
(2017) 12 AHC CK 0051
In the Allahabad High Court
Case No : 28178 of 2017

Ansal Properties & Infrastructure Ltd.	APPELLANT
Vs	
State Consumer Dispute Redressal Commission	RESPONDENT

Date of Decision : 19-12-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 14](#), [Section 18](#), [Section 14\(2\)](#), [Section 2\(JJ\)](#), [Section 16\(1-B\)\(i\)\(ii\)](#) -
Uttar Pradesh Consumer Protection Rules, 1987, Rule 7(10)

Citation : (2017) 12 AHC CK 0051

Hon'ble Judges : Devendra Kumar Upadhyaya, Rajesh Singh Chauhan

Bench : Division Bench

Advocate : Anurag Singh, Vikas Aragral, Manish Mishra, Ashish Kumar Pathak

Final Decision : Dismissed

Judgement

1. Since the issue involved in both these writ petitions is the same, with the consent of learned counsel for the parties, both the writ petitions are being decided by the common judgment and order which follows: In both these writ petitions under challenge are the orders passed by the State Consumer Dispute Redressal Commission (herein after referred to as the "State Commission"). The grounds of challenge in both these writ petitions are the same and the primary ground urged to impeach the orders passed by the State Commission is that the impugned orders have been passed by the President of the State Commission sitting single which is contrary to the provisions contained in Section 18, read with Section 14(2) and Section 16 (1-B) (i)(ii) of the Consumer Protection Act, 1986 (herein after referred to as "1986 Act").

2. Heard Sri Jaideep Narain Mathur, learned Senior Advocate, assisted by Sri Anurag Singh and Sri Ashish Kumar Pathak for the petitioners. Learned Additional Chief Standing Counsel, Sri Rahul Shukla has made his submission on behalf of the State Commission in opposition to the arguments made by the

learned counsel appearing for the petitioners in both these writ petitions.

3. The solitary ground urged in these writ petitions is that in terms of the provision contained in Section 18 of the 1986 Act, the provision of Section 14 of the 1986 Act for disposal of complaints by the District Forum have been made applicable for disposal of the disputes by the State Commission and Section 14(2) of the 1986 Act provides that every proceeding before the District Forum shall be conducted by the President of the District Forum and at least one member thereof sitting together, hence, accordingly the State Commission cannot be permitted to transact its business by a single member Bench; rather it has to be a Bench comprising of the President and at least one member of the State Commission. It has, thus, been stated by the learned counsel appearing for the petitioners that in the instant case, since the orders impugned have been passed by the President of the State Commission sitting single, accordingly, the orders are completely without jurisdiction and hence are liable to be quashed. Reference has also been made to the provisions contained in Section 16(1-B) of the 1986 Act and it has been submitted that though the jurisdiction of the State Commission may be exercised by the Benches thereof but the Bench exercising such jurisdiction has to be constituted by the President with one or more members as the President may deem fit. The prescriptions, thus, available in Section 16(1-B)(i)(ii) of the Act, 1986, according to the learned counsel for the petitioners, would mean that it is a Bench comprising of two members which will necessarily include the President which can exercise the jurisdiction vested in the State Commission and the President sitting alone cannot be permitted to exercise such jurisdiction of the Commission and, therefore, any order passed by the President sitting single will be erroneous and without any jurisdiction.

4. Learned Senior Advocate appearing for the petitioners in Writ Petition No. 28178 (MB) of 2017 has emphasized that if the provision of Sections 18, 14(2) and 16(1-B) are harmoniously construed, the position which would emerge is that the State Commission to exercise its jurisdiction vested in it under the Act, 1986 has to perform its functions through a Bench of two members of which the President is to be necessarily a part of.

5. Sir Jaideep Narain Mathur, learned Senior Advocate has stated that the word "with" occurring in Sub-section (ii) of Section 16(1-B) of Act, 1986 would mean the "President accompanied by one or more members". According to him the word "with" conjoins the words "President" and "one or more members" and accordingly, if the simplest meaning to such phrase occurring in Sub-section (ii) of Section 16(1-B) is given, that would mean a Bench comprising of the President and at least one member which will have the jurisdiction to exercise authority and powers of the State Commission under the Act, 1986. In support of his submissions, learned Senior Advocate, Sri Jaideep Narain Mathur, cited two judgments, firstly Delhi Development Authority Vs. Durga Chand Kaushish, reported in (1973) 2 Supreme Court Cases 825 and secondly, A.K. Raghumani Singh and others Vs. Gopal Chandra Nath and others, reported in (2000) 4

Supreme Court Cases 30. The relevant paragraphs as relied upon by Sri Jaideep Narain Mathur in the case of Delhi Development Authority (*supra*) are paragraphs 16 and 17, which are extracted herein below:

"16. The problem of interpreting the proviso was solved by the Division Bench largely by giving the word "with", used in it, one of its several meanings given in the, Webster's 3rd New International Dictionary. This was: "alongside of". We do not think that this meaning helps the respondent more, than the ordinary meaning suggested by the appellant which is also given there. It is: "inclusive of". Other meanings, possibly more helpful to the respondent, are: "(1) (a) in opposition to or against"; "(b) away from, so as to be separated or detached from". We are unable to say in what exact sense the word "with" was really used in the proviso. It is used to contrast and compare or oppose, by placing side by side, as well as to add up or include what is indicated as so, placed. In either case, if the "original term" were really to stand for the period of ninety years, the aggregation would carry us beyond ninety years and make the limitation to that period appear quite absurd. So, the meaning of "with" suggested by the appellant is also quite unhelpful.

17. The meaning of the word "with" generally gathered from the context and has to be considered in conjunction with word which precede and those which follow it. It is the exact meaning of the words "original term", as used in the proviso, which is far more important. It is not unlikely that the draftsman, due to an imperfect knowledge of a foreign language, which English is for us, used the expression in some special sense of his own. Its meaning could not, as pointed out above, be the initial term of ninety years, because, if that is added on to the periods of renewal of leases the total must obviously and necessarily exceed ninety years. Hence, we are compelled to resort to guesswork to make some sense out of the expression "original terms" as used in the proviso. It may be that the draftsman described the period of the first renewal as the "original term"; Or, perhaps he, used it to describe the actual period of a renewal as contrasted with subsequent or previous renewals. It is quite natural to restrict this expression used in the context of renewals to a term of a renewal. This would be a logical course to adopt as the whole of covenant 9 deals with renewal of leases. In any case, this is the only way in which we can make the proviso intelligible, and, therefore, unless the expression is discarded as incomprehensible or meaningless in the context, we have to read it in that sense".

6. Learned counsel for the petitioners has also placed reliance of paragraph 7 in the case of A.K. Raghmani Singh and others (*supra*), which is also extracted herein below: "7. The word "with" has been defined in the New Shorter Oxford Dictionary (1993), diversely the meaning depending on the context in which it is used. But when it is used to connect two nouns it means, "accompanied by; having as an addition or accompaniment. Frequently used to connect two nouns, in the sense "and"- "as well"."

7. It has further been argued by the learned counsel for the petitioners that Section 16 provides composition of the State Commission, according to which, it consists of a person who is or has been a Judge of a High Court, who shall be its President and such other members who shall be not less than two and shall not be less than of 35 years of age and possess a bachelor's degree and are persons of ability, integrity and standing and have knowledge and experience of at least ten years in dealing with the areas related to economics, law, commerce, accountancy industry, public affairs or administration. The submission, thus, is that apart from the President, other members are not from the judicial or legal background and since the Commission exercises judicial functions of adjudication of the complaints in relation of the deficiency in consumer disputes and services and hearing of appeals arising out of the orders passed by the District Forum, hence, there is rationale behind constitution of a Bench comprising of the President, who is the person of judicial background with one or more members. It has further been stated that Section 14 does not leave any room of doubt that it has to be a two members Bench. He has also taken the Court to the provision of Rule 7 (10) of the Uttar Pradesh Consumer Protection Rules, 1987 and has submitted that the said Rule prescribes that the orders of the State Commission shall be signed and dated by the members of the State Commission constituting the Bench and since in the said provision the word occurring is "Members" and not "Member", hence there has to be at least a two members Bench only then the functions of the State Commission can be appropriately and within the jurisdiction can be exercised. Sri Mathur has also referred to the Regulation 12 of the Consumer Protection Regulations, 2005 and has submitted that the said provision clearly answers the question that there has to be a Bench of at least two members which can transact the business of the State Commission entrusted to it under the Act and such jurisdiction, thus, cannot be exercised by the President or for that by any member of the State Commission sitting single.

8. Certain provisions which are relevant to be referred to for appropriate appreciation of the issue involved in this case, are the provisions of Section 14(2), 16(1-B) and Section 18 of the Consumer Protection Act, 1986. Section 14(2) of the Act is extracted herein below: "14(2). Every proceedings referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together".

According to Section 14(2), as afore-quoted, the proceedings of the District Forum shall be conducted by the President and at least one member thereof sitting together.

9. Section 18 of the Act, 1986 provides that the provision of Section 14 of Act, 1986 shall be applicable to the disposal of the matters by the State Commission with such modification as may be necessary. Section 18 of the Act, 1986 is extracted herein below:

"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."

Sub-section (i) of Section 16(1-B) provides the jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof. Sub-section (ii) of Section 16(1-B) provides that a Bench may be constituted by the President with one or more members as the President may deem fit. Section 16(1-B) (i)(ii) is also quoted hereunder:

"16(1-B)(i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit."

10. From a perusal of the afore-quoted provisions, what undisputedly emerges is that the jurisdiction of the State Commission is exercisable by its Benches and further that the Bench may be constituted by the President with one or more members which will be in the discretion of the President of the State Commission.

11. No doubt, Section 18 makes the provision of Section 14 applicable to the disposal of the matters by the State Commission, however, the applicability of Section 14 is not to be read in its entirety; rather its application to the proceeding to be drawn and conducted by the State Commission is circumscribed by "such modification as may be necessary".

12. Phrase "such modification as may be necessary" if read with the authority vested in the President of the State Commission under Section 16(1-B) (i)(ii) would mean that Sub-section (2) of Section 14 which provides the provision for conduct of the proceedings by the District Forum by the President and at least one member of the District Forum, can be modified by the President of the State Commission in its application to proceedings of the State Commission in exercise of his powers vested in him under Section 16 (1-B) (ii) of 1986 Act. As observed above, the application of Section 14(2) of the proceeding before the State Commission is always subject to the modification as may be necessary. The President of the State Commission in his discretion vested in him for constitution of Bench under Section 16(1-B) (ii) can take aid of the phrase "with such modification as may be necessary" occurring in Section 18 of the 1986 Act to deviate from sub-section (2) of Section 14 depending on the necessity.

13. Accordingly, we are of the considered opinion that the provision of sub-section (2) of Section 14 will have application to the proceeding before the State Commission subject to modification which may be deemed necessary by the President of the State Commission while he exercises his discretion for constitution of a Bench under Section 16(1-B)(ii) of the Act 1986. So far as the submission made by the learned counsel appearing for the petitioners that the occurrence of the word "with" in Section 16(1-B) (ii) of 1986 Act between the words "President" and "one or more members" would mean that the Bench has

to be necessarily comprised of President and any other member, is concerned, we may only state and observe that if this interpretation is accepted, a situation where the President of the Commission is absent for reasons whatsoever, it will be impossible for the State Commission to transact its business entrusted to it under 1986 Act. The construction sought to be given by the learned counsel for the petitioners to the said provision of the Act, 1986 are, thus, not acceptable.

14. The word "member" has been defined in Section 2(jj) of the Act, 1986, according to which member includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be. Thus, power of constitution of a Bench given to the President under Section 16(1-B) (ii) would mean that the President may constitute a Bench with only one member on it or with more than one members on the Bench. The word "with" has to be, thus, read in conjunction with word "Bench" occurring in Section 16(1-B) (ii) of 1986 Act to give the said provision the correct meaning so as to make the Commission functional even in absence of the President. There may be a situation where the President may not be available in the Commission on account of the vacancy in the office or for any other reason such as leave etc., and if the Bench has to be constituted comprising of the President and at least one member, as has been submitted by the learned counsel for the petitioners, in absence of the President, the entire function of the State Commission would come to a halt.

15. Dealing with such a situation, Hon'ble Supreme Court in the case of Gulzari Lal Agarwal Vs. Accounts Officer, reported in (1996) 10 Supreme Court Cases 590 has held that it could never be the intention of the Legislature to stall the functioning of the State Commission or render the State Commission non-functional in the absence of the President for the reason of either having not been appointed or if the President is on leave. Hon'ble Supreme Court in the said case has stated that the provisions of the Consumer Protection Act are to be construed harmoniously to promote the cause of the consumers under the Act and in case submission of learned counsel for the petitioners is accepted that every Bench of the State Commission has to comprise of at least a two members out of which the President has to be a necessarily a member, it will render the Commission non-functional, inasmuch as even in case of availability of more than one member apart from the President, no Bench except just one Bench comprising of President and another member will functional and then it will be a situation that many members of the Commission will sit idle and that cannot be the intention of the Legislature.

16. It is a common knowledge that the consumer disputes in the District Forums as well as State Commissions are increasing exponentially day by day with greater awareness amongst people about consumer rights and consumer protection laws.

17. Thus, the Legislature has provided for constitution of multi member Commission, however, it has also provided under Section 16(1-B) that the

jurisdiction, authority and powers of the State Commission will be exercised by the Bench or Benches to be constituted by the President of the State Commission. Thus, at a given point of time, there may be number of Benches comprising of single member which will include a Bench comprising of just the President or Benches comprising of more than one members with or without the President being on it.

18. In view of the aforesaid discussions, we are of the considered opinion that if the provisions of Section 14(2), 16(1- B) (i)(ii) and Section 18 of the Act, 1986 are read harmoniously, the legal position which emerges that it is the discretion of the President of the State Commission to constitute a Bench of one or more members. In other words, in terms of the provisions contained in Section 16(1- B) (i)(ii), the jurisdiction, powers and authority of the State Commission will be exercised by the Bench or Benches which may be constituted by the President comprising of single member or more than one member with or without the President being part of a Bench comprising of more than one member.

19. Purpose of Consumer Protection Act is to promote the cause of the consumers and provide for an effective mechanism for redressal of the consumers related grievances within a reasonable time. Accordingly, if this object is borne in mind, we have no option but to dis-agree with the submission made in this case by the learned counsel appearing for the petitioners. We thus, conclude that the jurisdiction, powers and authority of the State Commission may be exercised by the single member Bench to be constituted by the President and such Bench may comprise of the President himself alone.

20. In view of the discussions made herein above, we find these writ petitions to be completely devoid of any merit.

21. Resultantly, the writ petitions are hereby dismissed. However, in the facts of the case, parties will bear their own costs. Consequences to follow.