

(2014) 07 KL CK 0098

In the High Court Of Kerala

Case No : Writ Appeal Nos. 488 of 2013 and 25 of 2014

Jose

APPELLANT

Vs

Aby

RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Consumer Protection Act, 1986 — Section 12, 12(1B), 13, 14, 14(2)

Citation : (2014) 3 ILR 689 : (2014) 3 KLJ 336 : (2014) 3 KLT 333

Hon'ble Judges : T.R. Ramachandran Nair, J;P.V. Asha, J

Bench : Division Bench

Advocate : Devan Ramachandran, R. Ramadas and K.M. Aneesh, Advocate for the Appellant; P.T. Antony, Preetha Anil Ravindran, P.B. Krishnan and P.P. Padmalayan, Government Pleader, Advocate for the Respondent

Judgement

P.V. Asha, J.—The issue raised in both these Writ Appeals, at the time of hearing, is regarding competence of single Member to decide disputes before the Consumer Disputes Redressal Commission of the State (hereinafter referred to as "State Commission"). Since we are only called upon to decide the legal issue involved with respect to the provisions contained in the Consumer Protection Act, 1986 and the Consumer Protection Rules, 1998 and the Consumer Protection Regulations, 2005 (hereinafter referred to as "the Act", "the Rules" and "the Regulations" respectively for short), we are not referring to the factual background arising in these cases. The appellants herein were respondents in a complaint and in an appeal respectively before the State Commission. The learned Single Judge dismissed the Writ Petition filed by the appellant in W.A. No. 488 of 2013 considering the various provisions contained in the Act, Rules and Regulations, and upheld the competence/jurisdiction of single Member to decide the complaints/appeals/proceedings before the State Commission.

2. We have considered W.A. No. 25 of 2014 along with W.A. No. 488 of 2013 on the basis of the submission made by the learned counsel for the appellant that the only issue raised is relating to the jurisdiction/competence of the single

Member of the Commission. In this context we notice that the Writ Petition filed by the appellant in W.A. No. 25 of 2014 was disposed of, reserving his liberty to approach the National Tribunal. The issue regarding the jurisdiction of single Member is not seen considered in the judgment. It is seen that contentions regarding the jurisdiction of the Commission was raised in grounds B, C, G and H of the Writ Petition and in grounds C to H of the Appeal.

3. We heard Sri Devan Ramachandran and Sri R. Ramadas, the learned counsel appearing for the appellants in W.A. Nos. 488 of 2013 and 25 of 2014 respectively, Sri P. Padmalayan, the learned Senior Government Pleader as well as Smt. Preetha Anil Ravindran and Sri P.T. Antony, the learned counsel appearing for the party respondents. In order to consider the issue raised by the appellants, it is necessary to examine the relevant provisions occurring in the Act, Rules and Regulations.

4. Section 2(e) of the Act defines "Consumer Dispute" as a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint. The "complaint" is defined under Section 2(c) as any allegation in writing made by a complainant. The definition of a "Member" is given under Section 2(jj) is as follows:

"(jj): "Member" includes the President and a member of the National Commission or a State Commission or a District Forum, as case may be."

"State Commission" is defined under Section 2(p) as

"State Commission" means a Consumer Disputes Redressal Commission established in a State under clause (b) of Section 9."

Relevant portion of Section 9(b) reads as follows:

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

XXX XXX XXX

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

xxx xxx xxx

Section 16 provides for the composition of the State Commission, relevant portion of which reads as follows:

"16. Composition of the State Commission:--(1) Each State Commission shall consist of;

(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.

The jurisdiction, powers and authority of State Commission is provided in Section 16(16) which reads as follows:

"(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."

The provision which deals with the jurisdiction of the State Commission under Section 17 reads as follows:

"17. Jurisdiction of the State Commission.--[(1) Subject to the other provisions of this Act, the State Commission shall have jurisdiction;

(a) to entertain--

(i) complaints where the value of the goods or services and compensation, if any, claimed [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and

(ii) appeals against the orders of any district Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the

State, where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise of its jurisdiction illegally or with material irregularity."

Section 18 which provides for the procedure applicable to State Commission reads as follows:

"18. Procedure applicable to State Commissions." [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."

From Section 16(1B), it can be seen that the jurisdiction, powers and authority of the State Commission can be exercised by Benches thereof and that the Benches can be constituted by the President. Clause (ii) of Section 12(1B) provides that a Bench may be constituted by the President with one or more Members as the President may deem fit. From Section 17 it can be seen that the State Commission does have jurisdiction to entertain complaints where the value of goods or services or compensation claimed exceeds Rs. 25 lakhs and does not exceed Rs. 1 Crore and appeals against the orders of any District Forum within the State. This jurisdiction can be exercised by Benches thereof, constituted under Section 16(1B). The President of the Commission has the authority to constitute the Bench, under clause (ii) thereof, with one or more members as the President may deem fit. From the provision "the Bench may be constituted by the President with one or more members as the President may deem fit", it is clear that the Bench can be constituted either with one Member or with more Members. It is not necessary that the President should also be a part of the Bench, he is constituting because a Member includes President also, as defined under S. 2(jj).

5. According to the learned counsel appearing for the appellant in W.A. No. 25 of 2014, whenever the State Commission decides the appeals/complaints, the Bench should always consist of the President together with one or more members. We are unable to accept the above contention. Section 16(1B)(ii) only provides that a Bench may be constituted by the President with one or more members as the President may deem fit. As the President is also a Member, the Bench can be constituted either with the President himself alone; or by any one member; or members together; or President together with any number of members; i.e., there can be a Bench with a single member or a Bench with more members. Sub-clause (iii) of Section 16(1B) only provides for the contingency which arises in the event of any difference in opinion among the Members of a Bench. That does not mean that whenever a Bench is constituted there should be more than one Member.

6. The next provision relied on by the learned counsel for the appellants in support of their contention as to want of competence of a single Member to

decide the disputes before the State Commission is Section 18. Section 18 begins with "Procedure applicable to State Commissions". It further provides that "provisions of Sections 12, 13 and 14 and the Rules made thereunder for the disposal of complaints by the District Forum shall with such modification as may be necessary, be applicable to the disposal of disputes by the State Commission. Section 12 provides for the manner in which the complaint shall be made. Section 13 provides for the procedure on admission of complaint. Section 14 deals with the finding of the District Forum. Clause 1 thereof provides for conclusion of the proceedings under Section 13 and the manner in which orders have to be issued in redressal or otherwise of the complaints. Section 14(2) provides as follows:

"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.]

(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 members of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government."

It is relying upon the above provision read with Section 18 that the learned counsel for the appellants assails the competence of the single Member to decide a complaint/appeal before the State Commission. It is true that the complaints before the District Forum are to be adjudicated by the President and at least one Member thereof sitting together and the orders are to be signed by the President and Members who conducted the proceeding, as provided in Section 14(2) and (2A) thereof. It is pertinent to note that the jurisdiction, power and authority of the State Commission is specifically provided in sub-section (1B) of Section 16. Clause (ii) thereof, i.e., 16(1B)(ii) empowers the President to constitute Benches for adjudication of the matters coming before it. When there is a specific provision dealing with the manner of constitution of Benches, which can exercise jurisdiction, powers and authority of the State Commission, it will not be necessary to modify the constitution of Benches in accordance with the provisions in Section 14(2), which exclusively deals with proceedings before the

District Forum. Section 18 begins with "procedure applicable to the State Commission" and it is in that background that the provisions of Sections 12, 13 and 14 and the Rules made thereunder for disposal of complaints by the District Forum are made applicable that too with such modification as may be necessary, to the disposal of disputes by the State Commission. If the provision in sub-section (2) and (2A) of Section 14 are also be made applicable, for adjudication before the State Commission, the provisions in Section 16(1B) would be rendered nugatory. Nowhere in Section 16 it provides that the adjudication by the State Commission shall be by the President together with another Member or by a Bench with more than one Member with or without President. The jurisdiction of the State Commission to adjudicate complaints or appeals is nowhere found restricted to a Bench consisting of 2 or more members, as contended by the learned counsel for the appellants. The only impact it can have on applicability of Section 12(1B) is that the orders should be signed only by those who conducted the proceedings/adjudicated the dispute. The provisions in Section 14(2) or (2A) cannot be understood to have any overriding effect over Section 16.

7. On a harmonious construction of the provisions contained in the Act, we can only come to the conclusion that the procedure for adjudication in the District Forum alone is made applicable to the State Commission under Section 18 of the Act. The adjudication by the State Commission can be either by a Single Member Bench or by a Bench with more members. The orders of the Commission shall be signed by those who adjudicated the proceedings.

8. The learned counsel for the appellant in W.A. No. 25 of 2014 relied on Rule 12(9) of the Consumer Protection Rules, 1998 which reads as follows:

"The orders of the State Commission on complaint appeal, revision or other petitions shall be signed and dated by the President and the members of the State Commission constituting the Bench and shall be communicated to the parties free of charges."

There is nothing in the above provision which mandates that any order to be passed by the State Commission shall be signed by the President and the Members constituting the Bench. It can only be understood to mean that the orders of the State Commission shall be signed by those who conducted the proceedings. When the President can constitute a Bench either with one member or more members, as provided in Section 16(1B), that authority cannot be said to be diluted by the above rule. The provisions in Rule 12(9) has to be understood without doing violence to sub-section (1B) of Section 16, as long as there is no other provision prescribing the composition of each Bench of the Commission.

9. The learned counsel also relied on Regulation 12 of the Consumer Protection Regulation, 2005 which reads as follows:

"12. Hearing by Benche.--Where a Bench, constituted by the President of the

State Commission or the National Commission as provided under Section 16 or Section 20, as the case may be, does not have a member with judicial background and any complex question of law arises and there is no precedent to decide the law point, the Bench so constituted may refer the matter to the President of the State Commission or the National Commission as the case may be to constitute another Bench of which the President shall be a member."

The above provision only provides that the matters shall be referred to a Member with judicial background in case a question of law arises and there is no precedent to decide the law point. The learned counsel also relied on the proviso to Section 16 of the Act which provides that not more than 50% of the Members of the State Commission shall be from amongst persons having judicial background. The composition of the State Commission provided for in Section 16 is (i) President who is or has been a Judge of the High Court and (ii) not less than two, and not more than such number of members and one of them shall be a woman with the qualification prescribed therein. The proviso only provides that the members with judicial background shall not exceed 50%. The provisions contained in Regulation 19 or the proviso to Section 16 do not in any way help the appellants.

10. The learned counsel appearing for the appellant relied on the following orders of the National Consumer Disputes Redressal Commission, New Delhi: i) Baroda Municipal Corporation v. Akhil Bhartiya Grahak Panchayat Ltd. & Ors. [XI-XII-1992 (2) CPR 718],

ii) Oriental Insurance Co. Ltd. v. Rajeshkumar Hiralal Bajaj [X-1995(3) CPR 370],

iii) Telecom Divisional Engg. v. Virendra Kumar Agarwal (I (1996) CPJ 171 (NC)) and a Single Bench judgment of the Calcutta High Court in Hindustan Lever Ltd. and Another Vs. State Consumer Redressal Forum and Others, in support of his contention that the orders passed by a Single Member Bench of a State Commission is without jurisdiction and a nullity. In all the above cases, the National Consumer Disputes Redressal Commission set aside the orders passed by the State Commission on the ground that the orders were passed by a Single Member, on the finding that the provisions of Sections 12, 13 and 14 have been made applicable to the proceeding before the State Commission by Section 18 of the Act, according to which, every order made by the State Commission has to be signed by its President and the member or members who conducted the proceedings. It was held that the President or Member are not empowered to act singly while conducting the proceedings under the Act We are unable to accept the above view of the National Consumer Disputes Redressal Commission or that of the High Court of Calcutta in view of the specific provisions in Section 16(1B) which authorises the President to constitute Benches with one Member or with more than one Member to adjudicate the disputes. We also find that all those decisions were rendered by the National Consumer Disputes Redressal Commission/High Court before the amendment of Section 16 introducing sub-section (1B) specifically providing for the jurisdiction, powers and authority of the

State Commission, constitution of Benches, etc. by Act 62 of 2002, which came into force on 15.03.2003. The adjudication of dispute before the Commission by a single Member cannot be said to be without competence or without jurisdiction and hence the orders passed by the Commission cannot be said to be a nullity. We therefore do not find any circumstances warranting interference on the judgment rendered by the learned Single Judge.

The learned counsel for the respondents relied on the judgment reported in *Cicily Kallarackal Vs. Vehicle Factory, and Rajeev Hitendra Pathak and Others Vs. Achyut Kashinath Karekar and Another*, vehemently opposing the appellants, saying that there is an alternative remedy provided under the Act before the National Commission and hence no writ will lie against the order passed by the State Commission, either in the original jurisdiction or in the appellate jurisdiction. We find that the Writ Petitions have been filed challenging the very jurisdiction/competence of the Single Member who passed the impugned orders alleging the same as nullity. However, in view of the findings arrived at by us, it is not necessary to deal with it elaborately. In the above circumstances, we dismiss these Writ Appeals. There shall be no order as to costs.