

THE HIMACHAL PRADESH CONSUMER PROTECTION RULES,1988

Notification No. FDS.A(3)/4/82-III,dated the 25th April, 1988:- *In exercise of the powers conferred by sub-section (2) of section 30 of the Consumer Protection Act,1986 (68 of 1986), the government of Himachal Pradesh is pleased to make the following rules, namely:-*

PART-1

Preliminary

1. Short title and commencement 1-(1) These rules may be called the Himachal Pradesh Consumer Protection Rules,1988.
2. These shall come into force w.e.f 01.05.1988.

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 authorized by a party to present any complaint, appeal or reply on its behalf before the District Forum or the State Commission, as the case may be;
- c. “**appellant**” means a party which makes an appeal against the order of the District Forum,.
- d. “**memorandum**” means any memorandum of appeal filed by the appellant.’
- e. “**opposite party**” means a person who answers complaints or claims;
- f. “**president**” means the President of the District Forum or State Commission, as the case may be;
- g. “**respondent**” means the person who answers any memorandum of appeal.
- h. “**State Government**” means the Government of Himachal Pradesh.

(2)The words and expressions used in these rules and not defined therein the Act shall have the same meaning respectively assigned to them in the Act.

PART-II

DISTRICT FORUM

3. Place of sitting of the District Forum:- The office of the District Forum shall be located at the headquarters of the District and where the State Government decides to establish a single District Forum having jurisdiction over more Districts than one shall notify the place and jurisdiction of the District Forum so established.

4. Working days and office hours of the District Forum:-The working days and office hours of the District Forum shall be the same as those of the offices of the State Government.

5. Seal and emblem:-The official seal and emblem of the District Forum shall be such as the State Government may specify.

6. Sittings of the District Forum:- The sittings of the District Forum, as the when necessary shall be convened by the President and it may, in the interest speedy disposal of the complaint, hold its sitting at any place within its jurisdiction.

7. Staff of the District Forum:- The State Government shall appoint such staff as may be necessary to assist the District Forum in its day-today work and to perform such functions as are assigned to it by the President. The salary payable to such staff shall be defrayed out of the Consolidated Fund of the State Government.

The terms and conditions of the staff so appointed for this purpose shall be such as may be laid down by the State Government from time to time.

8. Salaries, honorarium and other allowances of the President and the Members of the District Forum:-

i. Where the President of the District Forum is a sitting Judge of the District Courts, he shall enjoy all benefits which he should have enjoyed as a sitting Judge of the District Courts. Where the President is not a sitting Judge of the District Court, he shall be entitled to the salary payable to District Judge but the pay plus pension of a retired person shall not exceed the last pay drawn by him, if appointed on whole-time basis or an honorarium of Rs.150/- per day/ if appointed on part-time basis. Other Members , if appointed on whole-time basis, shall received a consolidated honorarium of Rs.1,250/- per month or if appointed on part-time basis a consolidated honorarium of *Rs.750/- per day for each sitting.

{*(i) Substituted vide 3rd Amendmant (Notification No. FDS-A(3)7/90 dated 3-8-1995.)}

{*(ii) Substituted vide 4th Amendmant (Notification No. FDS-B(3)-2/96-loose-I dated 19-6-2001.)}

{*(iii) Substituted vide 5th Amendmant (Notification No. FDS-B(3)-2/96-loose-I dated 31-5-2010.)}

ii. The President and the members of the District Forum shall be entitled to traveling and daily allowance on official tours at the same rates as are admissible to the highest Grade-I Officers of the State Government.

iii. The honorarium or the salary, as the case may be, and other allowances shall be defrayed out of the Consolidated fund of the State Government.

9. Terms and conditions of services of the President and Members of the District Forum.-

i. Before appointment, the President and members of the District Forums shall have to give an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such President or Member, as the case may be.

ii. Terms and conditions of the service of the President and the Members shall not be varied to their disadvantage during their tenure of office.

iii. A casual vacancy caused by resignation or removal of the President or any other member of the District Forum shall be filled by fresh appointment.

iv. No act or proceedings of District Forum shall be invalid by reason only of the existence of any vacancy among its President and members or any defect in the constitution thereof.

v. In case of difference of opinion among the members of the District Forum, the majority opinion shall prevail and the opinion or orders of the District Forum shall be expressed in terms of the views of the majority.

vi. 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 organization which has been the subject of any proceeding under the Act during his tenure for a period of 5 years from the date on which he ceases to hold such office.

10. Removal of President or members of the District Forum from Office in certain circumstances.:-The State Government may remove any person from the office of the President or the member, as the case may be, 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 President or member; or

d. has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or 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 member shall not be removed from his office on the grounds specified in clauses (d) and (e) of this rule except on an enquiry held by the State Government in accordance with such procedure as it may specify in this behalf and find the President or the member, as the case may be, guilty on such ground.

11. Procedure on receipt of complaint:-

i. Where the opposite party admits the allegations made by the complainant, the District Forum shall decide the complaint on merits of the case and the documents presented to it.

ii. 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 authorized agents to appear before the District Forum on such date of hearing or any other date to which hearing is adjourned. Where the complainant or his authorized agent fails to appear before the District Forum on such day, District Forum may, in its discretion, either dismiss the complaint for default or decide it on merit. Where the opposite party or its authorized agents fails to appear on the day of hearing, the District Forum may decide the complaint ex-parte.

iii. While proceeding under sub-rule (2), the District Forum may, on such terms as it may think fit, at any stage of the proceedings, adjourn the hearing of the complaint but the complaint shall be decided as far as possible within a period of three months from the date of notice received by the opposite party where complaint does not require analysis or testing and within five months if it requires analysis or testing of the goods.

iv. Orders of the District Forum shall be duly signed, sealed and dated by the members of the District Forum constituting the Bench and shall be communicated to the parties free of cost.

12. Procedure to be adopted for analysis and testing of goods:-

1. Under clause (C) of sub-section(1) of the section 13 of the Act, if considered necessary, the District Forum, may direct the complainant to provide more than one sample of the goods in clean container with stopper properly, fixed on them.

2. On receiving the sample of such goods, the District Forum, shall seal it in 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; and

IV. Seal of the District Forum.

3. The sample will 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 after specifying the nature of the defect alleged and date of submission of the report.

PART-III

STATE COMMISSION

13. Salary, honorarium and other allowances of the President and members of the State Commission:-

- i. *The President of the State Commission shall be entitled to salary, allowances and other perquisites as are available to a sitting Judge of the High Court and other members, if appointed on whole time basis shall receive a consolidated honorarium

of Rs.1500/-per month or if appointed on part time basis a consolidated honorarium of Rs.1000/- per day for sitting shall be paid.

Provided that a member shall be eligible to any pension granted to him by the Government or any authority but honorarium plus pension shall not exceed the last pay drawn by him.

{*(i) Substituted vide 3rd Amendmants (Notification No. FDS-A(3)7/90 dated 3-8-1995.)}

{*(ii) Substituted vide 4th Amendmants (Notification No. FDS-B(3)-2/96-loose-I dated 19-6-2001.)}

{*(iii) Substituted vide 5th Amendmants (Notification No. FDS-B(3)-2/96-loose-I dated 13-10-2003.)}

{*(iv) Substituted vide 5th Amendmants (Notification No. FDS-B(3)-2/96-loose-I dated 31-5-2010.)}

- ii. The President and the member shall also be entitled to semi furnished accommodation.
- iii. The President and the members shall be entitled to traveling and daily allowance on official tours at the same rates as are admissible to the highest Grade-I Officers of the State Government.
- iv. The honorarium or the salary, as the case may be, and other allowances shall be defrayed out of the Consolidated Fund of the State Government.

14. Terms and conditions of service of the President and members of the State Government:-

i. Before appointment, the President and a member of the State Commission shall have to give an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such President or member, as the case may be.

ii. The President and the members shall hold the office for a term of two years and shall not be eligible for reappointment; Provided that no President or a member shall hold office as such for a term exceeding 5 years or after he has attained the age of 67 years, whichever is earlier. {deleted vide Notification No. FDS-A(3)4/82-III dated:18-08-1992}.

iii. Notwithstanding anything contained in sub-rule (2), the President or a member may:-

a. "By writing under his hand and addressed to the Secretary (Food and Supplies) to the Government of Himachal Pradesh, resign his office at any time and". {Substuted vide Notification No. FDS-A(3)-4/82-III dated:9-6-1992}

b. be removed from his office in accordance with the provision of Rule 15 of these rules.

iv. The terms and conditions of service of the President and the members shall not be varied to their disadvantage during their tenure of office.

v. A casual vacancy caused by resignation or removal of the President or any other member of the State Commission under sub-rule (3) or otherwise shall be filled by fresh appointment.

- vi. No act or proceedings of the State Commission shall be invalid by reason only of the existence of any vacancy among its President or members or any defect in the Constitution thereof.
- vii. In case of difference of opinion among the members of the State Commission, the opinion of the majority shall prevail and the opinion or orders of the Commission shall be expressed in terms of the views of the majority.
- viii. 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 organization which have been the subject of any proceedings under the Act during his tenure for a period of 5 years from the date on which he ceases to hold such office.

15. Removal of President or members from Office in certain circumstances:-

- (1) The State Government may remove from office, the President or any member 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 President or member; or
 - d. has acquired such financial or other interest as is likely to affect prejudicially his functions as the President or a member; or
 - e. has so abused his position as to render his continuance, in office prejudicial to the public interest.
- (2) Notwithstanding anything contained in sub-rule (1) the President or any member shall not be removed from his office on the grounds specified in clauses (d) and (e) of that sub-rule except on an inquiry held by the State Government in accordance with such procedure as it may specify in this behalf and find the President or any member guilty on such grounds.

16. Place of sitting of the State Commission:- The office of the State Commission shall be located in the capital of the State.

17. Working days and office hours of the State Commission :-The working days and office hours of the State Commission shall be the same as that of the offices of that State Government.

18. Seal and emblem of the State Commission:- The official seal and emblem of the State Commission, shall be such as the State Government may specify.

19. Sitting of the State Commission :-The sitting of the State Commission, as and when necessary, shall be convened by the President and it may, in the interest of speedy disposal of the complaint or appeal, hold its sittings at any place within its jurisdiction.

Note:Vide Notification No. FDS-A(3)-15/2005 dated 28-4-2008 in exercise of powers conferred by Section 17(b), the Government of Himachal Pradesh has declared all District Headquarters in the state of Himachal Pradesh as places for holding circuit benches by the Himachal Pradesh Consumer Disputes Redressal Commission.

20. State staff of the Commission:- The State Government shall appoint such staff as may be necessary to assist the State Commission in its day-today work and to perform such functions as are assigned to it by the President. The salary payable to such staff shall be defrayed out of the Consolidated Fund of the State Government.

21. Procedure to be followed by the State Commission:-

(1) A complaint containing the following particulars shall be presented by the complainant in person or by his agent to the State Commission or be sent by registered post addressed to the State Commission-

- a. the name, description and the address of the complainant
- b. the name, description and address of the opposite party or parties, as the case may be, so far as they can be ascertained
- c. the facts relating to the complaint and when and where it arose;
- d. document in support of the allegations contained in the complaint;
- e. the relief which the complainant claims;

(2) The State Commission shall, in disposal of any complaint before it, as far as possible, follow the procedure laid down in sub-sections(1) and (2) of section13 of the Act in relation to the complaint received by the District Forum.

(3) On the date of hearing or any other date to which the hearing could be adjourned, it shall be obligatory on the parties or their agents to appear before the State Commission. Where the complainant or his agent fails to appear before the State Commission on such days, the State Commission may in its discretion either dismiss the complaint for default or decide it on merits. Where the opposite party or its agent fails to appear on the date of hearing, the State Commission may decide the complaint ex-parte.

(4) The State Commission may, on such terms as it deems fit and at any stage of the proceedings, adjourn the hearing of the complaint but the complaint shall be decided, as far as possible within a period of three months from the date of notice received by the opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires such analysis or testing.

(5) If the proceedings conducted under sub-rule(3), the State Commission is satisfied with the allegations contained in the complaint, it shall issue orders to the opposite party or parties, as the case may be, directing him or them to take one or more of the things mentioned in sub-section(1) of section 14 of the Act.

22. Procedure of hearing the appeal:-

- i. Memorandum shall be presented by the appellant or his agent to the State Commission in person or be sent by registered post addressed to the Commission.
- ii. 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 grounds shall be numbered consecutively.

- iii. Each memorandum shall be accompanied by a 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.
- iv. When the appeal is presented after the expiry of the period of limitation as specified in the Act, the memorandum shall be accompanied by an application supported by an affidavit setting forth the facts on which the appellant relies to satisfy the State Commission that he has sufficient cause for not preferring the appeal within the period of limitation.
- v. The appellant shall submit four copies of the memorandum to the Commission for official purpose.
- vi. On the date of hearing or on any other day to which the hearing may be adjourned, it shall be obligatory for the parties or their agents to appear before the State Commission, If the appellant or his agent fails to appear on such date, the State Commission may in its discretion, either dismiss the appeal or decide it ex-parte on merits . If the respondent or his agent fails to appear on such date, the State Commission shall proceed ex- parte and shall decide the appeal on merits of the case.
- vii. The appellant shall not, except by leave of the State Commission, urge or be heard in support of any ground or objection not set forth in the memorandum but the State Commission, in deciding the appeal, may not confine to the grounds of objection set forth in the memorandum;

Provided that the State Commission shall not rest its decision on any grounds other than those specified in the memorandum unless the party who may be affected thereby, has been given an opportunity of being heard by the State Commission.

- viii. The State Commission, on such terms as it may think fit, and at any stage, adjourn the hearing of the appeal, but not more than one adjournment shall ordinarily be given and the appeal should be decided as far as possible, within 90 days from the first date of hearing.
- ix. The order of the State Commission, on appeal shall be signed and dated by the members of the State Commission and communicated to the parties free of charge.