Peerless General Finance and Investment Co. Ltd. and anr. Vs. District Consumer Redressal Forum and ors.

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SooperKanoon Citation : sooperkanoon.com/858983

Court : Kolkata

Decided On : Feb-29-1996

Reported in : [1996]87CompCas273(Cal)

Judge : Ajoy Nath Ray, J.

Acts : Constitution of India - Articles 14, 33 and 133; ;Consumer Protection Act, 1986 - Sections 13(1), 13(2), 13(3), 24 and 25

Appeal No. : Matter Nos. 141, 291, 359 and 3554 of 1991

Appellant : Peerless General Finance and Investment Co. Ltd. and anr.

Respondent : District Consumer Redressal Forum and ors.

Judgement :

Ajoy Nath Ray, J.

1. These writ applications raise two points. The first point is whether organisations like Peerless and CESC are rendering service to the individual respondents within the meaning of the definition of service as given in Section 2(o) of the Consumer Protection Act, 1986. If these organisations are rendering such service then the second point arises, which is whether the said Act is at all a valid Act.

2. The Supreme Court has already spoken on the Consumer Act on at least three occasions. Those are three reported cases which have been cited on behalf of the respondents.

3. Although due notice was sent to the highest law officers of the country yet their offices sent no special representation for contesting these writ matters. However, a strong contest has been put up both by Mr. Mukherjiand by Mr. Das and, in my opinion, they have left no stone unturned in their attempt to support the Act as a whole and also each and every individual portion thereof.

4. The three Supreme Court cases referred to above were also cited by ' them in support of their case. Those cases are respectively reported as Indian Medical Association v. V.P. Shantha , Laxmi Engineering Works v. P.S.G. Industrial Institute : [1995]3SCR174 and Lucknow Development Authority v. M.K. Gupta, : AIR1994SC787 . The cases have been carefully placed before me, as indeed those must be, since those are the pronouncements of the highest legal authority in India. Reading the doctor's case as I do, which is reported as Indian Medical Association v. V.P. Shantha , it appears to me that it is no longer open for Peerless to contend that the matter relating to the pension certificate payment referred to in their writ petitions would not constitute service rendered by them to the consumer (certificate purchaser) within the meaning of the 1986 Act. The case of CESC that their setting up of a public fountain is free of charge makes their case of not rendering service more arguable, but as the Peerless and the CESC case were presented together and both

argued on the invalidity of the Act, a determination of that crucial issue can neither be postponed nor shelved.

5. In the flat allotment case reported as Lucknow Development Authority v. M.K. Gupta, : AIR1994SC787 , the Supreme Court showed that within the meaning of service there is possibility of Government service or allied public service being also included thus attracting the 1986 Act.

6. In the case reported as Laxmi Engineering Works v. P.S.G. Industrial Institute : [1995]3SCR174 extensive reference has been made as to the manner in which the legislation came into being. The United Nations' resolution is referred to and consumer redressal in respect thereof has been historically traced as an outcome of such a resolution.

7. In the doctor's case, in the last paragraph their Lordships even went so far as to say that the challenge put forward by the doctors with regard to Articles 14 and 19 were also unacceptable to their Lordships. This being binding on me, much of the argument made by Mr. Gupta no longer needs to be considered.

8. Before I go on to the other points, which, in my opinion, still remain outstanding, let me dispose of those points of Mr. Gupta which have become unarguable any further in view of the Supreme Court pronouncements.

9. The proposition that Peerless (and arguably CESC too) renders no service within the meaning of the Act is no longer arguable. It is also no longer arguable that the composition of the forum makes the forum itself unconstitutional, as, such a composition will lead to arbitrariness and a possible violation of Article 14.

10. Mr. Gupta heavily drew upon the decision of the Supreme Court in Special Courts Bill, 1978, In re, : [1979]2SCR476 , when he had first argued this case quite some time back. He pointed out that there the Supreme Court recorded three concessions in regard to the proposed Special Courts Bill, and one of the most important concessions related to the personnel who would preside over the Special Court. The status of a retired judge of the higher judiciary was discussed by the Supreme Court in that case. Also in that case, the Supreme Court took a serious note of the fact that the proposed Special Courts Bill did not consider the possibility of a person trying a cause in which he was himself interested, and as such a glaring infirmity was created by the absence of a provision of a transfer of a case from one person who is presiding over the special court and is interested in the cause before him, to some other person holding equal authority but this time not having such a disqualifying interest in the matter.

11. These are pronouncements not only of the highest court but also of a Bench larger than the usual Bench of the Supreme Court. Yet when their Lordships have spoken pointedly in the consumer forum matter in regard to personnel and the composition of the forum, I cannot even think of not following that decision, or of applying the decision of a larger Bench given in another matter. This would be heresy against the doctrine of precedent and this I am not prepared to commit.

12. When these points are out of way, what remains of the challenge to the Consumer Protection Act In my opinion, a lot still remains outstanding and I have to explain these problems and infirmities hereafter. The first broad necessity is to consider the scheme of the Act. The basic scheme is the setting up of a hierarchy of deciding tribunals. The hierarchy is called the district forum, the State Commission and the National Commission. They have pecuniary limits in the ascending order and the present floor limit of the National Commission is Rs. 20 lakhs. They are to decide on disputes which are raised by consumers as against suppliers. Thedisputes will be in regard to goods or services. Such services include the widest spectrum ; there is banking, there is insurance, there is supply of goods, there is supply of professional services and there is hardly anything left out from the wide definition of services. So wide is the definition that the word practically includes all those areas which hereunto formed the bulk of the work of the ordinary commercial courts.

13. Indeed the parallel between the Consumer Redressal Tribunals and the courts of law trying commercial causes is not hard to see. The District Court is the District Forum, the High Court is the State Commission and the Supreme Court's Appellate Authority is the National Commission's. They are not so called, but they are supposed to discharge the functions of these courts in a very wide range and spectrum of commercial conflicts.

14. This brings us, in my opinion, to the crux of the matter. Was Parliament permitted in enacting the 1986 Act to set up courts parallel to the ordinary law courts

15. In Special Courts Bill, 1978, In re, : [1979]2SCR476 , the majority of their Lordships felt that a Special Court could be set up for trying emergency crimes as those fell into a special class, on the basis of which a classification and consequent legislation were both permissible. The Hon'ble Mr. Justice Shinghal, in the minority judgment, however, held that the proposed special court would suffer from this infirmity that it would be a court parallel to the ordinary criminal courts and, therefore, Parliament was not permitted to set up a parallel procedure for trying crimes which, according to his Lordship, should have been allowed to be tried by theordinary courts.

16. Paragraphs 150 to 158 in the AIR report of the case are material in this regard. Just as the doctrine of precedent compels me to follow the letter and the spirit of the decision of the Supreme Court, so it compels me also not to put weight upon a minority view of a Supreme Court decision in preference to the majority view. I cannot, therefore, come to the conclusion that any and every court, if it is parallel to the ordinary law courts, will immediately violate the constitution, because that result might be said to follow from the judgment of Shinghal J. I am not permitted to give the minority view its full scope, and I must read it as cut down by the majority view. However, I cannot treat the minority view as totally non-existent, but I must perform the difficult task of cutting it down only to that extent to which it is reduced or shorn off by reason of the majority pronouncement. It is a difficult task, but it must be performed.

17. In my respectful opinion there is nothing in the majority judgment which completely negatives the view of Shanghai J. that Parliament is not in general permitted to set up courts parallel to the ordinary courts be those civil or be those criminal in nature. But the general proposition is subject to exceptions. The Special Courts Bill was such a proposed exception. If the classification is eminently reasonable and passes the test of Article 14 then Parliament will be permitted to set up even Special Courts which will function similarly as the ordinary courts but only in the case of a special class of litigation.

18. Now, in the matter of consumers as envisaged in the Act, there is hardly any classification. 'The consumer is the general litigant at large. He can be the patient of a doctor, probably also the client of a lawyer. He might be the chairman of a multinational getting his Mercedez polished by a roadside shop, or he might be a roadside mechanic buying a multinational's car parts. I do not know whether the definition will stop short of allowing an applicant who applies to have his rights declared by a specialised authority fiscal or otherwise. The money scene is completely covered by the definition. The consumer is in fact the commercial litigant. It is not so much a material issue to decide whether the consumer is in a separate class from the supplier of goods or services. It is much more material to see whether the consumer in the 1986 Act is such a special litigant as to deserve a special hierarchy of courts set up for him which is different from the ordinary three level structure of District Court, High Court and the Supreme Court. If not, the Act sets up parallel courts without any special need for a special class.

19. In my opinion, in enacting the 1986 Act Parliament has purported to set up for the ordinary litigant a parallel system of courts for obtaining redressal in regard to defendants who would be otherwise defendants in the ordinary law courts in the general run of all civil cases, or practically all civil cases. On the basis of the general doctrine propounded by Shinghal J, it is not permissible.

20. There is another way of showing up the error committed in setting up such parallel bodies. Under the Constitution, every State is to have a High Court. Of course, it might be possible, provided it does not offend

the basic structure of the Constitution (in my opinion, it would definitely offend), to amend the relevant articles and to have numerous High Courts for one State or to do this even for the Union. But until that is done and permitted by us to be done, there shall be one High Court and one High Court only for one State, and Parliament cannot set up another body callingit a second Parliamentary High Court or the State Commission or anything else.

21. The question of basic structure is not involved in this litigation, simply because the 1986 Act was not even purported to be passed as a constitutional amendment. If in its basic theme, the Act offends any article of the Constitution, it must perish because any law made by Parliament, unless it is made in accordance with Article 368, is subservient to any and every part of the Constitution and in case of a conflict the Constitution prevails and the Parliamentary law fails.

22. If within the local limits of the ordinary original jurisdiction of this court, a commercial dispute arises involving banking, insurance, supply of goods or supply of services of practically any nature whatsoever, either of the two parties involved is permitted to approach this High Court by filing a suit. If the 1986 Act is good, one of those two parties is permitted also to approach the State Commission. The decision of the State Commission is accorded finality by the 1986 Act, see Section 24. An appeal will, of course lie, but only to the National Commission.

23. Thus, in Calcutta in the present day, if the Consumer Protection Act is good, there are two High Courts functioning. One High Court is this and it has been functioning in its slow, laborious and cumbrous way for many a decade. The other High Court is the State Commission which will entertain suits at the instance of each and every aggrieved consumer in the wide definition given in the 1986 Act.

24. If this is not setting up a second High Court then I do not know what is. If this is setting up a second High Court, then I do not know what is to be done with the 1986 Act excepting scrapping it altogether.

25. This is, as I say, the basic and perhaps the only point in these writs, and the decision which I have already reached on it is the basic decision on which I propose to fashion my order But there are other points which have to be dwelt upon in a little greater detail, if only to appreciate the main point better.

26. The automatic result of setting up a second body to do the same judicial job is to invite the most undesirable consequence of a series of conflict of decisions. Suppose a consumer files a redressal petition before the Consumer Commission or forum and the supplier files a suit for balance moneys due before the High Court or the District Court and asks for a declaration that the goods supplied were good or the services supplied were adequate and efficient. The result of these two proceedings beingpermitted to continue before the two different bodies is to create complete anarchy. The courts might decide that the supplier is in the right. The Forum might decide that the consumer is in the right. Under Section 24, the Commission's order is final. Under the laws well known in India today, the decree of the court is even more final. Are we then to have a series of orders which are all final but some of which are more final than others

27. It has been provided in the 1986 Act itself in regard to execution (see Section 25) that if the Forum or the Commission is unable to execute its own order it can send the order for execution to the ordinary courts and thereupon the court 'shall' execute the Commission's order.

28. To carry on the above example given above to its further logical extension, let us assume that the Commission sends its decree passed in favour of the consumer to the High Court for execution and let us assume the High Court has decreed (or even entertained), the suit where the supplier has either got or claimed, the price of goods or services and a declaration of being without blame or fault. If the 1986 Act is good then the High Court will shelve its own suit and execute the Commission's order. This is not setting up a second High Court. It is doing something worse. It is setting up a second High Court and saying that it shall be preferred in the widest possible body of commercial cases to the High Court set up by the Constitution. This Parliament is not permitted to do.

29. The other point, which is less serious, but not a trifling matter relates to the question of defamation. By a long line of cases decided over centuries, court proceedings are absolutely privileged. In a plaint the complaint against professional service can be made with total impunity. If the same thing is written in a letter, then a suit for libel will lie and damages are awardable without proof of special damage. The matter is exactly identical in so far as judgments and orders of ordinary courts are concerned. The point is, is the Commission to have a similar privilege Is the Commission to have such a similar and absolute privilege in regard to all complaints received by it and in regard to all pronouncements made by its members on such complaints The heavy machinery of the court, the court fees, and other technicalities, although they work harshly in a number of cases, have the great beneficial and deterrent factor of brushing aside litigation which is not serious or which is supposed to have only a nuisance or a pinprick value. Are we supposed to proceed on the basis that the District Forum, the State Commission and the National Commission each, has got already such an equal deterrent force as to banish from their doors the large body of frivolous and harassing litigants If fifty complaints arefiled in the shape of fifty plaints by the same litigant before the High Court against the same defendant, raising this plea or the other, on the basis of this bundle of facts in this case or those bundles of facts in those other cases, then, even with the slowness of procedure in the courts of law, it is not outside the possibilities that the said harassing plaintiff will soon be saddled with such costs as will teach him a lesson not to do the same thing in future again. The courts have the power to execute such decree for costs. The courts do not depend on Forums or Commissions for execution of their orders. But consumer Forums and Commissions have to depend on courts for execution of their orders. They are hardly comparable bodies so as to be able to scare off the consumers who have a mind, for this reason or the other, because the events of life are many or various, to harass this supplying organisation or that, or this supplier of professional service or that. I am quite confident in my mind that considering the Forum and the Commission to be equal to the courts in this matter would be a serious error of judgment.

30. The third point is Section 13(3). In the small experience which I have of Indian law and still smaller of English and other allied laws, I have never seen such a provision. It stands out as unique and extraordinary. The provision enacts to this effect that no proceedings complying with Section 13(1) and Section 13(2) shall be called in question for not having complied with the rules of natural justice. If anybody refuses to believe what I have stated above he merely needs to read the sub-section on his own. For my part, I would not blame him for not believing me in the first place.

31. It is not enough to denounce a provision like this merely on the logical basis, that if compliance with Section 13(1) and Section 13(2) were sufficient compliance with natural justice then Section 13(3) had no necessity for its inclusion, and that if Section 13(1) and Section 13(2) are not necessarily always a full compliance with the requirements of natural justice then Section 13(3) seeks to remove from a wide body of Indian cases and disputes, those most salutary principles, which have been extolled and applied by judge after judge in case after case for decades and decades.

32. It is also not enough simply to strike out this sub-section and leave the matter at that. With the greatest of respect, the sub-section shows the mood in which the enactment was made. Make some bodies to be manned as chosen by the executive, and give those a step by step hierarchy, just like ordinary courts. Allow them to deal with almost every case which acitizen might have. Completely disregard the courts of law and provide that these executive courts will have finality. Exclude the courts of law from enforcing the rules of natural justice. Keep them handy, however, if execution is to be enforced. I hope I have not been unfair in summarising the basic ideas which run through the entirety of the Consumer Protection Act of 1986, and if I have not been unfair in summarising those ideas, it must follow as a natural consequence that these ideas cannot be permitted to remain in the statute book even for one day after the errors have been exposed.

33. It is not enough to say that under Section 13(3) it is possible for a member of the Forum to' decide a case in which he has an interest of his own and yet the courts cannot strike down the decision for that reason or that disqualification, Such a possibility and the recognition of such a possibility are small complaints against such a monstrous sub-section as this. As I say, it is not enough to strike it down by itself because it is

symptomatic of the entire Act.

34. I have a little hesitation in saying what I am about to, regarding the fourth infirmity which I find in this Act. A special right of appeal has been given so as to take to the Supreme Court, as a matter of right, all the complaints from original and appellate decisions of the National Commission. I would be very happy to leave the matter of the Supreme Court to the Supreme Court itself but since the matter is before me I have, with due respect, to put forward what I honestly feel in this matter. Such a right of appeal to the Supreme Court is not available as a matter of course from decrees and orders of even this High Court. It is not available from decrees and orders confirmed or passed by the Division Benches of High Courts. A special leave is to be granted by the highest court itself or the court of the State must itself certify on the basis of the stringent provisions of Article 133 before a litigant can go up to the Supreme Court. For the Commission, however, the right is a matter of course. The Supreme Court must entertain each and every appeal filed from the decision of the National Commission whether the Supreme Court has granted leave or not. In my opinion, this is giving even more preference to the National Commission in the matter of approach to the Supreme Court than is given even to litigants litigating before the Division Bench of any High Court. In my opinion, this is again symptomatic of the slight which was shown in enacting the Consumer Protection Act to the entire body of Indian courts.

35. The Consumer Protection Act, 1986, is declared as ultra vires and is struck out. All rules made under the Act shall also be immediately struckout. All disputes and proceedings pending before the District Forums, State Commissions or the National Commission set up under the Act shall immediately come to a complete stop and there shall be a permanent order of stay accordingly.

36. Mr. Das and Mr. Mukherji pray for a stay of operation of this order but it is refused.

37. All parties and others concerned like Forums, State Commissions, the National Commission, their personnel and officers and all others howsoever concerned in the matter to act on a signed xerox copy of the dictated order on the usual undertakings of the learned advocates on record for Peerless and CESC.