

(1998) 01 GAU CK 0008

Gauhati High Court (Agartala Bench)

Case No: Civil Rule No's. 463 and 464 of 1997

New India Assurance Co. Ltd.

APPELLANT

Vs

Sujit Kumar Lodh

RESPONDENT

Date of Decision: Jan. 28, 1998

Acts Referred:

- Consumer Protection Act, 1986 - Section 12, 13, 14, 14(1), 14(2)
- Tripura Consumer Protection Rules, 1987 - Rule 6(10), 6(9)

Citation: (1998) 1 GLT 352

Hon'ble Judges: D.N. Chowdhury, J

Bench: Single Bench

Advocate: D.K. Biswas, for the Appellant; P.K. Pal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

D.N. Chowdhury, J.

These two Writ Petitions involved same question of facts as well as law and therefore both the cases were heard together for disposal.

2. The Consumer District Redressal Forum West Tripura District, Agartala conducted two separate proceeding u/s 13 of the Consumer Protection Act, 1986 (hereinafter referred as Act). Two separate complaints were filed by the Respondent No. 1, Shri Sujit Kumar Lodh in Civil Rule No. 463/97 and Shri Subhas Chandra Saha, Respondent No. 1 in Civil Rule No. 464/97 and the learned District Forum by two separate order rendered its findings. The Petitioners' New India Assurance Company being aggrieved, preferred two separate appeals against the order made by the learned District Forum u/s 15 of the Act and the said Appeals are pending before the Consumer Redressal State Commission, Agartala. In both the petitions the Petitioners have sought for a direction from this Court for constitution of the State Commission u/s 9(b) and Section 16 of the Act. Hence these petitions.

3. In the State of Tripura the Consumer Dispute Redressal Forum, known as State Commission was established by the State Government for the purpose of the Act u/s 9(b). However, the term of the President of the State Commission expired on December, 1996 and since then till the applications were taken up for consideration the new President of the State Commission was not appointed and thus the said State Commission is functioning without the President. The only question therefore arises as to whether the State Commission can function effectively in the absence of the President.

4. The Act was enacted to provide for better protection of the interest of consumers and for that purpose to make provision for establishment of consumer Council and other authorities for the settlement of consumers' dispute and for matters connected therewith. With a view to provide speedy simple redressal to the consumer's dispute, quasi judicial machinery is created at the District, State and National level, with a view to promote and protect the rights of the consumers. The Act is a Code by itself creating the rights as well as the remedial machinery. u/s 14(2) and 14(2) (s) every proceeding mentioned in Sub-section (1) is to be conducted by the President of the District Forum and at least one member thereof sitting together provided that where the members for any reason is unable to conduct the proceeding till it is completed, the President and the other members shall conduct such proceeding de-novo. Every, order made by the District Forum under Sub-section (1) is to be signed by the President and the member or members who conduct the proceeding.... The provisions of Sections 12, 13 and 14 and the rules made thereunder for disposal of complaints by the District Forum with such modification as may be necessary, be applicable for disposal of disputes by the State Commission in view of the provision contained in Section 18 of the Act. By the Act 34 of 1991, Section 29 (A) was incorporated inserting the following provision:

29 - A, 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.

5. In the State of Tripura the State Government in exercise of power conferred by Sub-section (2) of Section 30 of the Act framed rules known as Tripura Consumer Protection Rules, 1987. Sub-Rules 9, 10 of Rule 6 which are relevant to purpose of the case are extracted below:

6. Sub Rules 9 and 10:

(9) Where any such vacancy occurs in the office of the President of the State Commission, the seniormost (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 seniormost (in order to the 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....

6. On conjoint reading of the Act and Rules it thus appears that the Consumer Redressal Forum is intended to be functional and operative and no Act or Proceeding of the forum mentioned in the Act can be said to be invalid by reason only on the existence of a vacancy amongst its members. The State Commission is in existence with the other two members and the Statutory duty is cast on them to exercise its power inconformity with the law. The matter is no longer res-integra in view of the conductive pronouncement made by the Supreme Court in [Gulzari Lal Agarwal Vs. Accounts Officer](#), . The relevant observation is set out below:

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 above, 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. Sub-section (2-A) is consequential in the sense that every order made by the State Commission under Sub-section (1) shall be signed by the 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-section (2) and (2-A) of Section 14 may support the view taken by the National Commission but if these provisions are read with Section 29-A 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 the legislature to stall or render the State Commission nonfunctional in the absence of the President either having not been appointed in time due to some valid reasons or if the president is on leave due to certain reasons beyond his control. Sub-sections (2) and (2-A) of Section 14 and Section 18-A of the Act were brought into force with effect from 18.6.1993 whereas Section 29-A 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 of 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 has framed the Rules and

Sub-rules (9) and (10) quoted hereinabove unmistakably provide answer to such a situation as in the present case. The only harmonious construction that could be given to subsections (2) and (2-A) of Section 14 read with Sub-rules (9) and (10) is that as and when the President of the State Commission is functional, he along with at least 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 (9) provides that where any such vacancy occurs in the office of the President of the State Commission, the seniormost (in order of appointment) member holding office for the time being, shall discharge the function of the President until a 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 (2-A) of Section 14 read with Sub-rules (9) and (10).

18. The West Bengal Government has framed the Rules in the year 1987 and the object of Sub-rules (9) and (10) of Rule 6 appears to us 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 complaints under the act involved fairly large stakes which require a judicial approach.

20. In view of the 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.

7. The language of the statute is clear without leaving any doubt. The object of the act is to provide for safeguarding the interests of the consumer and to create a machinery for settlement of consumers disputes. Such institutions are set up obviously for being operational. Those who are charged with the statutory duties are required discharge its obligations to advance the object and purpose of the Act. No further deliberation is required in this regard since the issue is finally resolved by the Apex Court in *Gulzarilal Supra*.

8. In view of the reasons discussed above the State Commission is in existence and functional and can exercise its statutory function even in the absence of the President. It would therefore be open for the Petitioners to seek appropriate remedy before the State Commission and in the event any such move is made before the State Commission it is legitimately expected that the Commission shall pass appropriate orders in accordance with law.

9. Before parting with it, it must be observed that it would have been appropriate and desirable for statutory functionary to act with utmost speed and make appointment of the President of the State Commission without any further delay.

10. Subject to the observation made above the Writ Petitions stands dismissed. No costs.