

18 & 19.

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Date of Decision: 13.02.2012

% W.P.(C) 153/2011 & C.M. No. 289/2011 (for stay)

YASHBEER SINGH Petitioner
Through: Mr. Ashish Mohan & Mr. Rohit
Gandhi, Advocates.
versus

GNCT OF DELHI AND ANR Respondents
Through: Mr. N. Waziri & Ms. Neha Kapoor,
Advocates.

AND

W.P.(C) 305/2011 & C.M. No. 558/2011 (for stay)

SUBHASH CHANDER JAIN Petitioner
Through: Mr. N.N. Aggarwal & Mr. Rohit
Gandhi, Advocates.
versus

GNCT OF DELHI AND ORS Respondents
Through: Mr. N. Waziri & Ms. Neha Kapoor,
Advocates.

**CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI**

VIPIN SANGHI, J. (Oral)

1. By these petitions preferred under Articles 226 & 227 of the Constitution of India, the petitioners assail the advertisement dated 21.12.2010 issued by respondent No. 2/GNCTD for the purpose of inviting applications from candidates for appointment as whole-time

members of the State Consumer Disputes Redressal Commission in Delhi (State Commission), established under the Consumer Protection Act, 1986 (The Act). The advertisement relates to two posts, out of which one post has been reserved for “Member (Female – non-judicial)” and the second post has been reserved for “Member (judicial)”, for the purpose of creation of a second bench of the State Commission.

2. To appreciate the submissions of the parties and to examine the issues raised by the petitioners, it is necessary to set out Section 16 of the Consumer Protection Act, 1986, which reads as follows:

*“16. **Composition of the State Commission.** (1) Each State Commission shall consist of—*

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

[Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;]

[(b) not less than two, and not more than such number of members, as may be prescribed, and one of whom shall be a woman, who shall have the following qualifications, namely:-

- (i) be not less than thirty-five years of age;*
- (ii) possess a bachelor's degree from a recognized university; and*
- (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to*

economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent of the members shall be from amongst persons having a judicial background.

Explanation.- For the purposes of this clause, the expression “persons having a judicial background” shall mean persons having knowledge and experience for at least a period of ten years as presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment as a member, if he-

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or
- (b) is an undischarged insolvent; or
- (c) is of unsound mind and stands so declared by a competent court; or
- (d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or
- (e) has, in the opinion of the State Government, such financial or other interest, as is likely to affect prejudicially the discharge by him of his functions as a member; or
- (f) has such other disqualifications as may be prescribed by the State Government.]

[(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely:-

- (i) President of the State Commission—Chairman;
- (ii) Secretary of the Law Department of the State—Member;

- (iii) *Secretary, incharge of the Department dealing with consumer affairs in the State— Member.*

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(1B) (i) *The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.*

(ii) *A Bench may be constituted by the President with one or more members as the President may deem fit.*

(iii) *If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.]*

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

Provided that appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

(3) [Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier;

Provided that a members shall be eligible for re-appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee:

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this Section:

Provided also that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned.

(4) Notwithstanding anything contained in sub- section (3), a person appointed as the President or as a member before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term].” (emphasis supplied)

3. The submission of learned counsel for the petitioners is that the present constitution of the State Commission is as follows:

“

S.No.	Name	Post
1.	Mr. B.R. Zaidi	President
2.	Mrs. Salma Noor	Non-Judicial Member
3.	Mrs. Kanwal Inder	Judicial Member

“

4. Learned counsel submits that at present, apart from the President, who is a retired High Court Judge, the existing two members are females. He, therefore, submits that the respondent could not have reserved any post for a Member (Female – non-judicial), since the requirement of Section 16(1)(b), which provides that one of the members of the State Commission should be a woman, already stands satisfied. I may note that the respondent No. 1/UOI supports this stand of the petitioner in relation to the reservation of one post for Member (Female – non-judicial).

5. The submission of respondent No. 2 is that the two female members in the existing strength of the State Commission have been appointed, not on account of their being females, but as Non-judicial member (Mrs. Salma Noor) and Judicial member (Mrs. Kanwal Inder).

6. Mrs. Kanwal Inder, the judicial member already stands retired. Presently, the State Commission is left with only two incumbents, i.e. the President Mr. B.R. Zaidi and a non-judicial member Mrs. Salma Noor. It is argued that the advertisement in question is to fill up one reserved vacancy for Member (Female – non-judicial), as the earlier appointee viz. Mrs. Salma Noor was not appointed on account of her being a female.

7. Insofar as the advertisement for the second vacancy is concerned, namely that of Member (judicial), the submission of learned

counsel for the petitioners is that Section 16 does not purport to reserve any vacancy for a judicial member. On the contrary, it seeks to limit the appointment of “*persons having judicial background*” to not more than 50% while making appointment of members who meet the eligibility criteria set out in Section 16(1)(b) (i), (ii) & (iii). It is argued that the reservation made for Member (judicial) is contrary to Section 16 of the Act.

8. Learned counsel for the petitioners places reliance on various decisions on the interpretation of statutes to submit that normal function of a proviso is to except something out of the enactment, or to qualify something enacted therein which, but for the proviso, would be within the purview of the enactment. The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case. It is a qualification of the preceding enactment which is expressed in terms too general, to be quite accurate. As a general rule, proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule. (See ***Nagar Palika Nigam Vs. Krishi Upaj Mandi Samiti & Others***, AIR 2009 SC 187)

9. Reliance is also placed on ***Nasiruddin and Others Vs. Sita Ram Agarwal***, (2003) 2 SCC 577, to submit that the jurisdiction to

interpret a statute can be invoked when the same is ambiguous. The Court cannot interpret a legislation so as to enlarge the scope of the legislation, when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or re-cast legislation. It is submitted that the proviso to Section 16(1)(b) is worded in a negative way to prescribe that not more than 50% of the members shall be persons having a judicial background. Negative words are prohibitive and are ordinarily used as a legislative device to make a statute imperative (see ***M. Pentiah and Others Vs. Muddala Veeramallappa and Others***, AIR 1961 SC 1107). It is submitted that when the statute provides that not more than 50% of the members shall be persons having a judicial background, it cannot mean that, necessarily, 50% of the members should be persons having a judicial background.

10. Learned counsel for the petitioners submits that the President of the State Commission is also a “member”. Thus considered, the appointment of another judicial member would breach the restriction contained in proviso to Section 16(1)(b), as the number of judicial members, including the President, would exceed 50% of the total strength of the State Commission, as, apart from the President and Mrs. Kanwal Inder, one more member would be a person having a

judicial background – thus raising their number to three, whereas, the number of members not having a judicial background shall be only two, even if another member (Non-judicial) is appointed.

11. In support of this submission, learned counsel for the petitioners place reliance on the definition of the expression ‘member’ contained in Section 2(jj) of the Act, and also on the decision of the Kerala High Court in **K. Kanakachandran Vs. State of Kerala and Others**, AIR 2007 Kerala 155. He also places reliance on the decision of the Supreme Court in **Central Bank of India Vs. Ravindra and Others**, AIR 2001 SC 3095. In this case, the Supreme Court has observed that *“ordinarily, a word of expression used at several places in one enactment should be assigned the same meaning so as to avoid “a head-on clash” between two meanings assigned to the same word or expression occurring at two places in the same enactment. It should not be lightly assumed that “Parliament had given with one hand what it took away with the other” [See- Principles of statutory Interpretation, Justice G.P. Singh, 7th Edition 1999, p.113]. That construction is to be rejected which will introduce uncertainty, friction or confusion into the working of the system (ibid, p. 119). While embarking upon interpretation of words and expressions used in a Statute it is possible to find a situation when the same word or expression may have somewhat different meaning at different places depending on the*

subject or context. This is however an exception which can be resorted to only in the event of repugnancy in the subject or context being spelled out. It has been the consistent view of Supreme Court that when the Legislature used same word or expression in different parts of the same section or statute, there is a presumption that the word is used in the same sense throughout, (ibid, p.263). More correct statement of the rule is, as held by House of Lords in Farrell V. Alexander, (1976) 2 All ER 721, 736, "where the draftsman uses the same word or phrase in similar contexts, he must be presumed to intend it in each place to bear the same meaning".

12. Having heard learned counsel for the parties, considered the rival submission in the light of the judgments cited before me and after giving my due consideration to the provisions of the Act, I am of the considered view that so far as the advertisement of one post for Member (Female – non-judicial) is concerned, the same appears to be contrary to the provisions of Section 16(1)(b) of the Act. However, the advertisement of one post for Member (judicial) appears to be in order, and in consonance with the provisions of the Act.

13. A perusal of Section 16 of the Act clearly shows that there is no reservation of posts, either in favour of a woman or a person having judicial background, for being appointed as a Member of the State Commission. All that Section 16(1)(b) provides is that, of the members

appointed to a State Commission, at least one shall be a woman. It does not mean that a slot or a post of a member of the State Commission can be labeled or classified as that reserved for a Member (Female). What Section 16(1)(b) provides is that while making appointment of members to the State Commission, if none of the existing members is a woman, the appointing authority shall give priority to a candidate who is a female, who otherwise fulfills the criteria set out in Section 16(1)(b) (i), (ii) & (iii) of the Act.

14. For example, if only one post of a member of the State Commission is required to be filled, and none of the existing members is a woman, then the respondent No. 2 would be justified in advertising the post for a member, while restricting the applicants to female candidates. It would serve no purpose to call for applications even from male candidates, as the necessity is to appoint a woman member, and the appointment of a male member would, in that eventuality, be in breach of Section 16(1)(b) of the Act.

15. The Act also does not restrict the number of women appointees as members of the State Commission. There could be more than one women members of the State Commission, who may be appointed on their own merit, but the statutory requirement is that at least one of the members of the State Commission should be a woman. That woman member may, or may not, be a person having a judicial

background, and may belong to any of the fields, i.e. economics, law, commerce, accountancy, industry, public affairs or administration with adequate knowledge and experience of at least 10 years.

16. The requirement of having at least one woman member having been fulfilled with the appointment of Mrs. Salma Noor, who still continues to be Member (Mrs. Kanwal Inder having already retired), the advertisement of one of the posts of member, with reservation for Female – non-judicial candidate, appears to be in the teeth of Section 16(1)(b) of the Act. As aforesaid, the respondent No. 2 cannot shut out applications by other aspirants, who may otherwise satisfy the requirement of Section 16(1)(b) of the Act, and who may, or may not, be women. The respondent No. 2 is not precluded from appointing a woman from amongst the applicants, but the said appointment should be based entirely on the applicants' merit and should not be swayed by the consideration that she is a woman. The understanding of respondent No. 2 that the earlier appointee, namely Mrs. Salma Noor was not appointed on account of her being a woman and, therefore, a post of Member is still reserved for a woman, is clearly not in consonance with the language and spirit of the Act.

17. So far as the advertisement of one post for a Member (judicial) is concerned, the same stands on a very different footing. The Consumer Courts constituted under the Act provide an additional and alternate

forum to consumers to seek redressal of their grievance in relation to the goods & services that they may procure for consideration and for their personal use or consumption. The Consumer Courts which have a 3-tier hierarchy, are required to function in compliance of the principles of natural justice. They are vested with the same powers as a Civil Court while trying a suit in respect of various matters, such as summoning and enforcing the attendance of any defendant or witness, examination of the witnesses on oath; the discovery and production of any document or other material object producible as evidence; the reception of evidence on affidavits; the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source; issuing of any commission for the examination of any witness, and; such other matter as may be prescribed.

18. Proceedings before the Consumer Courts are deemed to be judicial proceedings within the meaning of Sections 193 and 228 of the I.P.C. and they are deemed to be Civil Courts for the purpose of Section 195, and Chapter XXVI of the Cr.P.C. The provision of Order I, Rule 8 of the First Schedule to the C.P.C., with modifications, apply to proceedings before the Consumer Courts.

19. The legal issues which arise before the Consumer Courts for determination, experience has shown, can attain high degree of

complexity. The orders passed by the District Forum are appealable before the State Commission. Similarly, the orders passed by the State Commission are appealable before the National Commission, and the orders of the National Commission are appealable before the Supreme Court directly.

20. The orders of the District Forum, State Commission and the National Commission are statutorily enforceable on the pain of attachment of the property of the person, who fails to comply with such orders and penalties in the form of imprisonment are also prescribed for failure to comply with the orders of the District Forum, the State Commission or the National Commission. Whereas the District Forum is statutorily mandated to be headed by a person who is, or has been or is qualified to be, a District Judge as its President, the State Commission necessarily has to be headed by a person, who is or has been a Judge of a High Court as its President, and the National Commission is headed by a person, who is or has been a Judge of the Supreme Court as its President. The Consumer Courts have jurisdiction to rule on the civil rights of the parties in respect of the subject matters which fall within their jurisdiction, and their orders have civil consequences. It is, therefore, abundantly clear that the Consumer Courts discharge a part of the judicial function of the State.

21. It is precisely for this reason that the Presidents of the State

Commission and the National Commission necessarily have to be sitting or retired High Court Judge, or sitting or retired Supreme Court Judge respectively. Even in respect of the President of the District Forum, he has to be a person who is, or has been, or is qualified to be a District Judge. Being judicial organizations, ordinarily the choice would be to induct persons having judicial background as members, meaning – persons having knowledge and experience as Presiding Officer at the district level Court or a Tribunal at equivalent level. However, to make the Consumer Courts more consumer friendly, so that they are more sensitive to the needs, the plight and the difficulties of the consumers, and considering the vast scope of their jurisdiction, the Act provides that not more than 50% of the members shall be from amongst the persons having a judicial background, and atleast one of them shall be a woman. This is to ensure that at least 50% of the members are those who are appointed, not on account of their having a judicial background, but on account of their having adequate knowledge and experience in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs & administration

22. In ***S.P. Sampath Kumar v. Union of India & Others***, (1987) 1 SCC 124, the Supreme Court was examining the validity of the Administrative Tribunals Act, 1985, whereby the jurisdiction of the High

Court under Articles 226 and 227 of the Constitution of India, of judicial review in service matters was excluded. The Administrative Tribunals Act was enacted under Article 323A(1) of the Constitution of India, introduced by the Constitution (42nd Amendment) Act, 1976. Though the examination of the provisions of the Administrative Tribunals Act was in the context of the exclusion of the jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India, so as to examine whether the Administrative Tribunals were an effective alternative institutional mechanism for judicial review, the Supreme Court dwelt upon the necessity of the Administrative Tribunal necessarily consisting of a judicial member.

23. Chief Justice Bhagwati, in his concurrent judgment, observed as follows:

"5. It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution and entrusted to the Administrative Tribunal set up under the impugned Act for adjudication involve questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise in this particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have some modicum of legal training and judicial experience because we find that some of these questions are so difficult and complex that they baffle the minds of even trained Judges in the High Courts and the Supreme Court. That is the reason why at the time of the preliminary hearing of these writ petitions we insisted that every bench of the Administrative Tribunal should consist of one judicial

member and one administrative member and there should be no preponderance of administrative members on any bench. Of course, the presence of the administrative member would provide input of practical experience in the functioning of the services and add to the efficiency of the Administrative Tribunal but the legal input would undeniably be more important and sacrificing the legal input or not giving it sufficient weightage would definitely impair the efficacy and effectiveness of the Administrative Tribunal as compared to the High Court.

24. In **R.K. Jain v. Union of India**, (1993) 4 SCC 119, the Supreme Court relied upon its earlier decision in **Krishna Sahai v. State of U.P.**, (1990) 2 SCC 673, wherein, in relation to the constitution of the U.P. Services Tribunal, the Supreme Court had observed that it would be appropriate for the State of U.P. to change its manning and a sufficient number of people qualified in law should be on the tribunal to ensure adequate dispensation of justice and to maintain judicial temper in the functioning of the tribunal. It also referred to **Rajendra Singh Yadav v. State of U.P.**, (1992) 2 SCC 763, wherein it was observed that the Services Tribunal mostly consist of administrative officers and the judicial element in the manning part of the tribunal is very small. The disputes require judicial handling and the adjudication being essentially judicial in character, it is necessary that adequate number of judges of the appropriate level should man the Services Tribunals. This would create appropriate temper and generate the atmosphere suitable in an adjudicatory tribunal and the institution would command the requisite confidence of the disputants.

25. The Supreme Court in **A.P. Pollution Control Board Vs. Prof. M.V. Nayudu (Retd.) and Others, etc.**, AIR 1999 SC 812, dealt with the issue of the constitution of environmental appellate authorities/tribunals. The Supreme Court noticed that in different Statutes, different provisions existed with regard to the constitution of the Appellate Authorities/Tribunals. The Supreme Court held that most of these bodies fall short of a combination of judicial and scientific needs. The Supreme Court in paragraphs 39, 40, 41, 45, 46 & 50 held as follows:

“39. Different statutes in our country relating to environment provide appeals to appellate authorities. But most of them still fall short of a combination of judicial and scientific needs.

*40. Good Governance is an accepted principle of international and domestic law. It comprises of the rule of law, effective State institutions, transparency and accountability in public affairs, respect for human rights and the meaningful participation of citizens - (including scientists) - in the political processes of their countries and in decisions affecting their lives. (Report of the Secretary General on the work of the Organization, Official records of the UN General Assembly, 52 session, Suppl. I (A/52/1) (para 22)). **Of paramount importance, in the establishment of environmental Courts, Authorities and Tribunals is the need for providing adequate Judicial and scientific inputs rather than leave complicated disputes regarding environmental pollution to officers drawn only from the Executive.***

41. It appears to us from what has been stated earlier that things are not quite satisfactory and there is an urgent need to make appropriate amendments so as to ensure that at all times, the

appellate authorities or tribunals consist of Judicial and also Technical personnel well versed in environmental laws. Such defects in the constitution of these bodies can certainly undermine the very purpose of those legislations. We have already referred to the extreme complexity of the scientific or technology issues that arise in environmental matters. Nor, as pointed out by Lord Woolf and Robert Cranworth should the appellate bodies be restricted to Wednesbury limitations.

42. x x x x x x x x x

43. x x x x x x x x x

44. x x x x x x x x x

45. As stated earlier, the Government of India should, in our opinion, bring about appropriate amendments in the environmental statutes, Rules and notification to ensure that in all environmental Courts, Tribunals and appellate authorities there is always a Judge of the rank of a High Court Judge or a Supreme Court Judge, - sitting or retired - and Scientist or group of Scientists of high ranking and experience so as to help a proper and fair adjudication of disputes relating to environment and pollution.

46. There is also an immediate need that in all the States and Union Territories, the appellate authorities under section 28 of the Water (Prevention of Pollution) Act, 1974 and section 31 of the Air (Prevention of Pollution) Act, 1981 or other rules there is always a Judge of the High Court, sitting or retired and a Scientist or group of Scientists of high ranking and experience, to help in the adjudication of disputes relating to environment and pollution. An amendment to existing notifications under these Acts can be made for the present.

47. x x x x x x x x x

48. x x x x x x x x x

49. x x x x x x x x x

50. As stated above and we reiterate that there is need to see that in the appellate authority under the Water (Prevention of Pollution) Act, 1974, the Air (Prevention of Pollution) Act, and the appellate authority under Rule 12 of the Hazardous Wastes (Management & Handling) Rules, 1989, under the notification issued under section 3(3) of the Environment (Protection) Act, 1986 for National Capital Territory and under section 10 of the National Environment Tribunal Act, 1995 and other appellate bodies, there are invariably Judicial and Technical Members included. This Court has also observed in *M.C.Mehta vs. Union of India and Shriram Foods & Fertilizers Case* [1986 (2) SCC 176] (at 262) that there should be a right of regular appeal to the Supreme Court, i.e. an appeal incorporated in the relevant statutes. This is a matter for the Governments concerned to consider urgently, by appropriate legislation whether plenary or subordinate or by amending the notifications.” (emphasis supplied)

26. I may also refer to the Division Bench judgment of this Court in **Rajeshwar Kumar Gupta v. Lt. Governor & Others** in W.P(C) 7718/2007 . In this case, the issue raised in the petition was whether the constitution of the Delhi Cooperative Tribunal is constitutional, legal and as per the Rules or not. Rule 144(2) of the Delhi Cooperative Societies Rules 1973 prescribes that the presiding officer or the president of the tribunal shall be the person who has been a judge of any High Court, or a retired District Judge or a person who has for not less than ten years been an advocate or a pleader, or who has held the office of the Registrar, Joint Registrar or Deputy Registrar for not less than continuous period of three years at a time, or has not less than

five years judicial experience at his credit. The Lt. Governor was empowered to relax the qualification in case of any person otherwise qualified in his opinion. The Division Bench placed reliance on the aforesaid decision in the case of **S.P. Sampath Kumar** (supra), and set aside the notification dated 26.05.2006, whereby the Delhi Cooperative Tribunal was constituted, and directed the constitution of a proper tribunal of which the Chairman should be a judicial member, preferably a retired District Judge.

27. The reasoning adopted by the Supreme Court in **Sampath Kumar** (supra), **R.K. Jain** (supra), **A.P. Pollution Control Board** (supra) and **Rajeshwar Kumar Gupta** (supra), in my view, applies with the same force to Consumer Courts. The Consumer Courts adjudicate civil rights arising out of contractual matters relating to sale of goods and provision of services to a consumer. Complex laws relating to banking, financing, insurance etc. fall within the jurisdiction of the Consumer Courts. Apart from these, the Contract Act, the sale of Goods Act etc which too require legal background and understanding for proper appreciation also routinely fall for consideration by the Consumer Courts. In the case of Consumer Courts as well, the legal input would undeniably be equally important as the inputs that the other members may provide and sacrificing the legal input and not giving its sufficient weightage would definitely

impair the efficacy and effectiveness of the Consumer Courts. Since the Consumer Courts discharge judicial function, and the proceedings are judicial proceedings, wherein advocates also appear and argue case and make legal submissions, the presence of a person having judicial background would certainly further the cause of efficacy, consistency and quality in the decision making process of the Consumer Courts and would help in maintaining judicial temper. The Consumer Courts and its benches, if there are more than one, should consist of at least one person having judicial background, unless it is presided by the President himself.

28. The aforesaid being the position, if the Government decides to specifically appoint a person having judicial background so as to facilitate the creation of a bench of the State Commission and, therefore, advertises the post by inviting applications from persons having a judicial background, the petitioners can have no grievance, particularly when the percentage of the persons having judicial background would not exceed 50%, even after the filling up of the advertised post.

29. The State Government is entitled to fill the vacancy of a Member from amongst the persons having judicial background if that is the need of the hour. There is no purpose of inviting applications from the general public under Section 16(1)(b) and then making an appointment

of a person having judicial background from amongst the applicants. Unless a specific advertisement is issued to make appointment of a person having judicial background, it is quite likely that persons with such credentials may not even apply. At the same time, it would be a wasted exercise for those who do not have such background, to require them to submit their applications, if the need is to appoint a person having judicial background.

30. As aforesaid, Mrs. Kanwal Inder has already retired and even if the President of the State Commission is considered as a “member” for the purpose of Section 16(1)(b) of the Act, the appointment of another person having a judicial background would not breach the upper limit of 50% of posts of members of the State Commission. Since the tenure of the persons of the State Commission is provided for in Section 16(3), the State Government would in advance, be aware of the date of expiry of the term of each of the members, and would do well to advertise the posts in advance to fill up the impending vacancies, so that the work of the Consumer Courts do not suffer due to non-filling up of vacancies.

31. Even if Mrs. Kanwal Inder had not retired, and the respondents were to appoint another person having judicial background, to my mind, there would be no breach of Section 16(1)(b) of the Act. Section 16(1) clearly draws a distinction between a “President” who is, or has

been a Judge of a High Court, and a “member” appointed under Section 16(1)(b). In my view, the expression “member” as used in Section 16(1)(b) as well as the proviso to Section 16(1)(b) does not include the President, even though the term “member” has been defined in Section 2(jj) to include the President of the National Commission, or a State Commission, or a District Forum, as the case may be. The definitions in Section 2 begin with the words “*In this **Act unless the context otherwise requires, ...***”. (emphasis supplied) Therefore, the definitions contained in Section 2 may not be relevant, if the context in which the defined expression is used, is different. The “President” of the State Commission is dealt with in clause (a) of Section 16(1), whereas the “member(s)” are dealt with in clause(b). The President stands on a different-rather a higher footing, than the members of the State Commission. His position, his terms of engagement, as well as the salary paid to him are different from the position, the terms of engagement and the salary paid to the members. The president of the State Commission is not merely the first amongst equals. His position is clearly on a higher pedestal, though he may sit in a bench with the other members to discharge his judicial functions. The context in which the expression “member” has been used in Section 16 of the Act requires that the expression “President” be not read or understood to mean a “member”.

32. In my view, the decision in ***Central Bank of India*** (supra) supports the view that I am taking. The Supreme Court recognized that while embarking upon interpretation of the words used in a Statute, it is possible to find a situation when the same word or expression may have somewhat different meaning at different places, depending on the subject or context. This is an exception to the general rule that when the legislature has used the same word or expression in different parts of the same Section or Statutes, there is a presumption that the word is used in the same sense throughout. In my view, the present case clearly falls in the exception, rather than under the aforesaid rule.

33. It is clear to me on a plain reading of Section 16 that the State Commission consists of at least three persons, i.e. the President appointed under Section 16(1)(a), and not less than two members appointed under Section 16(1)(b). If the submission of learned counsel for the petitioners that the President is also a “member” for the purpose of Section 16(1)(b) were to be accepted, it would mean that the State Commission could consist of two members, i.e. one President and a second member appointed under Section 16(1)(b). This scheme of things would not explain Section 16(1B)(iii) which, inter alia, provides that if the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if

there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself, or refer the case for hearing on such point or points by one or more of the other members, and such point or points shall be decided according to the opinion of the majority of the members, who have heard the case, including those who first heard it.

34. Without, at least, three incumbents in the State Commission (including the President), there is no question of a “majority” view or opinion. In that case, the deadlock created on account of difference of opinion between the President and the other member would never get resolved. It is, therefore, clear that the State Commission has to necessarily consist of at least three persons, i.e. the President and two other members. It is obvious that the expression “member/members” used in Section 16(1)(b) does not include the President.

35. Viewed thus, even if Mrs. Kanwal Inder had not retired and the appointments in terms of the advertisement in question had been made (which have not been made on account of pendency of these proceedings), the number of members having judicial background would have remained at two, and the number of members not having judicial background, but appointed under Section 16(1)(b), would also have remained at two. In that eventuality as well, the proviso to

Section 16(1)(b) would not have been breached.

36. Reliance placed by the learned counsel for the petitioners on various decisions, as aforesaid, on the aspect of interpretation of statutes have no relevance in the facts of the case and also in view of the aforesaid discussion.

37. The decision in **Nasiruddin and Others** (supra) does not advance the case of the petitioners in the light of the aforesaid discussion. Similarly, the decision in **M. Pentiah and Others** (supra) also does not advance the petitioners' case, since the upper limit of 50% for appointment of members of the State Commission having a judicial background has not been breached. The decision in **Nagar Palika Nigam** (supra) also has no relevance since the restrictions contained in the proviso to Section 16(1)(b) have not been breached by the respondents.

38. The decision of the Kerala High Court in **K. Kanakachandran** (supra) also does not advance the petitioners' case. It is clear from reading of paras 5 & 6 of the said judgment that the Court apart from recording the submission of the petitioner had not expressed a definite view on the issue whether the President was a "member" in the context of Section 16(1)(b) of the Act, as the said issue did not arise for determination in the facts of that case. This is clear from a reading of para 6, the relevant part of which reads as follows:

“6. Even if the contention of the petitioner that the members mentioned therein does not include the President is accepted, I feel that the same will also make no difference on the outcome of the case. Among the 4 members, if one is a member with a judicial background, the representation will be 25%. Twenty five percent is definitely a percentage which is not more than 50% as contemplated by the proviso to Section 16(1)(b) of the Act. But, the learned counsel for the petitioner submits that the said proviso should be read to mean that the persons with judicial background should be at least 50%.”

39. For all the aforesaid reasons, I partially allow these petitions and hold that the advertisement in question issued by respondent No. 2 for filling the post of Member (Female – non-judicial) is contrary to the provisions of the Act. However, the said advertisement to fill the post of a Member (judicial), i.e., to appoint a person having judicial background is in accord with Section 16 of the Act and is, therefore, upheld.

40. The petitions stand disposed of in the aforesaid terms leaving the parties to bear their own costs.

VIPIN SANGHI, J

FEBRUARY 13, 2012

'BSR'/sr