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ASSAM STATE CONSUMER PROTECTION RULES, 1989¹

NO. SDA/35/87/64, DATED 16-12-1989

In exercise of the powers conferred by sub-section (2) of section 30 of the Consumer Protection Act, 1986 (68 of 1986), the State Government in the Department of Food and Civil Supplies Assam makes hereby the following Rules, namely:—

Short title and commencement.

1. (1) These rules may be called “The Assam State Consumer Protection Rules, 1989”.

(2) They shall come into force from the date of their Notification in the Official Gazette.

Definitions.

2. (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) “State” means the State of Assam;

(i) “State Government” means the Government of Assam in the Department of Food and Civil Supplies.

Salaries and other allowances and terms and conditions of the President and Members of the District Forum (section 10(3) of the Act).

3. (1) 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 Rs. 150 per day of sitting of appointed on part-time basis. Other members if sitting on whole-time basis shall receive a consolidated honorarium of Rs. 2,000

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per month and if sitting on part-time basis, a consolidated honorarium of Rs. 100 per day for the sitting.

(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 Grade-I Officer of the State Government.

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

(4) Before appointment, the President and Members 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 the President and a Member.

(5) In addition to the provisions of section 10(2), State Government may remove from the office, the President and 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 involved 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 Member shall not be removed from his office on the ground specified in clauses (d) and (e) of the sub-rule (5) 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) The terms and conditions of the service of the President and the Members of the District Forum shall not be varied to their dis-advantage during their tenure of office.

(7) Where any vacancy occurs in the office of the President of the District Forum, the seniormost (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 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 seniormost (in order of the appointment) Member of the District Forum shall discharge the functions of the President till 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 for a period of 5 years from the date on which he ceases to hold such office.

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Place of sitting and other matters relating to District Forum [section 14(3) of the Act].

4. (1) The Office of the District Forum shall be located at the Head Quarter of the District.

(a) Persons who are appointed President/Members of any District Forum can also be appointed as President/Members of another District Forum but hearing of cases arising out of the territorial limits of any District Forum can be conducted only in that District and not while sitting in another District.

(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, as and when necessary shall be convened by the President.

(5) No Act or proceeding 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) State Government shall appoint such staff, as may be necessary to assist the District Forum in its day to day 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 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, 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 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 90 days from the date of notice received by the opposite party where complaint does not require analysis or testing of the goods and within 150 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 constituting the Bench and shall be communicated to the parties free of charge.

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Procedure to be adopted by the District Forum for analysis and testing of the goods [section 13(1)]

(c) of the Act.]

5. (1) If considered necessary, 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 which 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 laboratory, name(s) of which will be notified by the State Government from time to time, by the District Forum for sending report within 45 days or with 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.

Salary and other allowances and terms and conditions of the President and Members of the State Commission [Section 16(2) of the Act].

6. (1) President of State Commission shall receive the salary of the 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 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 eligible for such travelling and daily allowances on official tour as are admissible to that of the High Court Judge or Senior Grade Officer of the State Government.
- (3) The salary, honorarium, other allowance shall be defrayed out of the Consolidated Fund of the State Government.
- (4) President and the Member of the State Commission shall hold office for a term of five years or up to the age of 65 years whichever is earlier and shall not be eligible for renomination.
- (I) The President and the Members of the District Forum shall hold office for a term of 5 years or upto 65 years of age, whichever is earlier, and shall not be eligible for reappointment:

Provided that the President and 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) The State Government may remove from office, the President or a Member of the State Commission who:—
- (a) has been adjudged an insolvent, or
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- (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 no abused his position as to render his continuance in office prejudicial to the public interest.
- (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 5 years from the date on which the cease to hold such office.

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

7. (1) The office of the State Commission shall be located at the State Capital.
- (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 proceeding of the State Commission shall be invalid by reason only of the existence of any vacancy among its Member or any defect in its Constitution thereof.

(6) The State Government shall appoint such staff, as may be necessary to sit the State Commission 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 allegations 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.

Provided that the President or a Member shall not be removed from his office on the ground specified in clauses (d) and (e) or sub-rule (5) 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.

(8) 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 interests as is likely to affect prejudicially his functions as such President or Member.

(9) 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.

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(10) Every vacancy caused by registration 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.

(11) Where any such vacancy occurs in the office of the President of the State Commission, the seniormost (in order of appointment) Member, holding office for the time being, shall discharge the functions of the President and a person appointed to fill such vacancy assumes the office of the President of the State Commission.

(12) When the President of the State Commission is unable to discharge the functions owing to absence, illness, or any other cause, the seniormost (in order of the appointment) Member of the State Commission shall discharge the functions of the President until the day on which the President resumes the charge of this functions.

(13) If during the proceedings conducted under section 13, State Commission fixes 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 date 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*.

(14) 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 90 days from the date of notice received by the opposite party where complaint does not require analysis or testing of the goods and within 150 days of it requires analysis or testing of the goods.

(15) Orders of the State Commission 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.

Procedure for hearing appeal (section 15 of the Act).

8. (1) Memorandum shall be presented by the appellant or his authorised agent to the State Commission in person or sent by registered post addressed to the Commission.
- (2) Every Memorandum filed under sub-rule (1) shall be 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.
- (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 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

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supported by an Affidavit setting forth the fact on which appellant relies to satisfy the State Commis-

sion 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 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 appeal 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.