

Before Amarbir Singh Gill & Swatanter Kumar, JJ

VARINDER PAL KASHYAP—*Petitioner*

Versus

STATE CONSUMER DISPUTE REDRESSAL
COMMISSION, PUNJAB & ANOTHER—*Respondents.*

C.P.W.No 6985 of 2001

26th July, 2001

Consumer Protection Act, 1986 (Amending Act No. 5 of 1993)—S.24—B—Consumer Protection (Punjab) Rules, 1987—Rl.3(5)—Appointment of an Advocate as a member of District Forum—Participation of the member in allowing a complaint in which notices were issued by him as an Advocate—State commission calling for explanation, withdrawing the work and further proceeding to start disciplinary proceedings against the Member—Power of administrative & superintendence control of the state Commission over the District Forums—Ambit & scope—Provisions of S.24-B provide power of administrative & superintendence control of the state commission over the District Forums—Powers exercisable by the commission u/s 24-B are definite in character and limited in extent—Action of the Commission in calling for explanation and ordering withdrawal of the work from the Member does not suffer from any legal infirmity—State Commission does not vest power of disciplinary control over the members of the District Forums—State Govt. being the appointing \disciplinary authority competent to take disciplinary action against a Member—State Commission only to make recommendations \ suggestions to the State Govt.—State Govt. not bound to accept such recommendations \ suggestions.

Held that the State Commissioner has no disciplinary control or say in the terms and conditions of services of the Members of the District Forum, but certainly it enjoys the administrative and superintending powers within the scope of Section 24-B of the Act. The State Govt. alone is the controlling and disciplinary authority for the purpose of removal, inflicting of punishment and passing any orders in regard to condition of service of the Members in accordance with the rules applicable to such appointments.

(Para 15)

Further held, that the issuance of the letters requiring the petitioner to explain his conduct and withdrawal of work from him are sustainable in law and squarely fall within the administrative and superintending control which the Commission exercises over the District Forum and its Members. However, issuance of the charge sheet and appointment of the inquiry officer are the orders which in normal course and as per the statutory provisions of the Act ought to be issued by the appointing/disciplinary authority i.e. the Government. The State Govt. is the only competent authority for this purpose. As such this exercise by the Commission would serve no purpose and would be hit by the Commission would serve no purpose and would be hit by the principle of futility and inherent lack of jurisdiction.

(Paras 22 & 23)

Arun Nehra, Advocate for the Petitioner.

Gurminder Singh, DAG, Pb. for the respondents.

ORDER

Swatanter Kumar, J

(1) The ambit and scope of administrative and superintending jurisdiction of the state Commission over the District Forum has been questioned in this writ petition. The observations and dictum issued by the Hon'ble Supreme Court in the case of Common cause, a *Registered Society Versus Union of India and others*, (1) resulted in amendment of the relevant provisions of Consumer Protection Act, 1986. Section 24-B was inserted by the Amending Act No. 5 of 1993, which took effect from 18th June, 1993. The newly inserted section 24-B reads as under :—

“24-B. administrative control—(1) The National Commission shall have administrative control over all the State Commissioners in the following matters, namely :—

- (i) calling for periodical returns regarding the institution, disposal, pendency of cases;
- (ii) 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 judgements written in any language, speedy grant of copies of documents;

(iii) generally overseeing the functioning of the State Commissions or the District Forum 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)."

(2) The Hon'ble Apex Court laid emphasis on the concept of effective administrative control by the State Commission on the District Forum in order to achieve proper administration of justice and control in the hierarchy of the Forum constituted under the Consumer Protection Act, 1986, hereinafter referred to as the act. The basic lacuna that was noticed by the Supreme Court.

"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 lacuna in the statute."

(3) To bridge the lacuna in the statute temporarily, the Hon'ble Apex Court granted limited jurisdiction of exercising administrative control, to the National Commission over the State Commissions and the State Commissions over the District Forums. The bare reading of the provisions of Section 24 indicate that the legislature did not intend to give the National Commission or the State Commissions powers of a disciplinary authority or to place the lower Forum under the disciplinary control of higher Forum. No powers were given to the Commission to provide there terms and conditions of appointment or even to recommend names of the members for such appointment.

(4) It is a settled principle of interpretation of statutes that when the legislature specifies the extend of power, which an authority can exercise, then in no case, the authority can be permitted to transgress its prescribed power. Where Section 24-B gives power of

administrative control to the State Commission over the District Forum, there it also states beyond ambiguity the purpose and object of granting such powers. The limitations of such powers have been clearly spelled out. They are in relation to calling for periodical returns, instructions to be issued for the purposes stated therein and generally over-seeing the functioning of the Commission and Forum. All these powers are to be exercised to ensure that object and purpose of the act are best served *but with a clear caution that they, in no way, interfere with their quasi-judicial freedom*. At this stage it would be of relevance to examine the scheme of the Act in relation to this aspect and with particular reference to some of the other relevant Sections of the Act.

(5) Section 10 of the act deals with the composition of District Forum and it specifically provides that every appointment under Sub-Section (i) shall be made by the State Government on the recommendation of a Selection Committee. The Selection Committee or even the recommendatory authority is not the State Commission as a body. The Committee on the recommendation of which the Government has to make such appointment consists of three persons and President of the State Commission is the Chairman of the Three-membered Committee. The other two Members of the Selection of the Selection Committee, as specified are the Secretary of Law Department of the State and Secretary of the Incharge Department dealing with the consumer affairs in the State.

(6) Under Sub-Section (2) of Section 30 of the Act, the State Government has been empowered to frame rules. Consumer Protection (Punjab) Rules, 1987 were framed by the competent authority. Under Rule 3 of the said rules the salary, allowances, terms and conditions of the President of District Forum appointed under Section 10, have been detailed. Under Sub-Rule (5) of Rule 3 of the said Rules, read with Section 10(2) of the Act, the State Government may remove from its office the President and any Member of the District Forum for the reasons stated therein.

(7) The comprehensive appreciation of the above statutory provisions clearly makes a distinction between the administrative control, power of judicial superintendence and disciplinary control. These three distinct and different fields of control vested in a superior or appointing authority/Commission are well accepted canons of service

jurisprudence. In the given statute, the scheme of the various provisions may contemplate that administrative and superintendence control vests in one authority, while disciplinary control in another. However, in other all these three controls may vest in one and the same authority or body. In all such cases, each of the authority must exercise its jurisdiction within the limitations prescribed, for example, the High Court is vested with all three controls in relation to judicial services of the State and it is upon the recommendation of the High Court alone that State is to act. The State is bound by such recommendations of the High Court.

(8) The powers exercisable by the State Commission over the functioning of the District Forum and its members under Section 24-B cannot be equated or treated parimateria to the control exercisable by the High Court over the District Courts and Courts subordinate thereto, under Article 235 of the Constitution of India. Unlike Constitutional supervisory power as incorporated under Article 235 of the Constitution, the powers exercisable by the Commission under Section 24-B are definite in character and limited in extent. The administrative control exercisable by the State Commission over the District Forum would cover the day to day matters including the performance of its functions by the Mambbers, but cannot hamper, encroach or interfere with quasi-judicial freedom and the powers squarely and plainly fall in the exclusive domain of the disciplinary authority. This settled precept of administrative control hardly need any further elucidation.

(9) In exercise of its administrative and supervisory control, the Commission would be well within its powers to ask for an explanation of the Member in regard to discharge of his official functions. The purpose of said explanation would obviously be to give a chance to the Memembr of the Dsitric Forum to explain his conduct in reference to a particular commission or omission brought to the notice of the State Commission or its President by way of complaint or otherwise. But, the purpose of asking such explanation would be limited only to the extent of passing remarks, against the officer concerned or for recommending to the disciplinary authority to take appropriate action in accordance with law i.e. under the provisions of Section 10(2) of the Act and Rule 3(5) of the Rules.

(10) Having formulated the afore-narrated conclusions on the basis of the submissions made before us, now we would proceed to apply the law to the facts of the present case. Petitioner Virender Pal Kashyap is a practising advocate at Moga. According to the petitioner he separated from his brothers in the year 1994. Vide notification dated 5th July, 1996 issued by the Punjab Government, the District Consumer Disputes Redressal Forum was established at Moga and he was appointed as one of the Members of the District Forum. One Pritpal Singh Gill along with others filed a complaint against the Bank of Baroda for redressal of their grievances before the District Consumer Disputes Redressal Forum, Moga. Vide order dated 30th March, 1998, the President and Members of the District Forum allowed substantial relief to the complainant. The order was authored by the petitioner, as one of the Members. Bank of Baroda filed an appeal before the State Consumer Disputes Redressal Commission, Punjab, at Chandigarh, being appeal No. 364 to 1998. the appeal was heard by the President and two Members of the Commission,—vide order dated 22nd September, 2000. While allowing the appeal, the Commission held as under :—

“We find from the record of the District Forum, Exhibit A-10 which is a notice issued from the office of Sarv/Shri Dev Pal Kashyap, Vinay Kashyap and Varinder Kashyap, Advocates, to the Manager, Bank of Baroda, Railway Road, Moga and Regional Manager, Bank of Baroda, Regional Office, Sector-17, Chandigarh, who are the opposite parties in the complaint before the District Forum, Moga. One of the members of the District Forum, Moga, who has dictated the final judgment is none-else but Shri Varinder Kashyap, whose name, as already stated above, finds mention in Exh. A-10, i.e. legal Notice issued to the opposite parties before the District Form, Moga.

In these circumstances, we find that prejudice could be causal to the interests of oppoiste party-appellant, when the order has been dicated by Sh. Varinder Kashyap, as a member of the District Forum and the President and other member have only signed it.

In these circumstances, we find it just and proper that the order dated 30th March, 1998 of the District Forum,

Moga, which has been authored by Shri Varinder Kashyap, Member is set aside and the appeal is accepted.”

(11) In furtherance to the above findings of the Commission, the Officer on special duty in the Commission, on the directive of the Commission, issued a letter asking for the explanation of the Member as to whether it was proper for him to sit as a Member in view of Annexure A-10 the Notice, which was sent by him to the Manager of the Bank of Baroda on 16th September, 1998. On 21st November, 2000 the Member replied to this letter. Still in another appeal No. 259 of 1999 titled as Raj Kumar Singla Versus Branch Manager, United India Insurance Company Limited, the District Forum passed an order on 2nd May, 1999 in which notice Annexure A.6 was served by Varinder Kashyap as an Advocate. Still he was party to the order under appeal in that case. The letter dated 12th March, 2001 was served asking for the explanation. The Member was required to submit the reply within seven days. Reply was sent on 3rd April, 2001.

(12) However, the Registrar of the Commission, further proceeded to issue a charge-sheet and statement of allegations to the officer and an inquiry officer was also appointed,—*vide* letter dated 23rd April, 2001. *Vide* order dated 23rd April, 2001 the Registrar of the Commission directed the work to be withdrawn from the said Member with immediate effect. Thus, the petitioner in this petition prays for quashing of the charge-sheet and appointment of the inquiry officer and order dated 23rd April, 2001 withdrawing the work from him. These orders are annexed to the petition as Annexure P.8, P.9, and P.10 respectively.

(13) Upon notice, reply was filed by the Registrar of the Commission. The impugned orders were defended on the ground that they squarely fall within the administrative and superintending control of the Commission. The said officer has abused his office and in any case has offended the fine canons of judicial propriety.

(14) It is contended on behalf of the petitioner that the Commission not being his appointing or disciplinary authority, has no jurisdiction to pass the impugned orders particularly when the petitioner has not misused his official position. On the other hand, it is contended on behalf of the Commission as well as the State Government of

Punjab that the impugned orders have been passed by the commission within four corners of law and even the statement of allegations Annexure P-8, which informed the petitioner that. "He has, thus, so abused his official position as to render his continuance in office prejudicial to the public interest." was sustainable in law and was within the jurisdiction of the Commission.

(15) We have already held that the Commission has no disciplinary control or say in the terms and conditions of service of the Members of the District Forum, but certainly it enjoys the administrative and superintending powers within the scope of section 24-B of the Act. The State Government alone is the controlling and disciplinary authority for the purposes of removal, inflicting of punishment and passing any orders in regard to condition of service of the Members in accordance with the rules applicable to such appointments.

(16) We do appreciate the solitude and verve on the part of the Commission in maintaining proper and judicious functioning of District forums and its members, working under the Commission. The exception taken by the Commission in regard to the participation of the petitioner as a Member of the adjudicating forum in face of the notices issued by him along with his brother as an Advocate, does not suffer from an error of jurisdiction or otherwise. The anxiety on the part of the Commission to ostracize the possibility of infringement of principles of audi alteram partem and issuance of notices calling for explanation/comments of the Members was well within its jurisdiction and squarely falls within the content and scope of expression, "powers of administrative and superintending control" of the Commission over the District Forum. As we are not really called upon to comment on the merits of the allegations against the petitioner, we cannot but help to say that on the basis of the record and even after considering the reply, the action of the petitioner by no means can be termed misdemeanour. Extent of gravity is obvious on the record. The Commission has to maintain strict adherence to principles of judicial propriety and no Judge should hear a matter in which he had participated at any stage to the benefit of a party to the lis as it would offend the basic *maxim nemo debet esse iudex in propria causa*.

(17) The Commission had observed in its orders after examining the records that the notices were issued from the office of the petitioner as advocate, as admittedly, he was practising along with his family

members in Moga. The Commission considered it appropriate to issue letters calling for the comments of the officer, which is certainly a healthy practice and is in consonance with the principles enunciated by the Hon'ble Apex Court in various cases. In the case reported as *In the matter of 'K', a Judicial' Officer, (2)*, in recording of adverse remarks in a judgment, the Hon'ble Supreme Court held as under :—

“A Judge is not expected to drift away from pronouncing upon the controversy, to sitting in judgment over the conduct of the judicial and quasi-judicial authorities whose decisions or orders are put in issue before him, and indulge into criticising and commenting thereon unless the conduct of an authority or subordinate functionary or anyone else than the parties comes of necessity under review and expression of opinion going to the extent of commenting or criticising becomes necessary to have animadverted thereon for the purpose of arriving at a decision on an issue involved in the litigation. This applies with added force when the superior court is hearing an appeal or revision against an order of a subordinate judicial officer and feels inclined to animadvert on him.”

“The action so taken would all be on the administrative side. The subordinate Judge concerned would have an opportunity of clarifying his position or putting-forth the circumstances under which he acted.”

Reference can also be made to the judgment of this Court in the case of *Piare Lal versus Additional Civil Judge and others, Civil Revision No. 4014 of 2000, decided on 31st May, 2001.*

(18) The action of the Commission to call for the Comments of the Officer, through its Registrar, does not suffer from any legal infirmity or bias. On the contrary the said action is in strict adherence to the settled principles of law laid down in the above cited two judgments.

(19) The provisions of Section 24-B of the act arms the Commission with ample power of controlling the administration of justice by effective administrative and superintending control. Principle

of fairness demands that such judicial or quasi-judicial authorities must act in a way where justice should not only be done, but should be seem to be done in its true spirit. Allocation of work primarily falls within the domain of the Commission under its power of superintending and, thus, we cannot find any error on the part of the Commission in issuing order Annexure P-10 withdrawing the work from the said Member till further orders. Two specific instances have been brought on record by the Commission for passing such an order.

(20) We are unable to appreciate as to why the Commission issued a charge-sheet and statement of imputataions and appointed an inquiry officer. What purpose would it achieve ? Answer to this question is very simple and straight. It would be an exercise in futility. In other words it will only have obdurate results as the Commission is not the appointing or disciplinary authority of the Members and as such does not enjoy disciplinary control over them. Its powers are not even that of a recommending authority, by which the State Government would be bound.

(21) The approach adopted by the Commission would only cause un-necessary delay besides the fact that issuance of such orders may be without jurisdiction. It will serve no ends of administration of justice and would be to the prejudice of the petitioner as well as the Commission itself. The Commission has already expressed its view that it does not consider it appropriate to allocate work to the said Member for adjudication. The State Government being the appointing and disciplinary authority, is duty bound to take action on the information or suggestions given by the Commission. The intention of the Commission to discourage such practice is laudable, but it must exercise its powers within the ambit of four corners of law.

(22) Argo we have no hesitation in holding that the issuance of the letters requiring the petitioner to explain his conduct and withdrawal of work from him are sustainable in law and squarely fall within the administrative and superintending control which the Commission exercises over the District Forum and its Members. However, Annexure P-8 (statement of charges and statement of allegations) and Annmexure P-9 (letter informing appointment of Inquiry Officer) are the orders which in normal course and as per the statutory provisions of the Act, ought to be issued by the appointing/ disciplinary authority i.e. the Government.

(23) We have already held that the State Government is the only competent authority for this purpose. As such this exercise by the Commission would serve no purpose and would be hit by the principle of futility and inherent lack of jurisdiction. It will be more so particularly when the Commission has issued these notices with the stipulation that the petitioner's continuance in office is prejudicial to the public interest.

(24) Consequently, this writ petition is partly accepted. The appointment of the inquiry officer is quashed. We expect the Commission not to proceed with these proceedings any further. It was contended by the learned counsel appearing for the Commission that the Commission in fact proposes to make recommendations/suggestions to the State Government for taking appropriate action on these basis. Certainly such an action would be within the competence of the Commission and permissible in law. Thus, we further direct that if the commission makes any recommendations/suggestions to the State Government, it shall act with utmost expedition and in accordance with law.

R.N.R.

Before V.M. Jain, J

SHAKTI BHAKOO— *Petitioner*

versus

M/S RAJ LAKSHMI MILLS (REGD.)—*Respondent*

Crl.M. No. 7530/M OF 2001

16th August, 2001

Negotiable Instruments Act, 1881—Ss. 138 & 141—Dishonour of cheques — Complaint against a firm—Trial Court ordering summoning of all the partners of the firm—S. 141 provides that only the person incharge of and responsible to the firm for its conduct of the business shall be deemed to be guilty of the offence, liable to be proceeded against & punished— S. 141 does not refer to each & every partner of the firm—Disputed cheques not issued by the petitioner—Petitioner neither incharge of the firm nor responsible to the firm for its conduct—Petitioner being a sleeping parter not guilty of the offence under Section 138— Criminal proceedings liable to be quashed.