State Of U.P. & Ors vs Jeet S. Bisht & Anr on 18 May, 2007

Equivalent citations: 2007 AIR SCW 3427, 2007 (6) SCC 586, 2007 (4) ALL LJ 548, 2007 (4) AIR KAR R 416, (2008) 4 MAD LJ 551, (2007) 2 CPR 506, (2007) 4 SUPREME 359, (2007) 8 SCALE 35, (2007) 2 WLC(SC)CVL 448, (2007) 4 ALL WC 3241, (2018) 5 ALL WC 4496

Author: Markandey Katju

Bench: Markandey Katju

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           CASE NO.:
Appeal (civil)  2740 of 2007

PETITIONER:
State of U.P. & Ors.

RESPONDENT:
Jeet S. Bisht & Anr.

DATE OF JUDGMENT: 18/05/2007

BENCH:
Markandey Katju

JUDGMENT:
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J U D G M E N T (Arising out of Special Leave Petition (Civil) No.6928 of 1999) MARKANDEY KATJU, J.

1. Leave granted.

2. This appeal furnishes a typical instance of a widespread malady which has infected the judicial system in India, namely, the tendency in some courts of not exercising judicial restraint and crossing their limits by encroaching into the legislative or executive domain, contrary to the broad separation of powers envisaged under our Constitution.

3. Heard learned counsel for the parties as well as Shri Amarendra Sharan, learned Additional Solicitor General and Shri M.N. Krishnamani, Sr. Advocate.

4. This appeal arises out of a writ petition filed in the Allahabad High Court in which the grievance of the writ petitioner was of charging excessive electricity bills by the U.P. State Electricity Board. In para 19 of the writ petition it was also mentioned that the petitioner had, before filing the writ petition, approached the District Consumer Forum, Chamoli but the same was not decided because the term of two members of the District Consumer Forum had expired and till the filing of the

petition new members were not appointed and hence the District Consumer Forum, Chamoli was not working.

5. In the counter affidavit to the writ petition it was stated by the Special Secretary, Department of Food and Civil Supplies, U.P. Government, that appropriate steps were being taken to fill up the vacancies of the District Consumer Forum, Chamoli vide paragraphs 4 to 12 of the counter affidavit. In the said counter affidavit mention was also made about the grants given by the State Government for the State Consumer Forum and also mentioned the statistics about the number of cases filed and disposed off.

6. By the impugned judgment dated 8.1.1998 the High Court apart from making observations on the merits of the controversy issued the following directions :

> "We direct the State Government to constitute at least five State Consumer Forums at State level as used under Section 16 of Consumer Protection Act by making necessary amendment. The State Government can also make law by making local amendment with the prior consent of the President of India under Article 254 of Constitution of India if it falls under concurrent list and the Benches can be constituted at "Commissionery level" at the beginning with at five places on the pattern of Benches constituted under Administrative Tribunal Act. We further direct that the Presiding Officer of a Bench will be a retired High Court Judge who would enjoy the same facilities and amenities as enjoyed by a sitting High Court Judge as in Vice Chairman of Administrative Tribunal. At present the President of State Commission is not enjoying the facilities of a Judge of High Court.
>
> We are also of the view that the infrastructure facilities of proper building and recruitment powers of staff be given to the Presiding Officer of State Commission or Vice President and be given proper budgetary power to regulate the budget within the allocated sufficient budget so that he has not to run to the administrative department off and on.
>
> We make it clear that in case if it does not fall within the jurisdiction of State Government to issue ordinance by local amendment or enact law then the State Government is to approach immediately in view of the above discussion to the Central Government for making necessary infrastructure facilities regarding constitution of Benches and proper staff, building etc. so that the functioning starts within four months to mitigate the suffering of the consumers."

7. Against the aforesaid judgment of the High Court the State of U.P. and others filed this appeal before us in which a ground inter alia taken was that the aforesaid directions issued by the High Court were contrary to the provisions of the Consumer Protection Act. It was also urged that the court cannot issue a direction that the law be amended. It was further contended that the various directions of the High Court related to policy matters in which the judiciary cannot interfere.

8. When the appeal was taken up for hearing on the earlier occasions this Court passed interim orders expressing its anguish that the very purpose of the Consumer Protection Act was frustrated and the Act was becoming non functional due to the indifference of the State Government in filling up vacancies at the State and District Levels and providing in sufficient funds for salaries of members and the staff, and for the infrastructure without which the State and District Consumer Fora cannot operate. By the order dated 8.1.2001 this Court requested the Solicitor General of India to assist the Court and seek instructions. Thereafter, on 16.4.2001 the learned Solicitor General submitted that he had discussed the matter with the Chairman of the National Consumer Forum with a view to find out the difficulties being faced by the various Fora created at the National level, State level and District level so that effective steps can be taken to make these Fora functional and the object of the Act achieved.

9. Thereafter by an interim order dated 26.11.2001 this Court observed:

> "After hearing learned counsel for the parties we direct the Union of India to file, within two weeks from today, a comprehensive scheme with regard to the structuring of Consumer Forums at all the three levels. The emphasis has to be with regard to service conditions, not only of the members of the District, State and the National Consumer Forums but also with regard to the staff in each of the said Forums. In formulating the scheme, the report of the Bagla Commission may be taken into consideration.
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> On the scheme being filed in Court, notices will then be issue to all the State Governments for their comments. The effort has to be to see that these Consumer Forums become effective institutions where the consumers can give vent to their grievances rather then their going to the courts of law.
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> List for further orders on 11th December, 2001."

10. Thereafter it appears that a series of interim orders have been passed by this Court (including issuance of notices to all State Governments) relating to various matters concerning the Consumer Fora at the National, State and District level. It appears that the scope of the writ petition in the appeal before us has been expanded so as to cover not only the State and District Consumer Fora in U.P., but also of those all over India. Thus the initial controversy relating to the District Forum, Chamoli was expanded by the Allahabad High Court to the State level, and further expanded by this Court to the National level.

11. It was contended before us by Shri Amarendra Sharan, Additional Solicitor General of India that this Court should fix the salaries and allowances of members of the State Consumer Dispute Redressal Commission in all States of India as well as the salaries and allowances of the District Fora all over India.

12. We pointed out to learned Additional Solicitor General that this cannot be validly done as it would be contrary to the provisions of the Act. Thus, Section 10(3) of the Consumer Protection Act

states :

> "The salary or honorarium and other allowance payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government."

Similarly, Section 16(2) of the Act states:

> "The salary or honorarium and other allowances payable to, and the other terms and conditions of service (including tenure of office) of, the members of the State Commission shall be such as may be prescribed by the State Government."

13. We pointed out to the learned Additional Solicitor General of India that the salaries and allowances of the members of the State Commissions as well as the District Consumer Fora can only be prescribed by the State Government and not by this Court. When Parliament in its wisdom has nominated a particular authority (in this case the State Government) to fix the salaries and allowances of the members of the State and District Fora, this Court cannot override the clear language of the statute and substitute the words "the Supreme Court" for the words "the State Government" under section 10(3) and section 16(2). It is a well settled principle of interpretation that the Court cannot add or substitute words in a statute.

14. No doubt the Court can make a recommendation to the State Governments that the salaries and allowances of the members of the State and District Fora are inadequate and should be increased, but that is about as far as the Court can go. It can only make recommendations but it cannot give binding directions in this connection. By a judicial verdict the court cannot amend the law made by Parliament or the State Legislature.

15. Learned Additional Solicitor General submitted that such a direction can be given, and for this proposition he relied on the decision of this Court in All India Judges' Association & Ors. Vs. Union of India & Ors. 1993(4) SCC 288.

16. We have carefully gone through the above decision. We fully agree with the observations in this judgment that Judges should get adequate salaries and allowances to enable them to function impartially and with a free mind, but we do not agree that that decision has laid down any principle of law that the salaries, allowances and other conditions of Judges should be fixed by the judiciary.

17. The salaries, allowances and other conditions of service of Judges are either fixed by the Constitution (e.g. the age of superannuation and salaries of Supreme Court and High Court Judges) or by the legislature or the executive. In fact this is the position all over the world.

18. No doubt in the aforesaid decision various direction have been given by this Court but in our opinion that was done without any discussion as to whether such directions can validly be given by the Court at all. The decision therefore passed sub silentio . The meaning of a judgment sub silentio has been explained by this Court in Municipal Corporation of Delhi Vs. Gurnam Kaur (1989) 1 SCC

101 (vide paras 11 and 12) as follows :-

> "A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.
>
> In General v. Worth of Paris Ltd. (k) (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. (1941) 1 KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed."

19. The principle of sub silentio has been thereafter followed by this Court in State of U.P. & Anr. Vs. Synthetics & Chemicals Ltd. & Anr. (1991) 4 SCC 139, Arnit Das Vs. State of Bihar (2000) 5 SCC 488, A-One Granites Vs. State of U.P. & Ors. (2001) 3 SCC 537, Divisional Controller, KSRTC Vs. Mahadeva Shetty & Anr. (2003) 7 SCC 197 and State of Punjab & Anr. Vs. Devans Modern Breweries Ltd. & Anr. (2004) 11 SCC 26.

20. The direction to increase the age of superannuation is really the function of the legislature or executive. It has been held in several decisions of this Court that the Court cannot fix the age of superannuation e.g. T.P. George Vs. State of Kerala, 1992 Supp. (3) SCC 191 (vide para 6).

21. It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent.

22. In Municipal Committee, Amritsar vs. Hazara Singh, AIR 1975 SC 1087, the Supreme Court observed that only a statement of law in a decision is binding. In State of Punjab vs. Baldev Singh,

1999 (6) SCC 172, this Court observed that everything in a decision is not a precedent. In Delhi Administration vs. Manoharlal, AIR 2002 SC 3088, the Supreme Court observed that a mere direction without laying down any principle of law is not a precedent. In Divisional Controller, KSRTC vs. Mahadeva Shetty 2003 (7) SCC 197, this Court observed as follows:

> " ..The decision ordinarily is a decision on the case before the Court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle, upon which the case was decided "

23. In Jammu & Kashmir Public Service Commission vs. Dr. Narinder Mohan AIR 1994 SC 1808, this Court held that the directions issued by the court from time to time for regularization of ad hoc appointments are not a ratio of this decision, rather the aforesaid directions were to be treated under Article 142 of the Constitution of India. This Court ultimately held that the High Court was not right in placing reliance on the judgment as a ratio to give the direction to the Public Service Commission to consider the cases of the respondents for regularization. In that decision this Court observed:

> "11. This Court in Dr. A.K. Jain vs. Union of India 1988 (1) SCR 335, gave directions under Article 142 to regularize the services of the ad hoc doctors appointed on or before October 1, 1984. It is a direction under Article 142 on the particular facts and circumstances therein. Therefore, the High Court is not right in placing reliance on the judgment as a ratio to give the direction to the PSC to consider the cases of the respondents. Article 142 power is confided only to this Court. The ratio in Dr. P.C.C Rawani vs. Union of India 1992 (1) SCC 331, is also not an authority under Article 141.

24. In the present case there are clear statutory provisions in Sections 10(3) and 16(2) of the Consumer Protection Act which prescribe that it is the State Government which alone can fix the salaries and allowances and conditions of service of the members of the State and District Consumer Fora. How then can the court fix them?

25. If this Court itself fixes such salaries and allowances, it will be really amending the law, and it is well settled that the Court cannot amend the law vide Union of India Vs. Association for Democratic Reforms & Anr. AIR 2002 SC 2112 and Supreme Court Employees Welfare Association Vs. Union of India & Ors. AIR 1990 SC 334.

26. This Court cannot direct legislation vide Union of India Vs. Prakash P. Hinduja AIR 2003 SC 2612 (vide para 29) and it cannot legislate vide Sanjay Kumar vs. State of U.P. 2004 ALJ 239, JT 2006(2) SC 361, Suresh Seth vs. Indore Municipal Corporation AIR 2006 SC 767 (vide para 5) and Union of India & Anr. vs. Deoki Nandan Aggarwal AIR 1992 SC 96.

27. The Court should not encroach into the sphere of the other organs of the State vide N.K. Prasada vs. Government of India & Ors. JT 2004 Supp.(1) SC 326 (vide paras 27 and 28).

28. Thus in Supreme Court Employees Welfare Association Vs. Union of India & Ors. AIR 1990 SC 334 (vide para 55) this Court observed :

> . "There can be no doubt that an authority exercising legislative function cannot be directed to do a particular act. Similarly the President of India cannot be directed by the Court to grant approval to the proposals made by the Registrar General of the Supreme Court, presumably on the direction of the Chief Justice of India."

29. In Union of India Vs. Association for Democratic Reforms & Anr. AIR 2002 SC 2112 (vide para 21) this Court observed :

> "At the outset, we would say that it is not possible for this Court to give any directions for amending the Act or the statutory rules. It is for Parliament to amend the Act and Rules. It is also established law that no direction can be given, which would be contrary to the Act and the Rules."

30. If we issue the direction as prayed for by learned Additional Solicitor General in this case, we would be issuing a direction which would be wholly illegal being contrary to Section 10(3) and Section 16(2) of the Consumer Protection Act. This Court is subordinate to the law and not above the law.

31. When it is said "Be you howsoever so high, the law is above you" this dictum applies even to the Supreme Court, since the law is above the Supreme Court and the Supreme Court is not above the law. The Judges of the Supreme Court and High Court should have the modesty and humility to realize this.

32. In Union of India Vs. Prakash P. Hinduja AIR 2003 SC 2612 (vide para 29) this Court observed :

> "Under our constitutional scheme the Parliament exercises sovereign power to enact laws and no outside power or authority can issue a direction to enact a particular piece of legislation. In Supreme Court Employees' Welfare Association v. Union of India (1989) 4 SCC 187 (para 51) it has been held that no Court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority. This view has been reiterated in State of J&K v. AR Zakki and others, AIR 1992 SC 1546."

33. In Union of India & Anr. Vs. Deoki Nandan Aggarwal AIR 1992 SC 96 (vide para 14) this Court observed :

> "It is not the duty of the Court either to enlarge the scope of the legislation or the intention of the legislature when the language of the provision is plain and unambiguous. The Court cannot rewrite, recast or reframe the legislation for the very good reason that it has no power to legislate. The power to legislate has not been conferred on the courts. The Court cannot add words to a statute or read words into it which are not there. Assuming there is a defect or an omission in the words used by the legislature the Court could not go to its aid to correct or make up the deficiency. Courts should decide what the law is and not what it should be. The Court of course adopts a construction which will carry out the obvious intention of the legislature, but it could not legislate itself. To invoke judicial activism to set at naught the legislative will is subversive of the constitutional harmony and comity of instrumentalities vide P.K. Unni v. Nirmala Industries, (1990) 1 SCR 482 at p.488: (AIR 1990 SCC 933 at p.936), Mangilal v. Sugamchand Rathi (1965) 5 SCR 239: (AIR 1965 SC 101), Sri Ram Ram Narain Medhi v. The State of Bombay 1959 Supp. (1) SCR 489: (AIR 1959 SC 459), Smt. Hira Devi v. District Board, Shahjahanpur 1952 SCR 1122 at p. 1131: (AIR 1952 SC 362 at p.365), Nalinakhya Bysack v. Shyam Sunder Haldar (1953 SCR 533 at p.545): (AIR 1953 SC 148 at p.152), Gujarat Steel Tubes Ltd. V. Gujarat Steel Mazdoor Sabha (1980) 2 SCR 146: (AIR 1980 SC 1896), S. Narayanaswami v.

G. Punnerselvam (1973) 1 SCR 172 at p.182: (AIR 1972 SC 2284 at p.2289), N.S. Vardachari v. G. Vasantha Pai (1973) 1 SCR 886): (AIR 1973 SC 38), Union of India v. Sankal Chand Himatlal Sheth (1978) 1 SCR 423: (AIR 1977 SC 2328) and Commr.

of Sales Tax, U.P. v. Auriaya Chamber of Commerce, Allahabad (1986) 2 SCR 430 at p.438:

> (AIR 1986 SC 1556 at pp.1559-60). Modifying and altering the scheme and applying it to others who are not otherwise entitled to under the scheme will not also come under the principle of affirmative action adopted by courts sometimes in order to avoid discrimination. If we may say so, what the High Court has done in this case is a clear and naked usurpation of legislative power."

34. Thus the above decision clearly lays down that in the garb of affirmative action or judicial activism this Court cannot amend the law as that would be a naked usurpation of legislative power. This Court must exercise judicial restraint in this connection.

35. We regret to say that the directions of the High Court (which have been quoted in this judgment) are really an encroachment into the legislative and executive domain. Whether there should be one State Consumer Forum or five or more State Consumer Fora is entirely for the legislature and executive to decide. The High Court has directed that the State Government should constitute at least five State Consumer Forums at the State level by making necessary amendments in the Act. In our opinion such a direction was clearly illegal. The Court (including this Court) cannot direct amendment of an Act made by the legislature. The establishment of the District, State and National level Consumer Fora is done under Section 9 of the Consumer Protection Act by the authorities mentioned in that Act. The composition of these Fora is also prescribed in that section, and so are

the salaries and allowances and other conditions of service of the members. It is only the authorities mentioned in the Act who can do the needful in this connection, and this Court cannot arrogate to itself the powers given by the Act to the said authorities.

36. For instance, the salaries and allowances of member of the State and District Fora can only be prescribed by the State Government. We have been informed that in some States these salaries and allowances are very low. Be that as it may, this Court cannot arrogate to itself the powers and functions of State Government in this connection. Different State Governments have different constraints and considerations e.g. financial constraints, the number of cases, etc. and it is entirely for the State Governments to exercise the powers prescribed to them by the Act. Similarly it is entirely for the Central Government to perform the functions given to it by the Act, and this Court cannot interfere with the Central or State Government in the exercise of their functions. At best this Court or the High Court can make recommendations for increase of salaries, allowances and betterment of working conditions, etc. but there its jurisdiction ends. It cannot give binding directions in this connection.

37. We regret to say that even the interim order of this Court dated 26.11.2000 by which it directed the Union of India to file a comprehensive scheme with regard to the structuring of the Consumer Forums at all the three levels does not seem to be within its jurisdiction as it is contrary to the clear provisions of the Consumer Protection Act.

38. It has been nowhere provided in the Consumer Protection Act that the Central Government has a duty, or power, to prepare a comprehensive scheme with regard to the structure of Consumer Fora at all the three levels.

39. No doubt the High Court, as well as this Court, are concerned that the Consumer Fora in many parts of the country are not functioning properly, but the Court could at most have given some recommendations to the Central and State Government in this connection, and it is entirely upto the Central and State Governments whether to accept those recommendations or not, at their discretion. This Court cannot amend the Consumer Protection Act by issuing directions contrary to the clear provisions of the Act nor can the High Court do so.

40. The High Court apart from directing that there should be five Consumer Fora in U.P. has also directed that the Presiding Officer of a Bench will be a retired High Court Judge who would enjoy the same facilities and amenities as enjoyed by a sitting High Court Judge. This again is contrary to the provisions of the Act. Section 16(2) of the Act (which we have quoted above) clearly states that the salaries, allowances and conditions of service of the members of the State Commission shall be such as may be prescribed by the State Government. Hence it was not open to the High Court to practically amend Section 16(2) by its judicial verdict and prescribe the salaries or conditions of service of the members of the State Commission. Such salaries or conditions of service can only be prescribed by the State Government and not by the High Court as is clear from Section 16(2).

41. We are constrained to make these strong observations because in recent years it has been noticed that the judiciary has not been exercising self restraint and has been very frequently encroaching

into the legislative or executive domain. We should do introspection and self criticism in this connection.

42. It is true that there is no rigid separation of powers under our Constitution but there is broad separation of powers, and it not proper for one organ of the State to encroach into the domain of others.

43. In this connection, this Court in Asif Hameed & Ors. Vs. State of Jammu and Kashmir & Ors. AIR 1989 SC 1899 observed (vide para 17 to 19) :

> "Before adverting to the controversy directly involved in these appeals we may have a fresh look on the inter se functioning of the three organs of democracy under our Constitution. Although the doctrine of separation of powers has not been recognized under the Constitution in its absolute rigidity but the constitution makers have meticulously defined the functions of various organs of the State. The Legislature, executive and judiciary have to function within their own spheres demarcated under the Constitution. No organ can usurp the functions assigned to another. The Constitution trusts to the judgment of these organs to function and exercise their discretion by strictly following the procedure prescribed therein. The functioning of democracy depends upon the strength and independence of each of its organs. The Legislature and executive, the two facets of the people's will, have all the powers including that of finance. The Judiciary has no power over the sword or the purse, nonetheless it has power to ensure that the aforesaid two main organs of the State function within the constitutional limits. It is the sentinel of democracy. Judicial review is a powerful weapon to restrain unconstitutional exercise of power by the legislature and executive. The expanding horizon of judicial review has taken in its fold the concept of social and economic justice. While exercise of powers by the legislature and executive is subject to judicial restraint, the only check on our own exercise of powers is the self imposed discipline of judicial restraint.
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> Frankfurter, J. of the U.S. Supreme Court dissenting in the controversial expatriation case of Trop v. Dulles (1958) 356 US 86 observed as under :-
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> "All power is, in Madison's phrase, "on an encroaching nature". Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint .
>
> Rigorous observance of the difference between limits of power and wise exercise of power between questions of authority and questions of prudence requires the most alert appreciation of this decisive but subtle relationship of two concepts that too easily coalesce. No less does it require a disciplined will to adhere to the difference. It is not easy to stand aloof and allow want of wisdom to prevail to disregard one's own strongly held view of what is wise in the conduct of affairs. But it

> is not the business of this Court to pronounce policy. It must observe a fastidious regard for limitations on its own power, and this precludes the Court's giving effect to its own notions of what is wise or politic. That self-restraint is of the essence in the observance of the judicial oath, for the Constitution has not authorized the judges to sit in judgment on the wisdom of what Congress and the Executive Branch do."

When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the constitution and if not, the court must strike-down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an appellate authority. The constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers."

44. Courts have to maintain judicial self-restraint and they should not try to take over the functions of the Executive or the Legislature. In the present case, we can understand the concern of the High Court that the District Consumer Forum, Chamoli and other Consumer Fora in U.P. were not functioning properly, but then it could not and should not have overstepped its limits and taken over the functions of the authorities prescribed in Section 9 and other provisions of the Act.

45. It is well settled that the High Court cannot takeover the function of the statutory authorities under an Act, vide G. Veerappa Pillai, Proprietor, Sathi Vihar Bus Service Porayar, Tanjore District, Madras vs. Raman and Raman Ltd. Kumbakonam, Tanjore District and others AIR 1952 SC 192, State of U.P. vs. Section Officer Brotherhood and Anr. 2004 (8) SCC 286, U.P. State Road Transport Corporation and Anr. vs. Mohd. Ismail and others 1991(3) SCC 239 (paragraph 12) and State of U.P. and Anr. vs. Raja Ram Jaiswal and Anr. 1985(2) SCC 131 (paragraph 16).

46. For instance, this Court in G. Veerappa Pillai's case (supra) held that the High Court cannot direct the Regional Transport Authority to grant a permit, because in that event, the High Court itself will be acting as the permit granting authority. Similarly, in State of U.P. and Anr. vs. Raja Ram Jaiswal and Anr. (supra) this Court observed :

> "The High Court was, of course, clearly in error in issuing a mandamus directing the District Magistrate to grant a licence. Where a statute confers power and casts a duty to perform any function before the power is exercised or the function is performed, the Court cannot in exercise of writ jurisdiction supplant the licensing authority and take upon itself the functions of the licensing authority. The High Court was hearing a writ petition praying for a writ of certiorari for quashing the order of remand. The High Court could have quashed the order of remand if it was satisfied that the order suffers from an error apparent on the record. But there its jurisdiction would come to an end. The High Court cannot then proceed to take over the functions of the licensing authority and direct the licensing authority by a mandamus to grant to

licence."

47. Under our Constitution the Judiciary, the Legislature and the Executive have their own broad spheres of operation. It is important that these organs do not encroach on each other's proper spheres and confine themselves to their own, otherwise there will always be danger of a reaction. Of the three organs of the State, it is only the judiciary which has the right to determine the limits of jurisdiction of all these three organs. This great power must therefore be exercised by the judiciary with the utmost humility and self-restraint.

48. The judiciary must therefore exercise self-restraint and eschew the temptation to encroach into the domain of the legislature or the administrative or statutory authorities. By exercising self-restraint it will enhance its own respect and prestige. Of course, if a law clearly violates some provision of the Constitution, it can be struck down, but otherwise it is not for the Court to sit in appeal over the wisdom of the legislature, nor can it amend the law.

49. The Court may feel that the law needs to be amended or the Forum created by an Act needs to be made more effective, but on this ground it cannot itself amend the law or take over the functions of the legislature or executive. The legislature and the executive authorities in their wisdom are free to choose different methods of solving a problem and the Court cannot say that this or that method should have been adopted. As Mr. Justice Cardozo of the U.S. Supreme Court observed in Anderson vs. Wilson 289 U.S. 20 :

> "We do not pause to consider whether a statute differently conceived and framed would yield results more consonant with fairness and reason. We take this statute as we find it".

50. Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the State. It accomplishes this in two ways. First, judicial restraint not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing interbranch interference by the judiciary. In this analysis, judicial restraint may also be called judicial respect, that is, respect by the judiciary for the other coequal branches. In contrast, judicial activism's unpredictable results make the judiciary a moving target and thus decreases the ability to maintain equality with the co-branches. Restraint stabilizes the judiciary so that it may better function in a system of interbranch equality.

51. Second, judicial restraint tends to protect the independence of the judiciary. When courts encroach into the legislative or administrative fields almost inevitably voters, legislators, and other elected officials will conclude that the activities of judges should be closely monitored. If judges act like legislators or administrators it follows that judges should be elected like legislators or selected and trained like administrators. This would be counterproductive. An essential feature of an independent judiciary is its removal from the political or administrative process. Even if this removal has sometimes been less than complete, it is an ideal worthy of support and one that has had valuable effects.

52. The constitutional trade off for independence is that judges must restrain themselves from the areas reserved to the other separate branches. Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

53. As observed by the Supreme Court in M.H. Qureshi vs. State of Bihar 1959 SCR 629, the Court must presume that the legislature understands and correctly appreciates the need of its own people. The legislature is free to recognize degrees of harm and may confine its restrictions to those where the need is deemed to be the clearest. In the same decision it was also observed that the legislature is the best judge of what is good for the community on whose suffrage it came into existence, and it is for the legislature to amend the law, if it so wishes. The court can at most make a recommendation to the legislature in this connection, but it is upto the legislature to accept the recommendation or not.

54. The function of a judge has been described thus by Lawton LJ :

> "A Judge acts as a referee who can blow his judicial whistle when the ball goes out of play, but when the game restarts he must neither take part in it nor tell the players how to play" (vide Laker Airways Ltd. vs. Department of Trade (1977) QB 643(724).

55. In writing a biographical essay on the celebrated Justice Holmes of the U.S. Supreme Court in the dictionary of American Biography, Justice Frankfurter wrote :

> "It was not for him (Holmes) to prescribe for society or to deny it the right of experimentation within very wide limits. That was to be left for contest by the political forces in the state. The duty of the Court was to keep the ring free. He reached the democratic result by the philosophic route of skepticism by his disbelief in ultimate answers to social questions. Thereby he exhibited the judicial function at its purest." (See `Essays on Legal History in Honour of Felix Frankfurter' Edited by Morris D. Forkosch).

56. In our opinion adjudication must be done within the system of historically validated restraints and conscious minimization of the Judges preferences. The Court must not embarrass the legislature or the administrative authorities and must realize that the legislature and authorities have to take into account various considerations, some of which the court may not even be aware of. In the words of Chief Justice Neely:

> "I have very few illusions about my own limitations as a Judge. I am not an accountant, electrical engineer, financer, banker, stockbroker or system management analyst. It is the height of folly to expect Judges' intelligently to review a 5000 page record addressing the intricacies of a public utility operation. It is not the function of a Judge to act as a super board, or with the zeal of a pedantic school master substituting its judgment for that of the administrator."

57. In Lochner vs. New York 198 US 45 (1905), Mr. Justice Holmes of the U.S. Supreme Court in his dissenting judgment criticized the majority of the Court for becoming a super legislature by inventing a 'liberty of contract' theory, thereby enforcing its particular laissez-faire economic philosophy. Similarly, in his dissenting judgment in Griswold vs. Connecticut, 381 U.S. 479, Mr. Justice Hugo Black warned that "unbounded judicial creativity would make this Court a day-do-day Constitutional Convention". In "The Nature of the Judicial Process' Justice Cardozo remarked : "The Judge is not a Knight errant, roaming at will in pursuit of his own ideal of beauty and goodness". Justice Frankfurter has pointed out that great judges have constantly admonished their brethren of the need for discipline in observing their limitations (see Frankfurter's 'Some Reflections on the Reading of Statutes').

58. However, the Central and State Governments are requested to consider fixing adequate salaries and allowances for members of the Consumers Fora at all three levels, so that they can function effectively and with a free mind. They are also requested to fill up vacancies expeditiously so that the Fora can function effectively.