

(2000) 02 BOM CK 0102

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 314 of 2000

Sadashivrao Dhamankar

APPELLANT

Vs

The State of Maharashtra and
Others

RESPONDENT

Date of Decision: Feb. 22, 2000

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 2
- Constitution of India, 1950 - Article 226, 227
- Consumer Protection Act, 1986 - Section 10, 13, 14, 16, 18

Citation: (2000) 3 BomCR 190 : (2000) 2 MhLJ 233

Hon'ble Judges: D.S. Zoting, J; B.H. Marlapalle, J

Bench: Division Bench

Advocate: Smt. Lata Bade, P.K. Palve and D.K. Dagadkhair, for the Appellant; E.P. Sawant, G.P. and A.H. Joshi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B.H. Marlapalle, J.

Heard.

2. Rule.

3. With consent petition taken up for final hearing forthwith.

4. The petitioner presently holds the post of President, District Consumer Disputes Redressal Forum, Ahmednagar (District Forum for short) and he came to be appointed in the said post on 8-1-97. By order dated 4-12-98, he was transferred from Sholapur to Ahmednagar and by the impugned order dated 6-1-2000 he has been transferred from Ahmednagar to Sangli and the respondent No. 3 has been transferred from Sangli to Ahmednagar. It is required to be noted at this stage that the petitioner was enrolled as member of the Sholapur District Bar, whereas, the

respondent No. 3 was enrolled as member of the Ahmednagar District Bar and both of them were practising at the respective district headquarters prior to their appointments. It is contended that the impugned order has been issued with mala fide intentions and only to accommodate respondent No. 3 who is a resident of Ahmednagar District. The petitioner also has challenged the authority of the Under Secretary, Department of Food, Civil Supplies and Consumer Protection Department, Mantralaya, Mumbai by placing reliance on provisions of section 24-B of the Consumer Protection Act, 1986. It is also urged that the respondent No. 3 could not be posted at Ahmednagar as he was practising there prior to his appointment as President of District Forum.

5. The Under Secretary from the said Department of the Government of Maharashtra has filed affidavit-in-reply and contended that (i) the petition is not maintainable before this Court as the petitioner has an alternative remedy of approaching the Maharashtra Administrative Tribunal to challenge the impugned order of transfer; (ii) the transfer order has been issued for justifiable reasons and it does not suffer from any malice nor it has been issued to accommodate respondent No. 3 though, he had made such a re- quest in writing. In support of the first contention the learned Government Pleader has relied upon an order passed by the Maharashtra Administrative Tribunal, Bench at Aurangabad in O.A. No. 690/98, wherein the tribunal after considering the provisions of section 2 of the Administrative Tribunals Act, 1985 has held that the post of the President of District Forum does not fall within the exceptions set out in Clause (b) of the said section. In support of the second ground the affidavit states that the State Government has constituted one member Consumer Welfare High Power Committee at the State level under the Chairmanship of Shri Bindu Madhav Joshi, vide Government Resolution dated 6-1-1996 and for the reasons of the transfer the relevant portion of the affidavit reads:-

"the Chairman of the High Power Committee Shri Bindu Madhav Joshi, supervises the overall working of the District Forum. I say and submit that it is the duty of the Committee to see that the working of the Forum is satisfactorily done in the interest of justice to the public at large. I say and submit that the Chairman of the High Power Committee Shri Bindu Madhav Joshi, had received several oral complaints against the petitioner when he was working at Sholapur. Therefore, I say and submit that taking into consideration the complaints against the petitioner at Sholapur, it is decided not to transfer the petitioner at Sholapur, Therefore, I say and submit that the persons posted as President are required to be transferred through out the State."

The affidavit further states that while the petitioner was working at Sholapur, as well as at Ahmednagar, there were serious complaints received against his working style and it was therefore, found necessary to shift him from Ahmednagar as well.

6. Pursuant to the order passed by this Court on 21-1-2000, the learned Government Pleader has made available before us the relevant file and we have gone through the notings therein including the resolution dated 17-8-99 passed by the Ahmednagar City Bar Association in its General Body Meeting and other complaints against the petitioner as have been set out in the communication dated 7-9-1999 addressed by Shri Bindu Madhav Joshi, to the Secretary, Food, Civil Supplies and Consumer Protection Department of the Government of Maharashtra.

7. In the case of M/s. Fair Air Engineers Pvt. Ltd. & another v. N.K. Modi, reported in 1997 (4) Bom.C.R. 4 : 1996 N.C.J. 625 (S.C.) the Supreme Court after examining the provisions of sections 3, 10, 13, 14, 16, 20, 22, 23, and 25 of the Consumer Protection Act, 1986 (the Act for short) held that (i) the Presiding officers of the Forums are judicial officers (ii) the District Forum has all the trappings of a Civil Court and judicial authority. The Maharashtra Administrative Tribunal in O.A. No. 690/98 held, *inter alia*, that the President of the District Forum is not an employee of a Court subordinate to the High Court and he is a Government servant and therefore, does not fall in the ambit of section 2(b) of the Administrative Tribunals Act. This order was passed by the tribunal on 19-6-1998 and it is clear that the judgment of the Apex Court in the case of M/s. Fair Air Engineers Pvt. Ltd. & another (*supra*) was not cited before the tribunal. We are of the considered view that we need not decide the issue as to whether the President of the District Forum comes within the ambit of section 2(b) of the Administrative Tribunals Act, 1985, in this case and we may safely leave the issue to be decided in some appropriate case in future. In any case, availability of an alternative remedy is not necessarily a bar in every case and in a given case this Court would be justified in exercising its powers under Article 226 and 227 of the Constitution without directing the parties concerned to approach the alternative forum.

8. Section 24-B of the Act, was incorporated by way of an amendment by the Government of India as a sequel to the judgment of the Supreme Court in the case of *Common Cause v. Union of India* 1991(4) Bom.C.R. 601(S.C.) : 1991(2) sC.P.R. 523(S.C.) and Clause (iii) of sub-section (1) of the said section read with provisions of sub-section (2) therein it is clear that the State Commission has an administrative control namely, generally overseeing the functioning of the District Forum to ensure that the purpose of the Act is best served without in any way interfering with their quasi-judicial freedom. These provisions will have to be read on the touch-stone of the observations made by the Supreme Court in the case of *Common Cause* (*supra*) and it would be useful to reproduce the relevant observations therein :

"there is some amount of dispute as to whether the amendment containing provisions for giving administrative and superintending jurisdiction to the National Forum over the State Commission and to the State Commission over District Forums. Experience shows that on account of want of such authority, the National Forum is not able to exercise appropriate jurisdiction over the State Forums and the

State Forums are not able to exercise appropriate control over the District Forums. Proper operation of the statute requires both administrative and judicial superintendence. While the Act has contemplated judicial superintendence, there is no provision for administrative superintendence. This is a lacunae in the statute. Realising this defect, we had pointed out earlier that the requisite forums should be conferred with the power of superintendence and we commend to the Union Government as quickly as possible to remove the deficiency by conferring appropriate power of superintendence on the State and the National Commission. Until that is done, we direct that to meet the situation, the National Commission would be entitled to exercise administrative jurisdiction over the State Commissions and the State Commissions would be entitled to exercise such administrative jurisdiction in their respective areas of control."

9. Section 24-B if read in consonance with the judgment of the Supreme Court in Common Cause case (supra) clearly provides that the administrative and supervisory control over the District Forums is that of the President of the State Consumers Disputes Redressal Commission (State Commission for short) and such control cannot be vested with any other authority which is unknown to the Act. If any other interpretation is given to the provisions of section 24-B it would negate the law laid down by the Supreme Court in the Common Cause case (supra) and therefore, the transfer orders of President District Forum must be issued by the President of the State Commission in his administrative powers as embodied in section 24-B of the Act.

10. Chapter II of the Act, provides for establishment of Consumer Protection Councils and section 7 deals with the State Consumer Protection Councils. Section 8 states that the objects of the State Council shall be to promote and protect within the State the rights of the consumers laid down in Clauses (a) to (f) of section 6. Section 6 of the Act reads thus :

"6. The objects of the Central Council shall be to promote and protect the rights of the consumers such as,

- (a) the right to be protected against the marketing of goods which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods at competitive prices;
- (d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and

(f) the right to consumer education."

As per section 7 of the Act, the State Council shall consist of the following members namely :-

(a) the Minister incharge of consumer affairs in the State Government who shall be its Chairman; and

(b) such members of other official or non-official members representing such interests as may be prescribed by the State Government.

11. It is thus clear that the State Consumer Protection Council is a body consisting of more than one members in addition to the Chairman who shall be the Minister in-charge of the consumer affairs in the State Government. We are afraid that this statutory requirement of section 7 is not fulfilled by the Government while issuing G.R. dated 6-1-1996 and by appointing the one member Consumer Welfare High Power Committee under the Chairmanship of Shri Bindu Madhav Joshi. If the said High Power Committee is functioning, we have no doubt to hold that it is an extra constitutional body and does not exist in the eyes of law. The constitution of the same committee is void ab-initio and we must state that the said committee will have no role to play in the administration of the District Forums as well as the State commission, in view of the provisions of section 6 to 8 of the Act. Even otherwise the State Council constituted u/s 7 will have no powers of administrative or supervisory control over the District Forums and such a power is bestowed only with the President of State Commission as per the provisions of section 24-B of the Act.

12. So far as the issue regarding the posting of President the District Forum at the place where he was practising as a Bar member before his appointment to the said post is concerned, we must note that when the President of the District Forum has been held to be a Judicial Officer by the Supreme Court in the case of M/s. Fair Air Engineers Pvt. Ltd. & another (supra) it would be desirable that the said issue is left for the consideration and decision of the President of State Commission on the lines of the practice being followed in this regard for the Judicial Officers.

13. It is common knowledge that on the day of the impugned transfer order i.e. on 6-1-2000 the post of President State Commission was vacant and Shri Justice M.S. Rane, a retired Judge of this Court has recently taken over charge of the said post. Section 18-A has been incorporated by the Government of India with effect from 15-6-1991 in the Act and it states that when the office of the President of District Forum or of the State Commission, as the case may be, is vacant or when any such President is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such person, who is qualified to be appointed as President of the District Forum or, as the case may be of the State Commission, as the State Government may appoint for the purpose. Thus the Act has provided for alternative arrangement if the office of the President of the State Commission is vacant for any reasons whatsoever. The impugned order of transfer,

as observed hereinabove has been issued by the Under Secretary from the Food, Civil Supplies and Consumer Protection Department of the Government of Maharashtra and the affidavit further clarifies that the said order was issued on the advice of Shri Bindu Madhav Joshi, the Chairman of the so called Consumer Welfare High Power Committee at the State Level. The order undoubtedly suffers from lack of executive power and it cannot be sustained. The affidavit filed in reply does not state that the transfer order impugned was issued by the President or an authority within the meaning of section 18-A of the Act.

14. Though, we have held that the transfer order impugned in the present petition cannot be sustained, it does not mean that the petitioner and the respondent would go back to their respective places of postings prior to the issuance of the said order. A perusal of the file as submitted before us, *prima facie*, shows sufficient material to examine whether the petitioner should be continued at Ahmednagar and it would be therefore, appropriate that the concerned file is placed before the President of the State Commission for his considerations to examine the following issues :-

- (i) Retention of the petitioner at Ahmednagar;
- (ii) whether the President of the District Forum should be placed at a district where he was a practitioner prior to his appointment to the said post; and
- (iii) the request made by respondent No. 3 for his transfer from Sangli to Ahmednagar.

15. For the reasons stated in the foregoing paragraphs, we allow the writ petition partly and quash the transfer order dated 6-1-2000 and direct that the concerned file which was produced before us be placed before the President of the State Commission alongwith a copy of this order forthwith, for his decisions on the above referred three points. We have no doubt that the President of the State Commission will take a final decision within a period of two weeks from today and till then we direct that status-quo as on today in respect of the postings of the petitioner and the respondent No. 3 shall be maintained.

16. Rule made absolute in terms of the above order with no order as to costs.

17. Parties to act on a Steno copy of this order duly authenticated by the Court Sheristedar.

18. Petition partly allowed.