

SURENDRA MOHAN ARORA

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v.

HDFC BANK LTD. AND OTHERS

(Civil Appeal No. 4891 of 2014)

APRIL 25, 2014

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[GYAN SUDHA MISRA AND
PINAKI CHANDRA GHOSE, JJ.]

Consumer Protection Regulations, 2005 – Regulation 15

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– Power of the National Commission to review order when error apparent on the face of the record – Constitutionality of Regulation 15 – Held: The Regulations were framed in accordance with the power conferred on the Commission u/s.30A of the Act – Regulation 15(2) states that power to deal with review applications lies with the Commission – The procedure is to be adopted by the National Commission, whether the review petition would be decided after hearing the parties orally or can be disposed of by way of circulation – Regulations u/s.22 of the Act, cannot be said to be ultra vires the Act – No reason to believe that the National Commission by enacting Regulation 15 exceeded its jurisdiction or the power vested in it under s.30A of the Act – Consumer Protection Act, 1986 – ss.22 and 30A.

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Review – Held: Unless the power of review is specifically conferred by the statute, there cannot be any inherent power of review – Consumer Protection Act, 1986.

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Advocates Act, 1961 – s.30 – Proxy counsel – Entitlement of, to appear before the Courts – Held: Under the Advocates Act, there is no terminology which defines "proxy counsel – Therefore, specific direction issued by the National Commission in its Cause List, that no proxy counsel shall be allowed to make submissions, not bad in law.

- A The instant appeal was filed against the judgment passed by the High Court dismissing the writ petition filed by the appellant, questioning the vires of Regulation 15 of the Consumer Protection Regulations, 2005 framed under the Consumer Protection Act, 1986.
- B Regulation 15 of the Consumer Protection Regulations, 2005 sets out the grounds for review and states that unless otherwise ordered by the National Commission, an application for review shall be disposed of by circulation without oral arguments, as far as practicable between the same members who had delivered the order sought to be reviewed.
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- D The appellant contended that Regulation 15 of the Consumer Protection Regulations be struck down on the ground that the said Regulation was *ultra vires* Section 22 of the Consumer Protection Act; and that by introducing Regulation 15, the National Commission has exceeded its jurisdiction and the power vested in it under Section 30A of the Act.

- E The main grievance of the appellant was that the National Commission has provided for disposal of review application by circulation without oral arguments; and that the salient features of the Act are being rendered redundant by way of Regulation 15, by taking away the right of being heard and there is no adherence to principles of natural justice, thereby making it *ultra vires* to Section 22 of the said Act.
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Dismissing the appeal, the Court

- G HELD:1.1. Under Section 22(2) of the Consumer Protection Act, 1986, the National Commission has been empowered to review an order made by it when there is an error apparent on the face of the record. Also sub-section (1) of the said Act streamlines the functioning of
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the Consumer Redressal Forums and also reduces the number of appeals to the Supreme Court from the orders of the National Commission. The power of review did not exist earlier. It is trite law that unless the power of review is specifically conferred by the statute, there cannot be any inherent power of review. [Para 9] [843-C-E]

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1.2. In the instant case, the power conferred by Section 22 of the said Act on the National Commission is not an inherent power and further the Commission has the power to review its order when there is an error apparent on the face of the record. The Regulations have been framed in accordance with the power conferred under Section 30A on the Commission, thereby effecting its right to frame Regulations. Therefore, the Regulations have been framed in accordance with law. Regulation 15(2) states that power to deal with review applications lies with the Commission. The procedure is to be adopted by the National Commission, whether the review petition would be decided after hearing the parties orally or can be disposed of by way of circulation. Therefore, the said Regulations under Section 22 of the said Act, cannot be said to be *ultra vires* the said Act. There is no reason to believe that the National Commission by enacting Regulation 15 exceeded its jurisdiction or the power vested in it under Section 30A of the said Act. [Para 10] [843-F-H; 844-A-C]

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State of Orissa vs. Dr. (Miss) Binapani Dei and Ors (1967) 2 SCR 625; Maneka Gandhi vs. Union of India (1978) 1 SCC 248: 1978 (2) SCR 621; Sahara India (Firm), Lucknow vs. Commissioner of Income Tax, Central-I & Anr. (2008) 14 SCC 151: 2008 (6) SCR 427 and Automotive Tyre Manufacturers Association vs. Designated Authority and Ors. (2011) 2 SCC 258: 2011 (1) SCR 198 – Cited.

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2. Under the Advocates Act, there is no terminology which defines “proxy counsel. In a very recent decision

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- A in **Sanjay Kumar*, it was held that any “Arzi”, “Farzi”, half-baked lawyer under the label of “proxy counsel”, a phrase not traceable under the Advocates Act, 1961 or under the Supreme Court Rules, 1966 etc., cannot be allowed to abuse and misuse the process of the court
- B under a false impression that he has a right to waste public time without any authority to appear in the court, either from the litigant or from the AOR, as in the instant case. Therefore, the specific direction issued by the National Commission in its Cause List, that no proxy
- C counsel shall be allowed to make submissions, cannot be said to be bad in law and without any jurisdiction. [Para 11] [844-C-D, F-H; 845-A]

**Sanjay Kumar v. The State of Bihar & Anr. S.L.P. (Criminal) No.9967 of 2011, order dated January 28, 2014*

- D – relied on.

3. The foundation for filing this appeal by the appellant is only to curtail the rights of the National Commission to adopt the procedure whether the review

- E petitions will be decided after granting an opportunity of being heard to the petitioner. The order of the High Court showed that no such request was made in the application before the National Commission for such hearing. In these circumstances, the High Court correctly held that
- F the writ petition is misconceived and devoid of merit without even laying the basic foundation for having sought an oral hearing of the review application. There is no reason to interfere with the order passed by the High Court. [Para 12] [845-B-D]

- G Case law reference:

(1967) 2 SCR 625	Cited	Para 8
1978 (2) SCR 621	Cited	Para 8
H 2008 (6) SCR 427	Cited	Para 8

2011 (1) SCR 198

Cited

Para 8

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4891 of 2014.

From the Judgment & Order dated 07.01.2013 of the High Court of Delhi at New Delhi in Writ Petition No. 64 of 2013

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Nikhil Majithia, Parth Tiwari (for Pragati Neekhra) for the Appellants.

The Judgment of the Court was delivered by

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PINAKI CHANDRA GHOSE, J. 1. Leave granted.

2. This appeal is directed against the judgment dated January 7, 2013 passed by the High Court of Delhi in Writ Petition No. 64 of 2013 dismissing the writ petition filed by the appellant, questioning the vires of Regulation 15 of the Consumer Protection Regulations, 2005 (hereinafter referred to as "the Regulations") framed under the Consumer Protection Act, 1986 (hereinafter referred to as "the said Act").

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3. The facts of the case briefly are as follows :

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(3.1) The appellant filed a complaint before the District Forum under the said Act. The foundation of the filing of such complaint was an allegation made against respondent No. 1 – HDFC Bank Ltd. for indulging in unfair trade practice on the ground of failure to provide professional services to the appellant resulting in pre-payment of loan to respondent No.1 seeking to levy a penalty for pre-payment.

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(3.2) By an order dated August 2, 2007, the District Forum held in favour of the appellant. Respondent No.1 preferred an appeal against the said order before the State Commission resulting in dismissal by an order dated November 19, 2007. A revision petition was filed before the National Consumer Disputes Redressal Commission (hereinafter referred to as

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- A "the National Commission") which set aside the orders of the District Forum and the State Commission vide an order dated August 14, 2012 on the basis of the agreements *inter se* between the parties. Being aggrieved, the appellant filed a review application before the National Commission resulting in
- B dismissal by an order dated September 24, 2012.

(3.3) Being aggrieved and dissatisfied with the said order, the appellant filed a writ petition under Article 226 of the Constitution of India before the High Court, *inter alia*, praying that Regulation 15 of the Regulations be struck down on the ground that the said Regulation being *ultra vires* of the said Act, and further the review application filed by the appellant should be re-heard by the National Commission granting an opportunity to present the case by making oral arguments.

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- D 4. Mr. Nikhil Majithia, learned counsel appearing on behalf of the appellant, drew our attention to the Statement of Objects and Reasons of the said Act which is to provide for better protection of interest of consumers and it is towards that objective that Section 22 of the said Act was amended by Act No.62 of 2002 with effect from March 15, 2003, conferring the power of review on the National Commission, which was not available in the original Act. According to him, Regulation 15 is *ultra vires* Section 22 of the said Act. It is also his contention that by introducing Regulation 15, the National Commission has
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- F exceeded its jurisdiction and the power vested in it under Section 30A of the said Act.

5. Section 22 of the said Act reads as follows :

- G **"Section 22. Power of and procedure applicable to the National Commission. — (1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.**
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(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record.” A

It is necessary to quote Regulation 15 for our purpose B
which is as under:

“Regulation 15. Review.-(1) It shall set out clearly the grounds for review.

(2) Unless otherwise ordered by the National Commission, an application for review shall be disposed of by circulation without oral arguments, as far as practicable between the same members who had delivered the order sought to be reviewed.” C

6. It is needless to mention here that the said Regulations were duly published in the Official Gazette dated May 31, 2005 and were so made in pursuance of the power conferred under Section 30A of the said Act conferring power on the National Commission to make such regulations with the prior approval of the Central Government. According to Mr. Majithia, the Consumer Protection Act has been enacted to protect and advance the cause of consumers. He further contended that the Statement of Objects and Reasons of the Act in Clause 2 states that the Act seeks to promote and protect the rights of consumers including the right to hear and further to assure that the interest of the consumers will receive due consideration at appropriate fora. He further submitted that all these fora are quasi-judicial authorities, therefore, are bound to observe the principles of natural justice. D

7. He further pointed out that the amendment of Section 22 is only to empower the National Commission to function more explicitly and further to streamline the functioning of the consumer fora. The main grievance of the appellant is that the National Commission has provided for disposal of review E

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- A application by circulation without oral arguments. Mr. Majithia submitted that the said Act has provided for promotion and protection of the rights of the consumers which includes the right to be heard. The said Act has also provided that the principles of natural justice shall be adhered to by all quasi-judicial fora which include the National Commission. He submitted that the salient features of the Act are sought to be rendered redundant by way of Regulation 15, by taking away the right of being heard and there is no adherence to principles of natural justice, thereby making it *ultra vires* to Section 22 of the said Act. In these circumstances, he submitted that Regulation 15 should be struck down.

- 8. To fortify his submission, he relied on the decisions of this Court in *State of Orissa vs. Dr. (Miss) Binapani Dei and Ors*¹ followed in *Maneka Gandhi vs. Union of India*² & *Anr.*, *Sahara India (Firm), Lucknow vs. Commissioner of Income Tax, Central-I & Anr.*³ and *Automotive Tyre Manufacturers Association vs. Designated Authority and Ors.*⁴ and it has been contended by Mr. Majithia that the courts have emphasized on the right of being heard time and again even when an order is passed by an administrative authority and that written arguments cannot be a substitute for oral hearing. It is also the case of the appellant that the national Commission has exercised its power beyond the scope of Section 30A of the Act while enacting Regulation 15, which in its present form defeats the objective of the amended Section 22 of the Act as the right of making oral arguments is taken away from the consumer, making the Regulation inconsistent with the objective of the Act. It has also been submitted that the impression given by Regulation 15(2) that oral arguments can be made when allowed by the National Commission, is fallacious as it does

1. (1967) 2 SCR 625.
 2. (1978) 1 SCC 248.
 3. (2008) 14 SCC 151.

H 4. (2011) 2 SCC 258.

not consider the fact that the Act has given the prerogative to the consumer and not to the National Commission. Moreover, this would also lead to inequality as some consumers are given the right of being heard in open court and some are deprived of the same at the discretion of the National Commission. Another submission of the learned counsel is that in the light of the principle that justice must not only be done but also be seen to have been done; Section 22 is rendered redundant on account of Regulation 15 as the same is contrary to the principle of *audi alteram partem* which is undisputedly followed by judicial and quasi-judicial bodies alike.

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9. We have perused Section 22 of the said Act. Under Section 22(2), the National Commission has been empowered to review an order made by it when there is an error apparent on the face of the record. We have also noticed sub-section (1) of the said Act. It is a fact that this provision streamlines the functioning of the consumer Redressal forums and also reduces the number of appeals to the Supreme Court from the orders of the National Commission. The power of review did not exist earlier. It is trite law that unless the power of review is specifically conferred by the statute, there cannot be any inherent power of review.

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10. In the instant case, the power conferred by Section 22 of the said Act on the National Commission is not an inherent power and further the Commission has the power to review its order when there is an error apparent on the face of the record. We do not find any dispute that the Regulations have been framed in accordance with the power conferred under Section 30A on the Commission, thereby effecting its right to frame Regulations. Therefore, the Regulations have been framed in accordance with law. We have minutely gone through Regulation 15(2) and found that power to deal with review applications lies with the Commission. The procedure is to be adopted by the National Commission, whether the review petition would be decided after hearing the parties orally or can

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- A be disposed of by way of circulation. Therefore, we do not find that any mischief has been done by framing the said Regulations. In our opinion, the said Regulations under Section 22 of the said Act, cannot be said to be *ultra vires* the said Act. Accordingly, we do not find any substance in the arguments
- B put up before us by Mr. Majithia. There is no reason to believe that the National Commission by enacting Regulation 15 exceeded its jurisdiction or the power vested in it under Section 30A of the said Act, as has been tried to be contended by Mr. Majithia.
- C 11. The other grievance of Mr. Majithia is that the National Commission in its Cause List specifically issued a notice that no proxy counsel shall be allowed to make submissions. According to him, such a direction is bad in law and is without any jurisdiction. According to him, such direction is also arbitrary
- D and illegal as it prevents a qualified lawyer enrolled on the rolls of a State Bar Council from presenting his case before the National Commission. He further submitted that it is also in violation of Article 19(1)(g) of the Constitution, being the fundamental right to practice. He further stated that under
- E Section 30 of the Advocates Act, 1961, an Advocate, after having been enrolled, has a right to appear before the courts or any other authority and, therefore, it is curtailment of the right of an Advocate. We find that under the Advocates Act, there is no terminology which defines "proxy counsel". We have found
- F in a very recent decision of this Court in S.L.P. (Criminal) No.9967 of 2011 (*Sanjay Kumar v. The State of Bihar & Anr.*), a three-Judge Bench of this Court in its order dated January 28, 2014 has held as follows :
- G "In such a chaotic situation, any "Arzi", "Farzi", half-baked lawyer under the label of "proxy counsel", a phrase not traceable under the Advocates Act, 1961 or under the Supreme Court Rules, 1966 etc., cannot be allowed to abuse and misuse the process of the court under a false impression that he has a right to waste public time without
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[PINAKI CHANDRA GHOSE, J.]

any authority to appear in the court, either from the litigant A
or from the AOR, as in the instant case."

Therefore, we do not find any substance in the submission of Mr. Majithia with regard to "proxy counsel". We also do not find that the decisions cited by Mr. Majithia before us can extend any help in the facts and circumstances of this case. B

12. The foundation, as it appears to us for filing this appeal by the appellant, is only to curtail the rights of the National Commission to adopt the procedure whether the review petitions will be decided after granting an opportunity of being heard to the petitioner. From the order of the High Court, we find that no such request was made in the application before the National Commission for such hearing. In these circumstances, the High Court correctly held that the writ petition is misconceived and devoid of merit without even laying the basic foundation for having sought an oral hearing of the review application. We do not find any reason to interfere with the order passed by the High Court. Accordingly, we uphold and affirm the said order and dismiss this appeal. C D

Bibhuti Bhushan Bose

Appeal dismissed. E