

A.P.A.
STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW.

Appeal NO. 629 OF 2000

(Against the judgment/order dated 12.01.1998 in Complaint Case
No.214/96 of the District Consumer Forum, Aligarh.)

Manager, Sri Heeralal Barahsaini Inter CollegeAppellant

Versus

Sri Sushil Kumar Singh Rana & othersRespondents

BEFORE:-

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT

HON'BLE MR. RAMPAL SINGH, MEMBER.

HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER.

For the Appellant : None appears.

For the Respondents : None appears.

Dated : 31.3.2010

JUDGMENT

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

The case called out. None is present on behalf of the parties despite the cause list of date having been shown on the Internet through the Commission's website.

As this is an old appeal of the year 2000, we proceed to decide it on merit.

The present appeal has been filed against the majority judgment dated 03.11.1997 of the two members of the District Consumer Forum, Aligarh.

It is significant to note that the President of the District Consumer Forum did not express his opinion on the merit of the respondent's case rather criticized the procedure adopted by one of the members namely Capt. I.K. Ahuja, who, as is evident, wrote his judgment first on 03.11.1997 and then handed over the file for opinion of the female member. After the female member concurred with the judgment of Capt. Ahuja the file was sent six weeks after to the President who expressed his dismay vide his order dated 06.01.1998 about the procedure adopted by the male member Capt. Ahuja. Proviso to Section 14 (2A) of the Consumer Protection Act postulates that if hearing of a case has been conducted by the President and one member and they differ on any point or points they shall refer the matter for opinion of the third member.

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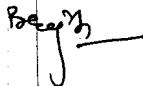
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(2)

However, there is no prohibition against the two members conducting hearing of a case and deciding it but if the President of the District Consumer Forum participates in the hearing of the case it is his prerogative to either write the judgment himself and then ask for opinion of the other members but in this situation neither of the two members is empowered to grab the file for himself/herself, write his/her own judgment and then send it to another member and after the other member submits his opinion send the file to the President. This procedure, indeed, is contrary to the provisions of Section 14 (2A) of the Consumer Protection Act. The procedure laid in that section and the attending proviso does not encroach upon the individual's independence of decision. In other words, all the three i.e. the President and both the members have full liberty to write a judgment according to his or her judicial conscience but a member with President's presence on the bench, has no power to draw a procedure of his or her own and act capriciously.

In the case in hand, it appears that Capt. I.K.Ahuja took the lead of writing the judgment without seeking any instruction from the President and after writing his own judgment solicited the opinion of female member. It was in the third place that Capt. Ahuja referred the matter for opinion of the President. It is quite natural for the President to have expressed his astonishment over the procedure adopted by Capt. Ahuja. The position would have been different, if the President had not participated in the proceedings of hearing of the case but it is borne out from the record that he was also presiding the bench at the time of hearing of the Complaint No. 214/1996. We, therefore, not only censure the procedure adopted by Capt. Ahuja but also hold that the act of Capt. Ahuja in taking recourse to an abnormal procedure was absolutely illegal and unwarranted.

In the result, this appeal succeeds and it is hereby allowed. The judgment of the two members is hereby quashed.










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The matter is referred to the District Consumer Forum, Aligarh for rehearing of the complaint and afresh decision in accordance with law.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


31.3.10
(RAMPAL SINGH)
MEMBER

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