

**HIGH COURT OF CHHATTISGARH, BILASPUR****WPC No. 1741 of 2021****(Order reserved on 02.08.2021)****(Order delivered on 03.09.2021)**

Naveen Chopda Son of Sudarshan Choopda Aged About 45 Years R/o Near Chandrika Hotel, Masanganj, District-Bilaspur, Chhattisgarh. --- **Petitioner**

**Versus**

1. Municipal Corporation, Bilaspur through the Commissioner, Municipal Corporation, Bilaspur, District : Bilaspur, Chhattisgarh
2. The Chief Executive Officer, Municipal Corporation, Bilaspur, District : Bilaspur, Chhattisgarh
3. Estate Officer, Municipal Corporation, Bilaspur, District : Bilaspur, Chhattisgarh
4. The District Consumer Dispute Redressal Forum Bilaspur Chhattisgarh through Its Chairman, District : Bilaspur, Chhattisgarh ---- **Respondents**

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For the Petitioner : Mr. Gagan Gupta, Mr. Padmesh Mishra,  
Mr. S.S. Baghel, Advocates

For Respondents 1 to 3 : Mr. Mr. Sandeep Dubey, Advocate

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**Hon'ble Shri Justice Goutam Bhaduri**

**C.A.V. ORDER**

1. The grievance of the petitioner is that the orders were passed by respondent no.4/District Consumer Dispute Redressal Forum, Bilaspur on 07.03.2018 vide Annexure P-1 in favour of the petitioner. The said order was challenged in appeal before the Chhattisgarh State Consumer Disputes Redressal Commission, Raipur, and State Commission by order dated 30th August, 2018 affirmed the order passed by respondent no.4. The District Consumer Forum by its order



dated 07.03.2018 has passed the following order which the Municipal Corporation was required to comply :

1. अनावेदकगण आवेदक को आदेश दिनांक से एक माह की अवधि के भीतर आबंटित भूखंड का कब्जा प्रदान करेंगे तथा इसमें विफल रहने की दशा में या तो उसे वैकल्पिक आबंटन की सुविधा प्रदान करेंगे अथवा वर्तमान शासकीय दर पर आबंटित भूखंड 1500 वर्गफीट क्रमांक c-24 की राशि वापस प्रदान करेंगे।
2. अनावेदकगण आवेदक को मानसिक क्षतिपूर्ति के रूप में 50000/- (पचास हजार रुपये) की राशि अदा करेंगे।
3. अनावेदकगण आवेदक को वादव्यय के रूप में 3000/- (तीन हजार रुपये) की राशि अदा करेंगे।

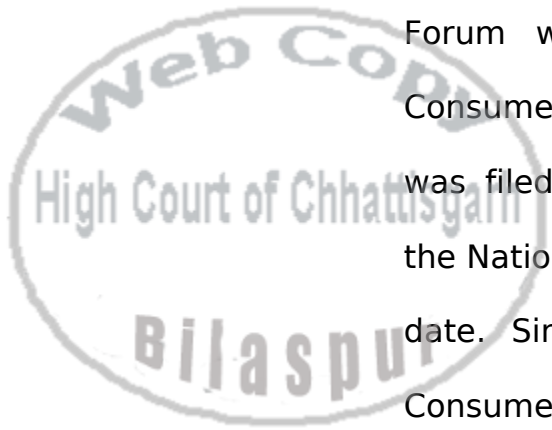
2. Learned counsel for the petitioner would submit that when the said order of R-4 District Consumer Dispute Redressal Forum was put to execution in the month of June 2019, despite appearance of respondents frequent adjournments were given and eventually for the reason that the revision has been preferred against the order of the State Consumer Forum and the quorum is not available, it was adjourned from time to time. He would submit that the last order sheets dated 21.1.2021 & 02.02.2021 would show that the order sheet was signed by the President of the District Consumer Forum as the members were not available, therefore, even in absence of any member, the President District Consumer Dispute Redressal Forum by virtue of Rule 3 (7) & (8) of *The Consumer Protection Rules, 1987* can exercise the jurisdiction and the doctrine of necessity would come into play. It is further submitted that Rule 3 (7) & (8) even otherwise gives power to the President and in absence of president, the member thereof to discharge the function of Forum. He further submits that in the like nature to avoid





such difficulty, the amendment in “The Consumer Protection Act, 2019” was carried out which empowers the President to form different Benches meaning thereby there cannot be cessation on any proceeding. Therefore, the president who is presiding over the forum be directed to continue with the execution proceeding instead of keeping it in abeyance.

3. Mr. Sandeep Dubey counsel for respondents 1 to 3 would submit that respondent no.4 is a statutory body and the issue which is raised in this petition is not required to be answered.
4. After hearing the parties, it appears that the order was passed in favour of the petitioner by the District Consumer Forum which was subsequently affirmed by the State Consumer Disputes Redressal Forum, against which revision was filed by the Respondent Municipal Corporation before the National Redressal Commission. The same is pending till date. Since no stay is existing over the order of the District Consumer Forum dated 07.03.2018, as such, the execution case was filed by the petitioner before the consumer forum, Bilaspur vide annexure P-4. The order sheet which is placed would show that in the month of June, 2019 execution proceeding was preferred which is still pending. The last order sheets of 21.1.2021 & 02.02.2021 would show that the execution case was adjourned for want of quorum. In the earlier order sheets of the Execution Court it is recorded that since the revision has been preferred before the National Consumer Forum, as such, it would be proper to await the decision. The said order of the executing Court cannot be sustained for the reason that the order of the National





Consumer Forum is awaited. On filing of the revision, there cannot be an automatic stay unless a judicial order exists.

5. Now turning back to the question of quorum, the petitioner has relied on the doctrine of necessity. Sub-rules (7) & (8) of Rule 3 of Chhattisgarh Consumer Protection Rules 1987 are relevant here for the purpose of deciding the issue. It reads as under:

**Rule 3. Salaries and other allowances and terms and conditions of the President and Members of the District Forum :**

(1) to (6) ....

(7) Where any vacancy occurs in the 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”.

6. The primary reading of the aforesaid Rule would show that the doctrine of necessity can be set into motion. However, one intervening fact comes in between that the Consumer Protection Act 2019 was published in the gazette on 9th August, 2019. This Act is known as The Consumer Protection Act, 2019 and Section 1 sub-section (3) provides that it shall come into force on such date as the Central Government





may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act. Section 1 sub-section (3) reads as under :

1. (1) This Act may be called the Consumer Protection Act, 2019

(2) It extends to the whole of India except the State of Jammu and Kashmir;

(3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.”

7. Sections 28 to 73 came into force by the notification dated 15th July, 2020, relevant part of which reads as under:

**MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**

(Department of Consumer Affairs)

**NOTIFICATION**  
New Delhi, the 15th July, 2020

S.O. 2351(E).--In exercise of the powers conferred by sub-section (3) of Section 1 of the Consumer Protection Act, 2019 (35 of 2019), the Central Government hereby appoints the 20th day of July, 2020 as the date on which the following provisions of the said Act shall come into force, namely :

Chapter	Sections
I	xxx xxx xxx
II	Xxx xxx xxx
IV	Sections 28 to 73 (both inclusive); (Except sub-clause (iv) of Clause (a) of Sub-section (1) of Section 58

8. Sections 31 & 32 of The Consumer Protection Act, 2019 are also relevant which reads as under:

“31. Any person appointed as President or, as the case may be, a member of the District Commission immediately before the commencement of this Act shall hold the office as such as president or, as the case may be, as member till the completion of his term for which he has been appointed.

32. If, at any time, there is a vacancy in the office of





the President or member of a District Commission, the State Government may, by notification, direct--

(a) any other District Commission specified in that notification to exercise the jurisdiction in respect of that district also; or

(b) the President or a member of any other District Commission specified in that notification to exercise the powers and discharge the functions of the President or member of that District Commission also”.

Reading of section 32 would show that in case any vacancy occurs in respect of President or a member of a District Commission, the State Government would notify any other District Commission to exercise the jurisdiction in respect of that district wherein the vacancy remains.

9. The aforesaid Act comes in direct conflict with the Rules as the Rules though prescribes alternate but with the promulgation of the new sections in the Act, the same cannot be acted upon.

10. According to the theory of jurisprudence of the eminent jurist *Kelsen* (the Pure Theory of Law), in every country there is a hierarchy of laws and the general principle is that if there is conflict between two laws one in the higher layer of the hierarchy and the other in the lower rung then the law in the higher layer will prevail. In our country the hierarchy of laws is as follows:

1.	Constitution of India
2.	Statutory Laws-made either by Parliament or by the State Legislatures;
3.	Delegated Legislation, which may be in the form of Rules or Regulations made under a statute, etc,



11. Therefore, the Act having been in force by 15th July, 2020, the doctrine of necessity cannot be given an over riding effect over the Act and though the petitioner may be a sufferer for the fruits of the order but it is for the State Government to make a notification u/s 32 of the Act, 2019. Consequently the President cannot be directed to exercise the power of other members in the teeth of Section 32 of the new Act, 2019.
12. Under the circumstances, the State Government is required to publish a notification in respect of the vacancy which exists in the District Consumer Forum as per Section 32 of the Act, 2019. Hence, the State Government is hereby directed to issue a notification as per Section 32 of the Act so that the orders which have been passed by the District Consumer Forum are complied with without any technical rider.
13. With the above observations, this writ petition stands finally disposed off.

Sd/-

**GOUTAM BHADURI  
JUDGE**