

West Bengal Consumer Protection Rules, 1987

WEST BENGAL

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042.

Notification No. 7601 F.S./FS/4F-25/82 Pt. II, dated 20th July, 1987.- In exercise of the power conferred by sub-section (2) of section 30 of the Consumer Protection Act, 1986 (68 of 1986), the Governor is pleased hereby to make the following rules :

1. Short title and commencement.

(1) These rules may be called the West Bengal Consumer Protection Rules, 1987.(2)They shall come into force on such date as the State Government may, by notification in the "Official Gazette", appoint.

2. Definitions.

(1) In these rules, unless the context otherwise requires, (a)"Act" means the Consumer Protection Act, 1986 (68 of 1986) ;(b)"agent" means a person duly authorised by a party to present any complaint or appeal or reply on its behalf before the State Commission or the District Forum ;(c)"appellant" means a party which makes an appeal against the order of the District Forum ;(d)"memorandum" means memorandum of appeal filed by the appellant ;(e)"opposite party" means a person who answers complaint or claim ;(f)"President" means the President of the State Commission or District Forum, as the case may be ;(g)"respondent" means the person who answers any memorandum of appeal ;(h)"section" means a section of the Act.(2)Words and expressions used in these rules and not defined but defined in the Act shall have the meanings respectively assigned to these in the Act.

3. Salaries, honorarium and other allowances, payable to and the other terms and conditions of service of the President and Members of the District Forum [section 10(3)].

(1) (I) If a sitting District Judge or a serving member of the West Bengal Higher Judicial Service is appointed as President of the District Forum on whole time basis, he shall receive a special pay of Rs. 200 per day besides the pay and allowances admissible to him as a sitting Judge or as a serving member of the West Bengal Higher Judicial Service. (ii) If a sitting District Judge or a serving member of the West Bengal Higher Judicial Service appointed as a President of the District Forum on whole time basis stands superannuated (on attaining the age of superannuation) during his tenure as President of the District Forum, he shall continue to receive the pay and allowances last drawn by him less pension and the pension equivalent to gratuity, if any. (iii) If a retired District Judge or a retired member of the West Bengal Higher Judicial Service or a person who has resigned from the Higher Judicial Service is appointed as President of the District Forum on whole time basis, he shall receive the pay and allowances last drawn by him less pension and the pension equivalent to gratuity, if any. (iv) If the President of the District Forum is appointed on part-time basis, he shall receive an honorarium of Rs. 150 per day. (v) Other members, if sitting on whole-time basis, shall receive a consolidated honorarium of Rs. 2,000 per month and if sitting on part-time basis shall receive a consolidated honorarium of Rs. 100 per day. (2) The President and the members of the District Forum shall be entitled to such travelling allowance and daily allowance on official tour as are admissible to a [Group A] [Substituted by Notification No. 530-DCA, dated 30.7.2001 w.e.f. 30.7.2001.] officer of the State Government. (3) The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government. (4) Before appointment, the President and any member of the District Forum shall have to give an undertaking that he does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as a member of the Forum. (5) The State Government may remove from the office, the President and any member of a District Forum who (a) has been adjudged an insolvent ; or (b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude ; or (c) has become physically or mentally incapable of acting as such member ; or (ca) [has remained absent in three consecutive sittings of the District Forum without obtaining previous permission of the State Government, except for reasons beyond his control, or ;] [Inserted by Notification No. 530-DCA, dated 30.7.2001.] (d) has acquired such financial or other interest as is likely to affect prejudicially his function as member ; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest : [Provided that the President or any other member shall not be removed from his office on the ground specified in clauses (d) and (e) except on an inquiry held by the State Government in accordance with the procedure laid down in sub-rule (10) ;] [Substituted, ibid. w.e.f. 30.7.2001.] (5A) [The State Government may transfer the President of a District Forum from one District Forum to any other District Forum in the interest of public service. (5B) The terms and conditions of service of the President and the members of the District Forum, which have not been specified in these rules, shall be such as are applicable to Group 'A' Officers of the State Government under the West Bengal Service Rules, Part I and Part 11.] [Inserted by Notification No. 530-DCA, dated 30.7.2001.] (6) The terms and conditions of service of the President and the members of the District Forum shall not be varied to their disadvantage during their tenure of office. (7) Where any vacancy occurs in the office of the President of the District Forum, the senior

most (in order of appointment) member of the District Forum, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the District Forum.(8)When the President of the District Forum is unable to discharge his functions owing to absence, illness or any other cause, the senior most (in order of appointment) member of the District Forum shall discharge the functions of the President until the day on which the President resumes the charge of his functions.(9)The President or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organisation which have been the subject of any proceeding under the Act during his tenure for a period of five years from the date on which he ceases to hold such office.(10)[(a) For the purpose of the inquiry under the proviso to sub-rule (5), the State Government shall draw up, or cause to be drawn up, (i)the substance of imputations of misconduct or misbehaviour into definite and distinct articles of charge ;(ii)a statement of misconduct or misbehaviour in support of each article of charge which shall contain (A)a statement of relevant facts including any admission or confession by the President or the member, as the case may be, of the District Forum.(B)a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.(b)The State Government shall deliver, or cause to be delivered, to the President or the member, as the case may be, of the District Forum a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared under clause (a).(c)The State Government shall, in all cases for the purpose of inquiry, appoint an inquiring authority and forward to it(i)a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour ;(ii)a copy of statement of witnesses, if any ;(iii)evidence proving the delivery of the documents referred to in clause (a) to the President or the member, as the case may be, of the District Forum.(d)The inquiring authority shall issue a notice to the President or the member, as the case may be, of the District Forum, to submit, within ten working days from the date of receipt of the notice, a written statement of his defence together with the following : (i)a list of witnesses to be examined on his behalf ;(ii)a notice asking for the discovery or production of any documents which are in possession of the State Government but not mentioned in clause(a).The inquiring authority shall also inform the President or the member through the aforesaid notice that, for the purpose of preparing his defence, he may, within five working days from the date of receipt by him of the notice, inspect the documents specified in the list referred to in clause (a).(e)The inquiring authority shall, on receipt of the notice for discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition :Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.(f)On receipt of the requisition referred to in clause (e), every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority :Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the President or the member and withdraw the requisition made by it for the production or discovery of such documents.(g)The President or the member, as the case may be, of the District Forum shall appear in person before the inquiring authority on such day and at such time within fourteen

working days from the date of receipt of notice as referred to in clause (d), as the inquiring authority may specify in this behalf, to defend the charges brought against him.(h)The inquiring authority shall issue a notice requiring the State Government or its representative to appear before it on such date and at such time as are specified in clause (g), to present its case.(f)The President or the member, as the case may be, of the District Forum and the State Government or its representative shall appear before the inquiring authority on the date of hearing or any other date on which the hearing may be adjourned.(j)If the President or the member, as the case may be, of the District Forum, without prior leave of the inquiring authority, fails to appear on the specified date and time, the inquiring authority may require the State Government or his representative to present his case and conduct the inquiry ex parte.(k)If prior leave of the inquiring authority has been taken, the case shall be adjourned to a later date. The inquiring authority shall not ordinarily allow more than one adjournment.(l)If the President or the member, as the case may be, of the District Forum, who has not admitted any of the articles of charge in his written statement of defence, the authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record and obtain the signature of the President or the member, as the case may be, of the District Forum thereon. The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the President or the member, as the case may be, of the District Forum pleads guilty.(m)If the President or the member, as the case may be, of the District Forum refuses or omits to plead guilty, or claims to be tried, the inquiring authority shall, after giving both the parties reasonable opportunities of being heard, conduct the inquiry.(n)After completion of the inquiry, a report shall be prepared which shall be forwarded to the State Government. The report shall contain(i)the articles of charge and the statement of imputation of misconduct or misbehaviour ;(ii)the defence of the President or the member, as the case may be, of the District Forum in respect of each article of charge ;(iii)an assessment of the evidence in respect of each article of charge ; and(iv)the finding on each article of charge and the reasons therefor.][Inserted by Notification No. 530-DCA. dated 30.7.2001.]

4. Procedure to be adopted by the District Forum for analysis and testing of the goods section 13(1)(c).

(1) Where a complainant alleges that a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum may direct the complainant to provide more than one sample of the goods in clean containers with stopper properly fixed on them.(2)On receiving the samples of such goods, the District Forum shall seal it and fix labels on the containers carrying following information(i)name and address of the appropriate laboratory to whom sample will be sent for analysis and test ;(ii)name and address of District Forum ;(iii)case number ; and(iv)seal of the District Forum.(3)The sample shall be sent to the appropriate laboratory by the District Forum for sending report within 45 days or within such extended time as may be granted by the District Forum (keeping in view the provision of sub-rule (9) of rule (5) after specifying the nature of the defect alleged and date of submission of the report.

5. Procedure relating to the conduct of the meetings of the District Forum, its sittings and other matters [section 14 (3)].

(1)The office of the District Forum shall be located at the headquarters of the district. Where the State Government decides to establish a single District Forum having jurisdiction over more than one district, it shall notify the place and jurisdiction of the District Forum so established.(2)The working days and the office hours of the District Forum shall be the same as that of the State Government.(3)The official seal and emblem of the District Forum shall be such as the State Government may specify.(4)The sitting of the District Forum, as and when necessary, shall be convened by the President.(5)No act or proceedings of the District Forum shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in its constitution.(6)The State Government shall appoint such staff, as may be necessary to assist the District Forum in its day to day work and to perform such other functions as are provided under these rules or assigned to it by the President.(7)Where the opposite party admits the allegation made by the complainant, the District Forum shall decide the complaint on the basis of the merit of the case and documents placed before it.(8)If during the proceedings conducted under section 13 the District Forum fixes a date for hearing of the parties, it shall be obligatory on the complainant and the opposite party or their authorised agents to appear before the District Forum on such date of hearing or any other date to which hearing could be adjourned. Where the complainant or his authorised agent fails to appear before the District Forum on such day, the District Forum may in its discretion either dismiss the complaint for default or decide it on merit. Where the opposite party or its authorised agent fails to appear on the day of hearing, the District Forum may decide the complaint ex parte.(9)While proceeding under sub-rule (8), the District Forum may, on such terms as it may think fit and at any stage, adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint should be decided within ninety days from the date of notice received by the opposite party where complaint does not require analysis or testing of the goods and within one hundred and fifty days if it requires analysis or testing of the goods.(10)Orders of the District Forum shall be signed and dated by the members of the District Forum and shall be communicated to the parties free of charge.

6. Salary, honorarium and other allowances payable to, and the other terms and conditions of service of the President and Members of the State Commission section 16(2).

(1) The President of the State Commission shall receive the salary admissible to Judge of the High Court if appointed on whole time basis or a consolidated honorarium of Rs. 200 per day for the sitting if appointed on part-time basis. Other members, if sitting on whole time basis, shall receive a consolidated honorarium of Rs. 3,000 per month and if sitting on part-time basis, a consolidated honorarium of Rs. 150 per day for the sitting.(2)The President and the members of the State Commission shall be entitled to such travelling allowance and daily allowance on official tour as are admissible to a [Grade A] [Substituted by Notification No. 530-oCA, dated 30.7.2001, w.e.f. 30.7.2001.] officer of the State Government.(3)The salary, honorarium, other allowances shall be defrayed out of the Consolidated Fund of the State Government.(4)The President and the members

of the State Commission shall hold office for a term of five years or up to the age of [67 years] [Substituted by Notification No. 530-OCA, dated 30.7.2001, w.e.f. 30.7.2001.] whichever is earlier and shall not be_ eligible for reappointment :Provided that the President and any member may (a)by writing under his hand and addressed to the State Government resign his office any time ; and(b)be removed from his office in accordance with provision of sub-rule (5).(5)The State Government may remove from office the President or a member of the State Commission who (a)has been adjudged an insolvent, or(b)has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude, or(c)has become physically or mentally incapable of acting as such member, or(ca)[has remained absent in three consecutive sittings of the State Commission without obtaining previous permission of the State Government, except for reasons beyond his control ; or] [Inserted, ibid, w.e.f. 30.7.2001.](d)has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or(e)has so abused his position as to render his continuance in office prejudicially to the public interest :[Provided that the President or any other member shall not be removed from his office on the ground specified in clauses (d) and (e) except on an inquiry held by the State Government in accordance with the procedure laid down in sub-rule (12).] [Substituted by Notification No. 530-OCA, dated 30.7.2001, w.e.f. 30.7.2001.](5A)[The terms and conditions of service of the President and the members of the State Commission, which have not been specified in these rules shall be such as are applicable to Group A Officers of the State Government under the West Bengal Service Rules, Part I and Part II] [Inserted, ibid, w.e.f. 30.7.2001.](6)Before appointment, the President and member of the State Commission shall have to give an undertaking that he does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as a member of the State Commission.(7)The terms and conditions of service of the President and the members of the State Commission shall not be varied to their disadvantages during their tenure of office.(8)Every vacancy caused by resignation or removal of the President or any other member of the State Commission under sub-rule (4) or otherwise shall be filled by fresh appointment.(9)Where any such vacancy occurs in the office of the President of the State Commission the senior most (in order of appointment) member, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such vacancy assumes the office of the President of the State Commission.(10)When the President of the State Commission is unable to discharge his functions owing to absence, illness or any other cause, the senior most (in order of appointment) member of the State Commission shall discharge the functions of the President until the day on which the President resumes the charge of his functions.(11)The President or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administrations of an organisation which have been the subject of any proceeding under the Act during his tenure for a period of five years from the date on which he ceases to hold office.(12)[(a) For the purpose of the inquiry under the proviso to sub-rule (5), the State Government shall draw up or cause to be drawn up-] [Substituted by Notification No. 530-OCA, dated 30.7.2001, w.e.f. 30.7.2001.](i)the substance of imputation of misconduct or misbehaviour into definite and distinct articles of charge ;(ii)a statement of misconduct or misbehaviour in support of each article of charge containing (A)a statement of relevant facts including any admission or confession by the President or the member, as the case may be, of the State Forum,(B)a list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained.(b)The State Government shall deliver, or cause to be delivered, to the President or to the member, as the case may be, of the

State Forum a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour prepared under clause (a). (c) The State Government shall in all cases for the purpose of inquiry appoint an inquiring authority and forward to it (i) a copy of the articles of charge and the statement of imputations of misconduct or misbehaviour ; (ii) a copy of statement of witnesses, if any ; (iii) evidence proving the delivery of the documents referred to in clause (a) to the President or the member, as the case may be, of the State Forum. (d) The inquiring authority shall issue a notice. to the President or the member, as the case may be, of the State Forum, to submit, within ten working days from the date of receipt of the notice, a written statement of his defence together with the following : (i) a list of witnesses to be examined on his behalf ; (ii) a notice asking for the discovery or production of any documents which are in possession of the State Government but not mentioned in clause (a). The inquiring authority shall also inform the President or the member through the aforesaid notice that, for the purpose of preparing his defence, he may, within five working days from the date of receipt by him of the notice, inspect the documents specified in the list referred to in clause (a). (e) The inquiring authority shall, on receipt of the notice for discovery or production of documents forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition : Provided that the inquiring authority may, for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case. (f) On receipt of the requisition referred to in clause (e) every authority having the custody or possession of the requisitioned documents shall produce the same before the inquiring authority : Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall, on being so informed, communicate the information to the President or the member and withdraw the requisition made by it for the production or discovery of such documents. (g) The President or the member, as the case may be, of the State Forum shall appear in person before the inquiring authority on such day and at such time within fourteen working days from the date of receipt of notice as referred to in clause (d), as the inquiring authority may specify in this behalf, to defend the charges brought against him. (h) The inquiring authority shall issue notice requiring the State Government or his representative to appear before it on such date and at such time as specified in clause (g), to present their case. (i) The President or the member, as the case may be, of the State Forum and the State Government or its representative shall appear before the inquiring authority on such date of hearing or any other date to which the hearing may be adjourned. (j) If the President or the member, as the case may be, of the State Forum, without prior leave of the inquiring authority, fails to appear on the specified date and time, the inquiring authority shall require the State Government or his representative to present his case and conduct the inquiry ex parte. (k) If prior leave of the inquiring authority has been taken, the case shall be adjourned to a later date. The inquiring authority shall, however, not ordinarily allow more than one adjournment.

7. Place of sitting and other matters relating to State Commission [selection 14(3) read with section 18]

(1) office of the State Commission shall be located at the capital of the State. (2) The working days and the office hours of the State Commission shall be the same as that of the State Government. (3) The official seal and emblem of the State Commission shall be such as the State Government may specify. (4) Sitting of the State Commission, as and when necessary, shall be convened by the President. (5) No act or proceedings of the State Commission shall be invalid by reasons only of the existence of any vacancy among its members or any defect in its constitution thereof. (6) The State Government shall appoint such staff, as may be necessary to assist the State Commission in its works and perform such other functions as are provided under these rules or assigned to it by the President. (7) Where the opposite party admits the allegation made by the complainant, the State Commission shall decide the complaint on the basis of the merit of the case and documents placed before it. (8) If during the proceedings conducted under section 13, the State Commission fixes a date for hearing of the parties, it shall be obligatory on the complainant and opposite party or their authorised agents to appear before the State Commission on such date of hearing or any other date to which hearing could be adjourned. Where the complainant or his authorised agent fails to appear before the State Commission on such day, the State Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its authorised agent fails to appear on the day of hearing, the State Commission may decide the complaint ex parte. (9) While proceeding under sub-rule (8), the State Commission may, on such terms as it may think fit and at any stage, adjourn the hearing of the complaint but not more than one adjournment shall ordinarily be given and the complaint should be decided within ninety days from the date of notice received by the opposite party where complaint does not require analysis or testing of the goods and within one hundred and fifty days if it requires analysis or testing of the goods. (10) Orders of the State Commission shall be signed and dated by the members of the State Commission and shall be communicated to the parties free of charge.

8. Form and manner of appeal under section 15.

(1) Every appeal under section 15 shall be filed in the form of a memorandum in legible handwriting, preferably typed, setting forth concisely under distinct heads the grounds of appeal without any argument or narrative and numbering such grounds consecutively. (2) The memorandum of appeal shall be presented by the applicant or his authorised agent to the State Commission in person or sent by registered post addressed to the State Commission. (3) Each memorandum shall be accompanied by the certified copy of the order of the District Forum appealed against and such of the documents as may be required to support grounds of objection mentioned in the memorandum. (3A) [Every memorandum shall be accompanied by a copy of the challan showing deposit of the amount required to be deposited by the appellant.] [Inserted by Notification No. 0125-CA/CA/Sectt/P/DF/4M-7/2000 Pt. II, dated 27.1.2005, w.e.f. 25.4.2005.] (4) When the appeal is presented after the expiry of period of limitation as specified in the Act, the memorandum shall be accompanied by an application supported by an affidavit setting forth the fact on which appellant relies to satisfy the State Commission that he has sufficient cause for not preferring the appeal within the period of limitation. (5) The appellant shall submit four copies of the memorandum to the State Commission for official purposes. (6) On the date of the hearing or any other day to which hearing may be adjourned, it shall be obligatory for the parties or their authorised agents to appear before the State Commission. If the appellant or his authorised

agent fails to appear on such date, the State Commission may, in its discretion, either dismiss the appeal or decide it on the merit of the case. If respondent or his authorised agent fails to appear on such date, the State Commission shall decide the appeal ex parte on merits of the case.(7)The appellant shall not, except by leave of the State Commission, urge or be heard in support of any ground or objections not set forth in the memorandum but the State Commission, in deciding the appeal, shall not confine to the grounds of objection set forth in the memorandum or taken by leave of the State Commission under this rule :Provided that the Commission shall not rest its decision on any other grounds unless the party, who may be affected thereby, has been given at least one opportunity of being heard by the State Commission.(8)The State Commission may, on such terms as it may think fit and at any stage, adjourn the hearing of appeal, but not more than one adjournment shall ordinarily be given and the appeal should be decided within ninety days from the first date of hearing.(9)Order of the State Commission on appeal shall be signed and dated by the Members of the State Commission (constituting the Bench) and shall be communicated to the parties free of charge.

9. [Maximum number of member's in the State Commission.- The State Commission shall consist of not more than five members, including the President.] [Inserted by Notification No. 0125-CA/CA/Sectt/P/DF/4M-7(2000 Pt. II, dated 27.1.2005, w.e.f. 25.4.2005.]