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Alka Mohan Wahi Vs. District Supply Officer/Assistant Director, Varanasi and Others

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Court : Allahabad

Decided On : May-29-1998

Reported in : 1998(3)AWC1608

Judge : R.R.K. Trivedi and ;R.K. Mahajan, JJ.

Acts : Uttar Pradesh Consumer Protection Act, 1986 - Sections 2, 9, 14(2) and (2A) and 29A; Uttar Pradesh Consumer Protection Rules, 1987 - Rules 3, 3(7) and 6(9) and (10)

Appeal No. : C.M.W.P. No. 9256 of 1996

Appellant : Alka Mohan Wahi

Respondent : District Supply Officer/Assistant Director, Varanasi and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V.K. Sahai, Adv.

Judgement :

R.K. Mahajan, J.

1. The petitioner alleges herself to be a Senior Member in District Forum, Varanasi constituted under Consumer Protection Act, 1986 (hereinafter referred to as the Act). She was appointed on 24.11.1993 vide Annexure-1 to the writ petition. The petitioner's grievance is that she has not been paid Rs. 100 per day honorarium as settled with her under the Rules and appointment letter by the respondents from October, 1995 till the date of filing of the writ petition and she seeks a further direction that respondent No. 1 be directed not to interfere in the working of the District Forum, Varanasi. It appears that she has been discharging her duties as required under the statute. It is also pertinent to refer, as stated in para 9 of the writ petition, that all the District Supply Officers have been directed vide Annexure-5 by the Government to see that payment is made to the members of the forum in different districts in first week of every month. It has also been ensured as appeared in Annexure-6 to the writ petition dated 29.6.1995 that no class III or class IV employees of the District Forum shall be engaged/disengaged for other offices so that working of forum is not hampered. The petitioner's grievance is that her experience in this regard is not good as the petitioner was stopped from availing services of class III and class IV employees and she was also not paid the honorarium. It appears that the petitioner approached the State Consumer Forum as well as addressed correspondence to the higherauthorities but of no avail and later on she had to file this writ petition, as there was no other efficacious remedy. It is alleged by her that the action of the respondent No. 1 is bad. It is further alleged by her that by virtue of Rule 3 (7) of the U. P. Consumer Protection Rules, 1987, a senior-most member of District Forum holding office for the time being shall discharge the functions of the President until a person is appointed. For ready reference Rule 3 (7) of U. P. Consumer Protection Rules, 1987 is quoted below :

'Rule 3 (7)--Where any vacancy occurs in the office of the president of the District Forum, the senior-most (in order of appointment) Member of District Forum, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the District Forum,'

2. It is further alleged by the petitioner that her appointment was for five years and merely that President was not appointed on account of certain administrative exigencies, this does not disentitle the petitioner's functioning as a Member and to get payment. The petitioner described the action of the authorities as arbitrary, illegal and mala fide.

3. The case of the respondent as revealed from the counter-affidavit is that since there was no President appointed since 27.3.1995 and no meeting for disposal of cases was convened for want of his appointment and as such, the petitioner is not entitled to get any honorarium. It is further stated that the petitioner is entitled to honorarium only for attending the meeting 'convened' by the 'President' for disposal of the complaints under the Act and not attending the meeting in absence of the President. The withdrawal of staff has also been Justified on the line of reasoning mentioned above. It is also stated that regarding the peon, the services can be utilised only when there is meeting and forum is working and not otherwise in the public interest. It is also stated in para 16 of the counter-affidavit that the petitioner claims herself to be the President but not a single case has been decided from 27.5.1995 to 15.5.1996.

4. The petitioner has filed rejoinder-affidavit reiterating the facts which has been stated in the writ petition.

5. Learned counsel for the petitioner submits that what is the fault of the petitioner if President has not been appointed and according to the Rules she can perform the function. He has also relied upon a judgment of Hon'ble Supreme Court Gulzari Lal Agarwal v. Accounts Officer, (1996) 3 CPJ 12 (SC). In this case, the Hon'ble Supreme Court has held that :

'The only harmonious construction that could be given to sub-sections (2) and (2A) of Section 14 read with sub-rules (9) and (10) is that as and when the President of the State Commission is functional, he along with at least one Member sitting together shall conduct the proceeding but where the President being non-functional, sub-rules (9) and (10) of Rule 6 will govern the proceedings. Sub-rule (9) provides that where any such vacancy occurs in the office of the President of the State Commission, the senior-most (in order of appointment) Member holding

office for the time being shall discharge the function of the President until a person is appointed to fill such vacancy. This sub-rule is made with a view to make the State Commission functional in the absence of the President and not to allow the State Commission to render non-functional for want of the President. It is well-settled that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the section 11 is this principle that needs to be made applicable while construing the provision of sub-sections (2) and (2A) of Section 14 read with sub-rules (9) and (10).'

6. Learned standing counsel submitted that the State is not bound to make payment in the absence of President and non-functional of Consumer Forum and not attending the meeting.

7. We are of the considered view that the petitioner is entitled to get honorarium @ Rs. 100 per day as claimed and other facilities even if the president for some reasons has not been appointed, according to Rule 3 of the U. P. Consumer Protection Rules, 1987.

8. We would like to quote the definition of District Forum as envisaged in Section 2(h) of the Act :

'District Forum' means a Consumer Disputes Redressal Forum established under clause (a) of Section 9.

9. We would like to further mention definition of member which is mentioned in Section 2(jj) of the Act:

' 'member' includes the President and a member of District Forum, as the case may be.'

The definition of 'member' has been inserted by Consumer Protection (Amendment) Act, 1993.

10. Now we would like to straightaway quote Section 29A of the Act which was inserted by Act No. 34 of 1991 and came into effect w.e.f. 16.8.1991 :

'29A. Vacancies or defects in appointment not to invalidate orders--No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.'

11. After conjoint reading of all the clauses and the dictum of Hon'ble Supreme Court the petitioner cannot be made to suffer for the acts over which she has no control. It was for the State Government to appoint President and to make the Forum more effective. It was not within the purview of the petitioner. The petitioner was appointed for five years and according to Rules, the meeting could be convened for disposal of cases and if for some reasons, the disposal could not be made, it is matter of great concern and on which we would like to comment later on.

12. We would like to comment upon the working of Consumer Protection Forum and judicial notice can be taken. We also get help from this case. It is a travesty of justice that the Act was enacted as mentioned in the preamble to provide for better protection of interest to the consumer and for that purpose, to make provisions for the establishment of consumer forums and other authorities for settlement of disputes of consumers and for matters connected therewith. The object behind this enactment was to give cheap, expeditious and informal type of justice to the consumers. The consumer has lost his relevance in the market and he gets substandard things and service from the public undertakings and authorities. Enactment was made after consistent efforts by the non-governmental organisation and other public bodies and also to implement the U. N. O. convention for the protection of the consumer rights. There is wide gap between the implementation of the Act and laudable objects. It may be mentioned that consumer has not to pay any court fee for redressal of grievance for inaction or negligence of service or deficiency of service and he gets protection if he suffers loss by way of reasonable compensation. Secondly, he has been also protected against unfair trade practice and this was introduced in the year 1993. Similarly consumer can move against defective services under Section 2(o) against banking, financing, insurance, transport and housing boards, etc.

13. We would like to throw some light on the working of District Consumer Forums from the writ petitions filed in this Court. Under Section 10 of the Act the District Forum is constituted with two Member. It is presided by the District Judge or Additional District Judge. In our considered view thereshould be Forum for each district or it may consists of two or three districts depending upon the work.

14. We are also of the view that sufficient number of posts should be created in the cadre of Higher Judicial Service so that the Forum be manned by regular incumbent from the Higher Judicial Service as retired District Judges/Additional District Judges may not like to work on honorarium basis. We are also of the view that the State of U. P. should consider the feasibility of following pattern as envisaged in Himachal Pradesh as the posts for manning the Forums have been created and they have encadred in the Higher Judicial Service. The High Court in consultation with the Government places the officer at the disposal of the Government and all reasonable facilities of the District Judges are given. We are also of the view that power of recruitment of Peon and other staff be given to the District Judge, and they should not be controlled by Civil Supply Department as seen in this case and also at the State level by Secretary, Food and Civil Supply. We would like to suggest that Law Department should be noddle department at the State level which would facilitate the working of the Consumer Forum in the district and state level. We are also of the view that proper infrastructure facilities, i.e., building, accommodation for Forum and staff be given and impression should go to the public that the President is for all purposes is the District Judge and enjoys the same facilities as is being enjoyed by the District Judge. In the present, it is seen that the consumers are fed up with the lengthy process and the cases are decided just like a civil court and not in a manner envisaged in the Act for providing quick justice.

15. The query is posed that if a consumer who gets a defective article or goods in village or in Tehsil level should go repeatedly at district level to get justice and why not the District Consumer Forum should visit the Tehsil Head Quarter for redressal of the grievance of the consumers by holding circuit. If imparting of Justice at the grassroot level is not evolved, the very purpose of the Consumer Protection Act would be defeated.

16. We are also of the view that Chief Secretary of Government of U. P. should convene a meeting regarding the facilities and requirement of the forums with the President of State Consumer Forum and some President of District Consumer Forums to get suggestions for making the effective working of the consumer forums and the meeting should be held after every six months.

17. We are also of the view that if positive steps are not taken within six weeks in the light of suggestions made above, the Court would not hesitate to issue mandamus so that the Consumer Forum in the State work effectively.

18. In the light of the observations made above, the present writ petition is allowed and the petitioner is entitled to get honorarium from October, 1995 till she was working on that post.

19. Registry is directed to send a copy of this order, forthwith to the Chief Secretary, U. P. for necessary action.

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