

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE**

MONDAY, THE 19TH DAY OF OCTOBER 2015/27TH ASWINA, 1937

WA.No. 2093 of 2015 () IN WP(C).3378/2015

**AGAINST THE ORDER/JUDGMENT IN WP(C) 3378/2015 of HIGH COURT OF KERALA
DATED 19-08-2015**

APPELLANT(S)/PETITIONERS:

- 1. JACOB STEPHEN
FORMER PRESIDENT
CONSUMER DISPUTES REDRESSE FORUM PATHANAMTHITTA DISTRICT
PATHANAMTHITTA RESIDING AT KAVUMKAL HOUSE
NELLIKKAMON PO, RANNI**
- 2. G. SIVAPRASAD
FORMER PRESIDENT
CONSUMER DISPUTES REDRESSEL FORUM
THIRUVANANTHAPURAM DISTRICT
THIRUVANANTHAPURAM RESIDING AT T.C 17/2005(3)
CRA 30(C), THALAKKONAM, NEAR ANVAR GARDENS
POOJAPPURA PO, THIRUVANANTHAPURAM**
- 3. PADMINI SUDHEESH
FORMER PRESIDENT
CONSUMER DISPUTES REDRESSEL FORUM THRISSUR DISTRICT
RESIDING AT THEVARUPARAMBIL, KARALM PO, IRINJALAKUDA
THRISSUR DISTRICT**

**BY ADVS.SRI.THOMAS ABRAHAM
SMT.MERCIAMMA MATHEW
SRI.ASWIN.P.JOHN**

RESPONDENT(S)/RESPONDENTS:

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF CONSUMER AFFAIRS, GOVERNMENT OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM**
- 2. KERALA STATE CONSUMER DISPUTES REDRESSEL COMMISSION,
SISUVIHAR LANE, VAZHUTHAKKAD
THIRUVANANTHAPURAM REPRESENTED BY ITS SECRETARY**

3. SECRETARY
DEPARTMENT OF LAW, GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM
 4. PRESIDENT
KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
SISUVIHAR LANE, VAZHUTHAKKAD, THIRUVANANTHAPURAM
 5. SECRETARY
DEPARTMENT OF CONSUMER AFFAIRS
GOVERNMENT OF KERALA SECRETARIAT, THIRUVANANTHAPURAM
 6. UNION OF INDIA
REPRESENTED BY ITS SECRETARY
MINISTRY OF CONSUMER AFFAIRS, GOVERNMENT OF INDIA
NEW DELHI
 7. P. SUDHIR
ASHA NILAYAM, GANESHGIRI PO, SHORNUR
PALAKKAD-679 123
 8. P. SASTHEESH CHANDRAN NAIR
MOOKANOIL, THEKKETHUKAVALA PO, PONUKNNAM
KOTTAYAM-686 519
 9. S. GOPAKUMAR
PONNARAMTHOTTATHU, PONNARAMTHOTTAM, MAVELIKKARA
ALAPPUZHA-90 101
 10. CHERIYAN K KURIAKOSE
KOTTALIL, KAVUMPADY, MUVATTUPUZHA PO
686 661
 11. P.K. SASI
PONNAMPARAMBIL KOOLIYAT HOUSE, KANDANASSERY PO
THRISSUR-680 102
 12. P.R. SHYNI
KOORKADAM HOUSE, ALAGAPPANAGAR PO, THRISSUR 680 302
 13. ROSE JOSE
PUNNELIPARAMBIL HOUSE, KALLETUMAKARA PO
THRISSUR 680 683
- R8 BY ADV. SRI.SERGI JOSEPH THOMAS
BY SRI.C.S.AJITH PRAKASH
BY SMT.ASHA ELIZABETH MATHEW
R BY SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
BY SR GOVERNMENT PLEADER SRI.C.S.MANILAL
BY SRI.K.S.MADHUSOODANAN
BY SRI.RAJIT
BY SRI.SANTHEEP ANKARATH

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 28-9-2015, THE
COURT ON 19-10-2015 DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, C.J.

&

A.M. SHAFFIQUE, J.

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W.A. No. 2093 of 2015

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Dated this, the 19th day of October, 2015

J U D G M E N T

Shaffique, J.

This appeal is filed by the petitioners challenging judgment dated 19/8/2015 in WP(C) 3378/2015. The petitioners have challenged the procedure and manner in which respondents 7 to 13 were appointed as Presidents of the Consumer Disputes Redressal Forums (for short 'CDRF') in various Districts by Ext.P4 order and seeks for a direction not to appoint any person on the basis of the interview conducted on 8th and 9th of October, 2014.

2. The petitioners, who are former Presidents of CDRFs, had approached this Court challenging the selection process to 8 vacancies which commenced on 8/12/2013. When applications were invited from eligible candidates, petitioners have also submitted applications. They were also called upon to attend interview on 9/10/2014. In Ext.P3 list of 133 candidates, to whom call letters were sent, the petitioners' names were included at Sl.

Nos.37, 39 and 41 respectively. Petitioners allege that though interview was conducted, it was a farce interview and there was no transparency in the matter of selection. Petitioners submitted a representation pointing out the illegalities in preparing the select list and since no action had been taken in the matter, this writ petition is filed.

3. 1st respondent has filed a counter affidavit refuting the allegations made and *inter alia* stating that the selection was conducted by a Committee as provided under the Statute and it is based on the said decision that the appointments were made. The 1st respondent denied the allegations made in the writ petition and had stated that the decision was taken in accordance with the procedure prescribed and that the allegations were absolutely baseless.

4. Counter affidavit has been filed by respondents 9, 11, 12 and 13 as well for which the petitioners had filed reply. The learned Single Judge after detailed evaluation of the factual and legal issues raised in the writ petition, by a common judgment, dismissed the writ petition. Appeal is filed only by the petitioners

in WP(C) No.3378/15.

5. Heard the learned counsel for the appellant Sri.Thomas Abraham and learned Senior Government Pleader Sri.C.S.Manilal.

6. Learned counsel for the appellants contended that the entire selection process was vitiated and when the learned Single Judge had already found that the procedure has not been strictly followed, the selection list ought to have been set aside. It was contended that Selection Committee had completely erred in preparing 7 separate rank lists consisting of 5 candidates for each District instead of a single category list for consideration by the State Government. Reference is made to Rules 7(2) and (3) of the Kerala Consumer Protection Rules, which read as under;

(2) The panel of Sitting Judges/Retired District Judges and persons qualified to be appointed as, District Judges shall be obtained from the High Court of Kerala for consideration of appointment to the post of President.

(3) The category-wise panel so obtained, after further scrutiny and short listing, with all relevant documents and details shall be placed before the Selection Committee at the appropriate time by the Convener of the Selection Committee and the Selection Committee shall finalise a panel of

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category-wise candidates, by adopting such methods as the Selection Committee may deem fit, and the list of qualified candidates so finalised, shall be sent for consideration of appointment by the Government. The Secretary to Government in charge of the Department dealing with Consumer Affairs in the State shall be the Convener of the Selection Committee."

7. Learned counsel also relied upon judgment of the Supreme Court in **Ramachandra Keshav Adke v. Govind Joti Chavare** (1975 (1) SCC 559) to contend that when the statutory provision is clear and unambiguous and that it is mandatory, the authorities have to act in accordance with the specific statutory provision and it should not be an empty formality and that failure to comply with such mandatory provisions would render the proceedings non est. In fact, the Supreme Court was considering an issue raised under Section 5(3)(b) of the Tenancy and Agricultural Lands Act, 1948 read with Rule 2A of the Tenancy and Agricultural Lands Rules, 1956, which provides for termination of tenancy by way of surrender in favour of the landlord. The provision indicated that the surrender shall be by writing and shall be verified by the Mamlatdar in the manner prescribed. The rules

provided the manner of such verification. It is in the said circumstances that the Supreme Court had occasion to find that it being a mandatory procedure, it has to be complied in letter and spirit. Para 25 is relevant, which reads as under;

“25. A century ago, in Taylor v. Taylor Jassel, M.R. adopted the rule that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all and that other methods of performance are necessarily forbidden. This rule has stood the test of time. It was applied by the Privy Council, in Nazir Ahmed v. Emperor and later by this Court in several cases, to a Magistrate making a record under Sections 164 and 364 of the Code of Criminal Procedure, 1898. This rule squarely applies “where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other.” The rule will be attracted with full force in the present case, because non-verification of the surrender in the requisite manner would frustrate the very purpose of this provision. Intention of the legislature to prohibit the verification of the surrender in a manner other than the one prescribed, is implied in these provisions. Failure to comply with these mandatory provisions, therefore, had vitiated the surrender and rendered it non est for the purpose of Section 5(3)(b).”

8. Another judgment relied upon is ***Renu v. District and Sessions Judge, Tis Hazari*** (AIR 2014 SC 2175). This judgment is relied upon to contend that when Courts are institutions or organism where all the limbs complete the whole system of Courts and when the Constitutional provision under Article 235 is of such wide amplitude to cover both the Courts and persons belonging to the Judicial office, there would be no reason to exclude the other limbs of the Courts, namely, administrative functionaries and ministerial staff of its establishment from the scope of control. In fact, this judgment was relied upon to contend that CDRFs constituted under the Consumer Protection Act are also Courts and therefore, the High Court will have to oversee the manner in which the selection process is being conducted.

9. In fact, the appellants had raised various contentions before the learned Single Judge. One of the major contention urged was regarding the requirement of consultation with the High Court. The contention was that such consideration has to be read into the provisions of the Consumer Protection Act. The

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learned Single Judge had evaluated this contention and after considering judgments of the Apex Court in ***State of Maharashtra v. Labour Law Practitioners' Association and Others*** (AIR 1998 SC 1233), ***Laxmi Engineering Works v. P.S.G Industrial Institute*** [(1995) 3 SCC 583] and ***Dr.J.J.Merchant v. Shrinath Chaturvedi*** [(2002) 6 SCC 635], it was held that Presidents of CDRFs cannot be seen as akin to District Judges for the purpose of invoking the provisions of Article 233 read with Article 236 of the Constitution of India and it was held that statutory provisions clearly indicate that the CDRF was not envisaged as a forum discharging the functions that were earlier discharged by a civil court. Having regard to the aforesaid finding of the learned Single Judge, we do not think that any modification is required in the aforesaid judgment.

10. In regard to the contention regarding violation of Rule 7 of the Kerala Consumer Protection Rules, the learned Single Judge observed that in terms of Section 10(1A) of the Consumer Protection Act, the appointment of President of the CDRF has to be made by the State Government on the recommendation of the

Selection Committee constituted for the said purpose. The procedure prescribes for a panel of District Judges, Retired District Judges and persons qualified to be appointed as District Judges to be obtained from the High Court and after scrutiny, shortlisting and after verifying all the documents, it has to be placed before the Selection Committee. The Selection Committee has to finalise a panel of category-wise candidates by adopting such methods as it may deem fit. The said list has to be forwarded to the Government. The category-wise apparently is with reference to the category of Sitting District Judges, Retired District Judges and persons qualified to be appointed as District Judges. Therefore, when the Selection Committee forwards the panel after the process, it has to be indicated that the candidate so selected comes under a particular category or other. In the case on hand, the Selection Committee has forwarded a list of five candidates for each of the District in which there was a vacancy. The list prepared by the Selection Committee has been produced as Ext.R1(c). With reference to Sitting Judges, the question was whether preparation of such a list would vitiate the selection

process. The learned Single Judge found that forwarding of the finalised panel of qualified candidates by the Selection Committee to the State Government was not in accordance with the procedure as contemplated under Rule 7 of the Rules. Thereafter, learned Single Judge based on the judgment of a Division Bench of this Court in ***State of Kerala v. Reghu Varma*** (2009 (3) KLT 634), which was reiterated in ***Susheela v. State of Kerala*** (2015 (1) KLT 1008) and ***Registrar General, High Court of Madras v. R.Gandhi & Ors*** [JT (2014) 4 SC 261] held that judicial review is permissible only in respect of assessment of eligibility and not in respect of assessment of suitability of candidates.

11. Further, we find that the procedure adopted by the Selection Committee has not caused any prejudice to the appellants. It is clearly indicated in the Rule that Selection Committee can adopt a procedure as they deem fit. They have decided to prepare a District-wise panel and it was submitted to the Government. They felt that this procedure would be more appropriate. We do not therefore think that Rule 7 is worded in

such a manner that prevents the Selection Committee to adopt its own procedure in sending the list to the Government. At any rate, in the absence of any malafides or arbitrariness in preparing the list, we do not think that any of the grounds urged by the appellants warrant interference by this Court by exercising the appellate jurisdiction. The learned Single Judge has in detail answered all the contentions urged by the appellants and we do not find any illegality in the said judgment, which warrants interference.

Appeal is, therefore, dismissed.

Sd/-

ASHOK BHUSHAN, CHIEF JUSTICE

Sd/-

A.M. SHAFFIQUE, JUDGE

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PS to Judge