

State of U.P. and Ors Vs. All U.P. Consumer Protection Bar Ass.

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Court : Supreme Court of India

Decided On : Nov-21-2016

Judge : T.S. Thakur and D.Y. Chandrachud and L. Nageswara Rao

Appellant : State of U.P. and Ors

Respondent : All U.P. Consumer Protection Bar Ass.

Judgement :

REPORTABLE IN THE SUPREME COURT OF INDIA CIVIL APPELLATE JURISDICTION CIVIL APPEAL No.2740 OF 2007 STATE OF U P AND ORSAPPELLANTS VERSUS ALL U P CONSUMER PROTECTION BAR ASSOCIATIONRESPONDENT With WRIT PETITION (C) No.164 OF2002

JUDGMENT

Dr D Y CHANDRACHUD, J1The deficiency of infrastructure in the adjudicatory fora constituted under the Consumer Protection Act, 1986 has led to several directions of this Court in the course of the proceedings in this case. On 14 January 2016, this Court constituted a Committee presided over by Mr Justice Arijit Pasayat, a former judge of this Court, to examine : the infrastructural requirements of the State Commissions, deficiencies in infrastructure and remedial measures; the position of vacancies of members at the national, state and district level; the need for additional Benches at the national, state and district level; conditions of eligibility for appointment of non-judicial members; administrative

powers which have been or should be conferred on the presiding officers of the state and district fora; service conditions including pay scales governing the presiding officers and members; requirements of staff; creation of a separate cadre of staff at the national, state and district level; and other relevant issues. The Committee was requested, while examining these issues, to submit its recommendations. The Committee has since the commencement of its work in February 2016 inquired extensively into the matters referred to it and has made an assessment of the prevailing conditions in the States of Orissa, Maharashtra, Punjab, Haryana, Andhra Pradesh, Telangana, Jammu and Kashmir, Tamil Nadu, Bihar and Jharkhand. The Committee has also analysed the prevailing position at the National Consumer Disputes Redressal Commission, as well as the State Commission in New Delhi. 2 The facts which have emerged from the interim report submitted by the Committee on 17 October 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 organizational set up, grossly inadequate infrastructure, absence of adequate and trained manpower and lack of qualified members in the adjudicating bodies. Benches of the state and district fora sit, in many cases for barely two or three hours every day and remain non-functional 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. The quality of presiding members, especially of non-judicial members at the state and district levels is poor. One of the reasons is that the remuneration which is being paid to non-judicial members of consumer fora varies from state to state and is too meager to attract qualified talent. Most of the non-judicial members are not even capable of writing or dictating small orders. At certain places non-judicial members act in unison against the presiding officer, while passing orders contrary to law, damaging the reputation of the adjudicating body. Presidents, as a result, prefer a situation where such non-judicial members absent themselves from work if only so that judicial work can be carried out by the presiding judge impartially and objectively. Many non-judicial members do not maintain punctuality and others attend to work sporadically once or twice a week. The Committee has observed that that the problem lies in - (i) absence of proper remuneration; (ii) appointment of former judicial officers who lack motivation and zeal; (iii) appointment of practicing lawyers as presiding officers of district fora; and (iv) political and bureaucratic interference in appointments. Many of the non-judicial members attend to the place of work only to sign orders which have been drafted by the presiding officer. 4 The Committee has furnished concrete examples of how bureaucratic and political influence has marred the selection process as a result of which the functioning of consumer fora is detrimentally affected. Three instances furnished in the Report of the Committee provided a telling example of the state of affairs :

15). The Committee could make out that there has been considerable bureaucratic and political influence/interference in the selection process and functioning of the

Consumer Fora. Just to cite a few instances, the Committee found that relatives of politicians, bureaucrats and judicial fraternity have been selected. A non-Judicial Member Mr. Jamal Akhtar posted at District Forum Meerut has been absenting without permission since 11.05.2015. The State Government has failed to take any action against him. Even the plea of President, State Commission has gone unheeded. The result is that his post has not been declared vacant and another non-Judicial Member posted elsewhere has been attached in his place. 16). One non-Judicial Member who had her first term at Lucknow and has now been enjoying her Second Term, having been appointed for District Forum Barabanki but has been attached to Greater Noida and as per the reports, comes to Forum once or twice a week. Another woman non-Judicial Member who happens to be wife of a bureaucrat was appointed for District Forum Baghpat but was attached/posted at Greater Noida. These few instances make it crystal clear that there is definite political influence and interference and in such a scenario, the work of District Consumer Fora is affected as it results in lowering the morale of the President. 17). In Haryana, a non-Judicial Woman Member did/does not attend the District Forum regularly, as she has to travel around 150/160 KM everyday. The President of one District Forum who happens to be former President of Bar Association has been serving the second term as President. Such non- Judicial Members manage to get selected and then misuse their position as Members, as they call themselves Judges.

The selection of persons as presiding officers and as members of the fora lacks transparency without a fixed criteria for selection. The Committee has, in our view with justification, proposed that a written test should be conducted to assess the knowledge of persons who apply for posts in the district fora. Issues of conflict of interest also arise when persons appointed from a local area are appointed to a district forum in the same area. 5 The position of the National Consumer Disputes Redressal Commission has emerged from the interactions of the Committee with the President and members of the Commission. The serious deficiencies of infrastructure are summarized below : Sanctioned strength of personnel is far lower than the actual requirement and is not based on the pendency of cases or on objective norms adopted by statutory organizations; There are 118 sanctioned posts as against a requirement of 322 while pendency of cases as on 30

September 2016 is 11,379; Few personnel work on a regular basis while others who are inducted on contract cannot be entrusted with work of a regular nature; The sanctioned strength of six Assistants, ten UDCs and eight LDCs to attend on the administrative side to judicial filing, establishment work and to the general administration is totally inadequate; The strength of members has increased from five in 2003 to twelve at present without a corresponding increase in supporting staff though the average monthly institution of original complaints has increased by 300 per cent; and Though the proposal for the creation of posts was sent to the Government of India in 2010, only a few posts for catering to the requirement of a sixth Bench (presently there are five) have been sanctioned. The Committee has recommended that at least 51 posts be created immediately as an interim measure. The Committee has noted that while the salary and allowances of the President of the National Commission are equivalent to those of a Judge of the Supreme Court, the conditions of service of members of the National Commission are not at par with those of the sitting judges of the High Court. The National Commission hears appeals and revisions against orders of the State Commissions, whose Presidents are treated at par with judges of the High Court. An anomalous situation prevails where members of a higher forum (the National Commission) have conditions of service inferior to those applicable to members of a forum lower in hierarchy. The Committee has proposed that the members of the National Commission should get the same salaries, allowances and conditions of services as are available to sitting judges of the High Court. 6 The Committee has opined that it is necessary to confer upon the President of the National Commission the power to recruit and transfer staff, to obviate delay in appointments. Exemption from consultation with the UPSC should, it is proposed, be granted as in the case of several other statutory tribunals, such as CAT, AFT and NGT. 7 The posts of President and members of the State Commission in Tamil Nadu and Jammu & Kashmir are lying vacant for more than one year. The Committee was assured by the Principal Secretary, Consumer Affairs, Tamil Nadu on 31 May 2016 that these appointments would be cleared within a short period. However, until the date of the report, no steps have been taken. The Government of Jammu & Kashmir has failed to appoint the President of the State Commission. 8 The Committee has formulated its suggestions to the Central Government in

Annexure A and the directions which it has issued to the state governments in Annexures B to M to the report. 9 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 despite the prevalence of such adverse 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 not to become a dead letter. With the proliferation of goods and services in a rapidly growing economy, Parliament envisaged the enactment to be the corner-stone 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. We will now take up each of the issues seriatim so as to enable the court to focus on each problem and on the nature of the malady before proceeding to formulate the directions : (1) Administrative control : One of the principal problems governing the functioning of the district fora on the one hand and the State Commissions on the other hand is the absence of clarity in regard to the exercise of administrative and disciplinary control. Section 24B provides for administrative control, in the following terms :

24B. Administrative control. -

(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely :- calling for periodical return regarding the institution, disposal, pendency of cases; issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents; generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1). (emphasis supplied) Clause (iii) of sub-section

(1) of Section 24B confers upon the National Commission the power of administrative control over all the State Commissions to generally oversee the functioning of the State Commissions or the district fora to ensure that the objects and purposes of the Act are best served. However, this is to be achieved without interfering with the quasi-judicial freedom of the State Commissions and the district fora. Under sub-section

(2) the State Commission is conferred with administrative control over all the district fora within its jurisdiction in all matters referred to in sub-section (1), which will necessarily cover clause (iii). The power of administrative control which has been conferred upon the National Commission in relation to the State Commissions and upon the State Commissions in relation to the district fora is an entrustment with a purpose; the object being to oversee the functioning of the forum, which is subject to its administrative control so as to ensure that it is an effective instrument of rendering justice to consumers. The power of administrative control is couched in wide terms. The power would include overseeing the functioning of the State Commissions and the district fora in all administrative matters. This would include the posting of and control over members, appointment of and control over manpower, provision of adequate infrastructure and the streamlining of all administrative matters (except the exercise of the judicial power in deciding complaints, appeals and revisions). The difficulties which have been encountered in the proper functioning of the district fora and the State Commissions can be obviated in a large measure once the true ambit of Section 24B is construed, by vesting full powers of an administrative nature in the National Commission (in relation to the State Commissions) and in the State Commissions (in relation to district fora). In the National Commission, the exercise of administrative authority over the State Commissions shall be vested in the President. Similarly, in the State Commissions the exercise of administrative control over the district fora shall be vested in the President.

(2) Rule making powers : Rule making powers under the Consumer Protection Act, 1986 are embodied in Section 30 which provides as follows :

30. Power to make rules.- (1) The Central Government may, by notification, make rules for carrying out the provisions contained in clause (a) of sub-section (1) of section 2, clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, sub-section (2) of section 12, clause (vi) of sub-section (4) of section 13, clause (hb) of sub-section (1) of section 14, section 19, clause (b) of sub-section (1) and sub-section (2) of section 20, section 22 and section 23 of this Act. (2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of section 7, clause (b) of sub-section (2) and sub-section (4) of Section 8A, clause (b) of sub-section (1) and sub-section(3) of section 10, clause (c) of sub-section (1) of section 13, clause (hb) of sub-section (1) and sub-section (3) of section 14, section 15 and clause (b) of sub-section (1) and sub-section (2) of section 16 of this Act.

The composition of the district fora is provided in Section 10 while the composition of the State Commissions is provided in Section 16. Section 10(3) provides as follows :

10. (3) The salary or honorarium and other allowances 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: [Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.]. The pension received by the presidents of the District Consumer Forum in respect of their previous services as District Judges is subject to deduction from their salary as president of the Forum fixed under provisions of the Act.

In relation to the State Commissions sub-section (2) of Section 16 provides as follows:

16. 1 (2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government. [Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.]. Hence, the state governments are required under sub-section (3) of Section 10 and under sub-section (2) of Section 16 to prescribe the salary or, honorarium, allowances and the other terms and conditions of service of the members of the district fora and of the State Commission. 10 Section 10 provides for composition of the district forum. Clause (b) of sub-section (1) of Section 10 stipulates the appointment of two members (apart from the President, who is to be or should have been or must be qualified to be a district judge). Section 10(1)(b) is as follows:

Composition of the District Forum : Each District Forum shall consist of (b). two other members, one of whom shall be a woman, who shall have the following qualifications, namely:- (i) be not less than thirty-five years of age, (ii) possess a bachelors degree from a recognized university, (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

Section 16(1)(b) provides for appointment of the members of the State Commission (apart from the president who is to be or should have been a judge of the High Court). Section 16(1)(b) in so far as is material provides as follows :

16. Composition of the State Commission : (1) Each State Commission shall consist of - ... 16(1)(b) Each State Commission shall consist of not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely :- (i) be not less than thirty-five years of age; (ii) possess a bachelors degree from a recognised university; and (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with

problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

11 The Central government is vested with rule making power in relation to Section 20(1)(b) - relating to appointments of members of the National Commission under Section 30. The rule making power with reference to the provisions of Section 10(1)(b) and Section 16(1)(b) is vested in the State government under Section 30. The difficulty arises because the vesting of the rule making power in the state governments in this manner may result in a lack of uniformity of rules across the country, both in regard to the terms and conditions of service as well as in regard to the modalities to be followed in ensuring that persons appointed as members fulfill the qualifications which are prescribed. Both in relation to the State Commissions and the district fora, a member must be a person of ability and standing with adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. These are broad general categories. There can be no gainsaying the importance of adopting unified standards and objective processes of selection from a national perspective. This would ensure an objective formulation of norms and their uniform application in different states in the country. In the absence of a uniform pattern, the result is a wide variation in standards and a great deal of subjectivity, and bureaucratic and political interference, which has been noticed in the reports submitted by the Committee to this Court. The Committee which has looked at the entire matter in perspective consists of a former judge of this Court, a former judge of the Delhi High Court, and the Secretary to the Union Government in the Ministry of Consumer Affairs, Food and Public Distribution. The findings of the Committee in the interim report are entitled to deference. 12 In these circumstances, we hold that Section 24B vests administrative control over the State Commissions in the President of the National Commission and over 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 members; selection, appointment and disciplinary matters relating to the staff of the district fora and State Commissions and in relation 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. 13 We also direct the Union Government to frame model rules with reference to the provisions of Section 10(1)(b) and Section 10(2) and Section 16(1)(b) and Section 16(2), within four months from today. The model rules so framed shall be placed before this Court for its approval. After the model rules are approved by this Court, the state governments shall while exercising their rule making authority with reference to the provisions of Section 10(1)(b) and Section 16(1)(b) and with reference to the provisions of Sections 10(3) and 16(2) frame rules in conformity with the model rules. Existing rules, if any, shall have to be brought in conformity with the model rules. 14 Under Section 30(A)(1) the National Commission is empowered, with the previous approval of the Central Government, to frame regulations not inconsistent with the Act to provide for all matters for which provision is necessary or expedient for the purpose of giving effect to the provisions of the Act. It is necessary for the National Commission to frame regulations expeditiously to give effect to its administrative control under Section 24B. The Regulations shall inter alia extend to ensuring the effective exercise of administrative control by the National Commission over the State Commissions and by the latter over the district fora. 15 Under Section 24B the adjudicatory fora under the Consumer Protection Act, 1986 have been constituted to resolve complaints of consumers about: (i) unfair or restrictive trade practices by traders and service providers; (ii) defects in goods purchased or agreed to be purchased; and (iii) deficiencies in the provision of services availed of or hired. Against the decision of the district forum upon an original complaint a remedy of an appeal is provided to the State Commission. The State Commission also has jurisdiction where the amount claimed is in excess of Rupees twenty lakhs (complaints below that amount lie before the district fora) and upto Rupees one crore. Appeals from orders of the State Commission lie to the National Commission. Apart from its appellate jurisdiction the National Commission has the power to entertain complaints where the value of goods or services and compensation sought exceeds Rupees one crore. The Committee has noted that in the Consumer Protection Bill, 2015 the pecuniary jurisdiction of

the district fora is to be enhanced to Rupees one crore. The proposed expansion of pecuniary limits requires the strengthening of the quality of adjudication in the district fora. Members of the forum must be aware of the responsibility vested in them as adjudicating officers. There is a need to ensure checks and balances. The work which is performed by the consumer fora constituted in the three tier hierarchy provided under law is of a judicial nature. The district forum is vested with powers of a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of various matters set out in Section 13(4). These provisions apply to the State Commission under Section 18 and to the National Commission under Section 22. Both having regard to the significant adjudicatory powers that are conferred upon the fora constituted under the Act and particularly in the context of the observations contained in the interim report of the Committee, we have come to the conclusion that the above directions are necessary to inculcate a sense of discipline and accountability amongst the members of the fora constituted under the Act. 16 The Committee has sought the directions of this Court specifically in the following terms :

a) The state of Tamil Nadu be directed to appoint the President and Members of the State Commission at the earliest; b) The State of Jammu & Kashmir be directed to appoint the President and Member of the State Commission at the earliest; and c) The State of Uttar Pradesh be directed to take appropriate disciplinary action against Mr. Jamal Akhtar, non-judicial member of District Forum for his unauthorized absence for over a year, forthwith.

We find justification in this request of the Committee. The reliefs mentioned in (a) and (b) above are allowed. A copy of this order shall be served on the Chief Secretaries respectively of the States of Tamil Nadu and Jammu & Kashmir for compliance within a period of two months from the receipt of a copy. As regards prayer (c), the President of the State Commission in Uttar Pradesh shall cause a notice to be served upon Shri Jamal Akhtar posted at the district forum, Meerut, who has been absenting himself without permission allegedly since 11 May 2015. The Committee has noted that the state government has failed to take action against him and even the plea of the President of the State Commission has gone unheeded. We order and direct that the President of the State Commission shall

upon the issuance of a notice to show cause to Shri Jamal Akhtar and after furnishing him an opportunity of submitting his explanation submit a report to the state government, preferably within one month from the receipt of a copy of this order. The state government shall thereupon pass necessary orders in accordance with law no later than within a fortnight of the receipt of the report of the President of the State Commission. 17 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 Telegana on 14 October 2016 for rectification of deficiencies in infrastructure and resolution of various aspects. By the order of this Court dated 14 January 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 implement the recommendations of the 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. 18 Hence in terms of the above discussion we issue the following directions : (i) The Union Government shall for the purpose of ensuring uniformity in the exercise of the rule making power under Section 10(3) and Section 16(2) of the Consumer Protection Act, 1986 frame model rules for adoption by the state governments. The model rules shall be framed within four months and shall be submitted to this Court for its approval; (ii) The Union Government shall also frame within four months model rules prescribing objective norms for implementing the provisions of Section 10(1)(b), Section 16(1)(b) and Section 20(1)(b) in regard to the appointment of members respectively of the District fora, State Commissions and National Commission; (iii) The Union Government shall while framing the model rules have due regard to the formulation of objective norms for the assessment of the ability, knowledge and experience required to be possessed by the members

of the respective fora in the domain areas referred to in the statutory provisions mentioned above. The model rules shall provide for the payment of salary, allowances and for the conditions of service of the members of the consumer fora commensurate with the nature of adjudicatory duties and the need to attract suitable talent to the adjudicating bodies. These rules shall be finalized upon due consultation with the President of the National Consumer Disputes Redressal Commission, within the period stipulated above; Upon the approval of the model rules by this Court, the state governments shall proceed to adopt the model rules by framing appropriate rules in the exercise of the rule making powers under Section 30 of the Consumer Protection Act, 1986; The National Consumer Disputes Redressal Commission is requested to formulate regulations under Section 30A with the previous approval of the Central Government within a period of three months from today in order to effectuate the power of administrative control vested in the National Commission over the State Commissions under Section 24(B)(1)(iii) and in respect of the administrative control of the State Commissions over the District fora in terms of Section 24(B)(2) as explained in this Judgment to effectively implement the objects and purposes of the Consumer Protection Act, 1986. 19 The proceedings shall now be listed before this Court on 7 March 2017, for further directions and for reporting compliance.CJI [T S THAKUR].J [Dr D Y CHANDRACHUD].J [L NAGESWARA RAO]. New Delhi November 21, 2016.

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