

Gulzari Lal Agarwal

Vs

Accounts Officer

Civil Appeal No. 33 of 1996

(Kuldip Singh, S.P. Kurdukar JJ)

25.09.1996

JUDGMENT

S.P. KURDUKAR, J.

1. This appeal is directed against the order dated 17-5-1995, in Revision Petition No. 393 of 1994 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'National Commission'). It is not disputed that at the relevant time when the order dated 21-1-1994 was passed by the State Commission constituted under the Consumer Protection Act, 1986 (for short 'the Act') it was not having a President since he had retired. No new President was appointed on the said State Commission. A complaint was filed by the appellant herein before the District Forum, Bankura as regards inflated telephone bills. A prayer was made in the said complaint that the respondent herein be directed not to disconnect the telephone connection. An order was made by the District Forum in favour of the appellant directing the respondent not to disconnect the telephone connection and maintain the telephone line on condition that the appellant deposits a sum of Rs 4000. The appellant accordingly complied with the said order. It appears that despite this order, the telephone connection of the appellant was disconnected on 30-11-1993. The appellant thereafter moved an application for restoration and it is common premise that on 25-5-1994, the telephone connection was restored. The complaint as regards the excessive bill of Rs 13,896 is still pending.

2. The respondent not being satisfied with the order passed by the District Forum preferred an appeal to the State Commission and the State Commission vide its order dated 21-1-1994 dismissed the said appeal, holding that the order passed by the District Forum was in consonance with the circular dated 15-10-1992 issued by the Telephone Department. Being aggrieved by the order passed by the State Commission, the respondent preferred revision petition under Section 21 of the Act before the National Commission. The National Commission after hearing the parties vide its impugned order dated 17-5-1995 allowed the revision petition primarily on the ground of jurisdiction. The National Commission has held as under :

"The impugned order passed by the State Commission, West Bengal has to be held illegal and void on the ground that the said order has been passed only by two members of the State Commission without the junction of the President, which is manifestly contrary to mandatory provisions contained in Section 14(2-A) read with Section 18 of the Consumer Protection Act, 1986. The said order of the State Commission is hereby set aside. We also set aside the interlocutory orders dated 14-10-1993 (Annexure 'B') and 19-10-1993 (Annexure 'C') passed by the District Forum, Bankura as being totally devoid of jurisdiction in the light of the recent

pronouncement of the Hon'ble Supreme Court in Morgan Stanley Mutual Fund v. Kartick Das [(1994) 4 SCC 225 : (1994) 2 CPJ 7 (SC)] where it has been categorically laid down that a Consumer Forum has no jurisdiction or power to pass any interim order pending disposal of an original complaint filed before it."

3. It is this order passed by the National Commission which is the subject-matter of challenge in this appeal.

4. Before we deal with the rival contentions raised before us, it would be appropriate to set out relevant provisions of the Act and Rules. Clause (jj) of Section 2 defines member :

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

5. Section 9 in Chapter III refers to the Consumer Disputes Redressal Agencies and the relevant provisions are as under :

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

#(a) * * *##

(b) a Consumer Disputes Redressal Commission to be known as the 'State Commission' established by the State Government in the State by notification; and

#(c) * * *##

6. Section 13 prescribes the procedure to be followed on receipt of a complaint.

7. Section 14 enumerates the items on which the District Forum shall issue an order to the opposite party directing him to do one or more of the following things set out in sub-sections 14(1)(a) to 14(1)(i).

8. The controversy relates to Sections 14(2) and 14(2-A) which are reproduced hereinbelow :

"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 of thereof sitting together :

Provided that where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo.

(2-A) 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."

9. Section 16 deals with the composition of the State Commission and it reads as under :

"16. Composition of the State Commission. - 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) * * *(2)-(4) * * *"#

10. Section 18 deals with the procedure applicable to State Commissions and reads thus :

"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."

11. Chapter IV of the Act deals with miscellaneous provisions. Section 29 refers to the power to remove difficulties. Section 29-A is the relevant provision which reads as under :

"29-A. Vacancies or defects in appointment not to invalidate orders. - No act or proceeding of the District Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof."

12. Sub-section (2) of Section 30 deals with the powers of State Government to make rules. Sub-section (2) of Section 30 reads as under :

"30. (2) The State Government may, by notification, make rules for carrying out the provisions contained in [clause (b) of sub-section (2) and sub-section (4) of Section 7], sub-section (3) of Section 10, clause (c) of sub-section (1) of Section 13, sub-section (3) of Section 14, Section 15 and sub-section (2) of Section 16."

Note. - Bracketed portion was incorporated by Act No. 34 of 1991, with effect from 15-6-1991.

13. The State Government in exercise of powers conferred by sub-section (2) of Section 30 of the Act framed the Rules which are called the West Bengal Consumer Protection Rules, 1987. These rules were brought into force immediately. Sub-rules (9) and (10) of Rule 6 are relevant and they read as under :

"6. (9) Where any such vacancy occurs in the office of the President of the State Commission the seniormost (in order of appointment) member holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the State Commission.

6. (10) When the President of the State Commission is unable to discharge his functions owing to absence, illness or any other cause, the seniormost (in order of

appointment) member of the State Commission shall discharge the functions of the President until the day on which the President resumes the charge of the functions."

14. In the light of the aforesaid provisions, it is necessary to consider as to whether the impugned order passed by the National Commission is legal. The National Commission held that the order passed by the State Commission is manifestly contrary to a mandatory provision contained in Section 14(2-A) read with Section 18 of the Act as it was made by two other members of the said Commission without the 'junction' of the President.

15. Mr Bhattacharya, the learned counsel appearing for the appellant, urged that the impugned order is unsustainable. He urged that the National Commission has totally overlooked certain provisions contained in the Act and the Rules and erroneously came to the conclusion that in the absence of the President of the State Commission being functional, the other two members have no jurisdiction to deal with the disputes/appeal filed before the State Commission. In support of the submission, the learned counsel drew our attention to the definition of a member contained in clause (jj) of Section 2 and Sections 14(2-A), 18-A and 29-A. Reliance was also placed on sub-rules (9) and (10) of Rule 6. Mr Bhattacharya urged that all these provisions will have to be construed harmoniously with a view to promote the object and spirit of the Act. The impugned order passed by the National Commission is unsustainable and the same be quashed and set aside.

16. Mr S.K. Sabharwal, the learned advocate appearing for the respondent, supported the impugned order and urged that sub-sections (2) and (2-A) of Section 14 in unmistakable terms indicate that 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. Sub-section (2-A) read with Section 18 requires that every order made by the District Forum/State Commission under sub-section (1) shall be signed by its President and the member or members who conducted the proceedings. In view of this mandatory provision, the counsel urged that any proceeding conducted before the State Commission in the absence of the President would be non est. He further urged that admittedly when the State Commission passed the orders on 14-10-1993 and 19-10-1993, the President of the State Commission was not appointed by the State Government and, therefore, these orders were rightly held to be illegal.

17. After giving careful thought to the rival contentions raised before us, we are of the considered opinion that the relevant provisions which we have quoted hereinabove will have to be construed harmoniously to promote the cause of the consumer under the Act. As indicated earlier, the definition of member includes the President and a member of a District Forum/State Commission. It is true that sub-section (2) of Section 14 read with Section 18 requires that every proceeding referred to under sub-section (1) shall be conducted by the President of the District Forum/State Commission and at least one member thereof sitting together. Sub-section (2-A) is consequential in the sense that every order made by the State Commission under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding. The procedure applicable to the District Forum is made applicable to the State Commission vide Section 18 with such modifications as may be necessary. Plain reading of sub-sections (2) and (2-A) of Section 14 may support the view taken by the National Commission but if these provisions are read with Section 29-A of the Act and sub-rules (9) and (10) of Rule 6, it would be quite clear that it could never be the intention of the legislature to stall or render the State Commission non-functional in the absence of the President either having not been appointed in time due to some valid reasons or if the President is on leave due to certain reasons beyond his control. Sub-sections (2) and (2-A) of Section 14 and Section 18-A of the Act were brought into force with effect from 18-6-1993 whereas Section 29-A

was made applicable from 15-6-1991. The Rules of 1987 were brought into force immediately. The complaint before the District Forum by the appellant was filed on 14-10-1993. Therefore, all these amended provisions were very much brought into force when the complaint was filed. Sub-section (2) of Section 14 is a presumptuous provision where the President of the State Commission is functional but it would not be correct to say that if the President of the State Commission is non-functional because of one or the other reason, the State Commission would stop its functioning and wait till the President is appointed. In order to avoid such a situation, the State Government has framed the Rules and sub-rules (9) and (10) quoted hereinabove unmistakably provide answer to such a situation as in the present case. The only harmonious construction that could be given to sub-sections (2) and (2-A) of Section 14 read with sub-rules (9) and (10) is that as and when the President of the State Commission is functional, he along with at least one member sitting together shall conduct the proceeding but where the President being non-functional, sub-rules (9) and (10) of Rule 6 will govern the proceedings. Sub-rule (9) provides that where any such vacancy occurs in the office of the President of the State Commission, the seniormost (in order of appointment) member holding office for the time being, shall discharge the function of the President until a person is appointed to fill such vacancy. This sub-rule is made with a view to make the State Commission functional in the absence of the President and not to allow the State Commission to render non-functional for want of the President. It is well settled that every provision in the Act needs to be construed harmoniously with a view to promote the object and spirit of the Act but while doing so, no violence would be done to the plain language used in the section. It is this principle that needs to be made applicable while construing the provision of sub-sections (2) and (2-A) of Section 14 read with sub-rules (9) and (10).

18. The West Bengal Government has framed the Rules in the year 1987 and the object of sub-rules (9) and (10) of Rule 6 appears to us to keep the State Commission functional in the absence of the President. From the impugned order it appears that the attention of the National Commission was not drawn to sub-rules (9) and (10) of Rule 6. It also appears from the record that the validity of sub-rules (9) and (10) of Rule 6 was never challenged. It is made clear that the view which we have taken in this appeal is on the premise that there is no challenge to the validity of the Rules and they hold the field.

19. Having regard to the composition of the District Forum and the State Commission, it is more appropriate and desirable to make the appointment of the President of the District Forum and the State Commission without any delay since the complaints under the Act involved fairly large stakes which require a judicial approach.

20. In view of the above discussion, we are of the opinion that the National Commission committed an error in holding that order passed by the two members of the State Commission without the junction of the President is "illegal and void". Impugned order to that extent is set aside.

21. Coming to the second part of the order as regards the grant of interim order, in our opinion, the National Commission has right in applying the law laid down by this Court in *Morgan Stanley Mutual Fund v. Kartick Das* [(1994) 4 SCC 225 : (1994) 2 CPJ 7 (SC)]. The Consumer Forum has no jurisdiction or power to pass any interim order pending disposal of original complaint filed before it. The impugned order in this behalf is confirmed.

22. In the result, the appeal is partly allowed. The impugned order holding that the order passed by the State Commission, West Bengal is illegal and void is quashed and set aside. But, however, the rest of the impugned order is confirmed. In the circumstances, parties are directed to bear their own

costs.