

CASE NO.:  
Appeal (civil) 2740 of 2007

PETITIONER:  
State of U.P. & Ors

RESPONDENT:  
Jeet S. Bisht & Anr

DATE OF JUDGMENT: 18/05/2007

BENCH:  
S.B. Sinha

JUDGMENT:  
J U D G M E N T

CIVIL APPEAL NO. 2740 OF 2007  
[Arising out of SLP (Civil) No. 6928 of 1999]  
W I T H  
W.P. (C) No. 164 of 2002

S.B. SINHA, J :

1. Leave granted.

2. Although I agree with my learned Brother Katju, J. that having regard to the question involved in the present appeal, we should request the Central Government as also the respective State Governments to consider the desirability of fixing appropriate salaries and allowances for members of the consumer fora at all three levels so that they can function effectively and with a free mind, I deeply regret my inability to agree with various observations made by my learned Brother for whom I have the highest respect.

3. The Consumer Protection Act, 1986 was enacted to provide for better protection of the interests of the consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. The said Act is in addition to and not in derogation of the provisions of any other law for the time being in force. The following Statement of Objects and Reasons preceding the Act are clear pointers to show the purport and object for which the Act was enacted:

"2. It seeks, inter alia, to promote and protect the rights of consumers such as \026

(a) the right to be protected against marketing of goods which are hazardous of life and property;

(b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;

(c) the right to be assured, wherever possible, access to an authority 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) right to consumer education.

3. These objects are sought to be promoted and protected by the Consumer Protection Councils to be established at the Central and State level."

4. The Act not only provides for new rights for the citizens of India in their capacity as consumers, it envisages their empowerment in this behalf. The same, in my opinion, deserves due consideration in the matter of determination.

5. It is indisputably the solemn duty of the executive of both the Government of India as also the Governments of States to implement the provisions of the Act in true letter and spirit.

6. In my opinion, in a situation of this nature where the action or inaction on the part of the executive government of a State or Union Territory would lead to virtual closure and/ or non-functioning of such an important judicial fora created under the Act, it is permissible for the Superior Courts, and particularly this Court, while exercising its constitutional functions, to issue necessary directions for proper and effective implementation of the provisions thereof.

7. The public interest litigation which was filed in the High Court of Allahabad was not in the nature of an adversarial litigation. It was filed for a specific purpose and to serve a public cause. The directions issued by the High Court in its impugned judgment were, of course, at one point of time challenged by the State of Uttar Pradesh, but the same had not only since then been complied with, but also this Court from time to time, on the intervention of several bodies, had issued various directions. Brother Katju, J. in the accompanying judgment has noticed some of them.

8. Indian Supreme Court has achieved world-wide acclaim in fashioning new rights under Part III of the Constitution and also using Directive Principles as interpretive devices for giving a contemporaneous meaning to Part III. Innovations in the field of PIL or Social Interest Litigation as some people like to call it, have been institutionalized; methods and rules in that regard have been streamlined to a great extent through later directives of this court. The journey of PIL from rhetoric to a trusted court procedure showcases in ample the potential of constructive exchange between organs of polity, remaining well within their limits. At the same time, we are not unmindful of some decisions which have brought disrepute to the institution as well the innovation itself. James Madison once when similarly situated remarked, that it is better to leave a few of its noxious branches to their luxuriant growth, than, by pruning them away, to injure the vigour of those yielding the proper fruits. As has been mentioned, subsequent directives of SC have come down heavily on such instances.

9. Although this phase has been widely documented but the last such mention was in Public Law, 2006 Autumn, Human Rights Transformed: Positive Duties and Positive Rights (P.L. 2006, AUT, 498-520 at pg. 513) where the author (Sandra Fredman) sees inspiration in the wide-ranging work of Indian SC for European Court of Justice. It was noted therein: "Two points should, however, be noted (about Indian Supreme Court's record on Public Interest Law). First, the Court has adapted its procedure to enable it to adjudicate polycentric issues more appropriately. Wide standing rules require the court to conduct some of its own fact-finding, sometimes through establishing its own commissions. It has also fashioned its own remedial orders to provide ongoing management. For example, in the "Right to Food" case, it has issued a continuing mandamus to

require states to fully implement specific schemes including mid-day meals at school. Secondly, affirmation of wide duties is often used to counter maladministration rather than to initiate new projects. Thus the right to livelihood of pavement dwellers gave rise only to a duty to consult before removing them; and the right to a road gave rise only to a duty to complete a project for which funds had already been allocated. In the right to food case, a primary problem was maladministration: the Court found that about half of the food subsidy was being spent on holding excess stocks; reducing stocks would free up large resources to distribute food and provide hot mid-day meals for school children.

The Indian approach is relevant to the domestic scene in that there are clear signs that the principles in the EU Charter of Fundamental Rights will be used as interpretative aids by the European Court of Justice, and thereby have a direct influence on domestic law."

(Emphasis supplied)

10. The matter at hand also involves consideration of a PIL. A different set of expectations stares us in the face, and significantly, we are also anchored with a unique sense of responsibility. Judicial apathy with a value-neutral outlook would neither help the functioning of consumer fora nor our self-belief. We attend to the matter with a similar approach.

11. We, however, would fail in our duties if we do not acknowledge the extent of cooperation which had been rendered to us not only by Mr. A. Sharan, learned Additional Solicitor General of India but almost all counsels appearing for different States in assisting us to issue directions from time to time which indisputably have served greater positive purpose.

12. Brother Katju, J. has noticed that even the learned Additional Solicitor General appearing on behalf of the Union of India had been more than fair in taking a bold stand agreeing for effective implementation of the provisions of the Act, this Court's intervention is necessary.

13. It may be true that the salary, honorarium or other allowances of the members of the District Forum as also those of the State Commission are ordinarily to be prescribed by the State Governments in terms of the provisions of the Act but even in that behalf, most of the State Governments have taken a very reasonable stand by agreeing to pay reasonable salaries and other allowances to the Chairman and members of the different fora.

14. In this context, we agree that the provisions of Consumer Protection Act envisage the role of the executive in laying down the particulars of pay-scale as also the associated benefits, but the fact situation as agreed on record by both the sides, portends a rather grim future for consumer fora at different levels. It will not be the spirit of any statute for that matter to put forward a framework of narrow rules which will impede issuing of directions to set in motion the machinery with respect to that law. Consumer Protection Act embodies a certain value in protecting the interests of consumers in the age of consumerism, and the institution of consumer fora has a specific mission in that behalf. Instant order needs to be seen in the perspective of achieving that 'point behind the law'.

15. With the advent of globalization, we are witnessing a shift from Formalism to a Value-laden approach to law. In the contemporary scholarship, especially with the decimation of law as purely an autonomous discipline (with the emergence of cross-cutting realms such as Law and Economics, Law and Philosophy, Law and Society, IPR et al), we see that

laws embody a goal, which may have its provenance in sciences other than law as well. It is no more the black letter in the law which guides the interpretation but the goal which is embodied by the particular body of law, which may be termed as the rationality of law.

16. Law, in its value-laden conception, is not entirely endogenous in its meaning and purpose: the construction thereof also depends on the statement of purport and object. There is a spill-over of the aforementioned shift in philosophy of law to statutory interpretation. Purposive interpretation, of lately, has gained considerable currency, which is relevant for the sake of maximizing the efficiency in respect to the point behind the rule. There may be a situation when purposive interpretation is required even in the context of deciphering the Constitutional mandate by invoking the notion of active liberty discovered by Justice Stephen Breyer of American Supreme Court. This is the precise role which was exhorted by Bruce A. Ackerman in the famous Storrs Lecture:

"If we are to make sense of our constitution, we must cut ourselves off from the Framers' theory of democracy. The Least Dangerous Branch opens with a second declaration of independence, not an effort at constitutional interpretation. The beginning of constitutional wisdom, apparently, is that Hamilton, Marshall, and the rest were utterly mystified by representative government."

17. The ultimate justification for the creation of new rights and renewed emphasis on implementation of statutory rights is that they have to be made justifiable, simply because of their primacy in living a life with dignity and the matching recognition thereof with the values that our constitution inheres. Following this philosophy the SC has developed new methods and new remedies. The same is to be considered to be a part of wider civilization.

(See Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution*, (2005) Knopf; Ronald Dworkin, *Taking Rights Seriously* (1977); Ronald Dworkin, *A Matter of Principle* (1985); Bruce A. Ackerman, 93 *Yale Law Journal* 1013 (May 1984), *The Storrs Lectures: Discovering the Constitution*)

18. In this situation, this Court had only been considering the matter relating to better implementation of the provisions of the Act so as to uphold the dignity and impartiality of the Chairman and members of the fora which would help them in discharging their judicial functions.

19. It is a matter on record that even the salary and other allowances payable to the members of the National Consumer Commission, as directed by this Court, have been accepted by the Union of India and an appropriate notification in this behalf has been published.

20. Separation of power is a favourite topic for some of us. Each organ of the State in terms of the constitutional scheme performs one or the other functions which have been assigned to the other organ. Although drafting of legislation and its implementation by and large are functions of the legislature and the executive respectively, it is too late in the day to say that Constitutional Court's role in that behalf is non-existent. The judge made law is now well recognised throughout the world. If one is to put the doctrine of separation of power to such a rigidity, it would not have been possible for any superior court of any country, whether developed or developing, to create new rights through interpretative process.

21. Separation of power in one sense is a limit on active jurisdiction of each organ. But it has another deeper and more relevant purpose: to act as check and balance over the activities of other organs. Thereby the active jurisdiction of the organ is not challenged; nevertheless there are methods of prodding to communicate the institution of its excesses and shortfall in duty.

Constitutional mandate sets the dynamics of this communication between the organs of polity. Therefore, it is suggested to not understand Separation of Power as operating in vacuum. Separation of power doctrine has been reinvented in modern times.

22. It is interesting to note here the decision in *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) wherein court commented on the utility of separation of power within the constitutional scheme to maximize good governance:

"The actual art of governing under our Constitution does not and cannot conform to judicial definitions of the power of any of its branches based on isolated clauses or even single Articles torn from context. While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity."  
(emphasis supplied)

23. The modern view, which is today gathering momentum in Constitutional Courts world over, is not only to demarcate the realm of functioning in a negative sense, but also to define the minimum content of the demarcated realm of functioning. Objective definition of function and role entails executing the same, which however may be subject to the plea of financial constraint but only in exceptional cases. In event of any such shortcoming, it is the essential duty of the other organ to advise and recommend the needful to substitute inaction. To this extent we must be prepared to frame answers to these difficult questions.

24. John Rawls in *Political Liberalism* (1996) at pg. 231 notes in relation to a similar situation:

"By applying public reason the court is to prevent that (higher) law from being eroded by the legislation of transient majorities, or more likely, by organized and well-situated narrow interests skilled at getting their way. If the court assumes this role and effectively carries it out, it is incorrect to say that it is straight-forwardly antidemocratic."

This perspective helps us all towards the wholesome realization of the democratic ideal of good governance and rule of law.

25. In the American context, it will be in the fitness of the discussion to quote from an illuminating piece by Cass R. Sunstein (*Constitutionalism After The New Deal*, 101 HVLIR 421):

"In the New Deal period, the original constitutional framework was thus reformulated in three fundamental ways. The New Deal set out a different conception of legal rights, rejecting common law and status quo baselines for deciding what constituted governmental 'action' and 'inaction'; it proposed a dramatically different conception of the presidency and a novel set of administrative actors; and it rejected traditional notions of federalism. The term 'New Deal constitutionalism' describes the resulting structure."

(Emphasis supplied)

26. If we notice the evolution of Separation of Power doctrine, traditionally the checks and balances dimension was only associated with governmental excesses and violations. But in today's world of positive rights and justifiable Social and Economic entitlements, hybrid administrative bodies, private functionaries discharging public functions, we have to perform the oversight function with more urgency and enlarge the field of checks and balances to include governmental inaction. Otherwise we envisage the country getting transformed into a state of repose. Social engineering as well as Institutional engineering therefore forms part of this obligation.

27. In this context, Bruce A. Ackerman in *We, the People* (1991) refers to constitutional moment in the lives of nations in which foundational premise of system finds seminal turnaround guided by popular awareness. A decision of change in the background of a constitutional moment has a transformative constitutional power, equivalent to a constitutional amendment.

28. All India Judges' Association and Others v. Union of India and Others [(1993) 4 SCC 288 : AIR 1993 SC 2493] is an instance to show that in appropriate cases the Judiciary may step in even for the purpose of making recommendations in regard to the scale of pay and other allowances payable to the judicial officers. While making its suggestion to the state, this court noted :

"These are only suggestions which are made and it will be more appropriate for each State, taking into consideration the local requirements, to adopt appropriate nomenclatures. It would be appropriate to mention at this stage that in some States, the entry point to the judicial service was at the level of a munsiff or a subordinate Judge. Those are nomenclatures which are also to be considered but what is important is that in respect of each scale, the nomenclature should be different. In this way, a judicial officer will get a feeling that he has made progress in his judicial career with his nomenclature or designation changing with an upward movement within the service."

29. We may notice that the Shetty Commission appointed to go into these matters had submitted its report and the same has been accepted by almost all the States.

30. It is also interesting to note that the Central Government evidently accepted the recommendations of the Shetty Commission and deleted the consideration in respect of the pay scales of the judicial officers from the terms of the reference of the Fifth Pay Commission.

31. A further order was passed in the said decision on or about 21st March, 2002 by a Three-Judge Bench of this Court in *All India Judges' Association and Others v. Union of India and Others* [(2002) 4 SCC 247]. Apart from referring to Article 50 of the Constitution of India, the Three-Judge Bench of this Court in repelling the contention of some of the States that this Court should not interfere in such matters raised constitutional questions in regard to the increase in retirement age from 60 to 62 years. The court went into the merits of the recommendations, sifted through them and also in the end gave suggestions to various State Governments. We may place on record that the Three-Judge Bench is still monitoring implementation of the report of the Shetty Commission and the various directions issued by this Court.

32. A Three-Judge Bench of this Court in *Dr. J.J. Merchant and Others v. Shrinath Chaturvedi* [(2002) 6 SCC 635], while opining that all complaints filed before different fora constituted under the Act should be required to be

determined as expeditiously as possible with regard to purport and object of the Act, observed:

"35. From the proposed amendment in the Act, it is apparent that Parliament is alive to the problems faced by the consumers and the consumer forums and, therefore, further directions are not required to be given.

36. However, apart from the contemplated legislative action, it is expected that the Government would also take appropriate steps in providing proper infrastructure so that the Act is properly implemented and the legislative purpose of providing alternative, efficacious, speedy, inexpensive remedy to the consumers is not defeated or frustrated.

37. Similar action is also expected from the National Commission as well as State Commissions. Hence, for avoiding delay in disposal of complaints within the prescribed period, the National Commission is required to take appropriate steps including:

( a ) By exercise of administrative control, it can be seen that competent persons are appointed as members on all levels so that there may not be any delay in composition of the Forum or the Commission for want of members.

( b ) It would oversee that the time-limit prescribed for filing the defence version and disposal of complaints is strictly adhered to.

( c ) It would see that the complaint as well as the defence version should be accompanied by documents and affidavits upon which parties intend to rely.

( d ) In cases where cross-examination of the persons who have filed affidavits is necessary, suggested questions of cross-examination be given to the persons who have tendered their affidavits and reply may be also on affidavits.

( e ) In cases where the Commission deems it fit to cross-examine the witnesses in person, video conference or telephonic conference at the cost of the person who so applies could be arranged or cross-examination could be through a commission. This procedure would be helpful in cross-examination of experts, such as doctors."

33. We have only noticed a different approach of the Court with the changing times. In a given case, the court may or may not issue any direction but the Supreme Court of India in an appropriate case should not stop its journey to creative interpretation of the constitutional provisions vis-à-vis the independence of judiciary.

34. Even if we, for the time being, do not take note of the Constitution Bench decision of this Court in Supreme Court Advocates-On-Record Association and Others v. Union of India and Another [(1993) 4 SCC 441] apart from Vishaka v. State of Rajasthan [(1997) 6 SCC 241] and Vineet Narain and Others v. Union of India and Another [(1998) 1 SCC 226] and several other judgments following the same, there are cases and cases where

this Court had, on one occasion or the other, dealt with the question of fixation of pay-scale not only with regard to judicial officers but also of other employees connected with the justice delivery system.

35. This Court in *Union of India and Others v. All Gujarat Fed. of Tax Consultants and Others* (SLP Nos. 6904-6905 of 1998) disposed of on September 16, 2003, issued directions in regard to various amenities and perks to be given to the members of the Income Tax Appellate Tribunal. The manner in which transfers and postings of the members of the Income Tax Appellate Tribunal should be effected was the subject matter of the decision of this Court in *Ajay Gandhi and Another v. B. Singh and Others* [(2004) 2 SCC 120].

36. In *Union of India v. S.B. Vohra* [(2004) 2 SCC 150], a Three-Judge Bench of this Court again considered the question of jurisdiction of the Chief Justice in fixing the scale of pay of the various officers of the Delhi High Court. This Court opined:

"49. The matter as regards fixation of scale of pay of the officers working in the different High Courts must either be examined by an expert body like the Pay Commission or any other body but in absence of constitution of any such expert body the High Court itself is to undertake the task keeping in view the special constitutional provisions existing in this behalf in terms of Article 229 of the Constitution of India.

50. We agree with the submission of the learned Additional Solicitor General to the effect that the decision of the High Court had been rendered having its origin in *A.K. Gulati* (CWP No. 289 of 1991) which had a spiralling effect, particularly in the case of Assistant Registrars. That was more a reason why a competent authority of the appellant should have taken immediate steps in holding a meeting with the Chief Justice or an authorized officer of the High Court.

51. Having regard to the aforementioned authoritative pronouncements of this Court, there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed themselves on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that the recommendations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question as regards fixation of a revision of the scale of pay of the High Court being within the exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons."

37. Yet again recently in *High Court Employees' Welfare Association, Calcutta & Ors. v. State of West Bengal & Ors.* [2007 (1) SCALE 180], this Court made a reference in context of institutional exchange holding:

"Though the power to make rules in regard to pay and allowances of the High Court employees is

vested in the Chief Justice subject to any law made by the Parliament, the Constitution has advisedly made the power of the Chief Justice to make such rules conditional upon approval of such rules by the Governor of the State, that is the State Government. The requirement of approval under the proviso Clause 2 of Article 229 is not a mere formality. We find that the State has approved all provisions except one clause. It has expressed its inability to agree to para 2 of Rule 4 as it provides for a general increase in pay of all existing employees by two stages, after fixation of pay in the revised pay scale. The non-approval is in consonance with the Minutes of the meeting dated 13/18.4.2005 between the Chief Justice and the Ministers representing the State. But for the unfortunate misunderstanding relating to second para of Rule 4 of the modified draft Pay Rules, the High Court and the State Government have shown understanding of each other's problems and by exchange of views and discussions, sorted out the outstanding issues, thereby maintaining the high constitutional traditions. Therefore there is no need for any interference."

(Emphasis Supplied)

38. We have only referred to some of the decisions of this Court which are binding on us, where pay scales have been fixed or amenities have been granted by the Courts or at least strong recommendations have been made.

39. In the instant case, Mr. M.N. Krishnamani, learned Amicus Curiae and the learned Additional Solicitor General of India have made the following common submissions:

"1) Court is competent to issue directions when State has either failed to perform its duty conferred on it under a statute or has exercised its power arbitrarily or on irrelevant considerations.

2) The pay fixation of Members is not directly related to the work load but it is a matter of status and dignity.

3) Nature of duties performed by the Members being judicial in nature, is entirely different from the other Govt. Services and, therefore, different considerations come into play."

40. It is also interesting to note that expanding citizen's right to food as envisaged under Article 21 of the Constitution of India, a Division Bench of this Court in *People's Union For Civil Liberties v. Union of India* [2006 (13) SCALE 399] inter alia directed the Government to sanction and operationalize minimum of 14 lakh AWCs under ICDS.

41. If financial constraint was not considered to be a criterion for issuing a direction to create and sanction a huge number of posts by one Bench, it would be inappropriate for us to restrain ourselves from doing so in respect of judicial officers and other members of different fora created under the Act who perform judicial functions. The consumer courts, it must be borne in mind, in effect and substance, are virtual substitutes for the civil court in respect of certain categories of cases.

42. As has already been mentioned, although functional tests and positive tests have not yet been fully evolved in the context of new separation of power doctrine, undoubtedly their application would, in appropriate cases,

be necessary so as to consider the institutional balance between various branches of the polity. It will be wholly inappropriate if we fail to consider the expanding jurisdiction. It is worth noticing that the Superior Courts of various other countries including Israeli Supreme Court and South African Constitutional Court, apart from those of the developed countries, have marked the beginning in this behalf.

43. For the views been taken herein, I regret to express my inability to agree with Brother Katju, J. in regard to the criticisms of various orders passed in this case itself by other Benches. I am of the opinion that it is wholly inappropriate to do so. One Bench of this Court, it is trite, does not sit in appeal over the other Bench particularly when it is a coordinate Bench. It is equally inappropriate for us to express total disagreement in the same matter as also in similar matters with the directions and observations made by the larger Bench. Doctrine of judicial restraint, in my opinion, applies even in this realm. We should not forget other doctrines which are equally developed viz., Judicial Discipline and Respect for the Brother Judges.

44. I would, therefore, while concurring with the conclusion of my learned Brother Kaju, J. for whose learning and erudition, I have the highest respect, differ with all his reasonings in support thereof.

45. List the matter after vacations, before another bench to be nominated by Hon'ble the Chief Justice of India.