

SIKKIM

GOVERNMENT



GAZETTE

EXTRAORDINARY

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No. 14

GOVERNMENT OF SIKKIM FOOD & CIVIL
SUPPLIES DEPARTMENT GANGTOK.

THE SIKKIM CONSUMER PROTECTION RULES, 1990.

NOTIFICATION

No. 19/FCS.

Dated 30/1/1990

In exercise of the powers conferred by sub-section (2) of section 30 of the Consumer Act, 1986 (Central Act 68 of 1986), State Government hereby makes the following Rules, namely:-

1. Short title and commencement.- (I) These Rules may be called the Sikkim Consumer Protection Rules, 1990.

(2) They shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definition.- 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;

Salaries and other allowances and terms and conditions of the President and members of the District Forum.-

(I) The President of the District Forum shall receive the salary of the judge of a District Court if appointed on whole-time basis or an honorarium of one hundred

rupees per day for the sitting if appointed on part-time basis. Other members shall receive two thousand rupees a consolidated honorarium of one hundred rupees per say for the sitting.

(2) The President and the members of the District Forum shall be entitled for such travelling allowance and daily allowance on official tour as are admissible to Grade I Officers of the State Government;

(3) The salary, honorarium and other allowances shall be defrayed out of the Consolidated

- (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
- (d) has acquired such financial or other interest as it is likely to affect prejudicially **his** functions as a 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 member shall not be removed from his office on **the** ground specified in clause (d) and (e) of the sub-rule except on an inquiry held by **the State Government** in accordance with such procedure as it may specify in this behalf and finds **the** members to be guilty of such ground.

(6) The terms and conditions of the 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 (i. office of the president of the District Forum, **the senior-most** (in order of appointment) member of 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 the functions **owing to** absence, illness or any other cause, the senior-most (in order of the 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 has been **the subject of any** proceeding under the Act during his tenure or any of five years from the date on which he ceases to **hold such office**.

4. Place of sitting and other matters relating to District Forum.- (I) **The office of** the District Forum shall be located as the headquarter 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) Sitting of the District Forum, 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 among its members or any defect in its constitution.

(6) The State Government such staff, as may be necessary to assist **the District Forum** in its day to day work and perform such other functions are provided under these rules, or assigned to it **by** the president. The salary payable to such staff shall be defrayed out of the Consolidated Fund of **the State Government**.

(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 present before it.

(8) If during the proceedings conducted under section 13, of the Act, District Forum fixes a **date** for hearing of the parties, it shall be obligatory on the complainant and opposite party or its **authorised** agent to appear

Procedure to be adopted by the District Forum for analysis and testing of the

goods.- (i) If the District Forum thinks it necessary so to do, it 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 the District Forum;
- (iii) case number;
- (iv) seal of the District Forum.

(3) The sample will be sent to the appropriate laboratory by the District Forum for sending report within forty five days or within such extended time as may be granted by the District Forum after specifying the nature of the defect alleged and date of submission of the report.

6. Salary and other allowances and terms and conditions of the president and members ,

of the State Commission.- (1) President of the State Commission shall receive the salary of the judge of the High Court if appointed on wholetime basis or a consolidated honorarium of two hundred rupees per day for the sitting if appointed on part-time basis. Other members shall receive a consolidated honorarium of one hundred fifty rupees per day for the sitting.

(2) The president and the members of the State Commission shall be eligible for such travelling allowance and daily allowance on official tour as are admissible to Grade-I Officer of the State Government.

(3) The salary, honorarium, other allowances shall defrayed out of the Consolidated Fund of the State Government.

(4) President and the members of the State Commission shall hold office for a term of five years or upto the age of sixty five years whichever is earlier and shall not be eligible for renomination:

Provided that the president and a member may -

- (a) by writing under his hand and addressed to the State Government resign his office any time;
- (b) be removed from his office in accordance with provisions of sub-rule (5).
- (5) (r) The State Government may remove from office, president or a member of the State Commission who -
 - (a) has been adjudged as 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
 - (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 prejudicial to the public interest:

Provided that the president or a member shall not be removed from his office on the ground specified in clauses (d) and (e) of this sub-rule except on an inquiry held by State Government in accordance with such procedure as it may specify in this behalf and finds the member to be guilty of such ground.

(6) Before appointment, president and a member of the State Commission shall have to take 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 such member.

(7) The terms and conditions of the service of the president and the members of the State Commission shall not be varied to their disadvantage during their tenure of office.

(8) Every vacancy caused by resignation and 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 seniormost (in order of appointment) members, 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.

(ii) 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 j years from **the date on which he** ceases to hold such office.

7. **Place of sitting and other matters relating to State Commission.—** (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) State Government shall appoint such staff, as may be necessary **to assist the State Govern-**sion in its work and perform such other functions as are provided under these rules or **assigned** to it by **the president.** The salary payable to such staff shall be defrayed out of the Consolidated **Fund of the State Government.**

(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 **present before it.**

(8) **If** during the proceeding conducted under section 13, the **State Commission fixes-a a** date for hearing of the parties, it shall be obligatory on the complainant and opposite party or **his authorised agent** 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 state, 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 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** Conimission constituting the Bench and shall be communicated to the parties free of charge.

8. **Procedure for hearing appeal.** — (i) Memorandum of appeal shall be presented by **the** appellant or his authorised agent to the State Commission in person or sent by registered post addressed to **the Commision.**

(2) Every memorandum filed under sub-rule (1) shall be in legible **handwriting preferably** typed and shall set forth concisely under distinct heads, the grounds of appeal without any argument **or narrative and** such ground shall be numbered consecutively.

(3) Each memorandum shall be accompanied by the certified copy of **the** order of thier District Forum appealed against and such of the documents as may be required to **support grounds of objection'** mentioned in the memorandum.

(4) When the appeal is presented after the expiry of period of limitation as specified **in the Act,** 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** with 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 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 appellant or his** authorised agent fails to appear on such date, the State Commission may, in its discretion, **either dismiss' the appesl or** decide it on the merit of the case. If respondent or his authorised agents **fails to appear on such date,** the State Commission shall proceed ex-parte and shall decide the appeal ex-parte on **merits of the case,**

(7) The annellant shall not, except by leave of the State Commission, urge **or be heard in** support of

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) 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 90 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.

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