
(2017) 01 BOM CK 0046
In the Bombay High Court
Case No : Writ Petition No. 534 of 2016

Shri Arjun Virnodkar

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 24-01-2017

Acts Referred:

Consumer Protection Act, 1986 — Section 10, Section 9

Citation : (2017) 3 AIRBomR 735 : (2017) 3 ALLMR 593 : (2017) 2 CPJ 74 :
(2017) 2 MhLJ 532

Hon'ble Judges : F.M. Reis and Nutan D. Sardessai, JJ.

Bench : Division Bench

Advocate : Mr. S.N. Joshi, Advocate, for the Petitioner; Mr. S.D. Lotlikar, Advocate General with Mr. D. Lawande, Addl. Advocate General and Ms. P. Kalangutkar, Addl. Government Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

F.M. Reis, J. (Oral)—Heard Mr. S. N. Joshi, learned Counsel appearing for the Petitioner and Mr. S D. Lotlikar, learned Advocate General appearing for the Respondents.

2. Rule. Heard forthwith with the consent of the learned Counsel. Learned Counsel appearing for the Respondents waives service.

3. The above Petition, inter alia, prays for a direction for appointment of a full time President for North Goa District Consumer Disputes Redressal Forum and South Goa District Consumer Disputes Redressal Forum as well as for Regular Members of both such Districts.

4. It is the contention of the Petitioner that in view of the pendency of matters before the Consumer Disputes Redressal Forum the then Commissioner of the State Commission made a recommendation for full time President for both the Dispute Forums on regular basis. It was also pointed out that the Act did not provide for an appointment of President on part-time basis and, as such, such

exercise was in breach of the objectives of the Consumer Protection Act, 1986. It was further pointed out that despite of a lot of correspondence with that regard, no action was taken in that direction and ultimately, the above Petition was filed considering the pendency before both the District Forums.

5. The Respondents though served, did not file a reply.

6. Mr. S. N. Joshi, learned Counsel appearing for the Petitioner, has pointed out that the objects of the Consumer Protection Act are being defeated by arbitrary and untenable actions on the part of the Respondents in not appointing full time Presidents for both the Districts. Learned Counsel further pointed that part time members are working at half pace as, according to him, the matters are merely adjourned and the complaints are not being disposed of. It is further pointed out that though in South Goa the complaints are disposed of but on account of the absence of a full time President, the Work in North Goa is being hampered, though such proceedings are to be disposed of expeditiously within six months. It is further pointed out that, the complaints are lingering for years together and, as such, there is no confidence in the Consumers that their grievances would be redressed expeditiously before the District Forums.

7. On the other hand, Shri S. D. Lotlikar, learned Advocate General appearing for the Respondents, has pointed out that it cannot be disputed that a full time President has to be appointed to ensure expeditious disposal of the Petitions before the District Consumer Forums. It is further pointed out that the Government will have to take a decision to examine the viability of appointing two full time Presidents or one full time President for both the Districts considering the pendency and the area of cases of the State, for the time being.

8. We had heard earlier the learned Counsel. Thereafter, the Respondents file additional affidavit, inter alia, disclosing that in terms of Section 13(3) A of the Consumer Protection Act, 1986, every complaint should be disposed of as expeditious as possible and within three months from the date of service. It is further stated that as on December, 2016, 262 original complaints and 100 Execution Applications are pending before the North Goa Consumer Disputes Redressal Forum and 128 original complaints and 6 Execution Applications are pending before the South Goa Consumer Disputes Redressal Forum.

9. Section 10 of Consumer Protection Act, 1986, reads thus :

"10. Composition of the District Forum.

- (1) Each District Forum shall consist of,-

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, 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,
- (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 a persons 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 pre-judicially 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 subsection (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely :-

- (i) the President of the State Commission -Chairman.
- (ii) Secretary, Law Department of the State -Member.
- (iii) Secretary, in-charge 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.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier: Provided that a member shall be eligible for reappointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of subsection (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further 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: Provided also that 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.

(3)The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum 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 District Forum."

10. On perusal of the said provision, it clearly specifies the position of the District forum. Clause (b) of Sub-Section (1) of Section 10 stipulates the appointment of two Members (Apart from the President) who is to be or should have been or must qualify to be as District Judge. The Rule making power with reference to the provisions of Clause 10(1) (b) is vested in the State Government under Section 30. In such circumstances, the Act itself contemplates that a full time District Forum has to be constituted in term s thereof. In the present case, we find that the action of the Respondents in appointing part time Members for such a long period of time would not meet the objectives of the provisions of the Consumer Protection Act. It is such indifference by the Respondents which renders a well-meaning legislation intended to protect a large body of consumers from exploitation ineffective. In such circumstances, it is difficult to comprehend why the State Government has been indifferent about the need to establish Regular full time District Forum in both the Districts of the State of Goa. It is stated that proceedings are pending for years together which by itself shows the urgency in ensuring that a full time Forum is available to get the disputes of Consumers redressed. Despite of recommendations, the fact remains that the Respondents have shown no sense of urgency in setting up a full time network for protection of the consumers at the District level. Though there is no dispute that the infrastructure facilities are made available for constituting such District Form but, however, the Respondents have failed to ensure that a full time District Forum is available for the benefit of the consumers. Under Section 9 of the said Act, it is the responsibility of the State Government to set up a District Forum in the manner stated therein. The State Government cannot absolve itself of this responsibility by ad hoc arrangements. As far as the composition of the District Forums are concerned, it is a matter for the State Government to consider in accordance with the provisions of the said Act. But, however, the need to ensure full time District Forums, are available for both Districts, cannot be forgotten.

11. In such circumstances, we pass the following directions :

(i) The Respondents are directed to constitute full time North Goa and South Goa Districts Consumer Disputes Redressal Forums in accordance with the provisions of the said Act on or before 30.06.2017.

(ii) Rule is made absolute in the above terms.