

# **1. Chief Information Commissioner vs Sanjay Kumar Mishra on 16 July, 2012**

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,

STATE CONSUMER DISPUTES  
REDRESSAL COMMISSION,

U.T.,  
CHANDIGARH

First Appeal No.

:

191 of 2012

Date of Institution

:

05.06.2012

Date of Decision

:

16.07.2012

1. Chief Information Commissioner, (CIC), State Information Commission, (SIC), Punjab, SC0 No.84-85, Sector 17-C, Chandigarh-160017

2. Public Information Officer (PIO), State Information Commission (SIC), Punjab, SC0 No.84-85, Sector 17-C, Chandigarh-160017

Appellants/Opposite Parties

V e r s u s

Sanjay Kumar Mishra, House No.1224, Ground  
Floor, New Housing Board Colony, Sector 19, Panchkula-134113 (Haryana)

....Respondent/complainant

Appeal  
under Section 15 of the Consumer Protection Act, 1986.

Argued by: Sh.  
B.S. Sudan, Advocate for the appellants.

Sh. Sanjay Kumar Mishra,  
Respondent in person.

First Appeal No.

:

201 of 2012

Date of Institution

:

11.06.2012

Date of Decision

:

16.07.2012

Sanjay Kumar Mishra, House No.1224, G/F,  
New HBC, Sector 19, Panchkula (Haryana), Pin-134113

Appellant/complainant

V e r s u s

1. Public Information Officer (PIO), State Information  
Commission (SIC), Punjab, SC0 No.84-85, Sector 17-C, Chandigarh-160017

2. Chief Information Commissioner, (CIC), State Information  
Commission, (SIC), Punjab, SC0 No.84-85, Sector 17-C, Chandigarh-160017

....Respondents/Opposite Parties

Appeal  
under Section 15 of the Consumer Protection Act, 1986.

Argued by: Sh.  
Sanjay Kumar Mishra, Appellant in person.

Sh. B.S. Sudan, Advocate for  
the respondents

BEFORE: JUSTICE  
SHAM SUNDER(Retd.), PRESIDENT.

MRS.  
NEENA SANDHU, MEMBER.

PER JUSTICE SHAM SUNDER (Retd.), PRESIDENT

1. This order shall dispose of the aforesaid two appeals, directed against the order dated 04.05.2012, rendered by the District Consumer Disputes Redressal Forum-1, U.T., Chandigarh (hereinafter to be called as District Forum only), vide which it dismissed the complaint, filed by the complainant (now appellant in First Appeal No.201 of 2012 titled as Sanjay Kumar Mishra Vs. Public Information Officer and Anr.) and (respondent in First Appeal No.191 of 2012, titled as Chief Information Commissioner and Anr. Vs. Sanjay Kumar Mishra).

2. The facts, in brief, are that the complainant moved an application dated 02.12.2010, under Section 6(1) of the Right to Information Act, 2005, seeking information, from Opposite Party

No.1/Public Information Officer (now appellant no.2 in First Appeal No.191 of 2012 and respondent no. 1 in First Appeal No. 201 of 2012) and paid a sum of Rs.10/- as fees, by way of an Indian Postal Order. The Public Information Officer, however, did not provide the information, as requested in para numbers 1 and 4 of the application dated 02.12.2010, within 30 days, as required under Section 7(1) of the Right to Information Act, 2005. The State Information Commission, Punjab, also dismissed the appeal on 06.04.2011, and confirmed the order of the Public Information Officer i.e. Opposite Party No.1. It was stated that the complainant, availed of the services of the Opposite Parties, by seeking information, for consideration i.e. by making payment of Rs.10, by way of an Indian Postal Order, and, as such, he fell within the definition of a consumer. It was further stated that by not supplying the information, sought by him, the Opposite Parties were deficient, in rendering service. It was further stated that, on account of the aforesaid acts of the Opposite Parties, the complainant had to suffer a lot of mental agony and harassment. When the grievance of the complainant, was not redressed, left with no alternative, a complaint under Section 12 of the Consumer Protection Act, 1986, seeking directions to the Opposite Parties, to supply information, sought by him, vide application dated 02.12.2010, according to the provisions of law; pay a sum of Rs.40,000/-, as compensation for loss caused and to be caused to the complainant; pay Rs.50,000/- by way of compensation, on account of mental agony and physical harassment; and pay Rs.5,000/- as costs of litigation, was filed.

3. The Opposite Parties, in their joint written version, pleaded that the District Forum, had no jurisdiction, to entertain and decide the complaint, arising out of the orders, passed under the Right to Information Act, 2005, as the said Act being a special law, would override the provisions of the Consumer Protection Act, 1986. It was further pleaded that the Right to Information Act, 2005, provided an explicit bar, under Sections 21 and 23 to the effect that, no suit and other legal proceedings were maintainable, in respect of anything done, or any order made, under the same. It was further pleaded that the authorities, under the Right to Information Act, 2005, perform quasi judicial/statutory functions, and, as such, the same did not fall within the definition of service, as defined under the Consumer Protection Act, 1986. It was further pleaded that the Right to Information Act, 2005, being a self-contained legal Code, defines the ambit and scope of right to information, laying down elaborate procedure for accessing information from public authorities. It was stated that the Right to Information Act, 2005, contains specific provisions including the provisions for first and second appeal, under Section 19, against any order passed under Section 7 by the Public Information Officer. It was further stated that under Section 19(8)(b), the Central Information Commission or the State Information Commission, may require the Public Authority, to compensate the complainant, for any loss or other detriment suffered. It was further stated that Section 20 of the Right to Information Act, 2005, also provides for award of penalty. It was further stated that the complainant, having availed of the statutory remedies, provided under the Right to Information Act, 2005, was debarred from approaching the District Forum. It was further stated that the order on the application of the complainant, which was passed by the Public Information Officer, on 05.01.2011, was challenged before the First Appellate Authority, under the Right to Information Act, 2005, which was dismissed. Thereafter it was challenged before the State Information Commission, by way of appeal and the same was also dismissed by the said Commission. It was further stated that neither the complainant availed of the services of the Opposite Parties, for consideration, nor he fell within the definition of a consumer, and, as such, the

question of deficiency, in service, did not at all arise. It was further stated that the complaint, being misconceived, was liable to be dismissed.

4. The Parties led evidence, in support of their case.

5. After hearing the Authorized Representative of the complainant, Counsel for the Opposite Parties, and, on going through the evidence, and record of the case, the District Forum, came to the conclusion, that it had jurisdiction, to entertain and decide the complaint, as the complainant fell within the definition of a consumer, qua the Opposite Parties, while seeking information, from them, under the Right to Information Act, 2005, It was, however, held that the Opposite Parties were not deficient, in rendering service, to the complainant.

6. Ultimately, the District Forum, dismissed the complaint, as stated above, in the opening para of the instant order

7. Feeling aggrieved, First Appeal No.191 of 2012 titled as Chief Information Commissioner, Punjab and Anr. Vs. Sanjay Kumar Mishra, was filed by the appellants/Opposite Parties, challenging the findings of the District Forum, holding that it had jurisdiction, to entertain and decide the complaint.

8. On the other hand, First Appeal No. 201 of 2012, titled as Sanjay Kumar Mishra Vs. Public Information Officer and Anr., was filed by the appellant/complainant, on the ground, that the order of the District Forum, holding that the Opposite Parties, were not deficient, in rendering service, being illegal and perverse, is liable to be set aside.

9. We have heard the Counsel for the appellants and the respondent in First Appeal No.191 of 2012, titled as Chief Information Commissioner, Punjab and Anr. Vs. Sanjay Kumar Mishra, as also, the appellant, and the Counsel for the respondents in First Appeal No. 201 of 2012, titled as Sanjay Kumar Mishra Vs. Public Information Officer and Anr., and have gone through the evidence, and record of the case, carefully.

10. The Counsel for the appellants, in First Appeal No.191 of 2012 titled as Chief Information Commissioner, Punjab and Anr. Vs. Sanjay Kumar Mishra, submitted that the jurisdiction of the District Forum, under the Consumer Protection Act, 1986, was barred under Sections 22 and 23 of the Right to Information Act, 2005. He further submitted that neither the respondent hired the services of the Opposite Parties/appellants, for consideration, nor he fell within the definition of a consumer. He further submitted that the appellants/Opposite Parties were performing Statutory/quasi Judicial functions, and, as such, a Consumer Complaint did not lie. He further submitted that even the Right to Information Act, 2005, has overriding effect, vis--vis the Consumer Protection Act, 1986. He further submitted that since, the jurisdiction of the District Forum was specifically barred under Sections 22 and 23 of the Right to Information Act, 2005, by entertaining and deciding the complaint, under Section 12 of the Consumer Protection Act, 1986, it (District Forum), acted illegally. He further submitted that the District Forum was, thus, completely wrong, in assuming the jurisdiction, which did not vest in it. He further submitted that the findings of the



District Forum, that it had jurisdiction, to entertain and decide the complaint, being illegal and perverse, are liable to be set aside.

11. On the other hand, the respondent/complainant, submitted that since an application was moved by him, for seeking information, from the Public Information Officer, by making payment of application fee, to the tune of Rs.10/-, he availed of the services, of the said Authority, for consideration. He further submitted that, thus, he fell within the definition of a consumer, under Section 2(1)(d) of the Consumer Protection Act, 1986. He further submitted that, when the complete information was not supplied to him, by the Opposite Parties/appellants, they were certainly deficient, in rendering proper service. He further submitted that Section 3 of the Consumer Protection Act, 1986, provides an additional remedy, and, as such, the District Forum, had jurisdiction to entertain and decide the complaint. He further submitted that the findings of the District Forum, that jurisdiction vested, in it, in entertaining and deciding the complaint, are legal and valid. He further submitted that the findings of the District Forum, that there was no deficiency, in rendering service, on the part of the Opposite Parties/appellants, being illegal and perverse, are liable to be set aside.

12. It may be stated here, that under Section 3 of the Consumer Protection Act, 1986, additional remedy is provided for speedy, inexpensive and affordable relief to the consumers, but that would be available, where there is no express bar, under some Statutory provisions.

Such bar is apparent, if we refer to Section 23 of the Right to Information Act, 2005, which reads as under:-

Bar of jurisdiction of Courts: No Court shall entertain any suit, application or other proceeding in respect of any order made, under this Act, and no such order shall be called, in question, otherwise than by way of an appeal under this Act.

It was held in Patel Roadways Limited vs Birla Yamaha Limited (2000) 4 SCC 91, that a complaint before the Consumer Forum falls within the ambit of word 'Suit'. Further the expression 'Court' used in the aforesaid Section is a generic term taking within its sweep all the Authorities having the trappings of the Court. As Consumer Forums are having the trappings of the Court and are, in fact, specifically conferred the same powers, as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the matters listed in Section 13 of the Consumer Protection Act, 1986, the Consumer Forums are covered within the expression Court. In Trans Mediterranean Airways Vs. M/s Universal Exports and another (2011(4) RCR (Civil) 472 (SC), it was held as under:-

The use of the word Court in Rule 29 of the Second Schedule of the CA Act has been borrowed from the Warsaw Convention. We are of the view that the word Court has not been used in the strict sense in the Convention as has come to be in our

procedural law. The word Court has been employed to mean a body that adjudicates a dispute arising under the provisions of the CP Act. The CP Act gives the District Forums, State Forums, and National Commission, the power to decide disputes of consumers. The jurisdiction, the power and procedure of these Forums are all clearly enumerated by the CP Act. Though, these Forums decide matters after following a summary procedure, their main function is still to decide disputes, which is the main function and purpose of a Court. We are of the View that for the purpose of the CA Act and the Warsaw Convention, the Consumer Forums can fall within the meaning of the expression Court.

13. The perusal of the provisions of Section 23 of the Right to Information Act, 2005, extracted above, reveals that, no Court shall entertain any suit, application or other proceeding, in respect of any order made under the Right to Information Act, 2005 and no such order shall be called, in question, otherwise than by way of an appeal under the Right to Information Act, 2005. Section 19(8) (b) of the Right to Information Act, 2005, also empowers the Central Information Commission, or the State Information Commission, as the case may be, to require the public authority, to compensate the complainant, for any loss or other detriment suffered. Section 20 of the Right to Information Act, 2005, empowers the Central Information Commission or the State Information Commission, as the case may be, to impose penalty of two hundred and fifty rupees for each day, till the application is received or information is furnished, but the total amount of such penalty, shall not exceed twenty five thousand rupees. In the instant case, the complainant, in the complaint, claimed directions to the Opposite Parties, to supply him the information, and also pay compensation. Such information could be supplied to him, as also the compensation and penalty could be awarded to him under the provisions of the Right to Information Act, 2005, and, if he was not satisfied, he could challenge the orders, by way of first and second appeal. He did so, but he could not succeed. He could also resort to the legal remedy, to challenge the orders of the Public Information Officer and the State Information Commission, which was available to him, under the Right to Information Act, 2005, and not by way of filing a complaint, under Section 12 of the Consumer Protection Act, 1986. So, it is held that the jurisdiction of the District Forum, was barred, under the provisions of Section 23 of the Right to Information Act, 2005.

14. The next question, that falls for consideration, is, as to, what is the effect of Section 3 of the Consumer Protection Act, 1986, which provides that the provisions of the Act, are in addition to, and not in derogation of the provisions of any other law, for the time being, in force. This part of the Section is to be divided into two parts, namely (1) in addition to the provisions of any other law, for the time being, in force, and (2) the provisions of the Act are not in derogation of the provisions of any other law, for the time being, in force. For the first part, the effect of the aforesaid provision, is that, even if there is an alternative remedy available under some provision of any other Act, or, say, even if Civil Suit is maintainable, for a particular cause, the proceedings under the Consumer Protection Act, 1986, are maintainable. The reason being, it is an additional speedy remedy provided to the consumers.

15. However, with regard to the second part, namely, not in derogation of the provisions of any other law, for the time being, in force, would mean that it is not in abrogation, repeal or deviation of any law, which is in force. This would mean that where there is an express bar to initiate proceedings, in any other Court, or Forum, the Consumer Protection Act, 1986, will not have any overriding effect. Once there is a bar created under the Statute giving exclusive jurisdiction, to the Court or the Tribunal, the provision that excludes the jurisdiction of the other Court or Tribunal will be effective and the proceedings could not be initiated, in any other Tribunal/Forum or the Court, except the Forum constituted under the provisions of the said Act. Similar principle of law, was laid down in *T. Pundalika Vs. Revenue Department (Service Division) Government of Karnataka*, Revision Petition No.4061 of 2010, decided by the National Consumer Disputes Redressal Commission, New Delhi, vide order dated 31.03.2011. The facts of *T. Pundalika`s case (supra)*, were that the complainant, with a view to sort out the controversy, with respect to his pensionary benefits, filed an application under the Karnataka Right to Information Act, 2002, seeking information. The Opposite Party, in that case, failed to provide the information. The complainant then filed a complaint, before the District Forum, which was allowed, and a direction was issued to the Opposite Party, to furnish the required information. Feeling aggrieved, an appeal, before the State Consumer Disputes Redressal Commission, was filed, which was allowed, with the observations that the complainant could not be considered as a consumer, as defined under the Consumer Protection Act, 1986, since there was a remedy available to him, to approach the Appellate Authority, under Section 19 of the Karnataka Right to Information Act, 2002. Feeling aggrieved, against the order of the State Consumer Disputes Redressal Commission, Revision Petition, aforesaid, was filed before the National Consumer Disputes Redressal Commission, New Delhi. The National Consumer Disputes Redressal Commission, New Delhi, in the aforesaid case, held that the appellant, could not claim himself, to be a consumer, under the Consumer Protection Act, 1986, as there was a remedy available to him, to approach the Appellate Authority, under Section 19 of the Right to Information Act, 2005. Similar principle of law, was laid down in *Ballarpur Industries Ltd., Vs. Eastern Railways and others, 1986-2007 Consumer 11929 (NS)*, a case decided by a three Member Bench of the National Consumer Disputes Redressal Commission, New Delhi, that when the jurisdiction of the Consumer Forum, is barred by any specific provision of some other Act, then it had no jurisdiction, to entertain and decide the complaint, under the Consumer Protection Act, 1986. The principle of law, laid down, in the aforesaid cases, is fully applicable to the facts of the instant case.

16. The respondent, however placed reliance on *Dr. S.P. Thirumala Rao Vs. Municipal Commissioner, Mysore City Municipal Corporation Sayyaji Rao Road, Mysore*, Revision Petition No. 1975 of 2005, decided on 28.05.2009, *Fair Air Engineers Pvt. Ltd. & Anr. Vs. N.K. Modi, III (1996) CPJ 1 (SC)*, *Skypak Courier Ltd. Vs. Tata Chemicals Ltd., AIR 2000 SC 2008*, *Lucknow Development Authority Vs. M.K. Gupta, (1994) 1 SCC 243*, *Secretary, Thirumurugan Cooperative Agricultural Credit Society Vs. M. Lalitha (Dead) through LRs & Ors. 1986-2004 Consumer 7844 (NS): 2003 CCC 394 (NS): (2004) 1 SCC 305*, in support of his contentions, that the District Forum had jurisdiction, to entertain and decide the complaint, and, as such, he fell within the definition of a consumer, as he had availed of the services of the Opposite Parties, for consideration, for seeking information. The submission of the respondent, in this regard, does not appear to be correct. In *Dr. S.P. Thirmuala Rao`s case (supra)*, the provisions of the Right to Information Act, 2005, did not fall

for interpretation. This case pertained to the Karnataka Right to Information Act, 2002, and it could not be said, as to whether, all the provisions contained therein are similar and identical to the provisions of the Right to Information Act, 2005. Secondly, from the facts of the case, it is not known, as to whether, any provision, existed in the Karnataka Right to Information Act, 2002, which empowered the State Commission to direct the Government Authority, to pay compensation to the complainant, and, thirdly the information, in the instant case, was furnished, on time, and two Statutory Appellate Authorities, under the Right to Information Act, upheld the decision of the Public Information Officer. Fair Air Engineers Pvt. Ltd. & Anrs` case (supra) related to the arbitration proceedings, and had no relevance to the facts of the complaint, filed by the complainant. It was held in paragraph 15 of the Judgment, in Fair Air Engineers Pvt. Ltd. & Anr.`s case (supra), that Section 34 of the Arbitration Act, did not confer an automatic right nor create an automatic embargo, on the exercise of the power, by the Judicial Authority, under the provisions of the Act. Keeping in view this provision, it was held by the Supreme Court of India, that the Consumer Forums, which had Judicial Authority, are at liberty to proceed with the matters. The decision in Skypak Courier Ltd. `s case (supra), was totally, in a different context, wherein the legality of the order of the National Consumer Disputes Redressal Commission, New Delhi, was challenged, vide which instead of deciding the matter before it, the National Consumer Disputes Redressal Commission, New Delhi, referred the same to Arbitration. Lucknow Development Authoritys case (supra), pertains to the services, regarding housing construction work, which was essentially, a commercial activity. The Hon`ble Supreme Court held that that the legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body, but whether the nature of the duty and function performed by it is service or even facility . As stated above, the provisions of Section 3 of the Consumer Protection Act, 1986, could not operate in derogation of the provisions of any other law i.e. against the provisions of the Right to Information Act, 2005. In Secretary, Thirumurugan Cooperative Agricultural Credit Societys case (supra), the Court dealt with Section 90 of the Tamil Nadu Cooperative Societies Act 1983, which provided that dispute touching the constitution of the Board or Management or the business of a registered Society was required to be decided by the Competent Authority provided under the Act. Section 156 of the said Act, gave finality to the orders for decision taken, under the Act, by an Arbitrator, liquidator, the Registrar, or an Officer authorized or empowered by him. In that context, the Court held that Section 3 of the Consumer Protection Act, 1986, gives an alternative speedy remedy to the consumers and that the Court was not dealing with a scheme, where there was an express bar on its jurisdiction. In none of these cases, it was laid down that if a specific bar of Jurisdiction is created under the Statute, from entertaining and deciding the dispute by any other Court/Tribunal, still a complaint under the Consumer Protection Act, would be maintainable. The facts of the aforesaid cases, being distinguishable, no help, therefore, can be drawn by the respondent/complainant, from the principle of law, laid down therein, to support his contentions, that Section 3 of the Consumer Protection Act, 1986, provides an additional remedy, and, as such, the District Forum, had jurisdiction, to entertain and decide the complaint.

17. Whether the complainant fell within the definition of a consumer and whether the Public Information Officer while furnishing the information under the Right to Information Act, 2005, rendered any service. Nominal fee of Rs.10/- was deposited by the complainant, for seeking

information, as provided under the relevant Statute. The Public Information Officer, while supplying the information, under the Right to Information Act, 2005, discharges his statutory duties. The person feeling aggrieved against the orders of the Public Information Officer, can file an appeal. The appellate Authority while hearing the appeals, performs the quasi-Judicial functions. The Public Information Officer, therefore, does not render any service to the complainant/applicant, seeking information, under the Right to Information Act, 2005. In S.P. Goel Vs. Collector of Stamps Delhi (AIR 1996 839 (SC)), it was held that the person presenting a document for registration is not a consumer, within the ambit of the Consumer Protection Act, nor the Officers appointed under the Registration and Stamps Act, render any service to him, but, on the other hand, they perform statutory duties, which are at least quasi Judicial. The principle of law, laid down, in the aforesaid case, is fully applicable to the instant case. In the present case, neither the complainant was a consumer, nor the Opposite Parties, were service providers, nor the dispute was a consumer dispute, and, as such, the Consumer Complaint was not maintainable.

18. The next question, that falls for consideration, is, as to whether, the Right to Information Act, 2005, has overriding effect, vis-a-vis the the Consumer Protection Act, 1986, or not. Section 22 of the Right to Information Act, 2005, reads as under:-

22. Act to have overriding effect- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923 (19 of 1923), and any other law for the time being, in force, or in any instrument having effect by virtue of any law other than this Act.

The Right to Information Act, 2005, is an enactment, which is later in date, than the Consumer Protection Act, 1986. In Maruti Udyog Ltd. Vs. Ram Lal (2005) 2 SCC 638, it was held that if both the Statutes contain non-obstante clause and are special Statutes, an endeavor should be made, to give effect to both of them. In case of conflict, the latter shall prevail. In the instant case, both the Statutes contain non-obstante clause. In case of conflict, the Statute enacted later in date i.e. the Right to Information Act, 2005, shall prevail over the Consumer Protection Act, 1986, as per the provisions of Section 22 of the Right to Information Act, 2005.

19. In view of the above discussion, it is held that the jurisdiction of the District Forum, in entertaining and deciding the complaint, was completely barred, under Section 23 of the Right to Information Act, 2005. The findings of the District Forum, that it had the jurisdiction to entertain and decide the complaint, being illegal, are liable to be set aside.

20. No other point, was urged by the Counsel for the appellants/Opposite Parties, as well as, the the respondent/complainant.

21. For the reasons recorded above, First Appeal No.191 of 2012 titled as Chief Information Commissioner, Punjab and Anr. Vs. Sanjay Kumar Mishra, filed by the appellants/Opposite Parties, is accepted, holding that the District Forum had no jurisdiction to entertain and decide the complaint. The findings of the District Forum, that it had Jurisdiction to entertain and decide the complaint, being illegal, are set aside.

22. In view of the decision, rendered in First Appeal No.191 of 2012 titled as Chief Information Commissioner, Punjab and Anr. Vs. Sanjay Kumar Mishra, First Appeal No. 201 of 2012, titled as Sanjay Kumar Mishra Vs. Public Information Officer and Anr., being devoid of merit, must fail, and the same is dismissed.

23. The parties are left to bear their own costs, in both the appeals.

24. Certified copy of the order be placed in the file of First Appeal No. 201 of 2012, titled as Sanjay Kumar Mishra Vs. Public Information Officer and Anr.,

25. Certified Copies of this order be sent to the parties, free of charge.

26. The file be consigned to Record Room, after due completion Pronounced.

July 16, 2012 Sd/-

[JUSTICE SHAM SUNDER Retd.)] PRESIDENT Sd/-

[NEENA SANDHU] MEMBER Rg