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RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION

UTTAR PRADESH LUCKNOW

COMPLAINT CASE NO. 43 OF 2014

Ajay Pandey, Advocate, resident of Balaji Ka Mandir, Dibiyapur Road, Auraiyya-206122

Complainant

Versus

1. Adhikshak, Zila Karagar, Gosaiganj, Lucknow
2. Kendriya Jan Sookhna Adhikari, Rashtriyapati Sachivalaya, Rashtriyapati Bhawan, New Delhi
3. Kendriya Jansookhna Adhikari, Sarvoch Niyayalaya, Tilak Marg, New Delhi
4. Uppar Police Adhishek, Kakor Mukhyalaya, District Auraiyya

Opposite parties

BEFORE

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT

HON'BLE MR. C.B. SRIVASTAVA, MEMBER

HON'BLE MR. A.K. CHAUDHARY, MEMBER

For the Complainant : Sri Ajay Pandey, Advocate himself

For the Opposite parties : None is present.

DATED: 06.06.2014

JUDGMENT

MR. JUSTICE VIRENDRA SINGH, PRESIDENT

This complaint has been filed by Sri Ajay Pandey, Advocate, the complainant in person with the prayer that certain information sought as per Annexures 1,2, 3 and 4 be given to the complainant alongwith a sum of Rs.1,00,00,000/- as compensation from the aforesaid opposite parties.

This complaint was fixed to be heard on 08.08.2014 and the complainant

was directed to file the narrative in respect to the law he had to refer looking into the conflicting judgments passed by various State Commission as well as Hon'ble N.C.D.R.C. In Writ - C No. 29606 of 2014 filed by the petitioner Ajay Pandey, the Hon'ble High Court at Allahabad has directed this Commission on 27.05.2014 that the State Commission shall give due consideration to the prayer for expedition and make an endeavour to decide the dispute early having regard to the mandate of the Consumer Protection Act, 1986, therefore, on the application dated 30.05.2014 filed by the complainant Ajay Pandey, this complaint was fixed for hearing on admission on 03.06.2014.

We have heard learned counsel for the complainant on the point of admission of this complaint.

Briefly stated the facts of the complaint are that the complainant had sought some information from the opposite party no.1 on 31.12.2013 thereby paying a sum of Rs.10/- as per provisions of the Right to Information Act 2005. Similarly as per applications dated 08/10.01.2014 sent separately to opposite parties 2 and 3 thereby paying the required amount of Rs.10/- to both the opposite parties some informations were sought by the complainant from the opposite parties 2 and 3. As per application dated 27.01.2014 similarly paying Rs.10/- some information were also sought from opposite party no.4 as per provisions under Right to Information Act. All the opposite parties have not supplied the informations. The informations were related to the life and liberty of the complainant as the complainant was arrested and was kept in jail for 117 days. There remained deficiency in service of the aforesaid opposite parties, therefore, the complainant being a consumer is not only entitled to get the information as per the provisions of Right to Information Act but he is also entitled for a sum of Rs.1,00,00,000/- as compensation to be received to the tune of Rs.25,00,000/- separately to be paid by each of the opposite parties.

The complainant took recourse of the following cases thereby submitting that the complaint is admissible under the provisions of the Consumer Protection Act.

1. Appeal no. 521 of 2012 Bar Council of Uttar Pradesh versus Ajay Pandey



Advocate, decided by Mr. S.A.A. Rizvi and Mr. Jugul Kishore of this Commission,

2. Appeal no. 1822 of 2012, Bar Council of India versus Ajay Pandey decided by Mr. S.A.A. Rizvi and Mr. C.B. Srivastava of this Commission,

3. Appeal no. 2057 of 2012, Dr. Adheer Gupta Reader/S.P.I.O and others versus Sri Ajay Pandey decided by Mr. S.A.A. Rizvi and Mr. R.P. Singh of this Commission.

This Commission has held that the complaint against the refusal of the information by the information authorities under Right to Information Act is cognizable by the District Consumer Forum.

4. Revision petition no. 1975 of 2005 Dr. S.P. Thirumala Rao Versus Municipal Commissioner, Mysore City Municipal Corporation, Mysore, wherein it is held by the Hon'ble N.C.D.R.C. that wherein the applicant had paid a fee of Rs.10/- for seeking the information the case of the applicant would fall within the scope and ambit of Section 2(1)(i)(o) of the Consumer Protection Act.

We have come accrossed the law laid down by Hon'ble N.C.D.R.C. in the case of "Pothireddipalli Sugunavati versus Territory Manager, Bharat Petroleum Corporation Limited, Revision no. 3276 of 2012 decided on 14.01.2013, wherein it is held that as per provisions under Section 22 and 23 of Right to Information Act which says pertaining to overriding effect of the Act that the provision of the Right to Information Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923) and any other law for the time being in force or any instrument having effect by virtue of any law other than this Act, clearly shows that it is beyond doubt that this Act however, has on overriding effect in that the authorities under this Act may make independent decision about the question whether such disclosure or non-disclosure has any overriding public interest and therefore, it may become necessary for the authorities to independently decide whether the disclosure of information which itself being an act done in public interest, overweighs the public interest sought to be protected under those enactments. Section 23 pertaining to Bar of Jurisdiction of Courts stating therein that no court shall entertain any suit, application or other



proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act, further makes it clear that the Consumer Foras are not armed with the power. The Hon'ble N.C.D.R.C. has taken the same view in "Shonkh Technologies Limited versus Tushar Mandlekar IV(2009) CPJ 280 (NC).

In Revision Petition no. 4061 of 2010 T. Pundalika versus Revenue Department, (Service Division) Government Of Karnataka, the Hon'ble N.C.D.R.C. deciding the revision on 31.03.2011 have also held that the petitioner cannot claim to be a consumer under the Consumer Protection Act. There is a remedy available for him to approach the Appellate Authority under Section 19 of Right to Information Act 2005.

The complainant contended that since there had been the inconsistent view of the Hon'ble N.C.D.R.C. in the aforesaid cases, and the Hon'ble N.C.D.R.C. in view of the conflicting view taken by the Benches of the Hon'ble N.C.D.R.C. the matter has already been taken up to be considered by a larger bench of the Hon'ble N.C.D.R.C. which is yet to be constituted by the Hon'ble President of the Hon'ble N.C.D.R.C. and since any such larger bench till date has not decided the aforesaid state of affair pertaining to the jurisdiction of the Consumer Foras, therefore, the law laid down by the Hon'ble N.C.D.R.C. in the case of Dr. S.P. Thirumala Rao shall prevail in view of the law laid down by the Hon'ble Supreme Court in the case of Fuljit Kaur versus State of Punjab and others and the law laid down by the Hon'ble Supreme Court in Writ Petition (Civil) 740 of 1986 Central Board of Dawoodi Bohra Community and another versus State of Maharashtra and another wherein it is held that if the Special Petition has been dismissed in limine by a non speaking order, that may not be a bar for further consideration of the case for the reason that the court might not have been inclined to exercise its discretion. The decision rendered by ignorance or a previous binding decision such as a decision of its own or of a court of coordinate or higher jurisdiction or in ignorance of the terms of a statute or of a rule having the force of law is said to be the decision per incuriam. A ruling making a specific reference to an earlier binding precedent may or may not be correct but cannot be said to be per incuriam. The principle of judicial discipline and propriety demanding that a Bench of two learned Judges



should follow the decision of a Bench of three learned Judges and if a Bench of two learned judges was inclined not to do then the proper course for it to adopt would be either to refer the matter before it to a Bench of three learned judges or to set out the reasons why it could not agree with the earlier judgment and if the Bench of three learned judges also comes to the conclusion that the earlier judgment of a Bench of three learned judges is incorrect then a reference should be made to a Bench of five learned Judges.

After hearing the petitioner and having gone through the entire facts and circumstances as well as the law as is aforesaid we are of this view that undisputedly there is conflicting view of the Hon'ble N.C.D.R.C. taken by the Benches of the Hon'ble N.C.D.R.C. in reference to the issue, as to whether the Right to Information Act. has got overriding effect on the provisions of the Consumer Protection Act or whether the Right to Information Act creates a bar on the jurisdiction of the Consumer Foras being the provision of appeal provided under the Right to Information Act and the matter seems to have been referred to larger bench for decision which seems to have been pending till today.

The Division Bench of this Commission have taken a view in the aforesaid cases referred by the petitioner that Consumer Foras have the jurisdiction to entertain the complaint wherein an applicant has not been provided the information by the authorities under the Right to Information Act despite the payment of Rs.10/- made by the applicant being the consumer under the provisions provided under the Consumer Protection Act. However, the Bench constituting the Members Mr. A.K. Chaudhary and Mr. R.P. Singh have held in Revision No. 184 of 2012 Manoj Kumar versus Upziladhikari thereby deciding the Revision on 06.12.2013 that the Right to Information Act have overriding effect over the Consumer Protection Act and the Consumer Foras have no jurisdiction to entertain the complaint pertaining to information not provided under Right to Information Act being the Right to Information Act a complete code in itself providing elaborate mechanism of appeal and the proper court for the aggrieved person is to approach the prescribed appellate authority.

What would happen and what should be in the state of conflicting views of this Commission as well as of the view of Hon'ble N.C.D.R.C. , during this period



till the larger Bench of Hon'ble N.C.D.R.C. finally decide the fact in issue or the Hon'ble Supreme Court lays down any law in this regard remained the question to be considered for admission of this complaint.

In the case of Central Board of Dawoodi Bohra Community and another versus State of Maharashtra and another the Hon'ble Supreme Court has held as follows:-

*"Having carefully considered the submissions made by the learned senior counsel for the parties and having examined the law laid down by the Constitution Benches in the aforesaid decisions, we would like to sum up the legal position in the following terms:-*

- (1) The law laid down by this Court in a decision delivered by a Bench of larger strength is binding on any subsequent Bench or lesser or co-equal strength.*
- (2) A Bench of lesser quorum cannot doubt the correctness of the view of the law taken by a Bench of larger quorum. In case of doubt all that the Bench of lesser quorum can do is to invite the attention of the Chief Justice and request for the matter being placed for hearing before a Bench of larger quorum than the Bench whose decision has come up for consideration. It will be open for a Bench of co-equal strength to express an opinion doubting the correctness of the view taken by the earlier Bench of co-equal strength, whereupon the matter may be placed for hearing before a Bench consisting of a quorum larger than the one which pronounced the decision laying down the law the correctness of which is doubted.*
- (3) The above rules are subject to two exceptions (i) The aforesaid rules do not bind the discretion of the Chief Justice in whom vests the power of framing the roster and who can direct any particular matter to be placed for hearing before any particular Bench of any strength; and (ii) In spite of the rules laid down hereinabove, if the matter has already come up for hearing before a Bench of larger quorum and that Bench itself feels that the view of the law taken by a Bench of lesser quorum, which view is in*



*doubt , needs correction or reconsideration then by way of exception (and not as a rule) and for reasons it may proceed to hear the case and examine the correctness of the previous decision in question dispensing with the need of a specific reference or the order of Chief Justice constituting the Bench and such listing. Such was the situation on Raghubir Singh and others and Hansoli Devi and others (Supra)."*

Here in the case before us the position of law is not as such that in between the conflicting view of the Division Bench of this Commission, which of the view shall prevail as this Bench is consisting of two Members with the President but the legal position has to be assessed as to which of the law laid down by the Hon'ble N.C.D.R.C. is to be followed as there had been the conflicting view of the Hon'ble N.C.D.R.C. in the case of Dr. S.P. Thirumala Rao and in the case of T. Pundalika alongwith the case of Pothireddipalli Sugunavati. Though the law of precedent requires to follow the earlier law if there is a conflict in the law decided later on by the same Bench but the law of precedent does also say that the court has liberty too, to have recourse and to go through the facts of both the cases wherein the conflicting view is expressed and which one does seem to have been decided elaborately taking recourse of the law on the facts, should be followed. In this scenario of the law and facts of case before us we have gone through the case of Dr. S.P. Thirumala Rao as well as the case of T. Pundalika and Pothireddipalli Sugunavati and we are of this view that since the case of Dr. S.P. Thirumala Rao is based on the Karnataka Right to Information Act and the cases of T. Pundalika and Pothireddipalli Sugunavati are based on the Right to Information Act 2005, the subsequent law laid down by Hon'ble N.C.D.R.C. seems to be followed by this Commission. The case of Dr. S.P. Thirumala Rao is based on the Karnataka Right to Information Act of 2002. The Right to Information Act 2005 is the Central Act which is passed in 2005. No doubt the overriding effect and the bar regarding jurisdiction have been provided in the same way in both the enactments but since we are concerned with the Right to Information Act 2005, we therefore, find it expedient that the latest law in this regard should be followed which in our view seems to have been more accurate .

Hon'ble Supreme Court in the case of U.P. Power Corporation Limited and



others versus Anis Ahmad has held pertaining to unauthorised use of electricity that the final decision by an assessing officer who is a public servant, on the assessment of unauthorised use of electricity is a "Quasi Judicial" decision and does not fall within the meaning of "consumer dispute" under Section 2(1)(e) of the Consumer Protection Act 1986. In our view similar situation arises in the case of refusal or action or omission on the part of the authorities under the Right to Information Act and that refusal or action or omission is also "Quasi Judicial" decision for which jurisdiction shall not fall within the meaning of "consumer dispute" as is defined under Section 2(1)(e) of the Consumer Protection Act 1986.

Looking into the aforesaid law laid down by Hon'ble Supreme Court pertaining to consumer dispute we are of this view that the decision regarding refusal, action or omission under the Right to Information Act in respect to the information sought are not the disputes which should be presumed that the person, against whom i.e. the authorities under Right to Information Act, the complainant has made allegations, have denied or the allegations have been disputed, whatever may be the decision in the shape of refusal, action or omission of the Right to Information Authorities shall amount the decision nor the dispute by the authorities under the Right to Information Act, the Quasi Judicial Authorities. Since Section 22 and 23 of the Right to Information Act provides the overriding effect, therefore, the provisions of Right to Information Act shall have effect notwithstanding anything inconsistent therewith contained in the Consumer Protection Act. It is beyond doubt that Right to Information Act has overriding effect for the authorities to make independent decision about the question whether such disclosure or non-disclosure has any overriding public interest and therefore, it may become necessary for the authorities to independently decide whether the disclosure of information which itself being an act done in public interest, overweighs the public interest sought to be protected under those enactments. Section 23 of the Right to Information Act clearly provides pertaining to Bar of Jurisdiction of Courts stating therein that no court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under






Right to Information Act.

Hence in the case before us the complainant could not be considered such consumer who has any "consumer dispute" to be decided under the Consumer Protection Act and since there is a remedy available for the complainant to approach the appellate authorities provided under Right to Information Act, we are of this view that this complaint of the complainant is not admissible/entertainable and is liable to be dismissed at this stage of its admission.

ORDER

The aforesaid complaint is hereby dismissed as not maintainable.

  
06.06.14  
(JUSTICE VIRENDRA SINGH)  
PRESIDENT

  
6/6/14  
(C.B. SRIVASTAVA)  
MEMBER

  
6/6/14  
(A.K. CHAUDHARY)  
MEMBER

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