

(1989) 12 NCDRC CK 0002

In the National Consumer Disputes Redressal Commission

ISHVARLAL JINABHAI DESAI

APPELLANT

Vs

SKYPAK INTERNATIONAL COURIERS

RESPONDENT

Date of Decision : 27-12-1989

Acts Referred:

Citation : 1991 2 CPJ 478 : 1991 2 CPR 182

Hon'ble Judges : S.A.Shah J.

Final Decision : Ordered accordingly

Judgement

1. THIS appeal came up for hearing on November 27, 1989. While hearing the arguments of the appellant, we pointed out to the parties that Mr. Manoharsinhji Jadeja, who is appointed as one of the Members of the State Commission, is not attending the Commission because he has not accepted the appointment. In these circumstances we raised a question whether the Commission can hear and decide a complaint or an appeal in absence of the third Member. We asked the parties and the intervener to address us on this point though nobody on behalf of the respondents was appearing.

2. THE respondents had not appeared before the District Forum also and this being an important question of law, we considered it proper to adjourn the matter to give one more chance to the respondents as well as the appellant and the intervener to prepare them on the question of law raised by us. THE matter was, therefore, adjourned to December 14, 1989. We also decided to issue notice to the Government to hear the Government's view on this preliminary point since the issue was an issue of jurisdiction. On December 14, 1989, Mr. R.K. Solanki, Deputy Director, Food and Civil Supplies Department, appeared on behalf of the Government and gave an application praying for adjournment since the Department had referred the question to the Legal Department of the Government for their opinion which was not received by them. Similarly, one of the respondents also appeared and he also asked for adjournment. Mr. I.J. Desai, the appellant, objected to granting of time since he had come second time to argue the matter. In the circumstances we heard the arguments of Mr. Desai on

the preliminary point as well as on the merits of the matter. The appellant had also given application for allowing him production of additional documents. The arguments of the appellant as well as the intervener were heard and the case was adjourned for hearing arguments of the Government and the respondents. In the order passed on the application for adjournment filed on behalf of the Government, it was clearly stated : "sufficient time was at the disposal of the Government to consider a very small legal point to considering the importance of the issue and that the Commission is not able to function and decide the cases without deciding this issue, any time taken by the Government will delay the proceedings, we are therefore, constrained to grant time and adjourn the matter on observing that no further adjournment shall in any case be granted either to the Government or any of the parties of which the parties may take note of.

Today, i.e. on December 27, 1989, neither the officer of the Government nor the Government pleader has appeared to make any submission though the Government had taken time for that purpose. Mr. Bhatt, learned advocate appearing for the respondents submitted that if the vacancy is created on account of unwillingness to be appointed by the Member, the two Members (including the President) can hear and decide the pending cases. He also requested that the preliminary point may first be decided. We, therefore, thought fit to decide the preliminary issue first.

3. THE preamble of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act") states that this is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. THE Act has come into force on December 24, 1986 which amongst other things provides a cheap, speedy and efficacious remedy to the consumers in respect of defective goods as well as deficiency in service. Service includes banking, financing, insurance, transport, processing, supply of electrical or other agency, board or lodging or both, entertainment, amusement or the purveying a news or other information. In short service of any description which is made available to potential users. Under the Act, three redressal agencies are to be established, namely, National Consumer Disputes Redressal Commission at the Centre, State Commission in each State and District Forum at district level. It is very well-known to us on account of high inflation and scarcity of goods there is a sellers' market and consumers are suffering since long and to give the consumers protection in respect of the goods as well as services, by way of cheap remedy, the Act has been enacted.

4. IT may be also noted that persons who are either sitting Judge or retired Judge of the Supreme Court can only be appointed as President of the National Commission and Sitting or retired Judges of the High Court at the State level and sitting or retired District Judges or persons qualified to be appointed as District Judges can only be appointed as President of the District Forum and Members of

these agencies should also possess prescribed qualifications. Section 9 of the Act, so far relevant for the purposes of this order, reads as under : - "9. Establishment of Consumer Disputes Redressal Agencies - There shall be established for the purpose of this Act, the following agencies namely : - (a) Xxx xxx xxx (b) a Consumer Disputes Redressal Commission to be known as the "State Government with the prior approval of the Central Government in the State by notification; and (c) Xxx xxx xxx". The State Government, in exercise of the powers conferred by Clause (b) of Section 9 read with sub-section (1) of Section 16 of the Act issued notification dated March 16, 1989 established a "Consumer Disputes Redressal Commission" to be known as the "State Commission" consisting of the following members : (1) Hon"ble Justice Shri S.A. Shah, as President, (2) Shri Manoharsinhji Jadeja, as Member and Kum. Lilaben Trivedi, as Member. Plain reading of the Notification clearly shows that the Government has exercised power under clause (b) of Section 9 and has established "State Commission". The President appointed by the Government is a retired Judge of the High Court and two members appointed are possessing the qualifications prescribed in Section 16(1)(b) of the Act out of which one is a woman. To my opinion, on publication of the Notification, the establishment of the Commission is complete. The President and the Members appointed are qualified persons and, therefore, there is no infirmity in the establishment of the Commission. The Commission is, therefore, legally established.

5. HOWEVER, Mr. Manoharsinhji Jadeja, one of the members has not taken charge as a Member of the Commission though he has sent to me a copy of the letter addressed by him to the Government therein, thanking the Government for nominating him and has shown surprise as to why a consent letter was not taken from him prior to his nomination. He has stated that he has heavy responsibilities as the Chairman of the G.I.D.C. and that he will not be in a position to do justice as a Member of the State Commission. This letter of Mr. Jadeja is not very clear to the point whether he is accepting the appointment or not though according to him a consent letter was not taken from him. At this juncture it is not necessary to enter into minor details as to whether this letter would amount to not accepting the appointment or resignation. But one thing is certain that he has not taken charge and is not attending the office of the Commission. It can, therefore, be said that he is unwilling to act as a Member of the Commission.

6. THE State Government has framed rules in exercise of the powers conferred by sub section (2) of Section 30 of the Act which are called "THE Gujarat Consumer Protection Rules, 1988" (hereinafter referred to as "the Rules"). Relevant parts of three rules which are important are reproduced hereunder : - "7(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."

"8(4) Sitting of the State Commission, as and when necessary, shall be convened

by the President".

(5) No act or proceeding of the State Commission shall be invalid by reason only of the existence of any vacancy among its members or any defect in its Constitution". (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". Rule 7(8) deals with vacancy caused by resignation and/or removal of the President or any other member of the State Commission. It is possible to argue that the vacancy envisaged by this Rule is vacancy caused by resignation and removal and in that case the word "and" shall have to be read as "or". It is the rule of construction that as far as possible the various enactments have to be read in harmony with others. Every statute has to be construed as a whole and the construction given should be harmonious one (See : A.I.R. 1970 S.C. 173). It is the cardinal principle of interpretation of statute that no part of statute is treated as superfluous and redundant and every provision must be given its due meaning and weight so far as possible. If two provisions of the same statute are in conflict with each other, an attempt has to be made to reconcile them so as to give effect to each one of them as far as possible. Now, this rule of construction of statutes would also be equally applicable to the interpretation of statutory rules. In Rule 7(8) vacancy caused by resignation and removal is only illustrative because the vacancy might arise not only by resignation or removal but also may arise on account of death, expiry of the term of office or on account of non-joining the post. In all these cases, the Government has to make fresh appointment. Again the words "or otherwise" normally suggest that the two contingencies referred to therein are only illustrative and vacancy may also occur otherwise than by resignation or removal. THEREfore, Rule 7(8) can be applied to every vacancy to which a fresh appointment is required to be made. Now, suppose there is vacancy, the question arises whether two members of the Commission can proceed with the complaint or appeal. Rule 8(5) is a clear answer to such situation which is a provision made with a view to removing any bottleneck that may arise in the functioning of the Commission.

It may be noted here that the State Commission was established on March 16, 1989 and three members including the President were appointed on the same date. One of the members, Mr. Jadeja, appears to have sent his letter dtd. April 1, 1989 as referred to hereinabove. About eight months and 26 days have passed and we have not still heard of any fresh appointment in his place. Neither the Department nor the Government pleader has turned up to disclose facts or to assist the Commission inspite of notice and time granted for that purpose. The question, therefore, that arises is as to whether a Commission duly appointed under the mandate of Section 9 of the Act will cease its functions only because one of the members does not take charge and the vacancy is not filled in by the State Government? To my opinion, Rule 8(5) specifically takes care of such a situation and enjoins upon the Commission not to stop functioning by reason only of the existence of any vacancy amongst its members or any defect in its

constitution. Again Rule 8(10) supports this view inasmuch as the bench constituting the Commission can sign orders of the State Commission. Reading of Rules 7(8), 8(5) and 8(10) together, leaves no doubt in our mind that on account of any vacancy either in the post of the President or one of the members, the functioning of the Commission shall not cease but the Commission can function and decide cases in accordance with law.

7. IT would be advantageous here to refer to similar cases though not exactly parallel (Before the Monopolies and Restrictive Trade Practices Commission hereinafter referred to as "MRTP Commission"). M.R.T.P. Commission is established under Section 5 of the M.R.T.P. Act which consists of a Chairman and not less than two and not more than eight members to be appointed by the Central Government. Their function is also a quasi-judicial function and the Chairman of the Commission must be a person who is or has been or is qualified to be Judge of the Supreme Court or of a High Court and the members thereof shall be of prescribed qualifications. One of the provisions of the Act (Section 6(4) similar to Rule 8(5) of the Rules which reads as under - "6(4) No act or proceeding of the Commission shall be invalid by reason only of existence of any vacancy among its member or any defect in the Constitution thereof. It so happened on several occasions that the Commission consisted of either only one member or the Chairman and one member. In those cases, the parties to the inquiry pointed out to the Commission that the Commission was not properly constituted and thus was not competent to conduct the inquiry. Cases in which such question arose were. Avery India Ltd. (MTP Inq. No. 1 of 1975), Delhi Pipe Dealers' Association v. Indian Tube Co. and Others. (Inquiry 1A of 1974) and Graphite India Ltd. (RTP Inq. No. 32 of 1974). The Commission appears to have interpreted Sec. 6(4) and stated that, that provision provides that no act or proceeding of the Commission shall be invalid by reason only of the existence of any vacancy or defect in the Constitution thereof. It is, therefore, clear that according to the statute there is to be no vacuum just because there is depletion in the strength of the members or just because the Chairman has retired and there is an interval between the retirement of the old chairman and the appointment of the new one. A similar question arose before the Calcutta High Court in the case of Bengal Potteries Ltd. and another v. M.R.T.P. Commission (45 Company Cases 697). In the said case the situation which arose was that one of the two members had relinquished charge of the Commission and it consisted of the Chairman and only one member. Relying upon the provisions of Section 6(4) the Court observed : - "The Legislature could be possibly have intended that the proceedings under the Monopolies Act should be kept in abeyance or that there should be a complete stand still in its working just because either the Chairman and/or one of its members is not available. The legislation aimed at preventing the concentration of economic power to the common detriment which would not be put in cold storage for administrative exigencies of this kind".

It may be noted that in M.R.T.P. Act, minimum requirement of Chairman and two members is mandatory. But if one person resigns or is not available, the

Chairman and one member can proceed with the inquiry and not stop functioning merely because Government takes time to appoint a member. Once the Commission is established, its functions cannot be stopped on account of vacancy or defect in the Constitution.

8. IN the instant case, the statute gives power to the State Government to prescribe procedure and the State Government having prescribed procedure by the Rules and having made a specific provision that the Commission will not stop its functions on account of vacancy or defect in the Constitution, it leaves no doubt that the Commission will not cease to function on account of vacancy created by Mr. Jadeja not joining as a member. We, therefore, hold that the two members of the Commission can hear complaints and appeal and decide them in accordance with law. It is regrettable that the State Government has neither put up its view point or has rendered any assistance to the State Commission. Ordered accordingly.