

SUPREME COURT OF INDIA

Punjab Urban Planning and Development Authority

Vs.

Vidya Chetal

SLP(C)No.4272 of 2015

(N.V.Ramana,J., Mohan M.Shantanagoudar and Ajay Rastogi,JJ.,)

16.09.2019

JUDGMENT

N.V.Ramana,J.,

1. The reference before us arises out of the order dated 13.07.2018, passed by a two-Judge Bench of this Court, wherein they expressed doubt as to the correctness of the judgment rendered in the case of *HUDA vs. Sunita*¹. This Court therein held that the National Consumer Disputes Redressal Commission (hereinafter referred to as “NCDRC”) had no jurisdiction to adjudicate the legality behind the demand of “composition fee” and “extension fee” made by HUDA, as the same being statutory obligation, does not qualify as “deficiency in service”.

2. It is pertinent herein to note the opinion expressed by the two- Judge Bench regarding the decision in the case of *Sunita* (supra) while passing the referral order:

“We are, prima facie, of the view that this six- paragraph order, which does not, prima facie, contain any reason for the conclusion reached, requires a relook in view of the fact that the Consumer Protection Act, 1986 is a beneficent legislation”

3. The counsel on behalf of the petitioner submitted that the order in the case of *Sunita* (supra) is well reasoned, as it validly holds that the NCDRC lacks jurisdiction to decide the legitimacy behind the demand of “composition fee” and “extension fee”. Relying on the aforesaid holding, the counsel further stated that “statutory dues” cannot be claimed as “deficiency in services”. Lastly, the learned counsel submitted that although the Consumer Protection Act, 1986 (hereinafter referred to as “the Act”) is beneficial in nature, demanding a liberal construction, the same cannot be used to extend the ambit of the Act by bringing in remedies or benefits which were not intended by the legislature.

4. On the contrary, the learned senior counsel appointed by this Court as amicus curiae to assist and appear on behalf of the respondent claimed that the order passed in the case of *Sunita* (supra), is an aberration in a series of long-standing judgments by this Court. The

learned amicus curiae thereafter placed strong reliance upon the judgments of this Court in *Lucknow Development Authority v. M.K. Gupta*², and *Ghaziabad Development Authority v. Balbir Singh*³, wherein it was held that the NCDRC has the jurisdiction to protect consumers against defective services rendered even by a statutory body. Further, the learned amicus curiae, while supporting the view that the Sunita case (supra) was per incuriam, has taken us through various judgments of this Court in this regard and submitted that the statutory authorities come under the ambit of the Act.

5. Heard the learned counsel appearing on behalf of the petitioner and the learned amicus curiae in this case. The precise question raised before us is whether the law laid down by this Court in the case of Sunita (supra) is valid. We may note that the validity of interpretation furthered in the case of Sunita (supra) hinges on the interpretation of Section 2(1)(d), 2(1)(e), 2(1)(f), 2(1)(g) and 2(1)(o) of the Act.

6. At the outset, we must remind ourselves that answer to majority of legal questions before Courts essentially lie in the process of interpretation. This Court in *Commissioner of Customs (Import), Mumbai v. Dilip Kumar and others*⁴, had emphasized that the purpose of interpretation is to find the legislative intent of an Act. It is established by umpteen number of cases in India and abroad that beneficial or remedial legislation needs to be given 'fair and liberal interpretation' [refer *Om Prakash v. Reliance General Insurance and Anr*⁵., In this regard we may note that, the liberal construction, extends the letter to include matters within the spirit or purpose.

7. Having observed the law on beneficial interpretation, we need to observe the concerned statutory provisions of the Act: Section 2 (1) (g) "deficiency"- means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. Thus, meaning of deficiency is explained as any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance of any service or supply of goods, in terms of standards set by the parties themselves through contract or otherwise, or imposed by the law in force. The basis for application of the consumer laws hinges on the relationship between the service provider and consumer. The usage of 'otherwise' within the provision subsumes other modes of standard setting alternative instruments other than contracts such as laws, bye-laws, rules and customary practices etc.

8. Service is defined under Section 2(1)(o) of the Act, which reads as under:-

(o) "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service; This definition is not exhaustive rather the legislature has left the task to expound the provision on a

case to case basis to the judiciary. The purpose of leaving this provision open ended, without providing an exhaustive list indicates the requirement for a liberal interpretation. Broadly speaking, it is inclusive of all those services performed for a consideration, except gratuitous services and contract of personal services. Moreover, aforesaid provision reflects the legislative intent of providing impetus to 'consumerism'. It may be noted that such a phenomenon has had a benevolent effect on the Government undertakings, wherein a new dynamism of innovation, accountability and transparency are imbibed.

9. On perusal of the impugned precedent, it may be noted that it does not provide clear-cut reasoning for the view held by the Court, except to the extent of pointing out that statutory obligations are not encompassed under the Act. Such broad proposition necessarily required further elaboration, as there is a possibility of over-inclusivity. Further, there is no gainsaying that all statutory obligations are not sovereign functions. Although all sovereign functions/services are regulated and performed under constitutional/statutory instruments, yet there are other functions, though might be statutory, but cannot be called as sovereign functions. These sovereign functions do not contain the consumer- service provider relationship in them and are not done for a consideration. Moreover, we need to be mindful of the fact that sovereign functions are undergoing a radical change in the face of privatization and globalization. India being a welfare State, the sovereign functions are also changing. We may note that the government in order to improve the quality of life and welfare of its citizens, has undertaken many commercial adventures.

10. Sovereign functions like judicial decision making, imposition of tax, policing etc, strictly understood, qualify for exemption from the Act, but the welfare activities through economic adventures undertaken by the Government or statutory bodies are covered under the jurisdiction of the consumer forums. Even in departments discharging sovereign functions, if there are sub-units/wings which are providing services/supply goods for a consideration and they are severable, then they can be considered to come within the ambit of the Act. [refer to *Standard Chartered Bank Ltd. v. Dr. B. N. Raman*⁶,

11. Having observed the provisions and the interpretation of pertinent provisions, we need to refer to Lucknow Development Authority Case (supra), wherein this Court was concerned with the question as to the amenability of statutory authorities like Lucknow Development Authority, for development of plots, to the Consumer Protection Act, 1986.

12. This Court in Lucknow Development Authority Case (supra) elaborated the meaning of 'Consumer', as occurring under Section 2(1)(b), in the following manner:-

“3 The word 'consumer' is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services. It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance,

it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it.”

(emphasis supplied)

13. Further, this Court elaborated on the meaning of the ‘service’ in the following manner:-

“4. What is the meaning of the word ‘service’? Does it extend to deficiency in the building of a house or flat? Can a complaint be filed under the Act against the statutory authority or a builder or contractor for any deficiency in respect of such property. It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words ‘any* and ‘potential’ are significant. Both are of wide amplitude. The word ‘any’ dictionary means ‘one or some or all*. In Black’s Law Dictionary it is explained thus, “word any’ has a diversity of meaning and may be employed to indicate ‘all* or ‘every’ as well as ‘some’ or ‘one’ and its meaning in a given statute depends upon the context and the subject-matter of the statute”. The use of the word ‘any’ in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all. The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility.”

(emphasis supplied)

Thereafter, this Court answered the relevant question in the following manner:-

“5. This takes us to the larger issue if the public authorities under different enactments are amenable to jurisdiction under the Act. It was vehemently argued that the local authorities or government bodies develop land and construct houses in discharge of their statutory function, therefore, they could not be subjected to the provisions of the Act. ...

... Any attempt, therefore, to exclude services offered by statutory or official bodies to the common man would be against the provisions of the Act and the spirit behind it. . A government or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service. Truly speaking it would be a service to the society if such bodies instead of claiming exclusion subject themselves to the Act and let their acts and omissions be scrutinised as public accountability is necessary for healthy growth of society.

6. What remains to be examined is if housing construction or building activity carried on by a private or statutory body was service within the meaning of clause (o) of Section 2 of the Act as it stood prior to inclusion of the expression ‘housing

construction' in the definition of "service" by Ordinance No. 24 of 1993. ^ So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993.

8. Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behavior before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. ...

Therefore, when the Commission has been vested with the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation.

(emphasis supplied)

14. Coming back to the Sunita case (supra), this Court held that the NCDRC had no jurisdiction to adjudicate the legality behind the demand of composition or extension fee by a developmental authority. This Court observed that the statutory obligations of a developmental authority and the plot holder under the authority's statutory framework cannot be construed as acts or omissions resulting in a "deficiency in service". In view of the law laid down by us, the interpretation provided by the Sunita case (supra) cannot be sustained as the service provided by the petitioner herein squarely comes under the ambit of 'service'.

15. We do understand that the confusion, which arose from the aforesaid situation, is that the authority does have the power to levy certain statutory fee. However, that itself does not prohibit the Consumer forums from evaluating the legality of such exactions or fulfilment of conditions by the authority before such exaction. In broad terms, non-fulfilment of conditions or standards required, amounts to deficiency in services' under the Act. Having said that, out of abundant caution, we note that the legality does not extend to the challenge of vires of a rule prescribing such fee. Such contentions are best agitated before the Constitutional Courts.

16. On a different note, if the statutory authority, other than the core sovereign duties, is providing service, which is encompassed under the Act, then, unless any Statute exempts, or provides for immunity, for deficiency in service, or specifically provides for an alternative forum, the Consumer Forums would continue to have the jurisdiction to deal with the same.³ We need to caution against over-inclusivity and the tribunals need to satisfy the ingredients under Consumer Protection Laws, before exercising the jurisdiction.

17. Moreover, we also need to note that the distinction between statutory liability which arise generally such as a tax, and those that may arise out of a specific relationship such as that between a service provider and a consumer, was not considered by this Court in the case of *Sunita* (supra). For instance, a tax is a mandatory imposition by a public authority for public purpose enforceable by 3 Section 3 of the Act. law; and is not imposed with respect to any special benefit conferred, as consideration, on the tax payer. There is no element of quid pro quo between the tax payer and the public authority. However, the above is not the only form of due charged by a statutory authority. In a catena of judgments, this Court has recognized that certain statutory dues may arise from services rendered by a statutory authority. In the case of *Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*⁷, a seven Judge-Bench of this Court held that-

“46. Coming now to fees, a “fee” is generally defined to be a charge for a special service rendered to individuals by some governmental agency. The amount of fee levied is supposed to be based on the expenses incurred by the Government in rendering the service, though in many cases the costs are arbitrarily assessed. Ordinarily, the fees are uniform and no account is taken of the varying abilities of different recipients to pay [Vide Lutz on Public Finance, p. 215]. These are undoubtedly some of the general characteristics, but as there may be various kinds of fees, it is not possible to formulate a definition that would be applicable to all cases.

47. . The distinction between a tax and a fee lies primarily in the fact that a tax is levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest [Vide Findlay Shirras on Science of Public Finance, Vol. I, p.202]. Public interest seems to be at the basis of all impositions, but in a fee, it is some special benefit which the individual receives.”

(emphasis supplied)

18. A five Judge Bench of this Court, in the case of *Kewal Krishan Puri and Anr. v. State of Punjab and Anr*⁸, also took note of the fact that certain statutory dues can arise from a quid pro quo relationship between the authority and an individual upon whom the liability falls.

“23. (6) That the element of quid pro quo may not be possible, or even necessary, to be established with arithmetical exactitude but even broadly and reasonably it must be established by the authorities who charge the fees that the amount is being spent for rendering services to those on whom falls the burden of the fee.”

(emphasis supplied)

19. Therefore, it is a clearly established principle that certain statutory dues, such as fees, can arise out of a specific relation. Such statutory dues might be charged as a quid pro quo for a privilege conferred or for a service rendered by the authority. As noted above, there are exactions which are for the common burden, like taxes, there are dues for a specific purpose, like cess, and there are dues in lieu of a specific service rendered. Therefore, it is clear from the above discussion that not all statutory dues/exactions are amenable to the jurisdiction of the Consumer Forum, rather only those exactions which are exacted for a service rendered, would be amenable to the jurisdiction of the Consumer Forum.

20. At the cost of repetition, we may note that those exactions, like tax, and cess, levied as a part of common burden or for a specific purpose, generally may not be amenable to the jurisdiction of the Consumer Forum. However, those statutory fees, levied in lieu of service provided, may in the usual course be subject matter of Consumer Forum's jurisdiction provided that there is a 'deficiency in service' etc.

21. We may also refer to the case of Ghaziabad Development Authority (supra) wherein this Court, relying upon Lucknow Development Authority case (supra), held that the power of the Consumer forum extends to redressing any injustice rendered upon a consumer as well as over any mala fide, capricious or any oppressive act done by a statutory body. The relevant para of the judgment reads as under:

“6 Thus, the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. Where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unpardonable behaviour.

(emphasis supplied)

22. Therefore, in line with the law laid down by us, we hold that the determination of the dispute concerning the validity of the imposition of a statutory due arising out of a “deficiency in service”, can be undertaken by the consumer fora as per the provisions of the Act. The decision of this Court in the case of Sunita (supra), wherein it was held that NCDRC has no jurisdiction to adjudicate the legitimacy of the aforementioned statutory dues, was rendered without considering any of the previous judgments of this Court and the objects of the Act. Consequently, the law laid down in the aforesaid case does not hold good before the eyes of law, and is thereby overruled.

23. The reference stands answered accordingly. The instant special leave petitions may be

placed before an appropriate Bench for considering the case on merits after obtaining orders from the Hon'ble Chief Justice of India.

Judgment Referred.

¹(2005) 2 SCC 0479

²(1994) 1 SCC 0243

³(2004) 5 SCC 0065

⁴(2018) 9 SCC 0040

⁵(2017) 9 SCC 0724

⁶(2006) 5 SCC 0727

⁷(1954) SCR 1005

⁸(1980) 1 SCC 0416