
(2018) 10 RAJ CK 0065

In the Rajasthan High Court

Case No : Civil Writ No. 1972, 5135, 2567, 5204, 3191, 4792, 5423, 5432, 5434? of 2012

Divisional Manager N.I.C. Ltd @APPELLANT@Hash Raj. State Cons. Disp. Red. Commi., & Ors

Date of Decision : 25-10-2018

Acts Referred:

Consumer Protection Act, 1986 — Section 2JJ, 2(p), 9, 10, 12, 13, 14, 14(2), 14(2A), 16, 16(1), 16(1B), 16(1B)(iii), 16(1)(b), 16(1)(b)(iii), 18, 22D

Citation : (2018) 10 RAJ CK 0065

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Anil Bhandari, Avinash Acharya, Vikas Phophaliya, Rajesh Choudhary, Deepak Kannojiya, Jagdish Vyas, M.R.Choudhary, Pradeep Sharma, M.L.Khatri, Sunil Joshi, Sonakshi Lohiya, Rajeev Kumar, P.R.Singh

Final Decision : Allowed

Judgement

In this bunch of writ petitions involving a common controversy, challenge is given to the orders passed by the State Consumer Disputes Redressal

Commission Rajasthan questioning the authority and jurisdiction of a single member of a State Consumer Commission to decide the appeals arising

from the orders passed by the District Consumer Redressal Forum.

The relevant provisions of The Consumer Protection Act which are germane for deciding the controversy presented in these writ petitions are noted

hereinbelow for the sake of ready reference:

â??Section 2(jj) ""member"" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case

may be;

Section 2(p) ""State Commission"" means a Consumer Disputes Redressal Commission established in a State under clause (b) of section 9;

Section 9. Establishment of Consumer Disputes Redressal Agencies. - There shall be established for the purposes of this Act, the following agencies, namely:â?

(a) â?|

(b) a Consumer Disputes Redressal Commission to be known as the ""State Commission"" established by the State Government in the State by

notification; and Section 10.(1) The Consumer Commission may summon any person to attend before the Consumer Commission in relation to an

investigation being conducted by it and to give evidence or to produce any document in his possession or under the control of such person.

(2) A summons under this section â?

(a) shall be in the form prescribed in the Second Schedule; and

(b) may be served by a constable, or a bailiff.

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 a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall

continue the proceeding from the stage at which it was last heard by the previous member.

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

proceeding:

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.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters shall

be such as may be prescribed by the State Government. Section 16. Composition of the State Commission. â?" (1) Each State Commission shall

consist ofâ?

(a) a person who is or has 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;

(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the

following qualifications, namely:—

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognised university;

and

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to

economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst persons having a judicial background.

Explanation. —" For the purposes of this clause, the expression "persons having judicial background" shall mean persons having knowledge and

experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment as a member if he—

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions

as a member; or

(f) has such other disqualifications as may be prescribed by the State Government.

(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of

the following members, namely:â?

- (i) President of the State Commission Chairman;
- (ii) Secretary of the Law Department of the State Member;

(iii) Secretary incharge of the Department dealing with Consumer Affairs in the State Member:

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection

Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(1B)(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.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority,

but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either

hear the point or points himself or refer the case for hearing on such point or points by one or more or the other members and such point or points shall

be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

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

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier,

subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section

(1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as the President or as a member, before the commencement of the

Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

Section 18. Procedure applicable to State Commissions.â?"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.

Section 22D. Vacancy in the Office of the President - When the office of President of a District Forum, State Commission, or of the National

Commission, as the case may be, is vacant or a person occupying such office is, by reason of absence or otherwise, unable to perform the duties of

his office, these shall be performed by the senior-most member of the District Forum, the State Commission or of the National Commission, as the

case may be:

Provided that where a retired Judge of a High Court is a member of the National Commission, such member or where the number of such members is

more than one, the senior-most person among such members, shall preside over the National Commission in the absence of President of that

Commission.â??

The impugned orders passed by the Circuit Bench of State Consumer Commission constituted of a single member are also assailed on merits but, this Court refrains from entertaining such challenge as statutory remedy of filing an appeal against these orders before the National Consumer

Commission is available to the petitioners.

Learned counsel representing the respective petitioners relied upon the Honâ??ble Supreme Court decisions in the cases of Gulzari Lal Agarwal Vs.

The Accounts Officer reported in JT 1996(9) SC 103, State of Karnataka Vs. Vishwabarathi House Building Coop. Society & Ors. reported in

I(2003) CPJ 1 (SC); the order dated 7.5.2018 passed in SLP (Civil) No.15804/2017 â??Rojer Mathew Vs. South Indian Bank

Limited & Ors.â? and the order dated 9.2.2018 passed in Writ Petition (Civil) No.279/2017 â??Kudrat Sandhu Vs. Union of India & Anr.â?, and

vehemently urged that the procedure applicable to the composition and functioning of a District Forum is mutatis mutandis applicable to the State

Commission. They submitted that as per the definition clause Section 2(jj) of the Act, member includes the President. Referring to Section 18 of the

Act, they argued that Sections 12, 13 and 14 which lay down the procedure for disposal of complaints by District Forum are applicable as such to the

procedure and composition of the State Commission. They further urged that Section 18 allows for necessary modifications in the procedure to be

adopted by the State Commission, but such modifications would never permit dilution of the composition of the Commission because the same would

amount to doing violence with the core of the statute and cause interference with the jurisdictional matrix. Referring to Sections 14(2) and 14(2A),

learned counsel urged that these two provisions mandate that every proceeding of a District Forum must be conducted by the President of the District

Forum and at least one member thereof sitting together. By virtue of Section 14(2A), every order made by the District Forum is mandatorily required

to be signed by the President and the member/members, who conducted such proceedings. They contended that as these two provisions are applicable

verbatim to the proceedings of the State Commission, there is no escape from the consequence that for the State Commission to pass a lawful order in

the letter and spirit of the statutory provisions, the bench of the Commission

must be comprised by at least two members of which one may be the President. They contended that if the Commission's Bench is constituted of a single member, then the order signed by such member would have no sanctity in the eye of law and would rather amount to a nullity. They further urged that the amended provision for constitution of Benches which was introduced vide amendment Section 16(1)(b) of the Act in the year 2002, has to be read as the modification referred to in Section 18 of the Act.

They relied upon ratio of Hon'ble the Supreme Court's decisions in the cases of *Gulzari Lal Agrawal and State of Karnataka vs. Vishwabarathi House Building Coop. Society* (supra) wherein, it was held that every proceeding under Section 14(2) read with Section 18 must be conducted by the President of the District Forum/State Commission and at least one member thereof sitting together. They emphasized on the literal meaning of the statute and contended that even as per the scheme of Section 16(1)(b) of the Act whereunder the concept of Benches of the State Commission was introduced, a Bench must be constituted by the President "with" one or more members as the President may deem fit. As per them, if the legislature contemplated a bench constituted by a single member, the word "of" would have been used instead of "with" (emphasis supplied).

They urged that Section 16(1)(b)(iii) of the Act contemplates a possible difference of opinion amongst members of the Bench in which situation, the point in question is required to be decided as per the majority opinion. However, in case, the members are equally divided, the matter has to be referred to the President, who in turn, may hear the point or points himself or refer the same to another member for deciding the same. They contended that if a single member decides the appeal, then the very possibility of difference in opinion would be totally eliminated thereby making the provision redundant. They fervently canvassed that as per Sections 14(2) and 14(2A) of the Act, any order passed by the District Forum which is subject to appeal before the State Commission, has to be delivered under the signature of the President and one member and as a corollary, for a lawful order to be passed by the State Commission or its bench, it must bear signatures of at least two members. They further contended that while the President of the Commission is an Officer in the rank of District Judge; either sitting or retired, the single member of the State Commission can

even be a person having a simple Bachelors Degree from a recognized university. They urged that in all fairness, a just decision in the Scheme of the Consumer Protection Act does not contemplate that a decision rendered by a District Consumer Forum constituted at least by two members of which one is an Officer in the rank of District Judge may be reversed by single member of the State Commission, who could be a qualified graduate having no formal education in law. They contended that if such a situation is allowed to prevail, it would lead to travesty of justice. They further urged that the Hon'ble Supreme Court is already contemplating reinforcing and revitalizing the entire Tribunalization system in the cases of Rojer Mathew and Kudrat Sandhu (supra) and extensive directions have been given to the government to fill all vacancies existing in various Tribunals and thus the State Government should be mandated to ensure that the benches of the State Commission function at full strength. On these grounds, they implored the Court to exercise its extraordinary writ jurisdiction and quash the impugned orders as being null and void on the ground that the concerned Benches of the State Commission were not constituted strictly in accordance with law and the orders under challenge having been passed by a single member are without jurisdiction.

Per contra, learned counsel representing the respective respondents, vehemently opposed the submissions advanced by the petitioners's counsel.

They relied upon the decisions in Smt.Shakuntala Yadav Vs. State of Haryana & Anr.(rendered by Hon'ble Punjab & Haryana High Court in

CWP No.2077/2009), The New India Assurance Co.Ltd. & Ors. Vs. M/s.Bhagwandas Vyapar Udyog Ltd. & Anr. (rendered by Hon'ble

Calcutta High Court in C.O.No.711/2014) and Swapan Chattopadhyay & Ors. Vs. Mr.Aditya Mukherjee (Developer) M/s.Solace Management

Consultancy Services (P) Ltd. (passed by Hon'ble Calcutta High Court in C.O.No.3048/2017) and contended that a literal interpretation of the

provision relating to constitution of Benches i.e. 16(1)(b)(ii) of the Act would clearly indicate that a Bench may be constituted by the President with

one or more members as the President may deem fit. They urged that as the principal provision gives discretion to the President of the State

Commission to constitute a Bench of either one or more members, the appeal can be lawfully decided by a Bench formed of a single member and

there cannot be any insistence that the Bench must be comprised by two or more members. They urged that if the view as sought for by the

petitioners is taken, it would amount misinterpretation and doing violence with the language of the statute. They further contended that two High

Courts i.e.

Punjab as well as Calcutta High Court have undertaken expansive and wholesome evaluation of the scheme of the Act and reached to the logical

conclusion that a Bench of the State Commission can lawfully be comprised of one or more members. As per the learned counsel for the respondents,

there is no reason to differ with the conclusive and affirmative view taken by various High Courts on this important aspect of interpretation of statute.

They further urged that merely because the procedure of the State Commission is to be generally guided by the provisions of Sections 12, 13 and 14

which relate to the disposal of complaints by the District Forum, that by itself, would not imply that the composition of Benches of the State

Commission would also be governed by these provisions. As per them, there is no concept of benches of the District Forums and thus, while

evaluating this proposition, the situation has to be assessed distinctly and no analogy can be drawn from the provisions governing the procedure

applicable to the District Forums. They contended that Section 18 allows for modifications in the procedure which is left to the discretion of the State

Commission which has the discretion to form a Bench of a single member. They also contended that for mutating the composition of a Bench is

exclusively within the domain of the President of the Commission and as the amended Section 16(1) (b)(ii) empowers the President to constitute a

Bench of one or more members, there should not be any difficulty in concluding that the Bench can be lawfully constituted even by a single member.

On these grounds, they implored the Court to reject all the writ petitions. They also contended that the petitioners if they so desire, could have

challenged the orders passed by the single member Bench of the State Commission by filing appeals before the National Commission and hence, the

writ petitions are not maintainable and should be dismissed on this ground alone.

I have given my thoughtful consideration to the arguments advanced at the bar and have gone through the material available on record and

appreciated the precedents cited at Bar.

Superficially, the controversy is squarely covered by the Hon'ble Supreme Court's decision in the case of Gulzari Lal Agarwal Vs. The Accounts

Officer (supra) wherein it was held :

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 require that every proceeding referred to under sub-section

(1) shall be conducted by the President of the District Forum/State Commission and atleast 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 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).â??

Hon'ble Supreme Court has categorically laid down that the conjoint reading of sub section (2) of Section 14 read with Section)

18 of the Act requires that the proceedings shall be conducted by the President of the District Forum/State Commission and at least one member

thereof sitting together. Thus viewed outwardly, in light of the above observations made by Honâ??ble the Supreme Court, there remains hardly any

scope for deviation from the conclusion that the State Commission must be comprised by the President and at least one member thereof sitting

together. However, controversy on this aspect has arisen with the amendment introduced in Section 16 of the Act of 1986 in the year 2002 whereby

President of the State Commission has been conferred the discretion to constitute one or more Benches of the Commission. Previously, there was no

provision for constitution of the benches of the State Commission. Composition of the Bench is unquestionably within the exclusive domain of the

President as per Section 16(1B) of the Act. Section 16(1) of the Act of 1986, stipulates that the State Government shall constitute the State

Commission which shall consist of a President, who is or has been a Judge of the High Court and not less than two and not more than such number of persons as may be prescribed. Thus, composition of the State Commission for deciding the appeals would mandatorily require the presence of the President and two members appointed under the Act at the seat of the Commission. The fact that the State Commission's bench too cannot function without there being at least two members, (one of whom may be the President) is clearly spelt out from a straight line holistic reading of Section 16(1B)(iii) which contemplates a situation of difference in opinion, on single or more issues amongst the members of the Bench while deciding a matter and reference thereof to be resolved by either the President or another member. Difference in opinion is not contemplated in the decisions rendered by the State Commission which is mandatorily required to be constituted of three persons including the President and thus, the majority opinion would prevail. There are various other indicators in the Act for coming to the conclusion that the bench must be constituted by two or more members. As per Sections 14(2) and 14(2A) of the Act, every proceeding of the District Forum has to be conducted by the President and at least one member thereof sitting together. Sub-clause 14(2A) makes it abundantly clear that the order of the District Forum has to be signed by the President and the member/members, who conducted the proceedings. Proviso to Section 14(2A) of the Act foresees difference in opinion amongst the President and one member on any point or points and the reference thereof to the another member for hearing on such point. Section 18 of the Act puts it beyond pale of doubt that the provisions of Sections 12, 13 and 14 providing the procedure for disposal of complaints by the District Forum, would be mutatis mutandis applicable to the procedure applicable for disposal of appeals by the State Commission. From a logical analysis of the provisions referred to supra, the only visible and marked difference in procedure applicable to the District Forums and the State Commission is available in Section 16(1B) which allows for constitution of Benches whereas, Bench of a District Forum is not contemplated under the Act. Learned counsel for the respondents were put pertinent queries by the Court regarding any manifest statutory modification brought around (by way of rules/notifications etc.) in the procedure of the State Forum in context of Section 18 of the Act apart from the provision to constitute Benches. No

other significant modification in procedure could be pointed out by them. As a result, it can safely be concluded that the only modification which has been introduced in the procedure applicable to the State Commissions vis-a-vis the District Forum is that the State Commission has been empowered to constitute and function in Benches as well. However, the composition of a Bench would indisputably be governed by Section 14 of the Act because no dilution has been allowed on this aspect in the entire scheme of the Act. Section 14(2A) of the Act makes it abundantly clear that every order made by the District Forum (which would mutatis mutandis apply to the State Commission in view of Section 18 of the Act) shall be signed by the President and the member/members who conducted the proceedings. The Act does not contemplate an order signed by the President or a single member in case of the District Forum and a consequently of the State Commission or its Benches as well. The two High Court judgments in the cases of Shankuntala Yadav and Bhagwandas Vyapar Udhyog Ltd. (supra) though do refer to the Supreme Court decision in the case of Gulzari Lal Agarwal but manifestly, in neither of these cases was this issue elaborated or considered. The observation made by the Calcutta High Court in the judgment of Bhagwandas Vyapar Udhyog Ltd. (supra) is reproduced hereinbelow :

“The order impugned before me is passed by a single member of the State Commission. The question, therefore, coming up for consideration is whether a single member of the State Commission can hear an appeal and pass an order thereon. Bereft of the niceties of law the question can be answered, in the instant case, by the two Office Orders of the State Consumer Disputes Redressal Commission. I, therefore, propose not to consider the question as to whether the provisions of the Consumer Protection Act, 1986 permits constitution of a single member bench of the State Commission to hear an appeal and pass an order thereon in this revisional application.”

These observations clearly indicate that the issue was not decided and was left open. The plea put forth by learned counsel for the petitioners that if a single member of the Commission decides the appeals, the possible difference in opinion contemplated by Section 16(1B)(iii) would never arise, is not without merit. Since the scheme of the Act contemplates a scenario of difference of opinion amongst two members of the State Commission or the

District Forum as the case may be and resolution thereof by the third member, manifestly, this provision cannot be allowed to be whittled away or

diluted by permitting a single member to hear and decide the appeals.

The other significant argument raised by learned counsel for the petitioners regarding possibility of the order passed by the District Forum comprised

of a District Judge (sitting or retired) and two members being overturned by a Single Member Bench of the State Commission comprised by a person,

who can be a simple graduate also appeals to logic. In all fairness, it is incomprehensible that an order passed by the District Forum comprised of an

Officer in the rank of District Judge and two members sitting together could be upturned by a Single Bench of the State Commission in appeal. The

situation if allowed to prevail would be totally undesirable and would be nothing short of travesty of justice. Thus also, there is no logic or rational

behind the argument of the respondentsâ?? counsel that the Bench of the State Commission can be constituted by a Single Member.

Hence, this Court has no hesitation in holding that a Bench of the State Consumer Commission cannot be constituted by a single member and that the

same must be comprised of the President and at least one member thereof. In reference to Section 2(jj) of the Act, it is clarified that the word

â??Presidentâ? as appearing in the Act, shall always be referred as including a member except where, the jurisdiction of constituting the Bench is to

be exercised. The said power is with the President who being the â??head of the institutionâ? has the exclusive administrative power to decide the

composition of the bench.

After the judgment had been reserved, the learned AAG submitted an additional affidavit 28.9.2018 with an office order dated 23.4.2013 issued by the

President of the National Commission. Upon this, the matters were reheard. The office order on which Shri Singh relied upon reads as below:

â??No.A20(Maharashtra)/NCDRC/2013 23rd April, 2013

OFFICE ORDER

A reference through D.O.No.SC//Mah/13/23 dated 2nd April, 2013 has been received from the President, State Commission Maharashtra regarding

seniority of the Members & Benches to be presided over at the State Commission level particularly when a judicial Member is junior in senior.

There is no provision in the Consumer Protection Act, 1986 as to who would

preside over the additional benches/circuit bench at the State

Commission level akin to Section 22 D of the Consumer Protection Act, 1986.

To liquidate the pendency of cases, the additional/circuit benches have been created at the State Commission level vesting the power with the

President of the State Commission under Section 16(1)(b)(ii) of the Consumer Protection Act, 1986 to constitute the Benches, which reads as under:-

“A Bench may be constituted by the President with one or more members as the President may deem fit.”

Accordingly, in exercise of power conferred under Section 24 (B(1)(ii) & (iii)) vested with, the National Commission, the President of all the State

Commissions wherever the additional/circuit benches are functional, may constitute the bench authorising the judicial member to preside over the

additional/circuit bench regardless of his inter Superintending Engineer seniority amongst the Members of the State Commission by exercising the

power under Section 16(1)(b)(ii)(supra).”

Though the said office order cannot be construed as having any precedential value but even if it is considered as such, then also, there is nothing in the

order which suggests that the Bench of State Commission may be constituted by a single member. The office order simply conveys that wherever

additional/circuit of the State Commissions are functional, the President may constitute the Bench authorising the judicial member to proceed

regardless of his inter-se seniority amongst the members of the State Commission. Thus, the office order merely postulates that the judicial member

shall preside over the Bench irrespective of the inter-se seniority amongst the members of the State Commission. Rather this Court is of the opinion

that had the National Commission intended that a Bench of the Commission can be comprised of a single member, then a specific clarification would

have been offered in this office order itself. Therefore, the office order is also of no help in deciding the issue raised before this Court in this bunch of

writ petitions.

As, it has been concluded by this Court that for lawful decision of the cases (appeals or original complaints, as the case may be), the Bench/Benches

of the State Commission must be constituted by at least two members of the Commission one of whom may be the President, manifestly, the orders

passed by the single member of the State Commission which are assailed in

these writ petitions are without jurisdiction and hence, the same cannot be sustained and are thus quashed and set aside. The matters are remanded to the State Commission, who shall either by itself or through properly constituted Benches, ensure fresh expeditious disposal of the appeals after providing opportunity of hearing to all concerned. The decision on remand shall be made without being influenced by the previous orders.

However, it is made clear that this verdict will not have any retrospective application considering the fact that such a view may result into a chaotic situation because this Court is apprised that large number of appeals had been decided by single member Benches and the orders have already been complied.

The State Government is directed to ensure that the vacancies existing in the State Consumer Commission and the District Forums are filled up immediately so as to ensure expeditious disposal of the appeals/complaints. The learned AAG shall submit the status report in this regard within next three months.

The writ petitions are allowed in these terms.

No order as to costs.

A copy of this order be placed in each file.

List on 31.1.2019 for receiving the compliance report.