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IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH

Date of Decision : 14<sup>th</sup> December, 2012

1. Civil Writ Petition No. 20715 of 2011

George

...Petitioner

Versus

The State of Punjab and others

...Respondents

2. Civil Writ Petition No. 1118 of 2012

George

...Petitioner

Versus

The State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE A.K. SIKRI, CHIEF JUSTICE  
HON'BLE MR. JUSTICE RAKESH KUMAR JAIN  
HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. Whether to be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

Present: Dr. Balram Gupta, Senior Advocate,  
with Mr. Vijay Saini, Advocate, for the petitioner.

Mr. Alok Jain, Additional Advocate General, Punjab.

Mr. M.L. Sarin, Senior Advocate, with Ms. Alka Sarin,  
Advocate, for respondents No. 2 to 4 in CWP No. 20715 of  
2011, and respondents No. 2 and 3 in CWP No. 1118 of  
2012.

\* \* \* \*

**A.K. SIKRI, (Chief Justice)**

The present Full Bench is constituted consequent upon orders dated 17.05.2012, passed by the Division Bench in Civil Writ Petition No. 20715 of 2011.

2. The matter initially came before the learned Single Judge, who opined that the issue involved in the case is of vital importance and needs to be considered by a Larger Bench and, therefore, vide order dated 06.01.2012, the learned Single Judge directed the matter to be placed before the Chief Justice for listing it before an appropriate Bench. The thought process of the learned Single Judge, while passing this order is of vital importance and we reproduce the said order in toto:-

*“With reference to the powers of the State Commission under Section 24-B of the Consumer Protection Act, 1986, a Division Bench of this Court in **Varinder Pal Kashyap Vs State Consumer Disputes Rederessal Commission, Punjab and another** CWP No. 6985 of 2001 decided on 26.07.2001, firstly held as follows:-*

*“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 pari-materia 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 Members, 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 member of the District 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, if any, 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.”*

*2. In the concluding part of the decision, the Division Bench in paragraphs 19 and 20 held that:-*

*“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 seen to be done in its true spirit. Allocation of work primarily*

*falls within the domain of the Commission under its powers of superintendence 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 imputations 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.”*

*3. On re-conciliation of the two sets of observations reproduced above, it appears that the Division Bench upheld the State Commission's purported powers under Section 24-B of the Act in withdrawing the judicial or administrative work of a Member of the District Forum as power to “allocate” the work necessarily implies the power to withdraw such work also. At the same time, the State Government has been held to be the disciplinary authority.*

*4. An order withdrawing judicial or administrative powers of the Presiding Officer of a judicial or quasi-judicial forum has very serious repercussions and for all intents and purposes it amounts to placing such officer under suspension. Will it be permissible in law or equity to exercise such like pre-emptory power where the disciplinary authority may or may not agree with the recommendations of the State Commission?*

5. The view taken by this Court in **Varinder Pal Kashyap's** case was later on considered by a Division Bench of Allahabad High Court in **Prem Kumar Joshi Vs State of U.P and others,** 2005(3) AWC, 2871 and while disagreeing with the same, the Allahabad High Court in paragraph 26 observed as follows:-

“26. The Hon'ble Supreme Court in **Common Cause a Registered Society Vs Union of India and Ors.,** 1992(1) SCC 707 has issued certain directions for making the amendment in the Act and the Rules to confer the power of superintendence of State and National Commission. In view thereof certain amendments have been made. In V.P. Kashyap (Supra) the Punjab & Haryana High Court has held that preventing the President or Member of the Forum by the President of the State Commission is permissible in exercise of its powers of superintendence. With all due respects and humility at our command we do not agree with this proposition for the reason that the Commission cannot be permitted to usurp the powers conferred upon the disciplinary authority, i.e., the State Government. Power of administrative control cannot be stretched to the extent that it may make the State Government, the disciplinary authority, a redundant employer. Putting the seal on the Record Room so that the evidence against the petitioners may not be tampered with, may fall within the ambit of administrative control. Power of restraining them from working, which would have the effect of suspension, is not permissible.”

6. The issue involved in this case is of vital importance as in the guise of 'administrative' or 'judicial' control on the functioning of the District Forum, the State Commission may in a given case, tinker with the day-to-day functioning of the District Forum which shall undoubtedly be contrary to the scheme of the Act. Very serious imputations made by the

*petitioner against the President of the State Commission in his representation dated 16.08.2011 (Annexured P-7) with supporting material on record also assume significance in this regard.*

*7. It would therefore be expedient if the principal and other allied issues are considered by a larger bench.*

*8. Let the records of this case be placed before Hon'ble the Chief Justice to list this case before an appropriate bench preferably on 11.01.2012.”*

3. As pointed out above, the Division Bench referred the matter for consideration by the Full Bench vide order dated 17.05.2012. Since this order reflects the genesis for referring the matter to a Larger Bench and also the question that arises for consideration before the Full Bench, at the outset, we reproduce the said order itself in its entirety:-

*“The question whether the President of the State Consumer Disputes Redressal Commission, has power to recommend removal of President of District Consumer Disputes Redressal Forum, and while doing so, withdraw his judicial and administrative work, is the question that has been referred for adjudication. As a necessary consequence, the extent and nature of administrative control exercised by the President of the State Consumer Disputes Redressal Commission over the District Consumer Disputes Redressal Forum, would also require an answer. A Division Bench of this Court has held in Varinder Pal Kashyapa Versus State Consumer Disputes Redressal Commission, Punjab & Anr., CWP No.6985 of 2001, decided on 26.07.2001, that though the President of the State Commission does not have the power to issue a charge-sheet or hold an enquiry against President of the District Consumer Disputes Redressal Forum but as it*

*has the power to “allocate” work, an inference would arise that it has the power to withdraw work.*

*The Hon'ble Division Bench in Varinder Pal Kashyapa's case (supra) has after considering the provisions of Section 24-B(iii) of the Consumer Protection Act, 1986 (hereinafter referred to as the 'Act') held that the President of the State Consumer Disputes Redressal Commission, has no power to issue a charge-sheet, or to hold an enquiry, but has held that Section 24-B of the Act can be read to confer ample power on the Commission to withdraw work of the President, District Consumer Disputes Redressal Forum. The above conclusion is based upon an inference, that as the State Consumer Disputes Redressal Commission has power to allocate work to the President of a District Consumer Disputes Redressal Forum, it necessarily has the power to withdraw such work.*

*We have considered Section 24-B of the Act, all other relevant provisions of the Act and the Rules, but are unable to discern any provision that may confer power upon the President of the State Consumer Disputes Redressal Commission or the State Consumer Disputes Redressal Commission, as a whole, to allocate work to the President of the District Consumer Disputes Redressal Forum. The appointing and the disciplinary authority is the State, which alone has the power to issue a charge-sheet, hold an enquiry and order removal. The scheme of statute, particularly, the power of administrative control, does not lend itself to an inference that the State Consumer Disputes Redressal Commission has such a pervasive administrative control over the President of the District Consumer Disputes Redressal Forum as to empower it to withdraw judicial work. While it may be expedient to confer such a power for the purpose of maintaining the purity of administration of justice but in the absence of any such power, conferred upon the State Consumer Disputes Redressal Commission, we*

*deem it appropriate to place the matter before Hon'ble the Acting Chief Justice, for constituting a Larger Bench, to consider the provisions of the Act and the judgment in Varinder Pal Kashyapa Versus State Consumer Disputes Redressal Commission, Punjab & Anr., CWP No.6985 of 2001, decided on 26.07.2001, if deemed appropriate."*

4. It is clear from the above that the Division Bench nurtured some doubts about the correctness of the view taken by earlier Division Bench in Varinder Pal Kashyap (supra) in so far as it pertains to the powers of the President of State Consumer Disputes Redressal Commission (hereinafter referred to as the State Commission) over the District Consumer Disputes Redressal Forum (hereinafter referred to as the District Forum). In essence, we are called upon to decide the extent of the powers of the President of the State Commission under the Consumer Protection Act, 1986 (hereinafter referred to as the Act) and the precise question is as to whether Section 24-B of the Act or any other provision gives power to the President to withdraw the judicial and administrative work of the President of the District Forum, when the President has no power to take any disciplinary action like issuing charge-sheet or holding an inquiry against the President or any other Member of the District Forum.

5. Though, it is a pure question of law that is to be decided on the plain language of Section 24-B of the Act and the Consumer Protection (Punjab) Rules, 1987 (hereinafter referred to as the Rules) framed thereunder, we still feel that some background facts raising this controversy in the present writ petition require a mention. Therefore,



before taking note of the contentions of the counsel for the parties on the aforesaid question of law and giving our answer thereto, we would like to narrate seminal facts of the case.

6. The petitioner had joined the Himachal Pradesh Judicial Service in 1981. The petitioner superannuated on 30.04.2009. The last posting before superannuation of the petitioner was as Director, Himachal Pradesh Judicial Academy in the rank of Selection Grade District and Sessions Judge in the cadre of H.P. Higher Judicial Service. The service record of the petitioner was immaculate. After superannuation, the petitioner was appointed as President of the District Consumer Disputes Redressal Forum, Bhatinda vide order dated 21.04.2009. The petitioner joined on 04.05.2009.

7. The petitioner was conveyed adverse remarks vide letter dated 29.06.2011 for the periods from 04.05.2009 to 31.03.2010 and from 01.04.2010 to 31.03.2011. The petitioner requested for the specific rules/regulations/instructions/guidelines with regard to the ACRs to be written of the Presidents of District Forums. The petitioner was informed about the resolution whereby the State Commission is required to maintain the ACRs of the Presidents of District Forums which in turn are required to be considered at the time of their re-appointment. The petitioner made a detailed representation to the State Commission. According to the petitioner, the said representation is still pending before the competent authority.

8. On 08.08.2011, the petitioner was conveyed the strictures passed by the State Commission in appeal F.A. No. 585 of 2011 (P-4). According to the petitioner, it is the District Consumer Forum, Mansa which had decided complaint No. 359/2010 on 03.02.2011. It was a unanimous decision of the Forum comprising the President and two members. The decision was based upon the judgment of the Hon'ble Supreme Court and that of the National Commission. However, the State Commission passed strictures only against the petitioner vide its order dated 21.07.2011 (P-6). The petitioner made a detailed representation on the aforesaid lines. There is no response from the State Commission.

9. Thereafter, vide orders dated 02.11.2011, the State Commission recommended the Government of Punjab to remove the petitioner as President of the District Forum under Rule 3(5)(e) of the Rules and at the same time vide that very order, judicial and administrative work of the petitioner has been withdrawn with immediate effect. It is this order which is challenged by the petitioner in Civil Writ Petition No. 20715 of 2011 and the question of the powers of the State Commission to do so has arisen under the aforesaid circumstances. According to the petitioner, no such power lies with the President of the State Commission and, thus, Writ of Certiorari is sought for quashing those orders. The petitioner also seeks Mandamus directing the respondents to allow the petitioner to continue to function as the President, District Forum.

10. Civil Writ Petition No. 1118 of 2012 is a sequel to the first writ petition. After the recommendation issued by the State Commission to the State Government to remove the petitioner from the office of President of the District Forum, Mansa, the State Government has issued the charge-sheet dated 17.11.2011, which contains the allegations conveyed by the State Commission. Alongwith the charge-sheet, the State Government has also appended the covering letter of the State Commission to the State Government. In this writ petition, the validity of the said charge-sheet is questioned, primarily, on the ground that the State Government, while charge-sheeting the petitioner has not applied its own independent mind and has proceeded on the premise as if it was under bounded obligation to follow what has been recommended/conveyed to it by the State Commission.

11. Since the matter has earlier been considered by the Division Bench in the case of Varinder Pal Kashyap (supra) and the position of law explained therein has been doubted resulting in the present reference, we deem it appropriate to commence the discussion by taking note of the analysis of various provisions of the Act in that judgment. The said judgment starts by mentioning that the question which needed determination pertained to the ambit and scope of administrative and superintending jurisdiction of the State Commission over the District Forum. It is a matter of record that no such power was initially provided to the State Commission under the Act. This omission was noticed by the Apex Court in the case of Common

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1992(3) S.C. 602 and the observations made in the said judgement (which would be taken note of at the appropriate stage) led the Parliament to make amendment in the Act by inserting Section 24-B therein while amending Act No. 05 of 1993. This newly added provision which was made effective from 18.06.1993 reads as under:-

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

*(i) calling for periodical return 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 judgments written in any language, speedy grant of copies of documents;*

*(iii) generally overseeing the functioning of the State Commissions or the District Fora 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).*

12. In **Varinder Pal Kashyap** (supra), the Court noted the aforesaid provision as well as the relevant observations of the Supreme Court to the effect that proper operation of the statute required both administrative and judicial superintendence. To bridge the lacuna in the statute temporarily, the Supreme Court also granted limited jurisdiction of exercising administrative control to the National Commission over

the State Commissions and also to the State Commissions over the District Forums. However, thereafter, statutory provision was introduced in the form of Section 24-B of the Act. The Division Bench noted that this provision would show 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 the higher Forum. To this extent, the parties before us are ad-idem and agree that the State Commission has no disciplinary jurisdiction over the President or the Members of the District Forum. On the interpretation of Section 24-B of the Act, the Division Bench was of the view that the powers exercisable by the State Commission over the functioning of the District Forum and its Members cannot be equated or treated *pari- materia* to the control exercisable by the High Court over the District Courts and the Courts subordinate thereto under Article 235 of the Constitution of India. The administrative control under Section 24-B of the Act was limited to performance of its functions by the Members without hampering/encroaching upon or interfering with quasi-judicial freedom of the District Forum. While defining the extent and scope of the administrative and supervisory control conferred upon the State Commission under Section 24-B of the Act, the Division Bench took the view that it would have powers to ask for an explanation of the Member with regard to discharge of his official functions. In para 9, the

scope of such administrative and supervisory control is delineated in the following manner:-

*“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 member of the District 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, if any, 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.”*

13. In that case, Sh. Varinder Pal Kashyap, a practicing Advocate, was appointed as one of the Members of the State Commission established at Moga. Order dated 30.03.1998 was passed by the District Forum. This order was written by Sh. Varinder Pal Kashyap to which the President and other Members of the Forum concurred. By this order, substantial relief was granted to the complainants, who had filed complaint against the Bank of Baroda. This order came in appeal before the State Commission which allowed the appeal and set aside the order vide its judgment dated 22.09.2000. In this judgment, the Commission found that Sh. Varinder Pal Kashyap had issued notice as an Advocate to the Bank out of which the complaint had originated and, therefore, he should not have heard the matter. Because of this reason, the State Commission concluded that

prejudice had been caused to the interest of the Bank when the order was dictated by Sh. Varinder Pal Kashyap. In furtherance of these findings of the Commission, the officer on special duty in the Commission, on the directives of the Commission, issued a letter asking for the explanation of Sh. Varinder Pal Kashyap. Sh. Varinder Pal Kashyap gave his reply. While this process was on, it was found that the District Forum with Sh. Varinder Pal Kashyap as its Member has passed order in another case, wherein again he had served legal notice, while he was an Advocate to the opposite party, namely, Branch Manager, United India Insurance Company Limited. Accordingly, another letter was served upon him by the Commission asking for his explanation. He gave reply to this notice as well. However, the Registrar of the Commission proceeded to issue chargesheet and statement of allegation to Sh. Varinder Pal Kashyap. Inquiry Officer was also appointed. At this juncture, Sh. Varinder Pal Kashyap filed the writ petition questioning the jurisdiction of the Commission to issue such a charge-sheet. As pointed out above, the Division Bench held that the Commission had no such power, which position is accepted and the only question is as to whether in the meantime the Commission could pass an order withdrawing the work. The Division Bench, however, took the view that the State Commission certainly enjoyed the administrative and superintending powers within the scope of Section 24-B of the Act and since allocation of work falls within the domain of the Commission under Section 24-B of the Act, it had the power to

withdraw this work as well. The relevant discussion in this behalf is in the following paragraphs:-

*“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 seen to be done in its true spirit. **Allocation of work primarily falls within the domain of the Commission under its powers of superintendence 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 imputations 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 unnecessary 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 (sic) 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 Annexure 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.”*

14. We have already reproduced the order of the Division Bench, in the instant case, doubting the correctness of the view taken in **Varinder Pal Kashyap** (supra), as per which, Commission is empowered to withdraw the work of President/Member of the District Forum.

We note that in the instant case, the order dated 02.11.2011, vide which, the administrative and judicial work was withdrawn from the petitioner reads as under:-

*“The State Consumer Disputes Redressal Commission, Punjab has recommended to the Government of Punjab for the removal of Sh. George as President, District Consumer Disputes Redressal Forum Mansa under Rule 3(5)(e) of the Consumer Protection (Punjab) Rules, 1987.*

*Now, therefore, in exercise of the powers conferred under Section 24-B of the Consumer Protection Act, 1986, the State Commission has withdrawn the administrative and judicial work from Sh. George as President, District Consumer Disputes Redressal Forum, Mansa in the interest of justice and in public interest with immediate effect till further orders.*

*By order of the Hon'ble State Consumer Disputes Redressal Commission."*

15. The State Commission has also examined the work and conduct of the petitioner for the period i.e. from 04.05.2009 to 07.12.2009 and from 14.12.2009 till 02.11.2011 when the order of withdrawal of the work was passed. The work and conduct of the petitioner during this period is adversely commented upon by the State Commission in its proceedings and the basis thereupon, the Commission also resolved to make a reference to the Government of Punjab for the removal of the petitioner. The resolution of the State Commission dated 02.11.2011, in this behalf, reads as under:-

*"The work and conduct of Sh. George as President, District Consumer Disputes Redressal Forum, Bathinda for the period from 04.05.2009 to 07.12.2009 and as President, District Consumer Disputes Redressal Forum, Mansa for the period from 14.12.2009 till date and the explanation furnished by him have been considered.*

*It was resolved that a reference may be made to the Government of Punjab for the removal of Sh. George, President, District Consumer Disputes Redressal Forum, Mansa under Rule 3(5)(e) of the Consumer Protection (Punjab) Rules, 1987.*

*It was also resolved that it would not be in the interest of justice and in public interest if Sh. George is allowed to hold the office/court as*

*President, District Consumer Disputes Redressal Forum, Mansa during the pendency of the removal proceedings pending before the Government of Punjab.*

*It was further resolved that in exercise of powers conferred under Section 24-B of the Consumer Protection Act, 1986, the administrative and judicial work of Sh. George as President, District Consumer Disputes Redressal Forum, Mansa be withdrawn with immediate effect till further orders.”*

16. The detailed proceedings annexed thereto are contained in 103 paragraphs spanning over 45 pages on the basis of which the Commission recorded its conclusion that the same would tantamount to mis-conduct and indiscipline. The conclusion of these proceedings is contained in the last two paragraphs which read as under:-

***“Misconduct, indiscipline and abuse of official position by Shri George:***

*102. The representations dated 16.08.2011 (Annexure A-108) and 30.09.2011 (Annexure A-95) made by Shri George not only tantamount to misconduct and indiscipline, these also amount to threat given by Shri George to the State Commission in the last paragraphs. This clearly amounts to abuse of official position by him. Therefore, the continuance in office of Shri George is extremely prejudicial to public interest.*

*103. It is, therefore, recommended that Shri George be removed from the office of President, District Consumer Disputes Redressal Forum, Mansa in accordance with the provisions of Rule 3(5)(e) of the Consumer Protection (Punjab) Rules, 1987 as soon as possible.”*

17. As per the aforesaid, the Commission has “recommended that the petitioner be removed from the office of the President, District

Forum, Mansa in accordance with the provisions of Rule 3(5)(e) of the Rules". Rule 3(5) of the said Rules is to the following effect:-

***"3. Salaries and other allowances and terms and conditions of the President and members of the District Forum under sub-section (3) of section 10 of the Consumer Protection Act, 1986:- XXXXXXXX***

*(5) In addition of provisions of sub-section (2) of Section 10, State Government may remove from the office, the President and members of a District Forum who, -*

*(a) has failed to attend five sittings of the District Forum in a calendar month; or*

*(aa) has been adjudged an insolvent;*

*(b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude;*

*(c) has become physically or mentally incapable of acting as such member; or*

*(d) has acquired such financial or other interest as is likely to effect prejudicially his functions as a member;*

*(e) has so abused his position as to render his continuance in office, prejudicial to the public interest :*

*Provided that the President or member shall not be removed from his office on the ground specified in clauses (d) and (e) except on an inquiry held by State Government in accordance with such procedure as it may specify in this behalf and finds the President or the member to be guilty of such ground."*

18. Since the recommendation is under Clause (e) of sub-rule 5 of Rule 3, action under this provision can be taken only after holding

inquiry by the State Government in accordance with such procedure as it may specify in this behalf.

19. As pointed out above, both these orders are challenged on the ground that neither the State Commission has power to withdraw the work of the President/Member of the District Forum, nor it has power to recommend to the State Government to remove the President or a Member of the District Forum. The foundation to this proposition is laid on the following arguments:-

(i) Power to withdraw the work is not given under Section 24-B of the Act, which gives only limited administrative control to the State Commission over the Fora, as categorically spelled out in the said provision, which does not include any specific power to withdraw the work. It was also argued that withdrawal of work tantamounts to suspension and is punitive in nature as the work is not withdrawn unless there is doubt about integrity etc. of the officer. Such a type of punitive action would not come within the ambit of 'administrative control' as specified in Section 24-B of the Act. It is submitted that such an order is in the nature of power exercisable under Article 235 of the Constitution of India, which power the High Court has over the subordinate Courts. The proposition laid down in **Varinder Pal Kashyap** (supra) is questioned by the learned Senior Counsel for the petitioner arguing that though in that case the Division Bench itself observed that the administrative control of the State Commission was not same as the administrative and superintending control of the High

Court over the subordinate Courts, but fell in error in holding that power to withdraw work is exercisable under Section 24-B of the Act. It was argued that the Division Bench did not consider the real effect and the seriousness of the action of withdrawal of work from a quasi-judicial or judicial authority.

(ii) In so far as recommendation to the State Government to remove the petitioner is concerned, submission was that the impugned order makes 'reference to the Government to remove the petitioner as President of the District Forum when there was no such powers with the State Commission to make a reference'.

(iii) Mr. Gupta, learned Senior Counsel also argued that as per proviso 5 to Rule 3, even the government can remove the President only after conducting the inquiry with the observation of principles of natural justice. Without such an inquiry, making impugned reference amounts to condemning the petitioner without following even the mandate of the procedure laid down in Rule 3(5) of the Rules.

(iv) It was also argued that such a recommendation in the form of reference curtails the powers of the appointing/punishing authority, namely, the State Government, which is called upon to take action without applying its own independent mind. It was submitted that in **Varinder Pal Kashyap** (supra) itself, the Division Bench had observed that the State Government "is duty bound to take action on the information or suggestions given by the Commission". Therefore,

argued the learned Senior Counsel, the State Government is influenced by the recommendations in the form of detailed purported findings of the Commission against the petitioner in which he is not even involved and it would clearly prejudice his case. It was, thus, pleaded that such an order of reference has to be struck down. In addition to the reference order of the Division Bench, in the instant case, Mr. Gupta, learned Senior Counsel also referred to the judgement of Allahabad High Court in **Prem Kumar Joshi and another Vs State of U.P. and others**, 2005(3) AWC 2871, equivalent to 2005(3) ESC 2123. In that case, the Allahabad High Court held that there are no powers with the President of the State Commission after noticing that disciplinary powers were with the State Government which was the appointing authority as well and not with the State Commission or the President of the State Commission. The Court also held that the State Commission has no power to restrain the Member of the District Forum from exercising his judicial/administrative or financial powers. This discussion is in the following paragraphs of the said judgement:-

*“20. So far as the order of restraining the petitioner No. 1 from exercising his judicial/administrative or financial power is concerned/ it is difficult to hold that such an order could be passed in exercise of administrative control of the President of the Commission. Passing such an order would amount to suspension. Such an order could have been passed only by the State Government.*

*21. It is settled proposition of law that what cannot be done "per directum is not permissible to be done per obliquum",*

*meaning thereby, whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud."*

22. *In Jagir Singh Vs Ranbir Singh, 1979 CriLJ 318*, the Apex Court has observed that an authority cannot be permitted to evade a law by "shift or contrivance." While deciding the said case, the Hon'ble Supreme Court placed reliance on the judgment in Fox Vs Bishop of Chester (1824) 2 BC 635, wherein it has been observed as under: -

*"To carry out effectually the object of a statute, it must be considered as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined."*

23. *Law prohibits to do something indirectly which is prohibited to be done directly. Similar view has been reiterated by the Apex Court in M.C. Mehta Vs Kamal Nath and Ors., AIR 2000 SC 1997, wherein it has been held that even the Supreme Court cannot achieve something indirectly which cannot be achieved directly by resorting to the provisions of Article 142 of the Constitution, which empowers the Court to pass any order in a case in order to do "complete justice."*

24. *A Division Bench of this Court in Naumi Ram Vs Deputy Collector and Ors. MANU/UP/0108/2001 considered a case of stopping the supply to the licensee of the fair price shop without passing the order of suspension merely on the allegation in a complaint. The Court held as under:-*

*"We are of the view that it is obligatory on the respondent authorities to follow the procedure prescribed by the law and there is no power conferred on the authority to stop the supply on the basis of mere allegation or complaint*



*and to take such action without affording an opportunity to the writ petitioner.*

*We however observe that it shall be open to the respondent authorities to take appropriate action in accordance with law."*

*25. In the instant case as stopping the petitioner No. 1 from working may amount to suspension and that power has not been exercised by the competent authority, i.e., the State Government, Order to that extent is liable to be quashed. But it does not preclude the State Government from passing an appropriate order in accordance with law."*

20. Interestingly, the Court took note of the judgment of this Court in **Varinder Pal Kashyap** (supra), but disagreeing with the said view recorded as under:-

*"26. The Hon'ble Supreme Court in **Common Cause a Registered Society Vs Union of India and others** (1992) 1 SCC 707 has issued certain directions for making the amendment in the Act and the Rules to confer the power of superintendence of State and National Commission. In view thereof certain amendments have been made. In **V.P. Kashyap** (supra) the Punjab & Haryana High Court has held that preventing the President or Member of the Forum by the President of the State Commission is permissible in exercise of its powers of superintendence. With all due respects and humility at our command we do not agree with this proposition for the reason that the Commission cannot be permitted to usurp the powers conferred upon the disciplinary authority, i.e., the State Government. Power of administrative control cannot be stretched to the extent that it may make the State Government, the disciplinary authority, a redundant employer. Putting the seal on the Record Room so that the evidence against the*

*petitioners may not be tampered with, may fall within the ambit of administrative control. Power of restraining them from working, which would have the effect of suspension, is not permissible”.*

21. The aforesaid judgment of the Allahabad High Court takes note of its earlier judgment in **R.K. Kulshrestha Vs State of U.P. and others**, 2004(5) AWC 3838. In this case, the Court had held that Section 24-B of the Act does not give power to the State Commission to suspend or order an inquiry. This conclusion is based on the following reasons in that judgment:-

*“Neither the Consumer Protection Act, 1986, nor the U.P. Consumer Protection Rules, 1987, contain any specific provision stating which authority is entitled to suspend the President of the District Forum. Hence the general principle will apply, namely, that the authority which has power to appoint has power to suspend. It follows from this that only the State Government can suspend the President of the District Forum, and the President of the State Consumer Disputes Redressal Commission, U.P., has no such power.*

*We may also refer to Section 24B(2) of the Consumer Protection Act, 1986, which states :*

*"The State Commission shall have administrative control over all the District Forum within its jurisdiction in all matters referred to in Sub-section (1)."*

*Sub-section (1) mentions the power to call for periodical returns regarding the institution, disposal, pendency of cases ; issuance of instructions regarding adoption of uniform procedure and other procedural rules ; and generally overseeing the functioning of the*

*District Fora to ensure that the objects and purposes of the Act are best served.*

*In our opinion, the power under Section 24B(2) does not include the power to suspend or order any inquiry, because the powers of administrative control under Section 24B are limited and specifically mentioned in Sub-section (1) of that provision, and these do not include the power of taking disciplinary action against the President of the District Forum.”*

22. Mr. Gupta also referred to another judgment of the Supreme Court in V.K. Jain Vs High Court of Delhi through R.G. and others, 2009(4) RSJ 656. That was a case, where the petitioner, a judicial officer, had filed an appeal seeking expunction of the remarks passed by the High Court, while entertaining bail petition. Allowing the prayer of the said judicial officer and expunging the remarks, some principles were culled out, as stated in para 50 of the judgment. Mr. Gupta referred to the following principle Nos. (viii) and (ix) contending that they were relevant to the present context:-

*“(viii) The superior courts should always bear in mind that the judicial officer is not before it and should ordinarily refrain from passing strictures, derogatory remarks and scathing criticism. The passing of such order without affording a hearing to the judicial officer is clearly violative of the principles of natural justice.*

*(ix) The superior courts should always keep in mind that disparaging and derogatory remarks against the judicial officer would cause incalculable harm of a permanent character having the potentiality of spoiling the judicial career of the concerned officer. Even if those remarks are expunged, it would not completely retribute and restore the*

*harmed judge from the loss of dignity and honour suffered by him.”*

23. Mr. Sarin, learned Senior counsel appearing for the State Commission defended both the orders, namely, that of withdrawing the work as well as order of recommendation to the State Government to take action against the petitioner. His submission was that judgment in **Varinder Pal Kashyap** (supra) lays down the correct legal position and this provision had to be interpreted having regard to the observations of the Supreme Court in the case of **Common Cause** (supra), which prompted the Legislature to insert Section 24-B of the Act by amendment. He has specifically referred to the following discussions in **Common Cause** (supra):-

*“6. An amendment to the Act is in contemplation as we are told at the Bar. There is some amount of dispute as to whether the amendment contains provisions for giving administrative and superintending jurisdiction to the National Forum over the State Commissions and, to the State Commissions over District Forums. Experience shows that on account of want of such authority, the National Forum is not able to exercise appropriate jurisdiction over the State Forums and the State Forums are not able to exercise appropriate control over the District Forums. 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. Realizing this defect, we had pointed out earlier that the requisite forum should be conferred with the powers of superintendence and we command to the Union Government as quickly as possible to remove the deficiency by conferring*

*appropriate power of superintendence on the State and the National Commissions. Until that is done, we direct that to meet the situation, the National Commission would be entitled to exercise administrative jurisdiction over the State Commissions and the State Commissions would be entitled to exercise such administrative jurisdiction in their respective areas of control. This order shall be forwarded to the National Commission as also to the State Commissions forthwith.”*

24. Mr. Sarin further argued that the Division Bench of this Court in **Varinder Pal Kashyap** (supra) lays down the correct law. He sought to distinguish the judgment of the Allahabad High Court, referred to by the learned Senior Counsel for the petitioner, on the ground that they were predicated on the Rules, governing the State of Uttar Pradesh and, therefore, such proposition will not apply here. He further pleaded that to maintain the parity of administration, such limited power to withdraw the work and also to recommend to the State Government to take action should be read in Section 24-B of the Act, as otherwise, the very purpose for which the provision is enacted gets defeated.

25. Mr. Alok Jain, learned Additional Advocate General, appearing for the State of Punjab supported the contentions of Mr. Sarin. In addition to the arguments advanced by Mr. Sarin, Mr. Jain submitted that provisions of Section 24-B of the Act were to be liberally and widely interpreted, as specifically held by the Apex Court in the **State of Rajasthan and others Vs Anand Prakash Solanki**,

2003(7) SCC 403, wherein, the Apex Court commented about this provision in the following manner:-

*“6. A complete hierarchy of Commissions and Fora has been constituted from the national level to the district level by the Consumer Protection Act, 1986. There is a National Commission at the national level constituted under Section 20 of the Act and the State Commissions constituted for the States under Section 16 of the Act. District Fora are constituted under Section 10 of the Act. These are the three-tier agencies established for the purposes of the Act as contemplated by Section 9. Each State Commission consists of a person, designated as President, who is, or has been, a Judge of a High Court, appointed by the State Government after consultation with the Chief Justice of the High Court. Then there are the members. Section 17 confers on the State Commission appellate and supervisory jurisdiction over the District Fora in quasi-judicial matters. Section 24-B inserted by Act 50 of 1993 w.e.f. 18.06.1993 provides as under:-XXXXXXX*

*7. Each District Forum in a State is constituted under Section 10 of the Act which reads as under:-*

*10. Composition of the District Forum - XXXXXXXX”*

26. After taking note of Section 24-B as well as Section 10 of the Act, the Apex Court further observed:-

*“It is clear from a bare reading of the abovesaid statutory provisions that though a District Forum is to be constituted and its President and members are to be appointed by the State Government, the power to appoint is exercisable only on the recommendation of a selection committee consisting of the President of the State*

*Commission and two Secretaries of the State as provided by Sub-section (1A) of Section 10. The concept of appointment by transfer is not unknown to service jurisprudence. A power to appoint includes a power to revoke an appointment, and so also a power to make an appointment includes a power to make an appointment by transfer, subject to satisfying the requirements of Section 10 of the Act. The expression "appointment" takes in appointment by direct recruitment, appointment by promotion and appointment by transfer. (see **Indra Sawhney Vs Union of India**, SCC para 827, per Jeevan Reddy, J.). In **K. Narayanan Vs State of Karnataka** the term "recruitment" came up for the consideration of this Court and it was held that It is a comprehensive term which includes any method provided for inducting a person in public service such as appointment, selection, promotion and deputation which are all well known methods of recruitment and even appointment by transfer is not unknown. In **Union of India Vs A.R. Shinde** this Court noticed three modes of making recruitment i.e. promotion, deputation and direct recruitment and at the same time held that an appointment by transfer too was unexceptionable.*

*It cannot be lost sight of that the National Commission, State Commissions and District Fora have all been constituted to exercise jurisdiction over such grievances of the aggrieved persons which were earlier available to be raised before the conventional courts established under the Constitution and/or the laws. In as much as the persons appointed to discharge functions under the Act at whatever level exercise judicial powers and are expected to function Judicially consistently with the procedure as laid down by the Act or Rules framed thereunder, the very nature of the functions discharged by them needs them to be insulated from the control of, or interference by the Executive. So far as the District Fora are concerned, the purpose is sought to be achieved by Sub-section (1A) of Section 10 as also by Section 24-B of the Act. Every appointment under Sub-section (1) of Section 10, though made by the State Government, is dependent on the recommendation of a*

*selection committee which is headed by the President of the State Commission who is, or has been, a Judge of a High Court. The administrative control over all the District Fora within the State has been vested in the State Commission in all the matters contemplated by Clauses (i), (ii) and (iii) of Sub-section (1) of Section 24B. The power conferred on the National Commission by Clause (iii) of Sub-section (1), exercisable by the National Commission over the State Commissions and District Fora, read mutatis mutandis confers the same power on the State Commission qua District Fora within the State by virtue of Sub-section (2). Keeping in view the purpose sought to be achieved by these provisions, Section 24B has to be so construed as to spell out administrative control in favour of the National Commission over all the State Commissions and District Fora and in favour of the State Commission over all the District Fora within its jurisdiction, whenever there is any doubt. In other words, Clauses (i), (ii) and (iii) abovesaid have to be liberally and widely interpreted.”*

27. He further submitted that it was within the power of the employer to keep an employee off duty even in the absence of power of suspension and the only effect thereof was that such an employee would get full salary and allowances during this period. He, thus, submitted that it was not open to the petitioner to make a grievance, if his work was taken away, so long he continues to get his salary and allowances, which the State Government was agreeing to pay. In support of this proposition, he relied upon the judgements of the Supreme Court in the cases of Union of India and others Vs Kameshwar Prasad (1997) 11 SCC 650 and Ram Lakhan and others Vs Presiding Officer and others (2000) 10 SCC 201. He also referred to the judgment of the Supreme Court in Jasbir Singh Vs State of Punjab (2006) 8 SCC 294, which discusses the scope and ambit of the power of superintendence, which lies with the Supreme



Court over all the subordinate Courts and Tribunals given under Articles 227 and 235 of the Constitution of India. Para 10 of this judgment was relied upon for this purpose, which reads as under:-

*“The power of superintendence over all the subordinate courts and tribunals is given to the High Court under Article 227 of the Constitution. So also, under Article 235 of the Constitution, the High Courts exercise control over all the District Courts and Courts subordinate thereto on all matters relating to posting, promotion and grant of leave to officers belonging to the judicial service of the State. The power of superintendence conferred on the High Court under Article 227 over all the Courts and Tribunals throughout the territory of the State is both of administrative and judicial nature and it could be exercised suo motu also. However, such power of superintendence does not imply that the High Courts can influence the subordinate judiciary to pass any order or judgment in a particular manner. The extraordinary power under Article 227 can only be used by the High Courts to ensure that the subordinate courts function within the limits of their authority. The High Court cannot interfere with the judicial functions of a subordinate Judge.”*

28. We have given our utmost consideration to the detailed submissions made by the counsel(s) for the parties and taken note of it. We have already spelled out the ratio of Varinder Pal Kashyap’s (supra) and the rational given by the Division Bench in taking such a view. We have also taken note of the observations made by the Division Bench while referring the matter to the Full Bench expressing its doubts about the correctness of the view taken in Varinder Pal Kashyap’s (supra). Thus the task of this Bench is to decide as to

whether Varinder Pal Kashyap's (supra) lays down the correct proposition of law or not. To put it otherwise, whether the withdrawal of the work from the President/Member of the District Forum is within the jurisdiction of the State Commission.

29. For giving answer to this question we will have to traverse through certain other judgments of the Supreme Court and other High Courts which have bearing on the issue.

30. A Division Bench of the High Court of Bombay in the case of Sadashivrao S/o Gopal Dhamankar Vs. The State of Maharashtra & others 2000(3) Bombay C.R. 190 had the occasion to interpret Section 24 (B) of the Act. That writ petition decided by the High Court was preferred by the President of the District Forum, AhmedNagar. He challenged the order of his transfer from AhmedNagar to Sangli on various grounds, though that order of transfer was not passed by the State Commission but by the Under Secretary, Department of Food, Civil Supplies and Consumer Protection. Some of the observations made in the said judgment interpreting the provisions of Section 24-B of the Act are relevant for our purposes. While quashing the transfer order on the ground that it suffers on the ground of lack of executive powers, the Court went into the following discussion:-

8. Section 24-B of the Act, was incorporated by way of an amendment by the Government of India as a sequel to the judgment of the Supreme Court in the case of Common Cause v. Union of India 1991(4) Bom.C.R. 601(S.C.) : 1991(2) sC.P.R. 523(S.C.) and Clause (iii) of sub-section (1)

*of the said section read with provisions of sub-section (2) therein it is clear that the **State** Commission has an administrative control namely, generally overseeing the functioning of the District Forum to ensure that the purpose of the Act is best served without in any way interfering with their quasi-judicial freedom. These provisions will have to be read on the touch-stone of the observations made by the Supreme Court in the case of Common Cause (supra) and it would be useful to reproduce the relevant observations therein :*

*"there is some amount of dispute as to whether the amendment containing provisions for giving administrative and superintending jurisdiction to the National Forum over the **State** Commission and to the **State** Commission over District Forums. Experience shows that on account of want of such authority, the National Forum is not able to exercise appropriate jurisdiction over the **State** Forums and the **State** Forums are not able to exercise appropriate control over the District Forums. 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 lacunae in the statute. Realising this defect, we had pointed out earlier that the requisite forums should be conferred with the power of superintendence and we commend to the Union Government as quickly as possible to remove the deficiency by conferring appropriate power of superintendence on the **State** and the National Commission. Until that is done, we direct that to meet the situation, the National Commission would be entitled to exercise administrative jurisdiction over the **State** Commissions and the **State** Commissions would be entitled to exercise such administrative jurisdiction in their respective areas of control."*

*9. Section [24-B](#) if read in consonance with the judgment of the Supreme Court in Common Cause case (supra) clearly provides that the administrative and supervisory control over the District Forums is that of the President of the **State** Consumers Disputes*

*Redressal Commission (State Commission for short) and such control cannot be vested with any other authority which is unknown to the Act. If any other interpretation is given to the provisions of section 24-B it would negate the law laid down by the Supreme Court in the Common Cause case (supra) and therefore, the transfer orders of President District Forum must be issued by the President of the State Commission in his administrative powers as embodied in section 24-B of the Act.*

31. As per the aforesaid judgment, 'administrative control' given to the State Commission under Section 24 (B) of the Act over the District Forum would include power of transfer. It would also be of significance to point out that though the Court had set-aside the transfer order, it went on record to say that prima-facie there was sufficient material to examine whether the petitioner in that case should be continued at Ahmed Nagar. For this reason, the Court directed that the concerned file be placed before the President of the State commission for his consideration to *inter-alia* examine as to whether he should be retained at Ahmed Nagar or not. Thus, the matter was handed over to the President of the State Commission to decide the question of transfer of the President of the District Forum.

32. The Bombay High Court has accordingly held that the power of 'administrative control' given under Section 24-B of the Act is to be interpreted widely keeping in view the observations of the Supreme Court in Common Cause case (supra).

33. The Kerala High Court in the case of Malabar Palace Vs. The Kerala State Consumer Disputes Redressal Commission and others MANU/KE/0790/2001 had the occasion to consider as to

whether such 'administrative control' given to the State Commission under Section 24(B)(2) of the Act would include the power of transfer of a complaint from one District to another. The Court held that there was no specific provision in the Act conferring power on the State Commission to transfer a complaint instituted in one District Forum to another jurisdiction of the State Commission. However, the Court traced this power under Section 24(B)(2) of the Act read with sub section (1) (iii) thereof as well as under section 17(b) of the Act. Relevant discussion in this behalf proceeds as under:-

11. .... "Section [17\(b\)](#) requires consideration. It gives the power to the **State Commission** to call for the records and pass appropriate orders in any **consumer dispute** which is pending before any District Forum within the **State** (omitted irrelevant portions) where it appears to the **State Commission** that the District Forum has exercised a jurisdiction not vested in it by law, or has acted in exercise of its jurisdiction illegally or with material irregularity. If the President of the District Forum who cannot hear a complaint for the reason which I have already stated as an illustration proceeds with the complaint and takes a decision will it not be a case of exercise of a jurisdiction not vested in it by law or at any rate a case of acting illegally in exercise of is jurisdiction? According tome such a case falls under the latter if not under both the clauses. Deciding a case in gross violation of the principles of natural justice would affect the very jurisdiction of a quasi-judicial tribunal like the District Forum or at any rate it would amount to an illegality. The expressions 'pass appropriate orders' used in Section [17\(b\)](#) of the Act will take in the power to transfer such a case to another District Forum. In this view of the matter the **State Commission** has got the power under Section [17\(b\)](#) of the Act to call for the records of a case pending before the District Forum and to pass orders transferring the same to another Forum within its jurisdiction provided the circumstances warrants.

12. Section [24B\(2\)](#) of the Act also confers administrative control over District Forum in respect of matters specified under Sub-section (1) to the **State Commission**. Clause (iii) of Sub-section (1) confers the **State Commission** the power of generally overseeing the functioning of 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 powers. The object and purpose of the Act as already stated is to provide for better protection of the interest of the **consumers**. If a **biased member** decides a complaint filed by a **consumer** will it subserve the better protection of the interest of the **consumer**? It is doubtful. The transferring of a complaint from one District Forum to another District Forum does not in any manner interfere with the quasi-judicial freedom of the District Forum. On the **other** hand it will only advance the cause of justice and uphold the prestige of the Forum in a given case. Thus the **State Commission** in exercise of the powers under Section [24B\(2\)](#) read with Sub-sectional) (1)(iii) thereof can also transfer a case from one District Forum to another District Forum within its jurisdiction of course subject to the convenience of the parties provided the circumstances justify such transfer.”

34. There was some debate before us as to whether the exercise of ‘administrative control’ given under Section 24-B of the Act would be similar to the exercise of ‘superintending jurisdiction’ conferred upon the High Court over the judicial officers of the District Judiciary. Such an issue had arisen in the case of **M.R.Raghuchandrabal Vs. State of Kerala and others** before the High Court of Kerala. The decision is reported as ILR 2009(4) Kerala 260 equivalent to 2009(4) K.L.T. 245. That was a case under the Kerala Police Act. Section 4 of the Act uses the expression ‘control’ of the Government over the State police. In that case, a crime was registered against the petitioner, who was the Minister of Excise during the period 1991 to 1996, under



Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. After investigation, it was found that there was no case made out against the petitioner. However, when this report was forwarded to the Government, the Government directed the Investigating Officer to re-investigate the case. The petitioner had challenged that order of the Government on the ground that Chapter XII of the Code of Criminal Procedure gave power of investigation entirely to the police and after completion of the investigation, it is for the Investigating Officer to submit a final report to the Court and the Government had no role in the investigation. In this context, Section 4 of the Kerala Police Act came up for interpretation which recognizes the control of the Government on the administration of the police through out the State stating that it shall vest in the Inspector General of Police and in such superior police officer as the government shall deem fit. The argument of the petitioner, however, was that the expression 'control' cannot be equated with 'superintendence' and contrasted this provision with Section 3 of the Indian Police Act which provides that superintendence of the police shall vest in and shall be exercised by the State Government. The High Court did not accept that submission and held that the word 'control' in Section 4 of the Kerala Police Act cannot be given a restricted meaning. We would like to reproduce the following portion of the said judgment:-

*24. True, Section 4 of **Kerala** Police Act does not specifically provide for superintendence. Under Sub-section (1) subject to the control of the Government, administration of the police throughout the **State***

*shall vest in the Inspector General of Police and in such superior police officer as the Government shall deem fit. The administration thus vested in the Inspector General of Police is subject to the "control of the Government". Section 16 empowers the Inspector General to control the force and make rules. Under Section 16 also from time to time the Inspector General, "subject to the approval of the Government, may frame such orders and rules not inconsistent with the Act, as he may deem expedient relating to the general government and distribution of the police force, the place of residence, the classification, rank and particular service and duties of the members thereof; their inspection, the description of arms, accouterments, and **other** necessities to be furnished to them,' the collecting and communicating intelligence and information, for preventing abuse or neglect, and for rendering such force efficient in discharge of all its duties.*

25. The question is, is it possible to give a narrow construction of the powers provided to the government in Section 4 for the omission of the word 'superintendence'. *ven in the absence of the word superintendence Section 4 of **Kerala** Police Act provides that the administration vested in the Inspector General of Police is not absolute, but subject to the control of the Government. The word 'control' in Section 4 cannot be given a restricted meaning as canvassed by the learned senior counsel, relying on the Division Bench decision in Srinivasan's case (supra). The word "control" by plain Dictionary means "the power to direct, manage, oversee and or restrict the affairs or to exercise the power of control. It would thus mean the authority to manage or direct". Hence an authority, having control, has the full command over the activities of the subordinate. If so, it cannot be said that the power available with the Government under Section 4 of the **Kerala** Police Act is less than the power of superintendence available to the Government under Section 3 of the Indian Police Act.*

26. As declared by the Apex Court in Saldanna's case, the word superintendence would imply administrative control enabling the authority enjoining such power to give directions to the subordinate to discharge, his administrative duties and functions in the manner indicated in the order



*though it does not extend to control the statutory power of the police to investigate the offence as provided under the Code. The power of control vested with the Government under Section 4 of **Kerala** Police Act, cannot be less than the power of superintendence available with the Government under Section 3 of Indian Police Act. If that be so, it cannot be said that the Government has no power, to direct further investigation of a case as canvassed by the learned senior counsel.*

35. It will also be relevant to refer to the judgment of the Supreme Court in case Fair Air Engineers Vs. N.K.Modi 1996(6) S.C.C. 385 wherein the Court had held that the District Forum, State Commission and National Commission under the Act have all the trappings of a Civil Court and the Judicial Authority and the proceedings before them are legal proceedings.

36. It follows from the above discussion that the 'administrative control' given to the National Commissions over the State Commissions and to the State Commissions over the District Forums under Section 24(B)(2) of the Act is to be interpreted widely. It is also to be kept in mind that when the hierarchy of the Tribunals at District level, State level and National level is given under the Consumer Protection Act, 1986 to ensure proper and effective functioning, necessary powers are to be given to the higher Forums over the lower Forums. Otherwise, the very purpose of inserting Section 24(B) by way of amendment in the Consumer Protection Act on the basis of the observations made in the Common Cause case (supra) would be defeated. It is for this reason that power of transfer of a Member/President of the District Forum from one District to another

or to transfer a case/complaint from one District to another is recognized by tracing the same to Section 24(B) of the Act and there cannot be any quarrel to this extent.

37. In the present case, however, we are concerned with the action of the State Commission in withdrawing the work from the President of the District Fora. Whether Section 24(B) of the Act vests such a power also with the State Commission is the question. This is to be answered recognizing the legal position that in so far as the power to take disciplinary action or power to suspend the President/Member of the District Forum is concerned, it vests with the State Government. This legal position is so extracted in Varinder Pal Kashyap's (supra).

38. Once we accept this position, the answer to the issue is not difficult at all. Withdrawal of work amounts to suspension. As a fortiori this kind of order can be passed only by the State Government. This very issue is decided by Allahabad High Court in Prem Kumar Joshi Vs. State of U.P. 2005(3) AWC 2871 in the following words:-

*“19. So far as the order of sealing of the record is concerned, we are of the considered opinion that if tampering with the evidence is apprehended, such an order may be necessary. Thus, it does not require any interference at all. Such an order would come within the administrative control of the President of the **State** Commission.*

*20. So far as the order of restraining the petitioner No. 1 from exercising his judicial/administrative or financial power is concerned/ it is difficult to hold that such an order could be passed in exercise of administrative control of the President of the Commission. Passing such an order would amount to*

*suspension. Such an order could have been passed only by the **State** Government.*

*21. It is settled proposition of law that what cannot be done "per directum is not permissible to be done per obliquum", meaning thereby, whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud."*

*22. In Jagir Singh v. [Ranbir Singh](#), [MANU/SC/0097/1978](#) : 1979CriLJ318 , the Apex Court has observed that an authority cannot be permitted to evade a law by "shift or contrivance." While deciding the said case, the Hon'ble Supreme Court placed reliance on the judgment in Fox v. Bishop of Chester (1824) 2 BC 635, wherein it has been observed as under: -*

*"To carry out effectually the object of a statute, it must be considered as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined."*

*23. Law prohibits to do something indirectly which is prohibited to be done directly. Similar view has been reiterated by the Apex Court in M.C. Mehta v. Kamal Nath and Ors. AIR 2000 SC 1997, wherein it has been held that even the Supreme Court cannot achieve something indirectly which cannot be achieved directly by resorting to the provisions of Article [142](#) of the Constitution, which empowers the Court to pass any order in a case in order to do "complete justice."*

39. Therefore, we are of the opinion that the administrative control given to the State Commission under Section 24-B of the Act would not include power to withdraw the work. That has to be necessarily exercised by the State Government though it may be done on the recommendation of the State Commission.

40. As a consequence of the aforesaid discussion in so far as Civil Writ Petition No.20715 of 2011 is concerned, the petitioner

succeeds therein and the order dated 02.11.2011 withdrawing judicial and administrative work of the petitioner by the State Commission warrants to be set-aside. This writ petition is accordingly allowed quashing the aforesaid order. However, we hasten to add that this would not prevent the State Government to apply its mind and decide as to whether there is necessity to pass suspension order or withdraw work from the petitioner during the pendency of the enquiry or not.

41. In so far as the second writ petition i.e. Civil Writ Petition No. 1118 of 2012 is concerned, in which the petitioner has challenged the charge-sheet dated 17.11.2011, we are of the view that the State Commission has necessary power to recommend the State Government for taking disciplinary action against the President/Member of the District Forum. The submission of the learned Senior Counsel for the petitioner, however, was that it was necessary for the State Government as disciplinary authority to apply its independent mind on the said recommendation and could not mechanically act upon the recommendation of the State Commission as if it was under obligation to follow the same. However, the petitioner has not been able to substantiate this averment/allegation. A perusal of the charge-sheet dated 17.11.2011 shows that it is issued by the Secretary, Punjab Government, Department of Food & Civil Supplies and Consumer Affairs. Even if it is on the basis of the information supplied by the State Commission, from that it does not automatically follow that the Disciplinary Authority has not applied its own mind. When the

administrative control over the petitioner is with the State Commission and the State Commission is also the Appellate Authority, naturally any act of misdemeanor or irregularity/misconduct warranting disciplinary action would first come to the notice of the State Commission and it is the State Commission which could bring such facts to the notice of the Disciplinary Authority. Ultimately, the veracity/truthfulness of such allegations is to be gone into and enquired by the Enquiry Officer appointed by the Disciplinary Authority who shall record his findings on the basis of the evidence produced before him that too after giving opportunity to the petitioner to put up his defence. Therefore, we do not find any merit in Civil Writ Petition No. 1118 of 2012 and dismiss the same.

**(A.K. SIKRI)**  
**CHIEF JUSTICE**

**(RAKESH KUMAR JAIN)**  
**JUDGE**

**(TEJINDER SINGH DHINDSA)**  
**JUDGE**

**14<sup>th</sup> December, 2012**  
Amodh/ravinder