

AFR
STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

APPEAL NO.784 OF 1996

(Against the judgment/order dated 26.8.1994 in Complaint Case
No.682/92 of the District Consumer Forum, Agra)

Agra Vikas Pradhikaran

.....Appellant

Versus

Atul Goel

.....Respondent

BEFORE:

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER

For the Appellant : Mr. R.K. Gupta, Advocate.

For the Respondent : None.

Dated : 13.9.2010

JUDGMENT

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT(ORAL)

Heard Mr. R.K. Gupta, learned counsel for the appellant. None is present on behalf of the respondent/complainant.

Since it is an old appeal of the year 1996, we proceed to decide it on merit.

The present appeal has been preferred against the impugned judgment dated 26.8.1994 passed by the President of the District Consumer Forum, Agra alone. It appears that in the absence of the President, the two members had conducted the proceedings of the Complaint No.682 of 1992 'Sri Atul Goel Vs. Agra Development Authority' and delivered their separate judgments on 4.6.1992. Whereas, Mr. Nathu Lal Tomar, Member directed the Agra Development Authority to execute the lease-deed in favour of the complainant within 45 days without any direction for payment of the outstanding sum, the other member Smt. Shakuntala Sharma while delivering her conflicting judgment directed for execution of the lease-deed on payment of the balance amount of the price of the plot as outstanding against him.

What important to note is that no reference was made to the President at that juncture as perhaps the post of President was lying vacant. However, more than two years after the President Sri Lokendra

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Nath Rai alone pronounced his judgment and while agreeing with the judgment of Smt. Shakuntala Sharma delivered his own judgment on 26.8.1994 which has been impugned by the Development Authority on the technical ground that the judgment is not in accordance with the provisions of Section 14(2)(2A) of the Consumer Protection Act. The Section 14(2) and Section 14(2A) provide as follows:-

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 at last heard by the previous member.]

14(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.]

In this context, it will also be relevant to look into the definition of Member as recited in Section 2(jj). It postulates as follows:-

"member" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be."

The above Proviso to Section 14(2A) was incorporated in the Sub Section w.e.f. 15.6.1991. However, learned counsel appearing for the appellant submits that since the Proviso was not available in the absence of the President, for the two members to pronounce their judgments candidly shows that their individual judgments were contrary to Sub Section 2 which authorised the President and at least one member to conduct the proceedings.

With the change of the definition of 'member' it is not now necessary that the proceeding of a complaint pending before the District

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Consumer Forum should be conducted by the President and at least one member. The Proviso added to Section 14(2) also removes the haziness by stating that if a member which includes a President is for some reason unable to conduct the proceedings, the other members can continue to conduct the proceedings and hearing of the case..

With the addition of Section (2A) the legal position is further clarified. It makes it abundantly clear that the two members can also sign the judgment provided they conducted the proceedings. The Proviso annexed to Section (2A) provides that if the President which obviously, includes a member and one member differ on any point or points, they shall state the point or points of difference 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.

From the above discussion, it becomes crystal clear that if the proceeding of a case pending before the District Forum is conducted by two members, they can pronounce the judgment and sign it and if they have some point or points of difference they can refer it to the third member. This situation ofcourse will prevail only when the President, if for some reason, is not available to conduct the proceedings.

However, the above referred provisions do not comprehend a situation that if two members which may include the President also have a difference of opinion on some point or points, the third member or the President who is appointed two years after or even a small gap after the conflicting judgments, can hold the proceedings while sitting single and can agree or disagree with either of the two conflicting judgments. In other words, it may be observed that the third member or the President to whom a reference is made as a consequence of the conflicting opinions of the two members, has to conduct the joint proceedings of hearing with the other two members who have expressed their different opinions. In the case in hand, the two members delivered their judgments in June, 1992 and the two conflicting judgments remained pending for more than two years and when the President took over he agreed with one of the members by recording a judgment on 26.8.1994. As said above, this kind of situation was never comprehended by the

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relevant provisions of the Act as referred to above nor the proceedings by the two members who have delivered conflicting judgments and the third member to whom the reference is made can be held at two different times with howsoever small interval there may be in between. The net result is that the impugned judgment of the President Sri L.N. Rai and the lady member Smt. Shakuntala is absolutely illegal and not in accordance with the provisions as envisaged under law, quoted above.

Accordingly, this appeal is allowed, the judgment is quashed and the dispute is remanded to the District Consumer Forum, Agra-I for a fresh trial and afresh decision in accordance with law after giving an opportunity of hearing to both the parties.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER

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