in the contention that this Court is not to dispose of the original petitions by directing the petitioner to resort to the alternate remedy provided under the Act.

Original petitions fail. They are accordingly dismissed.