

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.5199 OF 2017

WITH

WRIT PETITION NO.5283 OF 2017

WITH

WRIT PETITION NO.5284 OF 2017

WITH

WRIT PETITION NO.5247 OF 2017

WITH

WRIT PETITION NO.5282 OF 2017

WRIT PETITION NO.5199 OF 2017

Purushotam S/o Balkrishna Kachi
Age 38 years, Occ: Business,
R/o Plot No.1, Shriram Nagar, Near
Hanuman Mandir, Mhalgi Nagar, Nagpur ...**PETITIONER**

---VERSUS---

1. Regional Transport Officer Giripeth,
Amravati Road, Nagpur.

2. Transport Commissioner,
Maharashtra State, New Administrative
Building, Near Dr. Ambedkar Garden,
Bandra East and Mumbai.

3. United Telecoms Limited
C/o RTO Nagpur, Giripeth
Amravati Road, Nagpur

...RESPONDENTS

WITH

WRIT PETITION NO.5283 OF 2017

Mithulal Kewal Nayak
Age 61 years, Occ: Retired,
R/o Sneha Nagar, Wardha Road,
Nagpur

...PETITIONER**---VERSUS---**

1. Regional Transport Officer Giripeth,
Amravati Road, Nagpur.
2. Transport Commissioner,
Maharashtra State, New Administrative
Building, Near Dr. Ambedkar Garden,
Bandra East and Mumbai.
3. United Telecoms Limited
C/o RTO Nagpur, Giripeth Amravati Road,
Nagpur

...RESPONDENTS**WITH****WRIT PETITION NO.5284 OF 2017**

Shreyas Sanjay Khemuka
Age 29 years, Occ: Business,
R/o 5, Vinayak Apartment, Lokmat
Chowk, Dhantoli, Nagpur

...PETITIONER**---VERSUS---**

1. Regional Transport Officer Giripeth,
Amravati Road, Nagpur.

2. Transport Commissioner,
Maharashtra State, New Administrative
Building, Near Dr. Ambedkar Garden,
Bandra East and Mumbai.
3. United Telecoms Limited
C/o RTO Nagpur, Giripeth Amravati Road,
Nagpur

...RESPONDENTS

WITH

WRIT PETITION NO.5247 OF 2017

Ku. Snehlata Shankar Luley,
Age 57 years, Occ: Business,
R/o 246, Shankar Nagar, Nagpur

...PETITIONER

---VERSUS---

1. Regional Transport Officer Giripeth,
Amravati Road, Nagpur.
2. Transport Commissioner,
Maharashtra State, New Administrative
Building, Near Dr. Ambedkar Garden,
Bandra East and Mumbai.
3. United Telecoms Limited
C/o RTO Nagpur, Giripeth Amravati Road,
Nagpur

...RESPONDENTS

WITH

WRIT PETITION NO.5282 OF 2017

Ku. Pragati Birendra Mishra
Age 29, Occ: Student,
R/o Plot No.25, Kapil Nagar, Teka Naka, ...**PETITIONER**
Nagpur

---VERSUS---

1. Regional Transport Officer Giripeth,
Amravati Road, Nagpur.

2. Transport Commissioner,
Maharashtra State, New Administrative
Building, Near Dr. Ambedkar Garden,
Bandra East and Mumbai.

3. United Telecoms Limited
C/o RTO Nagpur, Giripeth Amravati Road,
Nagpur

...RESPONDENTS

Shri T.D. Mandlekar, Advocate for the petitioners.
Shri A.J. Purohit, Advocate for respondent no.3.

CORAM : AMIT BORKAR, J.
DATED : 14th JUNE, 2022.

ORAL JUDGMENT :

1. The subject matter of the writ petition and the facts involved in all petitions is similar; therefore, all the petitions are being disposed of by this common judgment.

2. Petitioners, who are the consumers, had invoked the jurisdiction of the District Consumer Dispute Redressal Forum on

the ground of deficiency in service. The District Consumer Forum dismissed the said complaints. Therefore petitioners filed an appeal before the State Consumer Dispute Redressal Commission. There was a delay of 5 days in filing the said appeal. Therefore petitioners filed applications for condonation of delay, which were dismissed by the impugned order. As per the impugned order, despite directions, the respondents did not give a copy of the application for condonation of delay. On the said date, the appellant's Advocate was absent. Therefore, the appeals were dismissed. The petitioners challenged the said orders by way of present petitions.

3. This Court, by order dated 22.08.2017, issued Rule and directed that the petitions be finally decided on the next date peremptorily.

4. I have heard the learned Advocates for the petitioners and respondent no.3.

5. The Advocate for the petitioners invited my attention to the order dated 18.08.2016, stating that in spite of the direction of the Commission dated 22.09.2015, the appellants failed to supply the copies to the respondents. Furthermore, despite three

opportunities, it was noted that a copy of the application was not supplied to the respondents. Finally, the Advocate for petitioners invited my attention to page 166 of the compilation to submit that, as a matter of fact, the respondent nos.1 and 2 have filed a reply to the application for condonation of delay. He, therefore, stated that the approach adopted by the State Consumer Dispute Redressal Commission was hiper-technical.

6. The Advocate for respondent no.3 invited my attention to the provisions of the Consumer Protection Act, 1986 and stated that the petitioners have alternate efficacious statutory remedy by way of revision before National Commission and, therefore, the petitions cannot be entertained. Thus, according to him, there is no merit in the petitions, and the petitions deserve to be dismissed.

7. The rival contentions fall for consideration.

8. I have carefully considered the submissions of the rival parties. It is undisputed that there is a delay of 5 days in filing appeals. It is also undisputed that appellants failed to serve a copy of the application for condonation of delay to respondents nos.1 and 2. State Consumer Commission appears correct about the

non-compliance with the direction. But in my opinion, dismissal of the appeal for a non-supplying memo of appeal takes away valuable statutory right granted in favour of the consumer. The Consumer Protection Act being beneficial legislation, Forum and Commission created under the said Act must be alive of the ground reality that for want of compliance of procedural requirement substantive right of statutory appeals merit should not be taken away for the lapse on the part of petitioners for non-supply of memo of appeal. Such lapse could have been compensated in terms of costs. Instead of said approach, in my opinion, State Commission has unreasonably dismissed the appeals of petitioners without adjudication on merit. I am, therefore, of the opinion that the petitioners should be given the opportunity to contest their appeals on merits subject to acceptance of sufficient costs for condonation of delay.

9. Insofar as the objection regarding the maintainability of the petitions is concerned, this Court has already issued Rule in the year 2017; therefore, delegating the petitioners to adopt the statutory remedy in the year 2022 would be unreasonable. It is well settled that the exhaustion of alternative statutory remedies is

a self-imposed limitation. In the facts of the present case interest of justice require petitions decided on merit. Therefore, I pass the following order:

10. In respective appeals, the impugned common order 18.08.2016 passed by the State Consumer Disputes Redressal Commission, Maharashtra Nagpur Circuit Bench, Nagpur, is hereby quashed and set aside.

11. All the appeals are remanded back to the State Consumer Disputes Redressal Commission, Maharashtra Nagpur Circuit Bench, Nagpur, for a decision on merit.

12. The State Consumer Disputes Redressal Commission shall decide the respective appeals on their merit subject to condonation of delay.

13. Rule is made absolute in the above terms. Pending civil application (s), if any, stand disposed of.

JUDGE

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