

(2013) 02 KL CK 0041

In the High Court Of Kerala

Case No : Writ Petition (C) No. 30939 of 2010

Jose

APPELLANT

Vs

Aby

RESPONDENT

Date of Decision : 25-02-2013

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 11, 12, 12, 13, 13

Citation : AIR 2013 Ker 157 : (2013) 2 ILR (Ker) 146 : (2013) 2 KHC 356 : (2013) 2 KLJ 96 : (2013) 2 KLT 1 : (2013) 3 RCR(Civil) 140

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : Devan Ramachandran and K.M. Aneesh, for the Appellant; P.T. Antony, Joseph George, Sr. Government Pleader and P.B. Krishnan as Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—Legality of an order passed by the Judicial Member of the Kerala State Consumer Disputes Redressal Commission ("the Commission" for short), awarding compensation in a complaint filed by the first respondent is the question that is raised in this Writ Petition. Case of the petitioner is that the first respondent filed O.P. No. 25/2003 before the Commission and that the case was heard by a Bench comprising of 3 members and orders were reserved. Thereafter, he received Ext. P1, an order passed by a Judicial Member of the Commission. Petitioner says that he objected to the Execution Application filed for the execution of Ext. P1, but his objections were overruled by Ext. P4 order of the Commission. Thereupon, this Writ Petition was filed, challenging Ext. P1 and all consequential proceedings, including the revenue recovery proceedings that were initiated for recovering the amount awarded.

2. The only contention raised by the counsel for the petitioner was that as per the provisions of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act" for short) and the Rules framed thereunder, complaints filed before the

Commission are to be dealt with by a Bench consisting of at least two members. To substantiate this contention, reliance was placed on Sections 12 to 14 and S. 18 of the Act. On this basis, he contended that the impugned order rendered by the Judicial Member is illegal.

3. I heard the counsel for the parties and considered the submissions made.

4. During the hearing of this case, learned Government Pleader made available a certified copy of the order sheet of the case in question/From the order sheet, it was seen that this case was heard on 12.11.2007 by the Judicial Member of the Commission and order was rendered by him on 27.11.2007. Therefore, the factual assertion that the case was heard by a three member Bench and order was passed only by the Judicial Member is wrong.

5. I shall now proceed to deal with the legal contention raised. Chapter III of the Act contains provisions for the constitution of the Consumer Disputes Redressal Agencies. S. 9 of the Act deals with the establishment of Consumer Disputes Redressal Forum for every District. S. 10 provides for the composition of the District Forum, with a President and 2 members. S. 11 deals with the jurisdiction of the District Forum and S. 12 lays down the manner in which complaints shall be made. Similarly, S. 13 lays down the procedure on admission of complaint. S. 14 deals with the finding of the District Forum. Sections 14(2), (2A) and (3), being relevant, are extracted below for reference:

Section 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.

6. From these provisions of the Act, it can be seen that proceedings referred to in Section 14(1) shall be conducted by the President of the District Forum and at least one member sitting together and every order made by the Forum shall be

signed by its President and the member or members who conducted the proceedings. Thus, it is clear that under the scheme of the Act, there cannot be a single member Bench for the District Forum and there cannot be any proceedings without the President being a member of the Bench.

7. After referring to these provisions, counsel for the petitioner referred me to S. 18 of the Act and contended that the provisions of Sections 12, 13 and 14 of the Act and the Rules made thereunder for the disposal of the complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission. According to him, in view of Sections 12 to 14 and 18 of the Act, the State Commission cannot constitute Benches with a single member, be it that of a judicial member or otherwise. On this basis, it was contended that Ext. P1 order is null and void and therefore, calls for interference.

8. Though this argument would sound appealing, on a closer look at the relevant statutory provisions, I do not find any substance in the contention urged. S. 16 of the Act deals with the composition of the State Commission and this Section, to the extent it is relevant, is extracted below for reference:

16. Composition of 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 recognized 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.-

....

(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.

9. This provision shows that unlike Sections 14(2) and (2A) of the Act which have been extracted above, S. 16(1B)(i) provides that the jurisdiction, powers and authority of the State Commission shall be exercised by Benches thereof and clause (ii) provides that a Bench may be constituted by the President with one or more members as he may deem fit. Therefore, as far as State Commissions are concerned, its President is to constitute Benches and unlike the District Forums, those Benches of the Commission may consist of one or more members. The language of S. 16(1B)(ii) also does not justify the interpretation that the President is to constitute Benches with himself and one or more members as he deems fit. If this interpretation is accepted, there cannot be any Bench without the President and that will be against S. 16(1B)(ii) itself. In other words, statute empowers the President of the State Commission to constitute Benches with one member also.

10. Similar provision has been made in S. 20 of the Act, which deals with the composition of the National Commission, and S. 20(1A)(i) and (ii), to the extent it is relevant, are extracted below for reference:

20. Composition of the National Commission.-

....

Explanation.-

....

(1A)(i) The jurisdiction, powers and authority of the National 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.

11. Further, in so far as the National Commission is concerned, the aforesaid position is more clear from R. 15A(1) of the Consumer Protection Rules, 1987, which reads as under:

15A. Sitting of the National Commission and signing of orders.-- (1) Every proceeding of the National Commission shall be conducted by the President or

the senior most member and at least two members thereof sitting together except when a bench is constituted by the President of the National Commission with one or more members as he may deem fit.

12. Another provision of the Act relied on by the counsel for the petitioner was S. 18, which is extracted for reference:

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.

13. Counsel for the petitioner was right in contending that because of S. 18 of the Act, provisions of Sections 12 to 14 and the Rules made thereunder for the disposal of the complaints by the District Forum are applicable to the disposal of complaints by the State Commission. However, while incorporating S. 18, the Legislature took care to provide that such applicability shall be "with such modification as may be necessary". Therefore, when Sections 12 to 14 are applied to a proceeding before the State Commission, those provisions should be read with suitable modifications, in the light of the other provisions of the Act.

14. In this context, S. 16(1B)(ii), empowering the President of the State Commission to constitute benches with one or more members as he deems fit, assumes significance. Therefore, S. 14(2), requiring the President of the District Forum to conduct the proceeding with at least one member sitting with him and S. 14(2A) providing that every order made by the District Forum shall be signed by its President and the member or the members who conducted the proceedings should, in so far as a State Commission is concerned, be read in the light of S. 16(1B)(ii) of the Act.

15. Relying on Regulation 12 of the Consumer Protection Regulations, 2005, counsel for the petitioner contended that this provision indicated the Legislative intention that each Bench constituted must have more than one member. To answer this contention, it is necessary to read Regulation 12 and therefore, this Regulation is extracted for reference:

12. Hearing by Benches.-- Where a Bench, constituted by the President of the State Commission or the National Commission as provided u/s 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.

16. Having read this Regulation, though I agree that if a Bench of the State Commission does not have a member with judicial background and if the circumstances mentioned in Regulation 12 arise, case should be referred to the President for necessary action. But this Regulation cannot be of any relevance

when the single member Bench is presided over by a member with judicial background, as in this case. Lastly, counsel contended that none of the State Commissions have single member Bench. This contention also cannot be accepted. This Court is only concerned with the legality of constituting single member Benches in State Commissions and not whether for practical reasons, it is being done or not. On the basis of the statutory provisions, I have already concluded that it is legally permissible. Therefore, the fact that for practical reasons, it is not being done, cannot be an argument to hold that single member Bench cannot be constituted.

In the result, the aforesaid contentions are all rejected and consequently, Writ Petition is dismissed, without any order as to costs.