
(2006) 07 KL CK 0082
In the High Court Of Kerala
Case No : O.P. No. 19405 of 2000

Fon-ESS India Private Ltd.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 12(3), 13, 13(2), 13(3A)

Citation : AIR 2006 Ker 319 : (2006) 4 CivCC 61 : (2006) 3 ILR (Ker) 455 : (2006) 2 KLJ 765 : (2006) 3 KLT 500

Hon'ble Judges : Kurian Joseph, J

Bench : Single Bench

Advocate : Pramod J. Dev, for the Appellant; P. Vijaya Bhanu, Mini John Paremalil, Benoy Thomas and Santhosh (Amicus Curiae), for the Respondent

Judgement

Kurian Joseph, J.—Whether a complaint/appeal under the provisions of the Consumer Protection Act, 1986 requires formal admission before the District Forum/State Commission is the main issue raised in this writ petition. Related issues on the procedure to be adopted by the Forum/Commission are also to be considered. The Consumer Protection Act 1986 has been enacted ".....to provide for better protection of the interest of consumers and for that purpose to make provisions for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith". It needs no elaborate discussion to hold that it is a benevolent piece of legislation intended to protect the interests of the consumers. There are three forums under the Act, the District, State and National. Complainant is defined at Section 2(b), complaint at Section 2(c) and consumer at 2(d) of the Act. Consumer dispute is defined at Section 2(e) as meaning ".....a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint." Therefore, in order to maintain a cause before the forums three ingredients are necessary: (1) there must be a complaint; (2) complaint must be by a complainant; and (3) there must be a consumer dispute.

2. Section 12(3) and (4) of the Act provide as follows:-

12(3) On receipt of a complaint made under sub-section (1), the District Forum may, by order, allow the complaint to be proceeded with or rejected:

Provided that a complaint shall not be rejected under this sub-section unless an opportunity of being heard has been given to the complainant:

Provided further that the admissibility of the complaint shall ordinarily be decided within twenty-one days from the date on which the complaint was received.

(4) Where a complaint is allowed to be proceeded with under sub-section (3), the District Forum may proceed with the complaint in the manner provided under this Act.

Provided that where a complaint has been admitted by the District Forum, it shall not be transferred to any other Court or Tribunal or any authority set up by or under any other law for the time being in force.

Section 13 provides for the procedure on admission of complaint. Section 13(2) reads as follows:-

13(2). The District Forum shall, if a complaint admitted by it u/s 12 relates to goods in respect of which the procedure specified in Sub-section (1) cannot be followed,.....

The above procedure is generally made applicable to State and National Commissions as per Sections 18 and 22 respectively. Thus under the scheme of the Act, the District Forum and the State or National Commission, on receipt of a complaint has to have a preliminary hearing as to whether the complaint requires admission, whether the complaint is frivolous or vexatious and whether the complaint is otherwise maintainable. That has to be decided, ordinarily within twenty-one days of the filing of the complaint. u/s 26, frivolous complaints are to be dismissed with costs. This provision reads as follows:-

26. Dismissal of frivolous or vexatious complaints.- Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost not exceeding ten thousand rupees, as may be specified in the order.

This safeguard is provided so that the consumers may avoid ill-advised misadventures of taking up every deficiency in service or dissatisfaction as to the goods before the forums under the Act. The provision is also intended to avoid unnecessary litigation and to prevent the abuse of process of the forums. The opposite parties, in case the complaint is otherwise frivolous or vexatious shall not be unnecessarily called before the forums, lest the traders or service providers should face unnecessary harassment in the form of litigation. Therefore, the District Forums and the State/National Commission under the Consumer

Protection Act, 1986 have a statutory obligation to have a preliminary screening as to whether the complaint filed before them is maintainable. The only stipulation is that the complaint shall not be rejected unless an opportunity for being heard is given to the complainant. The Act intends for granting of relief in the minimum required time and therefore only meritorious matters are to be entertained.

3. The situation is not different as far as the admission of appeals before the State/National Commission. From the very expression used u/s 19A it is clear that appeals require admission. All the reasons stated herein above with regard to the screening of frivolous and vexatious complaints would apply to the case of appeals also.

4. The three provisos u/s 13(3A) give a clear indication on the scrupulous approach to be made by the Forum/Commissions in the matter of adjournment. The first proviso states that there shall not be any adjournment ordinarily and in case any adjournment is to be given sufficient reasons for the same shall be recorded in writing. The second proviso mandates the grant of costs to the opposite party in the event of avoidable adjournments and the 3rd proviso mandates that in case the complaint is disposed of beyond the prescribed period, reason for the delay should be recorded in writing. Section 13(3A) provides that endeavour should be made to decide the complaint within a period of three months from the date of receipt of notice by the opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities. The provision reads as follows:-

13(3A). Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months, if it requires analysis or testing of commodities.

Section 19A provides for the procedure in the matter of disposal of appeals which reads as follows:-

19A. Hearing of appeal. An appeal filed before the State Commission or the National Commission shall be heard as expeditiously as possible and an endeavour shall be made to finally dispose of the appeal within a period of ninety days from the date of its admission.

It is clear from the Scheme that the legislature has intended expeditious disposal of the disputes. Even otherwise the very object establishment of Tribunals or such alternate redressal forums is expeditious settlement of disputes. The Consumer Protection Act, 1986 is a piece of legislation where the procedure with regard to expeditious disposal of the cases and appeals has been meticulously prescribed. Not only that endeavour should be made to dispose of cases in time, in the unlikely event of the delay beyond the prescribed period the District Forum

or the State/National Commission, as the case may be, both in the case of disputes and appeals are to state reasons for the delay, if any, in keeping the schedule. Even for the adjournment reasons are to be recorded in the proceedings. Provision for costs to the opposite party is also made in the Act.

In the above circumstances this writ petition is disposed of as follows:-

(1) Admission of a complaint before the District Forum or the State/National Commission and appeal before the Commission under the Consumer Protection Act, 1986 is not automatic. The Forum and the Commissions have to consider whether the complaint/appeal requires admission, as to whether it is frivolous or vexatious. The maintainability has to be considered before admitting the complaint/appeal and issuing notice to the opposite party.

(2) The District Forum or the Commissions shall not reject a complaint/appeal unless an opportunity of being heard has been given to the complainant/appellant.

(3) A decision as to the admissibility of the complaint/appeal shall be taken by the Forum/Commission ordinarily within 21 days of the filing.

(4) Every complaint before the District Forum/State Commission shall be decided within three months from the date of receipt of notice by the opposite party where the complaint does not require analysis or testing of commodities and within five months if the same requires analysis or testing of commodities.

(5) The District Forum and State Commission in the unlikely event of delay beyond the period specified above shall record in writing the reasons for the delay.

(6) No adjournment shall ordinarily be granted by the District Forum or the State Commission unless there is sufficient cause. In case the matter is adjourned sufficient cause for the adjournment is to be reflected in the order of adjournment.

(7) The Forum and the Commission should also consider the entitlement of costs to the opposite party on any adjournment.

(8) The State Commission shall ordinarily dispose of the appeal within 90 days of its admission.

(9) The Commission shall not ordinarily grant any adjournment in the matter of hearing of appeals unless there is sufficient cause. That sufficient cause should be shown in the order of adjournment. The entitlement of the opposite party for costs should also be considered by the Commission. In the unlikely event of an appeal being disposed of after three months of the admission, the State Commission shall record the reasons for the delay in disposing the appeal.