

PETITIONER:
GULZARI LAL AGARWAL

Vs.

RESPONDENT:
THE ACCOUNTS OFFICER

DATE OF JUDGMENT: 25/09/1996

BENCH:
KURDUKAR S.P. (J)
BENCH:
KURDUKAR S.P. (J)
KULDIP SINGH (J)

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

S.P. KURDUKAR, J.

This appeal is directed against the order dated May 17, 1995,, in Revision Petition No.393/94 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'National Commission'). It is not disputed that at the relevant time when the order dated 21.1.1994 was passed by the State Commission constituted under the Consumer Protection Act, 1986 (for short "the Act") was not having the President since he had retired. No new President was appointed on the said State Commission. A complaint was filed by the appellant herein before the District Forum, Bankura as regards inflated telephone bills. A prayer was made in the said complaint that the respondent herein be directed not to disconnect the telephone connection. An order was made by the District Forum in favour of the appellant directing the respondent not to disconnect the telephone connection and maintain the telephone line on condition that the appellant deposits a sum of Rs. 4,000/-. The appellant accordingly complied with the said order. It appears that despite this order, the telephone connection of the appellant was disconnected on 30.11.1993. The appellant thereafter moved an application for restoration and it is common premise that on 25.5.1994, the telephone connection was restored. The complaint as regards the excessive bill of Rs.13,896/- is still pending.

2. the respondent not being satisfied with the order passed by the District Forum preferred an appeal to the State Commission and the State Commission vide its order dated 21.1.1994 dismissed the said appeal, holding that the order passed by the District Forum was in consonance with the circular dated 15.10.1992 issued by the Telephone Department. Being aggrieved by the order passed by the State Commission, the respondent preferred Revision petition under Section 21 of the Act before the National Commission. The national Commission after hearing the parties vide its impugned order dated May 17, 1995 allowed the Revision

Petition primarily on the ground of jurisdiction. the National Commission has held as under:

"The impugned order passed by the State Commission, West Bengal had to be held illegal and void on the ground that the said order had been passed only by two Members of the State Commission without the junction of the President, which is manifestly contrary to mandatory provisions contained in Section 14(2A) read with Section 10 of the Consumer Protection Act, 1986. The said order of the State Commission is hereby set aside. We also set aside the interlocutory orders dated October 14, 1993 (Annexure 'B' and October 19, 1993 (Annexure 'C' passed by the District Forum, Bankura as being totally devoid of jurisdiction in the light of the recent pronouncement of the Hon'ble Supreme court in Morgan Stanely Mutual Fund vs. Kartik Das (1994-IIC.P.J. (S.C.7) where it has been categorically laid down a Consumer Forum has no jurisdiction or power to pass any interim order pending disposal of an original complaint filed before it".

3. It is this order passed by the National Commission which is the subject matter of challenge in appeal.

4. Before we deal with the rival contentions raised before us, it would be appropriate to set out relevant provisions of the Act and Rules. Clause (jj) of Section 2 defines : member:-

"member" includes the President and a member of the National Commission or a State Commission at a District Forum, as the case may be."

5. Section 9 in Chapter III refers to the Consumer Disputes Redressal Agencies and the relevant provisions are as under :-

9. "Establishment of Consumer Disputes Redressal Agencies:-

There shall be established for the purposes of this Act, the following agencies, namely, :-

(a) xxxx xxxx xxxx

(b) a Consumer dispute s Redressal Commission to be known as the "State Commission" established by the State Government if the State by notification; and

(c) xxxx xxxx xxxx

6. Section 13 prescribes the procedures to be followed on receipt of a complaint.

7. Section 14 enumerates the items on which the District Forum shall issue an order to the opposite party direction him to do one or more of the following things set out in sub sections 14(1)(a) to 14(1)(i).

8. The controversy relates to Section 14(2) and 14(2A) which are reproduced herein below :-

14(2)-Every proceeding referred to in sub section (1) shall be

conducted by the President of the District Forum and at least one member thereof sitting together:

Provided that where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo.

14(2A)-Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceedings; Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District forum.

9. Section 16 deals with the Composition of the State Commission and it reads as under:

"16. Composition of the State Commission:- (1) Each State Commission shall consist of -

(a) a person who is or had been a Judge of a High Court, appointed by the State Government, who shall be its President:

(Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;)

(1) xxxx xxxx xxxx

(2) xxxx xxxx xxxx

(3) xxxx xxxx xxxx

(4) xxxx xxxx xxxx

10. Section 18 deals with the Procedure applicable to State Commissions and it reads thus :-

"18. Procedure applicable to State Commission - The provisions of Sections 12,13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission".

11. Chapter IV of the Act deals with Miscellaneous Provisions. Section 29 refers to the power to remove difficulties. Section 29A is the relevant provision which reads as under :-

"29A- Vacancies or defects in appointment not to invalidate orders- No act or proceeding of the District forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution

thereof".

12. Sub-section (2) of Section 30 deals with the powers of State Government to make rules. Sub section (2) of Section 30 reads as under :-

"The State Government may, by notification, make rules for carrying out the provisions contained in [clause (b) of sub section (2) and sub-section (4) of Section 7], sub-section (3) if Section 10, Clause (c) if sub-section (1) of Section 13, sub-section (3) of Section 14, section 15 and sub-section (2) if section 16."

Note :- Bracketed portion was incorporated by Act No.34 of 1991 with effect from 15.6.1991.

13. the State government in exercise of powers conferred by sub-section (2) of section 30 of the Act framed the Rules which are called the West Bengal Consumer Protection rules, 1987. These rules were brought into force immediately. Sub-rules (9) and (10) of rule 6 are relevant and they read as under:-

"6(9) - Where any such vacancy occurs in the office of the President of the State Commission the senior most (in order of appointment) member holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the State Commission.

6(10) - When the President of the State Commission is unable to discharge his functions owing to absence, illness or any other cause, the senior most (in order of appointment) member of the State Commission shall discharge the functions of the President until the day on which the President resumes the charge of the functions."

14. In the light of the aforesaid provisions, it is necessary to consider as to whether the impugned order passed by the National Commission is legal. The National Commission held that the order passed by the State Commission is manifestly contrary to a mandatory provision contained in Section 14(2A) read with Section 18 of the Act as it was made by two other members of the said commission without the 'junctions' of the President.

15. Mr. Bhattacharya, the learned counsel appearing for the appellant urged that the impugned order is unsustainable. He urged that the National Commission had totally overlooked certain provisions contained in the Act and the Rules and erroneously came to the conclusion that in the absence of the President of the State Commission being functional, the other two members have no jurisdiction to deal with the disputes/appeal filed before the State commission. In support of the submission, Learned Counsel drew our attention to the definition of a member contained on Clause (jj) of Section 2 and Sections 14(2A), 18A and

29A. Reliance was also placed in sub-rules (9) and (10) of Rule 6. Mr. Bhattacharya urges that all these provisions will have to be construed harmoniously with a view to promote the object and spirit of the Act. The impugned order passed by the National Commission is unsustainable and the same be quashed and set aside.

16. Mr. S.K. Sabharwal, the learned Advocate appearing for the respondent supported the impugned order and urges that sub-sections (2) and (2A) of Section 14 in unmistakable terms indicate that every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together. Sub-section (2A) read with section 18 requires that every order made by the District Forum/State Commission under sub-section (1) shall be signed by the President and the Member or Members who conducted the proceedings. In view of this mandatory provision, counsel urged that any proceeding conducted before the State Commission in the absence of the President would be non-est. He further urged that admittedly when the State Commission passed the orders on October 14, 1993 and October 19, 1993, the President of the State Commission was not appointed by the State Government and, therefore, these orders were rightly held to be illegal.

17. After giving careful thought to the rival contentions raised before us, we are of the considered opinion that the relevant provisions which we have quoted hereinabove will have to be construed harmoniously to promote the cause of the consumers under the Act. As indicated earlier, the definition of member includes the President and a Member of a District Forum/State Commission. It is true that sub-section (2) of Section 14 read with section 18 requires that every proceeding referred to under sub-section (1) shall be conducted by the President of the District Forum/State Commission and at least one member thereof sitting together. Section 2A is consequential in the sense that every order made by the State Commission under sub-section (1) shall be signed by its President and the Member or Members who conducted the proceeding. The procedure applicable to the District Forum is made applicable to the State Commission vide Section 18 with such modifications as may be necessary. Plain reading of sub-sections (2) and (2A) of Section 14 may support the view taken by the National Commission but if these provisions are read with Section 29A of the Act and sub-rules (9) and (10) of Rule 6, it would be quite clear that it could never be the intention of legislature to stall or render the State Commission non-functional in the absence of the President either having not been appointed in time due to some valid reasons or if the President is on the leave due to certain reasons beyond his control. (2) and (2A) of Section 14 and Section 18A of the Act were brought into force with effect from 18-6-1993 whereas Section 29A was made applicable from 15.6.1991. The Rules of 1987 were brought into force immediately. The complaint before the District Forum by the appellant was filed on 14-10-1993. Therefore, all these amended provisions were very much brought into force when the complaint was filed. Sub-section (2) of section 14 is a presumptuous provision where the President if the State Commission is functional but it would not be correct to say that if the President of the State Commission is non-functional because of one or the other reason, the State Commission would stop its functioning and wait till the President is appointed. In order to avoid such a situation, the State Government had framed the Rules and

sub-rules (9) and (10) quoted hereinabove unmistakably provide answerable to such a situation as in the present case. The only harmonious construction that could be given to sub-sections (2) and (2A) of section 14 read with sub-rules (9) and (10) is that as and when the President of the State Commission of functional, he alongwith atleast one Member sitting together shall conduct the proceeding but where the President being non-functional, sub-rules (9) and (10) of rule 6 will govern the proceedings. Sub rule (0) provides that where any such vacancy occurs in the office if the President of the State Commission, the senior most (in order of appointment) member holding office for the time being, shall discharge the function of the president until person is appointed to fill such vacancy. This sub-rule is made with a view to make the State Commission functional in the absence of the President and not to allow the State Commission to render non-functional for want of the President. It is well settled that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the section. It is this principle that needs to be made applicable while construing the provision of sub-sections (2) and (2A) of Section 14 read with sub-rules (9) and (10).

18. The West Bengal Government had framed the Rules in the year 1987 and the object of sub-rules (0) and (10) of Rule 6 appears to use to keep the State Commission functional in the absence of the President. From the impugned order it appears that the attention of the National Commission was not drawn to sub-rules (9) and (10) of Rule 6. It also appears from the record that the validity of sub-rules (9) and (10) of Rule 6 was never challenged. It is made clear that the view which we have taken in this appeal is on the premise that there is no challenge to the validity of the Rules and they hold the field.

19. Having regard to the composition of the District Forum and the State Commission, it is more appropriate and desirable to make the appointment of the President of the District Forum and the State Commission without any delay since the complaint under the Act involved fairly large stakes which require a judicial approach.

20. In view of above discussion, we are of the opinion that the National Commission committed an error in holding that order passed by the two members of the State Commission without the junction of the President is "illegal and void." Impugned order to that extent is set aside.

21. Coming to the second part of the order as regards the grant of interim order, in our opinion, the National Commission was right in applying the law laid down by this Court in *Morgan Stanely Mutual Fund vs. Kartick Das*. 1994(II) CPJ 7(SC). The consumer forum has no jurisdiction or power to pass any interim order pending disposal of original complaint filed before it. The impugned order if this behalf is confirmed.

22. In the result, the appeal is partly allowed. The impugned order holding that the order passed by the State Commission, West Bengal is illegal and void is quashed and set aside. But, however, the rest of the impugned order is confirmed. In the circumstances, parties are directed to bear their own costs.