

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2867 of 2024

Sanjay Kumar Giri Son of Late Krishndeo Giri, village- Abupur, P.O. - Malekpur, P.S. - Karai Parsurai, District - Nalanda - 803117. C/o M/s. Sarvshri Ma Durge Industries, C- 19, Industrial Area, Industrial Estate Road, Patliputra, Patna- 800013.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Industries, Government of Bihar, Secretariat, Patna - 800001.
2. The District Consumer Disputes Redressal Commission, Patna through the President, R-Block Road No. - 2, Daroga Rai Path, Patna - 800001.
3. The State Consumer Disputes Redressal Commission, Bihar through the President, R-Block Road No. - 2, Daroga Rai Path, Patna- 800001.
4. Bihar Industrial Area Development Authority (BIADA), through the Managing Director, First Floor, Udyog Bhawan, East Gandhi Maidan, P.O. - Bankipur, Patna, P.S. - Gandhi Maidan, Town and District - Patna - 800004.
5. Regional Manager, Bihar Industrial Area Development Authority (BIADA), BIS Bhawan, Industrial Area, Patliputra, Patna- 800013.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Manish Kumar Singh, Advocate Mr. Kundun Kumar, Advocate
For the BIADA	:	Mr. Avinash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 25-11-2024

The present writ petition has been filed for quashing the order dated 19.11.2021, passed by the learned State Consumer Disputes Redressal Commission, Bihar, Patna, sitting singly, in Appeal No. 46 of 2020.

2. The learned counsel for the parties submit that the order dated 19.11.2021, passed by the President, State Consumer Redressal Commission, Bihar, Patna sitting singly, is in teeth of



the mandate of Section 14(2) of the Consumer Protection Act, 1986, hence the said order dated 19.11.2021, suffers from the vice being *coram non judis*.

3. At this juncture, it would be relevant to reproduce hereinbelow Section 18 and Section 14(2) of the Consumer Protection Act, 1986.

18. Procedure applicable to State Commission

The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaint by the Districts Forum shall, with such modification as may be necessary, be applicable to the disposal of disputes by the State Commission ..."

And

14. Finding of the District Forum

...(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 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: ..."

4. It would also be relevant to refer to Section 47(2) of the Consumer Protection Act, 2019, which is being



reproduced hereinbelow.

47. Jurisdiction of State Commission.—

(2) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof, and a Bench may be constituted by the President with one or more members as the President may deem fit:

Provided that the senior-most member shall preside over the Bench.

5. The issue under consideration is no longer *res integra* inasmuch as the Hon'ble Apex Court in the case of ***Gulzari Lal Agarwal vs. Accounts Officer***, reported in **(1996) 10 SCC 590**, has held that every proceeding shall be conducted by the President of the District Forum/State Commission and at least one member thereof sitting together. In this regard it would be relevant to reproduce hereinbelow paragraph no. 17 of the said judgment rendered in the case of ***Gulzari Lal Agarwal*** (supra):-

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 consumers 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).

6. In fact a Single Bench of the Hon'ble High Court of Rajasthan in the case of ***Divisional Manager NIC Limited Jodhpur vs. Rajasthan State Consumer Disputes Redressal Commission and others***, reported in ***(2018) SCC Online Raj. 2648***, has also held that a Bench of the State Consumer Commission cannot be constituted by a single member and that the same must be comprised of the President and at least one



member thereof. It would be pertinent to reproduce herein below paragraph no. 11 of the said judgment rendered in the case of ***Divisional Manager NIC Limited Jodhpur*** (supra):-

11. Hence, this Court has no hesitation in holding that a Bench of the State Consumer Commission cannot be constituted by a single member and that the same must be comprised of the President and at least one member thereof. In reference to Section 2 (jj) of the Act, it is clarified that the word “President” as appearing in the Act, shall always be referred as including a member except where, the jurisdiction of constituting the Bench is to be exercised. The said power is with the President who being the “head of the institution” has the exclusive administrative power to decide the composition of the bench.

7. On the aforesaid aspect of the matter, it would also be relevant to refer to a judgment rendered by the learned Single Judge of the Hon’ble High Court of Judicature for Rajasthan at Jodhpur dated 14.03.2018 passed in S.B. Civil Writ Petition No. 18 / 2012 (***Kamal Travels Kokks International vs. The State of Rajasthan & Others.***), wherein also it has been held that at least the Chairman and one member is required to hear the cases filed before the State Consumer Commission. The said judgment



dated 14.03.2018 has not only been upheld by the learned Division Bench of the High Court of Judicature for Rajasthan at Jodhpur vide order dated 04.07.2019, however, the same has also been upheld by an order dated 30.09.2021, passed by the Hon'ble Supreme Court of India in Petition for Special Leave to Appeal (Civil) No. 4969 of 2020.

8. Having regard to the facts and circumstances of the case, considering the law laid down by the Hon'ble Apex Court as also the Hon'ble High Court, as has been referred to hereinabove in the preceding paragraphs, this Court finds that the President, State Consumer Redressal Commission, Bihar, Patna, sitting singly, could not have passed the aforesaid order dated 19.11.2021 in Appeal No. 46 of 2020, hence the same is quashed and the matter is remanded back to the learned State Consumer Disputes Redressal Commission, Bihar, Patna, for fresh consideration, on merits.

9. The writ petition stands allowed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02.12.2024
Transmission Date	N/A

