

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.11716 OF 2012

Shri Pandharpatte Chandrakant Bandu	... Petitioner
Versus	
State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO.11712 OF 2012**

Shri Nagore Bhaskar Shripat	... Petitioner
Versus	
State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO.1803 OF 2014**

Syed Rahmet Ali s/o Syed Hamed Ali	... Petitioner
Versus	
The State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO.2877 OF 2014**

Pratibha Balkrishna Potdukhe	... Petitioner
Versus	
The State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO.4215 OF 2012
WITH
CIVIL APPLICATION NO.251 OF 2013**

Mr. Mahendra Mahadeodas Goswami and Ors.	... Petitioners
Versus	
The State of Maharashtra and Ors.	... Respondents

**WITH
WRIT PETITION NO.7709 OF 2012
WITH
CIVIL APPLICATION NO.372 OF 2014
WITH**

CIVIL APPLICATION NO.250 OF 2013

Ramlal Bhawarlal Somani and Ors. ... Petitioners
 Versus
 The State of Maharashtra and Ors. ... Respondents

WITH
WRIT PETITION NO.9551 OF 2012

Desai Gajanan Narayan ... Petitioner
 Versus
 Selection Committee,
 State Consumer Disputes Redressal
 Commission and Anr. ... Respondents

WITH
WRIT PETITION NO.12159 OF 2012

Shri Sharad Digamber Madake ... Petitioner
 Versus
 State of Maharashtra and Ors. ... Respondents

WP NO.11716 OF 2012 and WP NO.11712 OF 2012

Mr. Shriram S. Kulkarni i/by Mr. Niranjan Mogre, for the Petitioners.

WP NO.1803 OF 2014

Mr. Rahimtulla Meheboob Momin and Mr. Mujahid Shakeel Ansari, for the Petitioner.

WP NO.2877 OF 2014

Mr. Shriram S. Kulkarni, for the Petitioner.

WP NO.4215 OF 2012

Mr. Uday P. Warunjikar, for the Petitioners.

WP NO.7709 of 2012 A/W CA NO.250 OF 2013 AND CA NO.372 OF 2014.

Mr. Shriram S. Kulkarni i/by Mr. Sachin Chavan, for the Petitioner/Applicant.

WP NO.9551 of 2012

None for the Petitioner.

WP NO.12159 OF 2012

Mr. Manoj M. Kadam, for the Petitioner.

Mr. Nitin Deshpande, AGP for the Respondents- State in all Petitions.

Mr. Parag Vyas a/w Mr. Ashok Varma, for U.O.I. in all Petitions.

CORAM : A.S. OKA & A.K. MENON, JJ.

JUDGMENT RESERVED ON : 18th FEBRUARY, 2015

JUDGMENT PRONOUNCED ON : 8th JUNE, 2015

JUDGMENT (PER A.S. OKA, J.):—

. A common question arises in these Petitions. The said question is as under :-

“Whether the President of a District Forum constituted under Section 10 of the Consumer Protection Act, 1986 is eligible to seek re-appointment for another term of five years?”

2. The Consumer Protection Act, 1986 (for short “the said Act”) provides for establishment of Consumer Disputes Redressal Agencies. Section 9 provides for establishment of three agencies. The Section reads thus :-

“9. Establishment of Consumer Disputes Redressal Agencies.—There shall be established for the purposes for this Act, the following agencies, namely:—

(a) a Consumer Disputes Redressal Forum to be known as the “District Forum” established by the State Government [* * *] in each district of the State by notification:

[Provided that the State Government may, if it deems fit, establish more than one District Forum in a district;]

(b) a Consumer Disputes Redressal Commission to be known

as the “State Commission” established by the State Government [* * *] in the State by notification; and

- (c) a National Consumer Disputes Redressal Commission established by the Central Government by notification.”

3. Section 10 deals with the composition of the District Forum which reads thus :-

“10. Composition of the District Forum.— (1) Each District Forum shall consist of,—

- (a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;
- [(b) two other members, 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 recognised university.
 - (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating of economics, law, commerce, accountancy, industry, public affairs or administration:

Provided 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;
- (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.]

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

—

(i) the President of the State Commission —Chairman;

(ii) Secretary, Law Department of the State —Member;

(iii) Secretary in charge 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.]

[(2) Every member of the District Forum shall hold office for a terms of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five 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 also made on the basis of the recommendation of the Selection Committee:

Provided further 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 (1-A) in place of the person who has resigned:

Provided also that 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.]

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

[Provided that the 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 workload of the District Forum.]

1 *Subs.* by Act 50 of 1993, S. 8 (w.e.f. 18-6-1993).

2 *Subs.* by Act 62 of 2002, S. 6 (w.e.f. 15-3-2003). Prior to substitution it read:

“(b) two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.”

3 *Ins.* by Act 50 of 1993, S. 8 (w.e.f. 18-6-1993).

4 *Ins.* by Act 62 of 2002, S. 6 (w.e.f. 15-3-2003).

5 *Subs.* by Act 62 of 2002, S. 6 (w.e.f. 15-3-2003). Prior to substitution it read:

“(2) Every member of the District Forum 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 re-appointment:

Provided 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 the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.”

6 *Ins.* by Act 62 of 2002, S. 6 (w.e.f. 15-3-2003d).”

4. In exercise of powers under Sub-Section (3) of Section 10 and Sub-Section (2) of Section 30 of the said Act, the State Government has framed Rules which are known as “the whole-time President and Members of District Consumer Redressal Forum, Group–A, under the Food, Civil Supplies and Consumer Protection Department of the Government (Recruitment) Rules, 2011” (hereinafter referred to as “the Recruitment Rules”).

5. Under Sub-Section (1-A) of Section 10 of the said Act, the appointments of the President and Members of a District Forum are required to be made by the State Government on the recommendations of a Selection Committee consisting of the President of the State Commission, the Secretary of the Law Department of the State Government and the Secretary in-charge of the Department of Consumer Affairs of the State.

FACTS

6. Writ Petition No.7709 of 2012 has been filed by eight petitioners. All of them were appointed as Presidents of the different District Fora. Some of them were already re-appointed for second term. On 16th March, 2012, an advertisement (hereinafter referred to as “the said advertisement”) was issued inviting applications for appointments/re-appointments to the posts of Presidents of the District

Fora of different Districts in the State. The said advertisement was for fifteen prospective vacancies in the posts to be filled in by nomination as provided Rule 7 of the Recruitment Rules. The Petitioners in this Petition applied for re-appointment. Similarly, the Petitioners in Writ Petition No.4215 of 2012 were appointed as the Presidents of the District Fora in various Districts. On the basis of the said advertisement, even the said Petitioners also applied for their re-appointment.

7. The case made out in the aforesaid two Petitions is that as per the said advertisement, those who are seeking re-appointment to the posts of President were required to undergo a fresh selection process. The contention is that those who are seeking re-appointment to the posts of President were not required to undergo a regular selection process in view of the express provisions of Sub-Section (2) of Section 10 of the said Act and Rule 34 of the Recruitment Rules. In Writ Petition No.4215 of 2012, the challenge is to the validity of the Recruitment Rules. In the alternative, a prayer is made to quash and set aside Clause (9) of the advertisement dated 16th March, 2012 which requires those who are seeking re-appointment to undergo a fresh selection process. In Writ Petition No.7709 of 2012, there are similar challenges. In addition, there is a challenge to the validity of the proviso to Sub-Section (3) of Section 10 incorporated by Act No.62 of 2002. A

prayer is made to hold and declare that the Amending Act No.62 of 2002 to the extent of excluding the President of a District Forum from the provisions of re-appointment under Section 10 of the said Act is ex-facie illegal and violative of Part III of the Constitution of India.

8. Writ Petition No.4215 of 2012 was placed before a Division Bench of this Court on 8th May, 2012 when a notice was issued and the actions taken were made subject to further orders in the Writ Petition. In Writ Petition No.4215 of 2012 along with Writ Petition No. 7709 of 2012, on 20th July, 2012, the Division Bench passed the following common order :-

“2. In the meanwhile, by way of ad-interim relief, the respondents may consider the petitioners' candidature in pursuance of the advertisement dated 16.3.2012 without asking the petitioners to undergo the fresh selection process. However, the petitioners shall not be appointed until further orders.”

9. Writ Petition No.7709 of 2012 and Writ Petition No.4215 of 2012 were heard for admission on 6th December, 2012. Before the said Petitions came up before this Court, a meeting of the Selection Committee was held on 6th July, 2012. The Selection Committee came to the conclusion that the President of a District Forum cannot be re-appointed for another term. The said order of the Selection Committee was also considered by the Division Bench of this Court. Paragraphs 8

and 9 of the order dated 6th September, 2012 passed by this Court in Writ Petition No.7709 of 2012 and Writ Petition No.4215 of 2012 read thus :

- “8. Prima facie, we are of the view that the power to legislate and enact Rule 34 is relatable to Sub-Section (3) of Section 10 which permits the Government to enact subordinate legislation in respect of “other terms and conditions of service of the Members of the District Forum”, which will include reappointment, though it may not have included appointment. If any of the candidates are reappointed, such participation and selection shall be subject to the result of the Petition.”
9. The order of the Selection Committee dated 6/7/2012 is hereby stayed to the extent that it treats the petitioners as Presidents of District Forum, who have completed one term, as ineligible.”

10. The State Government preferred Special Leave Petitions before the Apex Court for challenging the said order dated 6th September, 2012. On 11th January, 2013, the Apex Court passed the following ad-interim order :-

“ Taken on board.
Delay condoned.
Issue notice.

As the interim relief granted by the High Court amounts to final relief and has been passed in a case where validity of the Act is under challenge. The High Court has directed to consider, the candidature of the respondents who were writ petitioners before the High Court, by the selection committee. Their candidature may be considered by the Committee but the result may not be declared. In the meanwhile, we request the High Court to expedite the hearing of the case.”

11. On the basis of the said order of the Apex Court, a representation was made by the Petitioners in the said two Writ Petitions to the Selection Committee and to the State Government. The Petitioners called upon the Selection Committee and the State Government to keep vacant seven posts of President of District Fora. On 15th January, 2013, the Petitioners in the said two Writ Petitions were called for viva- voce examination. On 7th January, 2013, final mark-sheet of the written examination and viva-voce examination held on 26th August, 2012 and 1st December, 2012 of the candidates to be appointed by nomination was published by the State Consumer Disputes Redressal Commission, Maharashtra. The select list was published on 18th January, 2013.

12. The Special Leave Petition filed by the State Government was ultimately disposed of on 27th September 2013 by directing that the ad-interim order dated 11th January, 2013 of the Apex Court will continue till disposal of the Petitions by this Court.

13. Writ Petition No.11716 of 2012 is also filed by a Petitioner who was holding the post of a President of the District Forum and who had applied for re-appointment. In this Petition, on 14th December, 2012, while issuing a notice for final disposal, a Division Bench passed

an ad-interim order. Clause 2 of the ad-interim order reads thus :-

- “2. The selection list is under preparation. The respondents shall, therefore, consider the petitioner's application for re-appointment under Section 10(2) without prejudice to their rights and contentions. In the event of the petitioner not being placed on the select list, the matter would end there. In the event of the petitioner's name being placed on the select list, the same shall be subject to further orders. The petitioner shall not under any circumstances claim any equity on account thereof. This order further does not direct the respondents to appoint the petitioner to the said post at this stage. In the event of the petitioner being placed on the select list, liberty to apply.”

The challenge in this Petition is the same as in the earlier two Petitions. In addition, by amending the Petition, the Petitioner has challenged the selection process and the select list dated 18th January, 2013.

14. Writ Petition No.9551 of 2012 is again filed by a Petitioner who was the President of a District Forum who sought re-appointment. On 26th November, 2012, the same Division Bench, while issuing Rule, directed the Selection Committee to consider the case of the Petitioner for re-appointment. Writ Petition No.12159 of 2012 is again filed by a Petitioner who was similarly placed. The learned Single Judge in vacation passed an order dated 26th December, 2012 in the said Petition granting ad-interim relief in terms of order dated 6th September, 2012 in Writ Petition No.7709 of 2012. Writ Petition No.1803 of 2014 was filed

before the Bench at Aurangabad. Even in this case, the Petitioner was appointed as the President of the District Consumer Forum who sought re-appointment on the basis of said advertisement dated 16th March, 2012. By a communication dated 28th August, 2012, the State Commission informed the Petitioner that his application stands rejected as there is no provision of re-appointment in Sub-Section (2) of Section 10 of the said Act. The challenge in this Petition is to the aforesaid advertisement to the extent to which it requires the person seeking re-appointment to the post of the President to undergo the entire selection process. The challenge is also to the aforesaid communication of rejection.

15. Writ Petition No.11712 of 2012 has been filed by a person who was appointed as the President of a District Forum who sought re-appointment. Even in this case, his application was rejected by communication dated 28th August, 2012 on the ground that there is no provision for re-appointment. In this Petition, by order dated 14th December, 2012, the Division Bench directed the Selection Committee to consider the case of the Petitioner. Writ Petition No.2877 of 2014 was filed by a Petitioner who was claiming to be similarly placed.

16. As far as Writ Petition No.1803 of 2014 is concerned, no

ad-interim relief was granted to the Petitioner. Writ Petition No.2877 of 2014 was filed on 4th March 2014 in which no ad-interim or interim order was passed obviously because the entire process was completed in January 2013.

17. In terms of the directions of the Apex Court in the Special Leave Petition, the Selection Committee considered the cases of all the Petitioners in the aforesaid Petitions except the Petitioners in Writ Petition No.1803 of 2014 and Writ Petition No.2877 of 2014 as there was no ad-interim order passed in the said Writ Petition. The Selection Committee did not call those Petitioners who had already completed two terms in the post of President. The Selection Committee called other Petitioners for viva-voce who are governed by the ad-interim/interim orders and who were seeking re-appointment to the posts of President for the first time. Their cases were purportedly considered in accordance with the Rule 34 of the Recruitment Rules. The result of the viva-voce of the said candidates has been placed on record in a sealed envelope.

SUBMISSIONS

18. We have heard the learned counsel representing the Petitioners at length. The submissions have been mainly canvassed by Shri S.S. Kulkarni and Shri U.P. Warunjikar, who are appearing for some

of the Petitioners. Submissions have been also made by the learned counsel representing the Petitioner in Writ Petition No.12159 of 2012 and 1803 of 2014. The Petitioners in all the Petitions except Writ Petition No.9551 of 2012 have been represented before this Court. Shri Nitin Deshpande, the learned AGP made submissions on behalf of the State Government and the State Commission as well as the Selection Committee. We have also heard the learned counsel representing the Union of India.

19. The learned counsel representing the Petitioners invited our attention to the provisions of Section 10 of the said Act as it stood prior to the amendment made by the Act No.62 of 2002. It is pointed out that under the unamended Section 10, there was no provision for re-appointment of the members of the District Forum. The learned counsel appearing for the Petitioners invited our attention to the statements of objects and reasons of the Act No.62 of 2002. One of the objects was to make a provision in the said Act for re-appointment of President and members of the District Forum. Their contention is that a member of the District Forum as defined by Clause (jj) of Section (2) includes the President as well as other members. Relying upon the first proviso to Sub-Section (2) of Section 10 as amended by Act No.62 of 2002, they urged that every member of the District Forum including the

President is eligible for re-appointment for an another term. The learned counsel invited our attention to the Recruitment Rules and in particular Rule 34 thereof which provides that in case of re-appointment of Presidents and members of the District Forum who have already undergone a selection process, the candidates are not required to undergo the same process of selection. However, appointments can be made only on the basis of recommendations of the Selection Committee. The learned counsel appearing for the Petitioners therefore submitted that the view taken by the Selection Committee and the State Forum is completely erroneous and Presidents of the District Fora were entitled to seek re-appointment.

20. The learned AGP appearing for the State invited our attention to the provisions of Section 16 as well as Section 20 of the said Act which deal with the constitution of a State and the National Commission respectively. He pointed out that the second proviso to Sub-Section (3) of Section 16 which was incorporated by Act No.62 of 2002 specifically provides that a person appointed as a President of a State Commission shall be eligible for re-appointment in the manner provided in Clause (a) of Sub-Section (1) of said Section. He pointed out that similarly, second proviso to Sub-Section (3) of Section 20 specifically provides that the President of the National Commission shall be entitled

to seek re-appointment. He pointed out that the aforesaid provisions in Section 10, Section 16 and Section 20 were incorporated by the same Act No.62 of 2002, but as far as Section 10 which deals with District Forum is concerned, no such amendment was made which specifically provides that a President of the District Forum shall be entitled for re-appointment and in fact, the first proviso to Sub-Section (2) of Section 10 specifically provides that a member shall be eligible for re-appointment. He would, therefore, urge that the intention of the legislature is to exclude the Presidents of the District Fora from seeking re-appointment and only the members of the District Fora are entitled to seek re-appointment.

21. The learned counsel representing the Union of India has placed on record a compilation of documents including a copy of the letter dated 24th January, 2015 addressed to him by the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) of Union of India. Paragraph 3 of the said letter clearly records that in view of Clause (jj) of the Section 2 of the said Act, a “member” includes the President and that Section 10 deals with appointment of both the President and Members. In the compilation, there is a note which states that in the Consumer Protection (Amendment) Bill, 2011, with a view to clarify the clear position that a

President of the District Fora is entitled to seek re-appointment, a proviso is proposed to be added to Sub-Section (2) of Section 10. The learned counsel representing the Petitioners have relied upon some of the decisions of the Apex Court.

CONSIDERATION OF LEGAL SUBMISSIONS

22. We have given careful consideration to the submissions. Before an amendment was made to the said Act by the Act No.62 of 2002, Section 10 read thus :-

“10. Composition of the District Forum – (1) Each District Forum shall consist of-

- (a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;
- (b) two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

(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, namely,-

- (i) the President of the State Commission - Chairman,
- (ii) Secretary, Law Department of the State - Member,
- (iii) Secretary in-charge of the Department dealing with consumer affairs in the State - Member.

(2) Every member of the District Forum 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 re-appointment:

Provided 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 the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.

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

23. It will be also necessary to consider the statement of objects and reasons of the Act No.62 of 2002. Clause 2 of the statements of objects and reasons is relevant for our consideration which gives the details of the provisions sought to be incorporated by way of amendment. Sub-clause (ix) of clause 2 of the statement of objects and reasons reads thus :-

“(ix) provision for re-appointment of President and Members of the District Forum, State Commissions and the National Commission, for another term of five years.”

24. Section 10 as amended by Act No.62 of 2002 is already reproduced earlier. However, for the sake of convenience, we are reproducing the substituted Sub-section (2) of Section 10 which reads thus:

“[(2) Every member of the District Forum shall hold office for a terms of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five 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 also made on the basis of the recommendation of the Selection Committee:

Provided further 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 (1-A) in place of the person who has resigned:

Provided also that 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.]”

25. Clause (jj) of Section 2 of said Act which defines “member” reads thus :-

“(jj) “member” includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;]”

Thus, a “member” includes the President of a District Forum, the President of a State Commission and the President of the National Commission.

26. Sub-Section (2) of Section 10 lays down the term of office of every member of a District Forum. Sub-Section (3) provides for payment of salary and other allowances to members of a District Forum.

There is no separate provision made in the said Act laying down the term of the President of District Fora and the salary and allowances payable to the President of District Fora. The reason being that the definition of “member” provides that it includes a President. Otherwise there will not be a specific outer limit for holding the office of the President and there will not be any provision regarding the salary and allowances payable to a President of a District Forum. Thus, the term of office laid down by Sub-Section (2) of Section 10 is also of the President of a District Forum. Hence, Sub-Sections (2) and (3) also apply to the Presidents of District Fora. The first proviso added by Act No.62 of 2002 makes it clear that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to condition that he fulfills the qualifications and conditions for appointment mentioned in Clause (b) of Sub-Section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee. The object of the Amendment as quoted above is to provide that the members and the President should be eligible for re-appointment for an another term. As stated earlier, Sub-Section (2) is applicable not only to members but also to the President of a District Forum. Therefore, the said proviso is applicable to every member including the President. The main Sub-Sections (1) or (2) of Section 10 do not provide that a member is

eligible for re-appointment for another term. The proviso is to Sub-Section (2) which lays down the term of office of a member which includes even the President of a District Forum. Therefore, the said proviso is applicable both to the members and the President.

27. As far as the interpretation of a proviso is concerned, in the case of Commissioner of Commercial Taxes, Board of Revenue v. Ramkishan Shrikishan Jhaver¹, the Apex Court observed thus:

“Again in *CIT v. Nandlal Bhandari & Sons* [(1963) 47 ITR 803] it was observed that **“though ordinarily a proviso restricts rather than enlarges the meaning of the provision to which it is appended, at times the legislature embodies a substantive provision in a proviso. The question whether a proviso is by way of an exception or a condition to the substantive provision, or whether it is in itself a substantive provision, must be determined on the substance of the proviso and not its form”**.

(emphasis added)

Even assuming that the first proviso to Sub-Section (2) of Section 10 is by way of an exception to the term prescribed by Sub-Section (2), the said exception carved out providing for extending the term will apply to the President as well as the members of a District Forum as the main Sub-Section (2) applies to both.

28. The submission of the learned AGP is based on Sections 16 and 20 which deal with the composition of a State Commission and the

¹ (1968) 1 SCR 148; AIR 1968 SC 59; (1967) 66 ITR 664; 20 STC 453

National Commission respectively. Sections 16 and 20 read thus :-

“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:

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

- 2[(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 recognised 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 a 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.]

[3](#)[(1-A)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.

- (1-B) (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 [4](#)[* * *] of, the members of the State Commission shall be such as may be prescribed by the State Government:

[5](#)[Provided that the 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 workload of the State Commission.]

- [6](#)[(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 member 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 (1-A) 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.]

1 *Ins.* by Act 50 of 1993, S. 13 (w.e.f. 18-6-1993).

2 *Subs.* by Act 62 of 2002, S. 12 (w.e.f. 15-3-2003).

3 *Ins.* by Act 62 of 2002, S. 12 (w.e.f. 15-3-2003).

4 Cl. (3C) *omitted* by the Aligarh Muslim University (Amendment) Act (62 of 1981), S. 11 (10-2-1982).

5 Words “including tenure of office” *omitted* by Act 50 of 1993, S. 13 (w.e.f. 18-6-1993).

6 *Ins.* by Act 62 of 2002, S. 12 (w.e.f. 15-3-2003).”

“20. Composition of the National Commission.—(1) The National Commission shall consist of,—

- (a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President:

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

2[(b) not less than four, 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 qualification, namely:

(i) be not less than thirty-five years of age;

(ii) possess a bachelor's degree from a recognised 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 the 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 a presiding officer at the district level court or any tribunal at equivalent level:

Provided further that a person shall be disqualified for appointment, if he—

- (a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the Central 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 Central 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 Central Government:

Provided also that every appointment under this clause shall be made by the Central Government on the recommendation of a Selection Committee consisting of the following, namely:—

- (a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India. —Chairman;
- (b) the Secrecy in the Department of Legal Affairs in the Government of India. —Member;
- (c) Secretary of the Department dealing with Consumer Affairs in the Government of India. —Member.

3[(1-A)(i) The jurisdiction, powers and authority of the National 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 ⁴[* * *] of the members of the National Commission shall be such as may be prescribed by the Central Government.

- ⁵[(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of seventy 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 National Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1):

Provided also that a member may resign his office in writing under his hand addressed to the Central 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 (1-A) in place of the person who has resigned.

- (4) Notwithstanding anything contained in sub-section (3), a person appointed as a 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.]

1 *Ins.* by Act 62 of 2002, S. 17 (w.e.f. 15-3-2003).

2 *Ins.* by Act 50 of 1993, S. 16 (w.e.f. 18-6-1993).

3 *Ins.* by Act 62 of 2002, S. 18 (w.e.f. 15-3-2003).

4 Words “(including tenure of office)” *omitted* by Act 50 of 1993 (w.e.f. 18-6-1993).

5 Subs.by Act 62 of 2002, S. 18 (w.e.f. 15-3-2003).”

29. It is sought to be contended by Shri Deshpande, the learned AGP that second proviso to Sub-Section (3) of Section 16 specifically makes a provision under which the President of a State Commission is made eligible for seeking re-appointment. It is his contention that second proviso to Sub-Section (3) of Section 20 specifically makes a provision under which the President of the National Commission is made eligible for seeking re-appointment. The contention is that though the said second proviso to both the proviso were added by the Act No.62 of 2002, there is no similar provision made by adding a specific proviso to Sub-Section (2) of Section 10 in respect of the President of District Fora.

30. As stated earlier, Clause (jj) of Section 2 which defines “member” which includes the President of a District forum, the President of a State Commission as well as the President of the National Commission. Sub-Section (3) of Section 16 provides that 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. There is no other provision in Section 16 which specifically deals with the term of office of the President of the State Commission. The first proviso to Sub-Section (3) makes it clear that a member shall be eligible for re-

appointment for another term of five years or up to the age of sixty-seven years, whichever is earlier. It is this first proviso which makes even the President of a State Commission eligible for re-appointment. The second proviso is by way of an exception to the first proviso which adds an additional procedural requirement for re-appointment of the President of a State Commission. The reason for incorporating the second proviso appears to be that as per Clause (a) of Sub-Section (1) of Section 16, the appointment of the President of a State Forum cannot be made except after consultation with the Chief Justice of the concerned High Court. It is because of this peculiar provision that second proviso to Sub-Section (3) is added by way of clarification that even the re-appointment of the President will be governed by Clause (a) of Sub-Section (1). It is because of this special provision in Clause (a) of Sub-Section (1) that second proviso to Sub-Section (3) of Section 16 has been added. If the first proviso which provides for re-appointment was not applicable to the President, the second proviso becomes meaningless or redundant. In the case of Abdul Jabar Butt v. State of J&K, 1957², the Apex Court held thus:

“In the first place it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso.”

31. The second proviso is in relation to the matter provided in the first proviso to sub-section (3) of Section 16. It is the first proviso

2. SCR 51: AIR 1957 SC 281: 1957 Cri LJ 404

which by way of an exception to the term of the members and President provided in Sub-Section (3) lays down that the members including the President shall be eligible for re-appointment. In case of the President of a District forum, there was no need to provide a provision in terms of the second proviso applicable to the case of the Presidents of State Commissions. The need to make second proviso to Sub-Section (3) of Section 16 was only due to the fact that the first proviso makes a President of State Commissions eligible for re-appointment. The second proviso is made to ensure that the President of a State Commission is considered for re-appointment in the manner provided in Clause (a) of Sub-Section (1) which provides that no appointment of the President of a State Commission can be made without consultation with the Chief Justice of the concerned High Court.

32. As far as the term of the Members and the President of the National Commission are concerned, Sub-Section (3) of Section 20 makes a similar provision on par with Sub-Section (3) of Section 16. The only difference is that the outer limit of age is 70 years. The first proviso to Sub-Section (3) makes it clear that a member including the President of the National Commission shall be eligible for re-appointment for another term of five years or up to the age of seventy years, whichever is earlier. The second proviso to Sub-Section (3) is by

way of an exception to the first proviso. The second proviso is made to ensure that the President is considered for re-appointment in the manner provided in Clause (a) of Sub-Section (1) which provides that no appointment of the President of the National Forum can be made without consultation with the Chief Justice of India. Therefore, the argument of the learned AGP based on Sub-Section (3) of Sections 16 and 20 has absolutely no basis.

33. There is no ambiguity about the proviso to Sub-Section (2) of Section 10. A President of a District Forum being a member of the District Forum is eligible to seek re-appointment for another term of five years. Thus, the stand taken by the State Government as well as the Selection Committee cannot be sustained. At the same time, it must be noted that a member or the President, as the case may be, is entitled to seek re-appointment only for one term of five years and there is no provision for further re-appointment. The stand of the Union of India is that the definition of a member includes the President. The first proviso to Sub-Section (2) of Section 10 of the said Act clearly provides that “a member shall be eligible for re-appointment another term of five years...”. Hence, a member is entitled for re-appointment only for one more term. He not entitled to seek re-appointment thereafter.

34. The State Government has exercised the Rule making power by framing the Recruitment Rules. Elaborate procedure has been laid down in the Recruitment Rules for considering the applications of the practising Advocates for appointment to the post of the President of a District Forum by nomination. Rules 9 to 11 of the said Rules read thus :-

- “9. Where it is proposed to appoint the practicing Advocate as a President, the Selection Committee shall consider all the applications of the eligible candidates referred to it and may shortlist them on the basis of comparative merit and the number of vacancies and thereafter, the State Commission shall hold the final examination of 250 marks for the post of Presidents. Out of 250 marks, 200 marks shall be for written examination and 50 marks shall be for viva-voce examination.
10. The written examination shall consist of two papers 100 marks each. The first paper shall cover the topics such as the Code of Civil Procedure, Code of Criminal Procedure, Law of Evidence, Law of Specific Performance, Transfer of Property Act, Contract Act, Insurance Act, Maharashtra Co-operative Societies Act, 1961, the Maharashtra Ownership of Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963 and Rules framed thereunder. Another paper of 100 marks shall cover the Consumer Protection Act, 1986 and the rules framed thereunder. Duration of each paper shall be of 2½ hours. Candidate who secures at least than 50% of marks in each paper in written examination shall be eligible for the viva-voce examination:

Provided that, candidate belonging to backward class who obtains at least 45% marks in written examination shall be eligible for viva-voce examination.
11. The candidate who is eligible for viva-voce examination as stated above, he will be included in a selection list as per merit. The Selection Committee shall hold viva-voce examination carrying out 50 marks. Out of these 50

marks, 45 marks shall be considered for the performance of the candidates facing the oral interview. 05 marks shall be considered for his personality, behaviour, attitude while responding the interview.”

35. What is material is Rule 34 of the Recruitment Rules which reads thus :-

“34. In case of re-appointment of the Presidents and Members of District Forum, as at the time of appointing the Presidents and Members, the concerned candidates have undergone the selection process as stated in the rules, **it shall not be necessary for the said candidates to undergo the same process of selection.** However, the re-appointment of the Presidents and Members shall be done, if he satisfies the qualifications, on a recommendation of the Selection Committee. The Selection Committee while making recommendation shall take into consideration the Confidential Reports, the disposal of cases, the performance during the time of first appointment, a general reputation of a candidate and the complaints, if any, pending against the candidate.”

36. In view of Rule 34, the relevant clause in the said advertisement which requires the Presidents who are seeking re-appointment to undergo a fresh selection process is completely illegal. The result sheets show that after holding the viva voce, the committee has considered the Confidential Reports, the disposal of cases, the performance during the time of first appointment, general reputation of the candidates and the complaints, if any, pending against the candidates. Thus, the Committee has considered the factors which are required to be considered in terms of the Rule 34 of the Recruitment

Rules. The Selection Committee seems to have followed the mandate of Rule 34 of the Recruitment Rules.

37. There is an affidavit filed by Mrs. Anuja Sagar Wairagade, Registrar (Legal) of the State Commission. In the said affidavit, she has stated that the Selection Committee did not consider the cases of those Petitioners who have already completed two terms as the Presidents. It is stated in the affidavit that the Selection Committee considered the cases of all the Petitioners in whose favour there were ad-interim/interim orders directing the Selection Committee to consider their respective cases. The Selection Committee did not call the Petitioners in the Petitions in which there were no ad-interim/interim orders. After opening the sealed envelope containing the results, we have perused separate recommendations of the three members of the Selection Committee. The selection Committee considered the cases of 12 Petitioners. We find that the Selection Committee has found only two Petitioners fit for re-appointment as the President. The first candidate is Shri Sharad D. Madke, the Petitioner in Writ Petition No.12159 of 2012. The second candidate found to be fit is Shri Ramlal B. Somani, the first Petitioner in Writ Petition No.7709 of 2012. The unanimous opinion of the three Selection Committee members as regards the other Petitioners interviewed is that they are not fit for being re-appointed.

38. Civil Application No.250 of 2013 was filed by the Petitioners in Writ Petition No.7709 of 2012. Clause 4 of order dated 23rd January, 2013 passed thereon specifically records that the appointments to the posts of the President of the District Fora will be subject to further orders passed in the said Writ Petition No.7709 of 2012 and other pending Writ Petitions. Clause 5 of the said order specifically directs that while issuing the orders of appointment, the State shall ensure that appointees are informed about the pending Petitions in this Court.

39. We may note here that as of 19th January, 2015, the posts of President of the District Forum at Yavatmal as well as at Buldhana were vacant. The Petitioner in Writ Petition No.12159 of 2012 and the first Petitioner in Writ Petition No.7709 of 2012 are entitled to re-appointment. The State Government will have to either cancel the appointments of the last two candidates in the select list declared on 18th January, 2013 or to accommodate the said two Petitioners in the vacant posts.

40. As far as the sole Petitioners in Writ Petition No.1803 of 2014 and Writ Petition No.2877 of 2014 are concerned, their cases were not considered by the Selection Committee on the ground that there was no ad-interim or interim order passed in these Writ Petitions.

That is the stand taken in the affidavit of Smt. Anuja Wairagade. For the reasons which we have recorded above, the impugned communications rejecting the applications of the Petitioners therein will have to be set aside. The rejection is only on the ground that there is no provision for re-appointment under Sub-Section (2) of Section 10. As all appointments made on the basis of select list dated 18th January, 2013 are made subject to further orders, the case of the said Petitioners will have to be considered by the Selection Committee in accordance with Rule 34 of the Recruitment Rules. If they are found to be fit for re-appointment, an order of appointment will have to be issued to the said Petitioners by cancelling the appointment of the last candidates in the merit list. If there are vacant posts, the appointees need not be disturbed.

41. As far as the Petitioner in Writ Petition No.2877 of 2014 is concerned, earlier the Selection Committee considered her case for re-appointment. The minutes of the Selection Committee meeting dated 2nd July, 2011 record that she was not fit for re-appointment. On the basis of the said advertisement, she again applied for re-appointment. By communication dated 28th August, 2012, her application was rejected not on merits but on the ground that there is no provision for re-appointment. The Petitioner has challenged the decision dated 2nd July, 2011. The said challenge cannot be entertained as by accepting the

said decision, she subsequently applied on the basis of the said advertisement dated 16th March, 2012. As her application on the basis of the said advertisement has not been considered on merits, her case will have to be considered. However, the prayer for setting aside the said decision dated 2nd July, 2011 will have to be rejected.

42. There is nothing placed on record to show that those who are entitled to be re-appointed had no source of income after their first term expired. Hence, they are not entitled to any other benefits.

43. Hence, we dispose of the Petitions by passing the following order :-

ORDER

- (i) We hold that the President of a District Forum is entitled to seek re-appointment for another term as provided in first proviso to Sub-Section (2) of Section 10 of the said Act. We, however, hold that the President of a District Forum can seek re-appointment only once and he is not entitled to seek re-appointment after completing two terms in the office of the President;
- (ii) We hold that in view of Rule 34 of the Recruitment Rules, the President of a District Forum seeking re-appointment is not required to undergo a fresh selection process applicable to fresh candidates. Their cases shall

be considered in accordance with Rule 34 of the Recruitment Rules.

- (iii) The State Government shall issue orders of appointment to the Petitioner in Writ Petition No.12159 of 2012 (Shri Sharad Digamber Madke) and to the first Petitioner in Writ Petition No.7709 of 2012 (Shri Ramlal Bhawarlal Somani) in accordance with law within a period of three months from today. We direct that the cases of Shri Syed Rahmet Ali, the Petitioner in Writ Petition No.1803 of 2014 and Smt. Pratibha Balkrishna Potdukhe, the Petitioner in Writ Petition No.2877 of 2014 shall be placed before the Selection Committee for consideration in accordance with Rule 34 of the Recruitment Rules. The Selection Committee shall take appropriate decision within a period of three months from today. If the said Petitioners or any of them are found to be fit for re-appointment, the State Government shall issue orders of re-appointment within a period of three months from the date on which the recommendation of the Selection Committee is received;

- (iv) Writ Petition Nos.12159 of 2012, 7709 of 2012, 2877 of 2014 and 1803 of 2014 are partly allowed to the aforesaid extent. The prayers which are not specifically granted stand rejected;
- (v) Subject to what is observed above, all other Writ Petitions are rejected;
- (vi) Pending Civil Applications stand disposed of;
- (vii) There will be no orders as to costs;
- (viii) The result sheets shall be re-sealed and kept in the custody of the Registrar (J-1).

(A.K. MENON, J)

(A.S. OKA, J)