

तातडीचे



राज्य ग्राहक तक्रार निवारण आयोग, महाराष्ट्र

जुने प्रशासकीय महाविद्यालय इमारत, रु.नं.१,२,५ व ६, हजारीमल सोमानी मार्ग,
छत्रपती शिवाजी टर्मिनससमोर, मुंबई-४०० ००९

☎ ०२२-२२०५७४०९ / २२०७२०९७ E-mail : mah-sforum@nic.in Website : <https://grahak.maharashtra.gov.in/>

वाचा ०: या कार्यालयाचे पत्र क्र.राआ/आस्था/सर्व.मार्ग.सूचना/२००९/२०९४, दि.१६.११.२००९

जा.क्र.राआ/महा./आस्था-३/परिपत्रक/२०१५/२४५ दिनांक १९ मार्च, २०१५

-०: परिपत्रक ०:-

राज्यातील जिल्हा ग्राहक तक्रार निवारण मंचाच्या कामकाजाबाबत मा.अध्यक्ष, राज्य ग्राहक तक्रार निवारण आयोग, महाराष्ट्र यांचे पूर्वमान्यतेने या परिपत्रकाद्वारे खालील दिशानिर्देश काटेकोर अंमलबजावणीसाठी निर्गमित करण्यात येत आहेत.

- १) डायसवर कार्यवाही सुरु असतांना अध्यक्ष तसेच सदस्यांनी डायस सोडून जाणे, शिष्टाचार व शिस्तीचे उल्लंघन करणारे आहे. याबाबत राज्य आयोगाने सोबत जोडलेल्या दि.१६.११.२००९ च्या पत्रान्वये निर्गमित केलेल्या मार्गदर्शक सूचना स्वयंस्पष्ट आहेत.
- २) मंचासमोरील प्रकरणांत युक्तीवाद पूर्ण झालेनंतर ग्राहक संरक्षण विनियम, २००५ (Consumer Protection Regulations, 2005) च्या विनियम क्र.१८ (७) मधील तरतुदीनुसार १५ दिवसांचे आंत आदेश पारीत करणे आवश्यक आहे.
- ३) विनियम क्र.५ मध्ये नमुद केलेली वेळ मंचाच्या अध्यक्ष व सदस्यांनी पाळणे आवश्यक आहे.
- ४) मंचाच्या दैनंदिन बोर्डवर कामकाजासाठी पुरेशी प्रकरणे ठेवणे तसेच विनियम क्र.१९ (१) मधील तरतुदीनुसार मंचाने दरमहा ७५ ते १०० प्रकरणे निकाली काढणे आवश्यक आहे. तसेच एखाद्या महिन्यात असलेल्या जास्त सार्वजनिक सुट्या वरील प्रमाणापेक्षा कमी प्रकरणे निकाली काढण्याचे कारण होऊ शकत नाही.

५) आदेश पारीत करतांना मंचाच्या सदस्यांमध्ये (अध्यक्षांसह) सहमती न झाल्यास त्या त्या प्रकरणी ग्राहक संरक्षण अधिनियम, १९८६ च्या कलम १४ (२ए) च्या परंतुकातील तरतुदीनुसार कार्यवाही होणे अपेक्षित व आवश्यक आहे.

आदेशान्वये,

ASW
19/10/2015

(अ.सा.वैरागडे)

प्रबंधक विधी,

राज्य आयोग, महाराष्ट्र, मुंबई

प्रति,

मा.अध्यक्ष व मा.सदस्य,

सर्व जिल्हा ग्राहक तक्रार निवारण मंच,

महाराष्ट्र राज्य

सोबत ः वरीलप्रमाणे

प्रतिलिपी ः

१. मा.न्यायिक सदस्य व मा.सदस्य, राज्य ग्राहक तक्रार निवारण आयोग, महाराष्ट्र
२. प्रबंधक विधी, राज्य ग्राहक तक्रार निवारण आयोग, महाराष्ट्र, नागपूर व औरंगाबाद परिक्रमा खंडपीठ
३. प्रबंधक, सर्व जिल्हा ग्राहक तक्रार निवारण मंच, महाराष्ट्र राज्य

महाराष्ट्र शासन

महाराष्ट्र राज्य ग्राहक तक्रार निवारण आयोग, मुंबई
जूने प्रशासकीय महाविद्यालय इमारत, रुम नं.१,२,५ व ६, हजारीमल सोमाणी मार्ग,
सि.एस.टी.स्टेशन समोर, मुंबई-४०० ००१

जा.क्र.राआ/आस्था/सर्व.मार्ग.सूचना/२००९/२०९४ । दिनांक : १६/११/२००९

प्रति,

१) प्रबंधक (विधी)

महाराष्ट्र राज्य ग्राहक तक्रार निवारण आयोग,
खंडपीठ नागपूर/औरंगाबाद

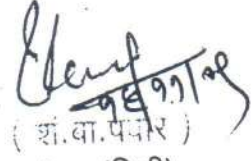
२) प्रबंधक,

जिल्हा ग्राहक तक्रार निवारण न्याय मंच, (सर्व)

विषय :- मार्गदर्शक सूचना पाठविण्याबाबत...

राज्य आयोगाच्या प्रशासकीय समितीच्या दिनांक ३१/१०/२००९ रोजीच्या बैठकीतील ठराव क्र.२ च्या अनुषंगाने सोबत जोडलेल्या परिशिष्टाप्रमाणे सर्वसाधारण मार्गदर्शक सूचना पाठविण्यात येत आहेत. प्रबंधक यांनी सदर मार्गदर्शक सूचनांच्या तीन प्रती तयार करून त्या मा.अध्यक्ष व दोन सदस्य यांना देऊन तसा कार्यपूर्ती अहवाल या कार्यालयास तात्काळ सादर करावा.

सोबत :- वरीलप्रमाणे



(श.वा.प.प.प.)

प्रबंधक (विधी),

राज्य आयोग, महाराष्ट्र, मुंबई

GENERAL INSTRUCTIONS TO THE DISTRICT CONSUMER FORUMS IN THE STATE OF MAHARASHTRA UNDER SECTION 24 B OF THE CONSUMER PROTECTION ACT 1986.

1. It has been brought to the notice of the State Commission that functioning of the District Consumer Forums in the State of Maharashtra at some places suffers from agonizing procedures namely the Presidents of the Forums are under impression that in a decision making process, they have an upper hand and that the members of the District Consumer Forums while hearing and deciding the cases are subordinate to the President. Such impressions are carried away by the Presidents only on the basis of inequality of remuneration and the status as a President. However, in a decision making process as contemplated under the Act, such conception on the part of President is misconception. No doubt the President is supposed to head the District Consumer Forum, but under the Act, District Consumer Forums consists of a President and two members, one of which shall be a woman member and all three together are supposed to take a decision in the case, since they stand on equal footing in decision making process. Any member who is having any difference of opinion is entitled to differ from rest of the members. In the circumstances, it is expected that the District Consumer Forums, if not in a position to take a decision on dais, shall assemble in the chamber of the President, discuss the issues of difference and thereafter, if possible, to come to a unanimous

opinion and shall take unanimous decision. However, instead of following this process, for whatsoever reason, there is no unanimous decision, amongst members of District Consumer Forum, then, in that circumstances the member or the President, who is in a majority shall write his own judgement in order to enable the dissenting party to write his own reasoning. The majority judgement shall be prepared first and thereafter, minority reasoning shall be recorded and order on the basis of majority view can be passed, signed by all the three. Therefore, the order must show who has written the majority judgement and who is member concurring with it. Order must also show, name of the member who has given dissenting reasons. If the case was headed by two members and they differ with each others, then each of them shall write separate order and then the case shall be placed before third member for hearing and giving his reasons. Before placing case before third member for hearing the differing members shall comply with requirement of section 14(2A) proviso. If any party to the proceeding demands the copies of differing order or point or points framed under section 14 (2A) proviso, said copies be given to the parties so that parties can argue matter before third member. Third member is supposed to agree with one of the views already expressed by member. Third member is not supposed to write a third order differing with the two orders already on record. After third member gives his reasons, the majority view order shall be passed by the Forum signed by three members.

2. It has been also noticed that the members of the District Consumer Forums are attending the Forum at convenient time to them. Namely one member sits with the President in first half of the day, while the other member sits along with the President in the second half of the bench and thereby, either of the members remains absent in the forum for half a day. This is not the situation contemplated under the law. What is contemplated is that the Forum consists of the President and two members, that too three together. However, to overcome any situation that in case of some difficulty one of the members may not be in a position to attend-like that he is sick or he has private work of more urgency than attending the Forum, etc. For the said purpose, the quorum has been provided of a two, but this provision of the quorum cannot be utilized for the purpose of remaining absent by one of the members every day for a half day, as has been found of in earlier part. The rule permitting adjustment of sitting of District Consumer Forum has been improperly interpreted by the District Forums. This mechanism which the Forums members have developed of remaining absent for half a day, in some of the District Consumer Forums, is contrary to the provisions of the law and the appointments made by the State Government. Therefore, it is clarified that the members of a District Consumer Forums, either man or woman is entitled to get his honourarium only if he/she attends the forum for full day i.e. from 10.30 a.m. to 1.00 p.m. and 2.00 p.m. to 4.00 p.m. otherwise, there will be a cut in the remuneration for remaining half day absent. Therefore, in order to avoid facing of

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such a difficulty, each member shall attend the Forum throughout the day. It may be possible that even though three members are present in the Forum, two can attend the dais and one can sit in the chamber and write the judgement, when the judgement is reserved or pending judgements are there, but not to attend half a day is in complete violation of the appointment orders and taking of the honourarium, keeping the Commission and the Government in the darkness will amount to causing loss to the Government and will equally amount to misappropriation of the Government money and misconduct thereby. The proviso to rule is enabling provision to meet of exceptional circumstances and to avoid hardship to members who faces difficulty in attending the forum of any day. By this proviso member gets exemption from sitting with President of District Consumer Forum only.

3. It has been also found by the Commission that some Presidents are not respectfully treating the members. In fact the President being the head of the institution, is supposed to be generous, courteous and co-operative with the other members and shall give due respect to them. It is equally binding for the members also that the members shall give due respect, courtesy to the President and all are under obligation to see that their difference of opinion or acts of disagreements shall not be conveyed to the litigants and the office and thereby they are under obligation to maintain decorum, discipline of the Forum not only in the public eyes, but also in the eyes of staff working along with them in the Fora.

4. It has been also observed in some cases that when the President and members come to the dais, the President does not wait till the member comes and he is in a position to occupy the dais along with the Member. Vice versa, it is also been noticed that the members do not wait for the President or other members. In fact those who are going to occupy the dais shall enter the dais one after another, stand together, bow down before the public and thereafter, occupy the chairs which shall be an uniform act on the part of three and in exceptional circumstances on the part of two. Similarly, discipline is also required to be followed when they are rising from the dais at 1.30 p.m. and at the end of the day. Similarly, discipline is required to be followed if for whatsoever reason the board is discharged and they are required to raise from the dais.

5. It has been also observed that some of the Presidents do not allow to place the files before the members. Since they have equal power in decision making and hearing the cases, whenever the matter is called out, file of the said matter shall be placed before each of the members and for the said purpose rules have placed an obligation on the complainant to give three sets of files.

6. It has been also observed that many times, judgements are reserved, but the date for the judgement is not given and the matters are communicated to the State Commission as "disposed of", when in reality neither the order is ready nor it is communicated to the parties. Therefore, it is desirable that the date of judgement shall be given and as far as possible on the

said day, order shall be given. For whatsoever reason if it is not possible for the forum to declare an order on that day, forum may adjourn the date of order by giving reasons as to why the order could not be pronounced on that day. But while doing that Forum shall keep in mind that regulations framed by National Commission requires that the order shall be pronounced within 15 days after the judgement is reserved and this mandate of the rule shall be obeyed by the Forum. Thereafter order must be declared within 15 days after the case is closed for order.

7. It has been also brought to the notice of State Commission that without preparing orders, the cases are informed to the State Commission as being disposed of and President tries to wash his hands by saying that the order was dictated and steno has not transcribed and typed it. This practice is not approved by State Commission. The member who decides the matter shall give dictation well in advance and shall see that order is typed and signed by member of District Consumer Forum, within 15 days of reserving the order. District Consumer Forum shall not communicate this case being disposed off in monthly return unless order is signed by all members of the District Consumer Forum who have heard the case.

8. It has been also found that some of the District Consumer Forum follows practice of declaring operative order and thereafter they assign reasons at convenient time to them. This practice is not in accordance with law and State Commission disapproves this practice because it creates problems for litigants i.e. limitation, etc.

9. It has also been observed that admission of the complaints and/or the interim orders are passed by the President alone either sitting in the chamber and on a dais. This is not as per the law. Requirement is that at least one member along with the President has to go on dais, ideal position is to get both the members, but for whatever reason one member is not available then two can pass order, but passing an order by the President himself when the member is available is not permissible. Therefore, President shall keep in mind that whenever the members are available in the Forum, he shall take them along with him, while passing orders of admission and interim orders. Commission is aware of the fact that in exceptional circumstances, both the members may not be available in the Forum so that the forum with the quorum can deal with the matter of admission and or interim relief, even in that circumstances also, the matters in which no interim orders are required, can be posted on a day when the forum is with the quorum. In matters where the party is asking for interim reliefs and the other members are not available, then in such an exceptional circumstances, after making record of this fact, ad-interim order can be passed by the President alone but such cases be placed before forum on next immediate working day, when forum with quorum is available for confirmation of the said ad-interim order i.e. for example if the matter is presented on Thursday and at that point of time two members are absent, President can pass ad-interim order to protect the party subject to the confirmation of the said order by the Forum and if on the next day namely, Friday, the quorum is available, the President

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shall place the matter before the Forum for continuation and/or otherwise decision in respect of ad-interim order. If the other members do not agree with him, then in that circumstances ad-interim granted on Thursday will stand vacated and then Forum may hear the matter after issuance of notices to the parties within 45 days. This is by way of an example. Whole thrust of the instructions is that ad interim orders, which are passed by the President shall get an approval of the District Consumer Forums as early as possible and that is on the next day when the quorum is available. This instruction is being given in the public interest and to protect the complainant, & to overcome the lacunae in the rules in this respect. This is an exceptional power and to be used by the President very sparingly and it should not be a routine practice of the District Forums.

10. The party and/or advocate seeking ad-interim reliefs as stated above shall be informed by President that the ad interim order passed by him is being placed before Forum on next immediate date when Forum with quorum is available.

11. It is also being found and noticed that instructions issued by the Hon'ble National Commission in respect of the dress code are not being followed by the President and members of the District Consumer Forums, namely some members and President put on shirts of a dark colour like blue, green, red. Such dress is not permissible.

12. All these facts stated above have been seriously considered by the Commission. State Commission is aware of fact that all the above circumstances, which have been quoted above is not

state of affair in all the Forums. There are some good Forums which are following good practices and have a good reputation. But to have a uniform procedure and for the implementation of rules and regulations, we are hereby issuing following directions to District Consumer Forums in State of Maharashtra :-

1. That the dais which is provided to the District Consumer Forums shall be in accordance with the Regulations issued by the Hon'ble National Consumer Disputes Redressal Commission, as per Regulation no.3.
2. The dress code as provided in the Regulation no.4 shall be meticulously followed by the President and the members.
3. While sitting on the dais the President shall sit at the centre. Senior member shall occupy chair on right side of the President and junior member shall occupy chair on left side of the President and in this sequence they shall enter on a dais one after another. After the entry on dais in this sequence they will come to the chairs, stand in one row, will bow down before the public, litigants to reciprocate the respect shown by them to the Forum and thereafter will occupy the respective chairs. While rising from the dais, the same discipline will be followed.
4. President of the Forum is under obligation to conduct a Forum. Therefore he will see that when the matter is called, the files are placed before the respective members including himself and thereafter hear the litigants or an advocate. The all members of the District

Consumer Forum have equal right in decision making process and therefore their participation is expected. Since the responsibility to run the forum is of the President, normally president will conduct proceedings. However that does not mean that the two other members are not entitled in participating the proceeding, because they may have certain queries to be clarified by the litigants and advocate. Therefore, normally the members will put up their queries to the President and Members will get clarification of those queries with the formal permission of the President. Members can put up question to the litigants and the advocates directly. It is to be noted that the permission to be sought is a formal one in order to maintain the decorum and the President is supposed to grant the permission in usual course, unless he finds that the decorum in the Forum is likely to be disturbed and he may lose the control over the proceeding. The members are also expected to make the queries which are relevant to the point at issue, namely the consumer dispute and members shall not conduct in such a manner so as to overpower the President and take the whole reign of the proceeding in his hand. In that circumstances, the President is supposed to control the members and by way of respect, members are supposed to restrain making of queries. All this exercise should be carried out by the members and the President in such a manner that it shall not pass on to litigants and

advocates in such a manner that at the end of day, they can go on making gossiping out of that incident. How to maintain good reputation and decorum at Forum is the skill of the President and from that angle he shall conduct the proceedings and members shall always keep in mind that they have to respect the President or presiding officer without surrendering decision making power in this respect. Commission expects that good discipline, harmonious relations, courteous conduct and respect for each other shall be a signal to the public and not the inter-se dispute between members and the President.

5. The members are instructed that they have to attend the Forum for a full day as provided in Regulation no.5 of the Hon'ble National Commission. If for whatsoever reason they are not in a position to attend whole day, then they may give an application for absence for rest of the day, but in that event there will be a cut in the honourarium to that extent. However if all the members of the Forum are present, normally three together shall go to the dais, but in view of the pendency and or in order to comply the pronouncement of the judgements on a scheduled date, if any one of them is required to sit in the chamber, the two may conduct the cases and the third member may dictate the judgements sitting in the chamber. But attending the Forum for half a day by one member and thereby drawing the full honourarium by

both of them is not permissible and we clarify to them that if such a conduct is found and proved, it will not only be a misconduct, but equally misappropriation of the Government money for which appropriate action may follow. The rule 4(2) proviso of Maharashtra Consumer Protection Rules 2000 though permits adjustment of sitting with President, it does not permit absence of Forum. The rule 4(2) proviso has to be read with rule 4(4) wherein meaning of sitting has been explained.

6. The staff allotted to the District Consumer Forum i.e. Registrars, Superintendents, etc. shall not only respect the President, but also shall give respect to the members. It shall not go with an impression that their salary is more than honourarium received by the members and therefore members can be ignored. We instruct to the ministerial staff of the Forum that along with the president the members are also superior to them and they have to obey and respect them like President. Only in case of a conflict of a direction between member and the president, they shall follow the instructions of the president.

7. The date of judgement shall be fixed at the time of reserving the matter for judgement and within 15 days as per the regulation, final order shall be passed as per Regulation no.18 sub regulation no.(vii) i.e. the mandate of the National Commission, which cannot be allowed to be ignored by the District Consumer Forums. If on a date

for pronouncement of the order, the order cannot be pronounced, the Forum may adjourn the date after assigning the reasons for the same in the Roznama which shall be signed by three and/or the members in quorum who have heard the matter and reserved for judgement.

8. We specifically invite the attention of all the District Consumer Forums members to Regulation nos.25 & 26 of the Regulations of 2005 framed by the Hon'ble National Commission and those should be meticulously followed in order to maintain the dignity of the court.
9. After closure of hearing case, if it is noticed that there is difference of opinion between members of the Forum, then the President shall convene the meeting in his chamber and the members of the forum shall discuss the matter and try to come to an unanimous finding and the order. However, after making this effort if it is found that unanimous decision is not possible, then the members on majority side shall prepare their order and give it to the dissenting member and thereafter, dissenting member shall write his dissenting reasons. Member writing dissenting reasons shall write his own reasons, but he shall not write reasons in such a way as if he is sitting as appellate authority over the majority view.
10. This procedure is to be followed when case was heard by three members of Forum. But where case is heard by two members of Forum, and both of them differ with

each other, then each of them shall write separate orders and comply with section 14(2A) proviso and thereafter, case be placed before third member, who shall hear and decide whether he agrees with one of the two members, who have written differing orders. If parties demand orders passed by differing members and point or points framed under section 14(2A) proviso, the third member shall give ordinary copies to them so that parties can argue before third member. Third member shall agree with one of them and shall not write a third order differing with the two orders already on record. After third member gives reasons agreeing with one of the members who have heard case, the Forum shall pass order by majority and shall be signed by three. All this exercise shall be reflected in the Roznama signed by three members of District Consumer Forums. Thereafter the order shall be pronounced as per majority view. In order to show that this exercise has been done by the President, it shall reflect in the roznama signed by the members.

11. All the members of the District Consumer Forums shall show due respect to the litigants and also to the advocates while on dais or otherwise and shall always bear in mind that the Forum has been established to redress the grievances of the litigants and therefore they shall create the confidence in a public. That the members of the forum shall behave in such a manner that the

confidence is reposed in the public and litigants that the justice will be done here. They shall keep in mind that not only the justice in accordance with the law is expected, but it should be shown to have been done in the matter. The air of the power shall not be allowed to enter the head. Forum shall handle the misbehaviour and/or the disgruntled element in a soft spoken manner and see that the prestige and dignity of the Forum is maintained without surrendering the majesty of law.

12. Judicial proceedings under this Act are supposed to be conducted with a summary procedure. It has been noticed that many times attempt is made by the parties on the basis of the principles of the Civil Procedure Code to protract the litigations, which is not expected under the Consumer Protection Act, 1986. On the contrary the Civil Procedure Code applies to the extent it is stated in the Act and not otherwise. Therefore, while dealing with the matters, the District Consumer Forums shall see whether any application made by the party has been provided in the Act coupled with the Civil Procedure Code or not. If it is not provided under the Act, procedure of a Civil Procedure Code shall be avoided and that is the mandate of the Regulation no.26(1) and the proviso. This is brought to the notice of the District Consumer Forums, because the Commission has noticed that many matters are protracted and the applications are entertained and heard for hours

and lengthy orders are passed as if the Forum is functioning as a Civil Court. Whole object of the Act is to give a speedy relief to the party by conducting quasi judicial proceeding in a summary manner and this intent of the legislation shall always be kept in mind.

13. Further instructions may be issued as and when necessary.



(S.B.Mhase)

President

State Commission, Mumbai

Date: 31/10/2009