Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3911 of 2003

Bihar School Examination Board .. Appellant (s)

-versus-

Suresh Prasad Sinha .. Respondent (s)

WITH

C.A. Nos. 676/2006, C.A. No. 1739/2006, C.A. No. 1764/2006, C.A. No. 2236/2006, C.A. No. 2476/2006, C.A. No. 3718/2005 & C.A No.6032/2009 @ SLP(C) No. 2844/2006

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MARKANDEY KATJU, J.

This appeal by special leave has been filed against the impugned judgment and order dated 24.10.2002 in R.P. No. 2167/02 of the National Consumers Disputes Redressal Commission, New Delhi.

2. Heard learned counsel for the parties and perused the record.

3. It appears that a complaint was filed before the District Consumer Forum, Hazaribagh under Section 11 of the Consumer Protection Act 1986 (hereinafter referred to as the Act). The complaint was filed by the respondent, Suresh Prasad Sinha on behalf of his minor son Rajesh Kumar. In the said complaint it was mentioned that Rajesh Kumar appeared in the Bihar Secondary School Examination in 1998. Rajesh Kumar and another student Sunil Kumar Singh were allotted the same Roll No. 496. Hence, the Centre Superintendent allotted to Rajesh Kumar Roll No.496A and this was communicated to the Board office at Patna. The result of Rajesh Kumar was not published in spite of several letters written by him and hence he had to re-appear in the Board Examination the following year, and thus he had to suffer a loss of one year allegedly due to the fault of the Bihar School Examination Board (hereinafter referred to as the 'Board'). The result of Roll No.496A was not declared and it is alleged that this was because Rajesh Kumar had been given another Roll number. Hence the complainant prayed for compensation from the District Consumer Forum.

4. In its written statement in reply the Board stated that the Consumer Forum had no jurisdiction in the matter as the complainant was not a

consumer, as defined in Section 2(1)(d) of the Act. It was also alleged that on the application of the examinee the strong room was searched and it was found that the serial number of his answer book of Advanced Maths did not tally with the serial number in the attendance sheet. While the answer book of the student found in the strong room was bearing serial number 148774, the attendance sheet serial number was 148744. Hence, the result was not published.

5. The District Consumer Forum found that the complainant had filed the Registration Receipt as well as the Admit Card, and the case of the complainant was admitted so far as appearance of Rajesh Kumar in the examination was concerned. It was held that if the serial number of the answer book did not tally with that which was noted in the attendance-sheet, that has to be explained by the Board and not by the student. Hence the District Consumer Forum allowed the complaint and ordered the Board to pay compensation of Rs.12,000/- with an interest of 12% to the complainant.

6. Against the said order the Board filed an appeal before the State Consumer Redressal Commission under Section 14 of the Act,which was dismissed on 9.9.2002. In the order dated 9.9.2002, it has been again stated in para 6 thereof that one of the contentions raised by the Board

was that the complainant is not a consumer within the meaning of section 2(1)(d) of the Act. It seems that that plea was not, in fact, decided by the State Consumer Commission.

7. The appellant Board then filed a further appeal before the National Consumer Commission under Section 19 of the Act, which has been dismissed by the impugned judgment dated 24.10.2002. Against the said impugned judgment and order this appeal has been filed by the Board under Section 23 of the Act.

8. The question that arises for our consideration is whether a statutory School Examination Board comes within the purview of the Consumer Protection Act. There is some confusion and divergence in the decisions of the National Commission on this issue. In some cases, it has been held that Examination Boards do not come within the purview of the Act. In some other cases, the Commission has held that though holding of examinations is a statutory function, issue of mark-sheets and certificates etc., is an administrative function, and therefore, the Examination Boards are amenable to the jurisdiction of consumer fora if there is negligence amounting to deficiency in service, in such consequential administrative functions.

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9. The definitions of the terms 'service' and 'deficiency' in clauses (o) and (g) of Section 2 of the Act which are relevant, are extracted below:

> "**Section 2(o):** 'Service' means service of any description which is made available to potential users and includes, but not limited to, the provisions 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;
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> **Section 2(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."

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According to the definition of 'consumer' in Section 2(d) of the Act, a person who hires or avails of any services for a consideration, is a consumer. The following category of service-availors will not be consumers: (i) persons who avail any service for any commercial purpose; (ii) persons who avail any free service; and (iii) persons who avail any service under any contract of service. A consumer is entitled to file a complaint under the Act if there is any deficiency in service provided or rendered by the service-provider.

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10. The Board is a statutory authority established under the Bihar School Examination Board Act, 1952. The function of the Board is to conduct school examinations. This statutory function involves holding periodical examinations, evaluating the answer scripts, declaring the results and issuing certificates. The process of holding examinations, evaluating answer scripts, declaring results and issuing certificates are different stages of a single statutory non-commercial function. It is not possible to divide this function as partly statutory and partly administrative. When the Examination Board conducts an examination in discharge of its statutory function, it does not offer its "services" to any candidate. Nor does a student who participates in the examination conducted by the Board, hires or avails of any service from the Board for a consideration. On the other hand, a candidate who participates in the examination conducted by the Board, is a person who has undergone a course of study and who requests the Board to test him as to whether he has imbibed sufficient knowledge to be fit to be declared as having successfully completed the said course of education; and if so, determine his position or rank or competence vis-à-vis other examinees. The process is not therefore availment of a service by a student, but participation in a general examination conducted by the Board to ascertain whether he is eligible and fit to be considered as having

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successfully completed the secondary education course. The examination fee paid by the student is not the consideration for availment of any service, but the charge paid for the privilege of participation in the examination.

11. The object of the Act is to cover in its net, services offered or rendered for a consideration. Any service rendered for a consideration is presumed to be a commercial activity in its broadest sense (including professional activity or quasi-commercial activity). But the Act does not intended to cover discharge of a statutory function of examining whether a candidate is fit to be declared as having successfully completed a course by passing the examination. The fact that in the course of conduct of the examination, or evaluation of answer-scripts, or furnishing of mark-sheets or certificates, there may be some negligence, omission or deficiency, does not convert the Board into a service-provider for a consideration, nor convert the examinee into a consumer who can make a complaint under the Act. We are clearly of the view that the Board is not a 'service provider' and a student who takes an examination is not a 'consumer' and consequently, complaint under the Act will not be maintainable against the Board.

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12. The learned counsel for the respondent placed considerable reliance on the decision of this Court in *Lucknow Development Authority vs. M. K. Gupta* [1994 (1) SCC 243] to contend that a statutory authority that offers any kind of service for which a fee is charged, will be amenable to the jurisdiction of the consumer fora. He relied upon the following passages from paras 4 and 6 in support of his contention :

> "In absence of any indication, expressed or implied there is no reason to hold that authorities created by the Statute are beyond purview of the Act….. 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*". (Vide para 4).
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> …….the entire purpose of widening the definition (of 'service' under section 2(o) of the Act) is to include in it not only day to day buying and selling activity undertaken by a common man but *even such activities which are otherwise not commercial* in nature yet they partake of a character in which some benefit is conferred on the consumer". (vide para 6)

13. Let us examine whether the said decision has any relevance. To understand a decision correctly it is necessary to first know the facts of the case. The facts in *Lucknow Development Authority* were that even after the payment of the entire amount by the respondent for the flat which was allotted to him, possession was not given to him and the work of constructing the flat was still incomplete, although the time for handing over the possession had expired. In these circumstances, the National Consumer Commission ordered possession of the flat to be

handed over without delay after completing the construction work and it further directed payment of 12% simple interest on the deposit made by the respondent. The question that was considered was whether any act or omission by the Development Authority relating to housing activity such as delay in delivery of possession of the houses to the allottees, non-completion of the flat within the stipulated time or defective or faulty construction etc. will come within the purview of the Act. The submission before this Court in that case was that Statutory Development Authorities do not come within the purview of the Act. While negativing the said contention, this Court observed that activities which are not otherwise commercial, but professional or service oriented in nature will come within the purview of the definition of 'service' in Section 2(o) of the Act. But the said observation is of no relevance. The Board is not carrying on any commercial, professional or service-oriented activity. No 'benefit' is conferred nor any 'facility' provided by the Board for any consideration. Therefore, the said decision is inapplicable.

14. The courts should guard against the danger of mechanical application of an observation without ascertaining the context in which it was made. In *C.I.T vs. Sun Engg. Works (P) Ltd.* - 1992(4) SCC 363 (vide para 39) this Court observed :

> "It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete `law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings."

It is also necessary to keep in mind the following principles laid down in *Government of Karnataka & Ors. vs. Gowramma & Ors.* (AIR 2008 SC 863) with reference to precedential value of decisions:

> "Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving a judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in an Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable

to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

The following words of Lord Denning in the matter of applying precedents have become locus classicus:

> Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases. One should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.
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> *** *** ***
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> Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it."
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> (***emphasis supplied)***

15. In *Sarva Shramik Sanghatana (K.V), Mumbai vs. State of Maharashtra & Ors.* - AIR 2008 SC 946, this Court cited the following

passage from *Quinn v. Leathem* [1901 AC 495] with approval :

> "Now before discussing the case of Allen v. Flood (1898) AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all."

16. In *Bhavnagar University vs. Palitana Sugar Mills Pvt. Ltd* - (2003) 2 SCC 111 (vide paragraph 59), this Court observed :

> "It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

17. As held in *Bharat Petroleum Corporation Ltd. & another vs. N.R.Vairamani & another* - (AIR 2004 SC 4778), a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed:-

> "*Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the*

> *decision on which reliance is placed.*_Observations of Courts are neither to be read as Euclid`s theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated."
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> ***(emphasis supplied)***

18. We have referred to the aforesaid decisions and the principles laid down therein, because often decisions are cited for a proposition without reading the facts of the case and the reasoning contained therein.

19. For the reasons mentioned above, we are of the view that the Bihar School Examination Board is not rendering any 'service' as defined under the Consumer Protection Act, 1986. The appeal is, therefore, allowed. The impugned orders of the Consumer Fora are set aside. No costs.

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20. Leave granted.

21. In view of the order passed in Civil Appeal No. 3911/2003, these appeals stand allowed in terms of the said decision. The impugned orders

of the Consumer Fora are set aside and the complaints filed by the respondents against the Board or University are held to be not maintainable. No costs.

……J.
(R. V. Raveendran)

……J.
(Markandey Katju)

New Delhi;
September 4, 2009.

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