

## **Bihar Consumer Protection Rules, 1987**

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## **Bihar Consumer Protection Rules, 1987**

NOTIFICATION NO. G.S.R. 32, DATED 28TH SEPTEMBER, 1987 In exercise of the powers conferred by sub-section (2) of section 30 of the Consumer Protection Act, 1986 (68 of 1986), the Governor of Bihar is pleased to make the following rules namely :-

### **1. Short Title And Commencement :-**

- (1) These rules may be called the Bihar Consumer Protection Rules, 1987.
- (2) It shall come into force on such date<sup>2</sup> as the State Government may, by notification in the Official Gazette, appoint.

### **2. Definitions :-**

In these rules unless the context otherwise requires:-

- (a) "Act" means the Consumer Protection Act, 1986 (68 of 1986);
- (b) "Agent" means a person duly authorised by a party to present any complaint or appeal or reply on its behalf before the State Commission or the District Forum;
- (c) "appellant" means a party which makes an appeal against the order of the District Forum;
- (d) "memorandum" means memorandum of appeal filed by the appellant;
- (e) "opposite party" means a person who answers complaint or

claim;

(f) "President" means the President of the State Commission or District Forum as the case may be;

(g) "respondent" means the person who answers any memorandum of appeal;

(h) "State" means the State of Bihar.

1. Published in the Bihar Gazette (Extraordinary) No. 493, dated 28th September, 1987.

2. With effect from 2nd November, 1987 (vide Notification No. S.O. 1040, dated 18th November, 1987).

### **3. Salaries And Other Allowances And Terms And Conditions Of The President And Members Of The District Forum :-**

(1) The President of the District Forum shall receive the salary of the

District Judge, if appointed on whole-time basis or an honorarium of

Rs. 150 per day for the sitting, if appointed on part-time basis. Other members if sitting on whole-time basis shall receive a consolidated honorarium of

Rs. 2,000 per month and if sitting on part-time basis, a consolidated honorarium of Rs. 100 per day for the sitting.

(2) The President and the members of the District Forum shall be entitled for such travelling allowance and daily allowance on official tour as are admissible to Class I officers of the State Government.

(3) The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government.

(4) Before appointment, the President and member of the District Forum shall have to give an undertaking that he does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as a member.

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

(a) has been adjudged an insolvent, or

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

(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 affect prejudicially his functions as a member, or

(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) of sub-rule (5) except on an enquiry held by the State Government in accordance with such procedure as it may specify in this behalf and finds the member guilty of such ground.

(6) The terms and conditions of the service of the President and the members of the District Forum shall not be varied to their disadvantage during their tenure of office.

(7) Where any vacancy occurs in the office of the President of the District Forum, the senior most (in order of appointment) member of District Forum, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such a vacancy assumes the office of the President of the District Forum.

(8) When the President of the District Forum is unable to discharge the functions owing to absence, illness or any other cause, the senior most (in order of appointment) member of the District Forum shall discharge the functions of the President until the day on which the President resumes the charge of his functions.

(9) The President or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organization which has been the subject of any proceeding under the Act during his tenure for a period of 5 years from the date on which he ceases to hold such office.

#### **4. Place Of Sitting And Other Matters Relating To District Forum :-**

(1) The office of the District Forum shall be located at the old divisional

head-quarters namely Patna, Ranchi, Bhagalpur and Muzaffarpur. Where State Government decides to establish a single District Forum having jurisdiction over more than one district, it shall notify the place and jurisdiction of the District Forum so established.

(2) The working days of the District Forum shall be notified by the State Government from time to time.

(3) The Official seal and emblem of the District Forum shall be such as the State Government may specify.

(4) Sitting of the District Forum, as and when necessary, shall be convened by the President as provided in sub-rule (2).

(5) No act or proceedings of the District Forum shall be invalid by reason only of the existence of any vacancy among its members or any defect in its constitution.

(6) State Government shall appoint such staff, as may be necessary to assist the District Forum in its day-to-day work and perform such other functions as are provided under these rules, or assigned to it by the President. The salary payable to such staff shall be defrayed out of the Consolidated Fund of the State Government.

(7) Where admission of facts have been made either in the pleading or otherwise, whether orally or in writing the District Forum may at any stage of the case, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties make such order or decide the complaint as it may think fit, having regard to such admissions.

(8) If during the proceedings conducted under section 13, District Forum fixes date for hearing of the parties, it shall be obligatory on the complainant and opposite party or its authorised agent to appear before the District Forum on such date of hearing or any other to which hearing is adjourned. Where the complainant or his authorised agent fails to appear before the District Forum on such day, District Forum may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its authorised agent fails to appear on the day of hearing, the District Forum may decide the complaint ex parte.

(9) While proceeding under sub-rule (8), the District Forum may, on such terms as it may think fit and at any stage, adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint should be decided within 90 days from the date of notice received by the opposite party where complaint does not require analysis or testing of the goods and within 150 days if it requires analysis or testing of the goods.

(10) Orders of the District Forum shall be signed and dated by the members of the District Forum constituting the Bench and shall be communicated to the parties free of charge.

## **5. Procedure To Be Adopted By The District Forum For Analysis And Testing Of The Goods :-**

(1) Under section 13(1)(c), if considered necessary the District Forum may direct the complainant to provide more than one sample of the

goods in clean containers with stopper properly fixed on them.

(2) On receiving the samples of such goods, the District Forum shall seal it and fix labels on the containers carrying following information :-

(i) Name and address of the appropriate laboratory to whom sample will be sent for analysis and test;

(ii) Name and address of the District Forum;

(iii) Case Number;

(iv) Seal of the District Forum.

(3) The sample will be sent to appropriate laboratory by the District Forum for sending report within 45 days or within such extended time as may be granted by the District Forum after specifying the nature of the defect alleged and date of submission of the report.

## **6. Salary And Other Allowances And Terms And Conditions Of The President And Members Of The State Commission :-**

(1) The President of the State Commission shall receive the salary of the

Judge of the High Court if appointed on whole-time basis or a consolidated honorarium of Rs. 200 per day for the sitting if appointed on part-time basis. Other members, if sitting on whole-time basis, shall receive a consolidated honorarium of Rs. 3,000 per month and if sitting on part-time basis, a consolidated honorarium of Rs. 150 per day for the sitting.

(2) The President and the members of the State Commission shall be eligible for such travelling allowance and daily allowance on official tour as are admissible to Class I officers of the State Government.

(3) The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government.

(4) The President and the members of the State Commission shall hold office for a term of five years or upto the age of 65 years whichever is earlier and shall not be eligible for re-nomination :

Provided that President and member may-

(a) by writing under his hand and address to the State Government resign his office any time;

(b) removed from his office in accordance with provision of sub-rule (5).

(5) The State Government may remove from office. President or a member of the State commission who-

(a) has been adjudged an insolvent, or

- (b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude, or
- (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 affect prejudicially his functions is a member, or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest :

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

(6) Before appointment, President and a member of the State Commission shall have to take an undertaking that he does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as such member.

(7) The terms and conditions of the service of the President and the members of the State Commission shall not be varied to their disadvantage during tenure of office.

(8) Every vacancy caused by resignation and removal of the President or any other member of the State Commission under sub-rule (4) or otherwise shall be filled by fresh appointment.

(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.

(10) When the President of the State Commission is unable to discharge the 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 his functions.

(11) The President or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organisation which has been the subject of any proceeding under the Act during his tenure for a period of 5 years from the date on which he ceases to hold such office.

## **7. Place Of Sitting And Other Matters Relating To State Commission :-**

- (1) Office of the State Commission shall be located at Patna.
- (2) The working days and the office hours of the State Commission shall be as notified by the State Government from time to time.
- (3) The official seal and emblem of the State Commission shall be such as the State Government may specify.
- (4) Sitting of the State Commission as and when necessary, shall be convened by the President as provided in sub-rule (2).
- (5) No act or proceedings of the State Commission shall be invalid by reasons only of the existence of any vacancy among its members or any defect in its constitution thereof.
- (6) State Government shall appoint such staff, as may be necessary to assist the State Commission in its work and perform such other functions as are provided under these rules or assigned to it by the President. The salary payable to such staff shall be defrayed out of the Consolidated Fund of the State Government.
- (7) Where admission of facts have been made either in the pleading or otherwise, whether orally or in writing, the State Commission may at any stage of the case, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or decide the complaint as it may think fit, having regard to such admissions.
- (8) If during the proceedings conducted under section 13, State Commission fixes a date for hearing of the parties, it shall be obligatory on the complainant and opposite party or his authorised agent to appear before the State Commission on such date of hearing or other date to which hearing is adjourned. Where the complainant or his authorised agent fails to appear before the State Commission on such day, the State Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its authorised agent fails to appear on the day of hearing, the State Commission may decide the complaint ex parte.
- (9) While proceedings under sub-rule (8) the State Commission may, on such terms as it may think fit and at any stage, adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint should be decided within 90 days from the date of notice received by the opposite party where complaint does not require analysis or testing of the goods and within 150 days if it requires analysis or testing of the goods.

(10) Orders of the State Commission shall be signed and dated by the members of the State Commission constituting the Bench and shall be communicated to the parties free of charge.

## **8. Procedure For Hearing Appeal :-**

(1) Memorandum shall be presented by the appellant or his authorised

agent to the State Commission in person or be sent by registered post addressed to the Commission.

(2) Every memorandum filed under sub-rule (1) shall be in legible handwriting preferably typed and shall set forth concisely under distinct heads, the grounds of appeal without any argument or narrative and such ground shall be numbered consecutively.

(3) Each memorandum shall be accompanied by the certified copy of the order of the District Forum appealed against and such of the documents as may be required to support grounds of objection mentioned in memorandum.

(4) When the appeal is presented after the expiry of period of limitation as specified in the Act, memorandum shall be accompanied by an application supported by an affidavit setting forth the fact on which appellant relies to satisfy the State Commission that he has sufficient cause for not preferring the appeal within the period of limitation.

(5) The appellant shall submit four copies of the memorandum to the State Commission for official purposes.

(6) On the date of hearing or any other day to which hearing may be adjourned it shall be obligatory for the parties or their authorised agents to appear before the State Commission. If appellant or his authorised agent fails to appear on such date, the State Commission may, in its discretion, either dismiss the appeal or decide it on the merit of the case. If respondent or his authorised agents fails to appear on such date, the State Commission shall proceed ex parte and shall decide the appeal ex parte on merit of the case.

(7) The appellant shall not except by leave of the State Commission, urge or be heard in support of any ground of objection not set forth in the memorandum but the State Commission, in deciding the appeal, shall not confine to the grounds of objection set forth in the memorandum or taken by leave of the State Government under this rule :

Provided that the Commission shall not rest its decision on any



other grounds unless the party who may be affected thereby, has been given, at least one opportunity of being heard by the State Commission.

(8) State Commission may, on such terms as it may think fit and at any stage, adjourn the hearing of appeal, but not more than one adjournment shall ordinarily be given and the appeal should be decided within 90 days from the first date of hearing.

(9) Order of the State Commission on appeal shall be signed and dated by the members of the State Commission constituting the Bench and shall be communicated to the parties free of charge.