
(2021) 02 TEL CK 0001
In the Telangana High Court
Case No : Writ Petition No. 325 Of 2021

Venkateswara Kommu

APPELLANT

Vs

Government Of India

RESPONDENT

Date of Decision : 03-02-2021

Acts Referred:

Consumer Protection Act, 2019 — Section 38(7), 49(1), 52
Industrial Disputes Act, 1947 — Section 17
Prevention Of Food Adulteration Rules, 1955 — Rule 7(3)

Citation : (2021) 02 TEL CK 0001

Hon'ble Judges : Hima Kohli, CJ;B. Vijaysen Reddy, J

Bench : Division Bench

Advocate : J.P. Rao, N. Rajeshwar Rao

Final Decision : Dismissed

Judgement

B. Vijaysen Reddy, J

1. The relief sought for in the writ petition is as follows:

â??â?|the Honâ??ble Court may be pleased to issue an order more particularly Writ of Mandamus declaring the non-compliance of Sections 38(7),

49(1) and 52 of the Consumer Protection Act, 2019 by the Respondents No.3 and 4 in their day to day functioning as illegal and amounts to flouting of

the Provisions of the Act and defeating the object of the Act and consequently direct the Respondents No.3 and 4 to dispose of CC.No.8/19 and

FA.No.8/2020 respectively pending on their respective filed duly adhering to the aforesaid provisions of the Act for better protection to the Consumers

and pass such other orders as this Honâ??ble Court may deem fit and proper in the circumstance of the case.â??

2. Petitioner submits that he filed CC.No.8 of 2019 before the State Consumer

Disputes Redressal Commission, Hyderabad (for short "the State Commission") in the year 2019. The said case is coming for evidence of the opposite party. In the meantime, an order dated 27.11.2019 was passed in IA.No.864 of 2019 in CC.No.8 of 2019 against the Opposite Party No.2. Aggrieved by the said order, the Opposite Party No.2 filed an appeal before the National Consumer Disputes Redressal Commission (for short "the National Commission") on 14.01.2020, FA.No.8 of 2020 and the same is pending.

3. According to the learned counsel for the petitioner, the grievance of the petitioner is that no orders are being passed in CC.No.8 of 2019 and the said case is being adjourned beyond three months. Since January 2020, there is no progress in the case. He further states that there is non-compliance of Sections 38(7), 49(1) and 52 of the Consumer Protection Act, 2019 (for short "the Act") by the State Commission as well as the National Commission, which are expected to dispose of a complaint within a period of three months as per Sections 38(7) and 49(1) of the Act, and an appeal within a period of 90 days as per Section 52 of the Act. Referring to Section 52 of the Act, which stipulates that no adjournment shall ordinarily be granted by the State Commission or the National Commission unless sufficient cause is shown and reasons for grant of adjournment recorded in writing, it is contended that the State Commission and the National Commission are acting in contravention of the provisions of the Act by adjourning the complaint and the appeal respectively, beyond three months, due to which, the matters are being dragged on for years together, thereby frustrating the object and the purpose of the Act.

4. Heard the learned counsel for the petitioner.

5. On 06.01.2021, when this Court directed the learned counsel for the petitioner to look into the aspect as to whether the time fixed by the Statute is mandatory for disposal of cases in view of any law laid by the Supreme Court, learned counsel for the petitioner had sought time to go through the judgments.

6. When the matter has come up for hearing today, learned counsel for the petitioner states that in spite of his best efforts, he could not trace out any judgments on the aforesaid aspect.

7. The Supreme Court in its recent decision in *C. BRIGHT v. DISTRICT COLLECTOR* 2020 (6) ALD 214 (SC) has held as under:

7. A well settled rule of interpretation of the statutes is that the use of the word 'shall' in a statute, does not necessarily mean that in every case it

is mandatory that unless the words of the statute are literally followed, the proceeding or the outcome of the proceeding, would be invalid. It is not

always correct to say that if the word 'may' has been used, the statute is only permissive or directory in the sense that non-compliance with

those provisions will not render the proceeding invalid (*State of I.P. v. Manbodhan Lal Srivastava*, AIR 1957 SC 912) and that when a statute uses the

word 'shall', prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole

scope of the statute (*State of U.P. and others v. Babu Ram Upadhyaya*, AIR 1961 SC 751). The principle of literal construction of the statute alone in

all circumstances without examining the context and scheme of the statute may not serve the purpose of the statute (*Reserve Bank of India v.*

Peerless General Finance and Investment Co. Ltd. and others, (1987) 1 SCC 424).

8. The question as to whether, a time limit fixed for a public officer to perform a public duty is directory or mandatory has been examined earlier by

the Courts as well. A question arose before the Privy Council in respect of irregularities in the preliminary proceedings for constituting a jury panel.

The Municipality was expected to revise the list of qualified persons but the jury was drawn from the old list as the Sheriff neglected to revise the

same. It was in these circumstances, the decision of the jury drawn from the old list became the subject matter of consideration by the Privy Council.

It was thus held that it would cause greater public inconvenience if it were held that neglecting to observe the provisions of the statute made the

verdicts of all juries taken from the list ipso facto null and void so that no jury trials could be held until a duly revised list had been prepared (*Montreal*

Street Railway Company v. Normandian, AIR 1917 PC 142).

9. The Constitution Bench of this Court held that when the provisions of a statute relate to the performance of a public duty and the case is such that

to hold acts done in neglect of this duty as null and void, would cause serious general inconvenience or injustice to persons who have no control over

those entrusted with the duty, the practice of the courts should be to hold such

provisions as directory (Dattatraya Moreshwar Pangarkar v. State of Bombay and others, AIR 1952 SC 181). In a seven Bench judgment, this Court was considering as to whether the power of the Returning Officer to reject ballot papers is mandatory or directory. The Court examined well-recognised rules of construction to observe that a statute should be construed as directory if it relates to the performance of public duties, or if the conditions prescribed therein have to be performed by persons other than those on whom the right is conferred (Hari Vishnu Kamath v. Ahmad Ishaque and others, AIR 1955 SC 233).

10. In a judgment reported as Remington Rand of India Ltd. v. Workmen, AIR 1968 SC 224. Section 17 of the Industrial Disputes Act, 1947 came up for consideration. The argument raised was that the time limit of 30 days of publication of award by the labour court is mandatory. This Court held that though Section 17 is mandatory, the time limit to publish the award within 30 days is directory inter-alia for the reason that the non-publication of the award within the period of thirty days does not entail any penalty.

11. In T.V. Usman v. Food Inspector, Tellicherry Municipality, Tellicherry, (1994) 1 SCC 754, the time period during which report of the analysis of a sample under Rule 7(3) of the Prevention of Food Adulteration Rules, 1955 was to be given, was held to be directory as there was no time-limit prescribed within which the prosecution had to be instituted. When there was no such limit prescribed then there was no valid reason for holding the period of 45 days as mandatory. Of course, that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and, on that basis, to hold that even prosecution cannot be launched.

12. This Court distinguished between failure of an individual to act in a given time frame and the time frame provided to a public authority, for the purposes of determining whether a provision was mandatory or directory, when this Court held that it is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified (Narisurddin and

others v. Sita Ram Agarwal, (2003) 2 SCC 577).â??

8. In view of the above observations, the time frame fixed under Sections 38(7), 49(1) and 52 of the Consumer Protection Act, 2019, for disposal of

cases by State Commission and National Commission cannot be said to be mandatory and are only directory in nature. The anxiety of the petitioner

can be understood but, at the same time, the petitioner has to keep in mind the limited manpower available to the forums and Courts. With an

enormous increase in the number of cases and huge pendency of cases, it would be not only impractical, but also impossible to expect the

Courts/Forums to dispose of the cases within the time frame fixed by the Statute. Further, during the COVID-19 pandemic, due to imposition of

lockdown in March 2020 and the Standard Operating Procedure/s issued by the Union of India in the entire country from time to time, allowing limited

congregation and consequent closure of physical Courts, there has been a disruption of Court work and the Consumer Forums and the State

Commission/ National Commission are no exception.

9. The writ petition is, thus, dismissed as devoid of merits.

The miscellaneous petitions, pending if any, shall stand closed.

There shall be no order as to costs.