

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

WEDNESDAY, THE 19TH DAY OF AUGUST 2015/28TH SRAVANA, 1937

WP(C).No. 34020 of 2014 (B)

PETITIONER(S):

**N.PREMKUMAR, AGED 34 YEARS
NEDUKEPURAYIL HOUSE, CHUKULANJI P.O, VALIAKULAM
VADASSERIKKARA RANNI, PATHANAMTHITTA 689 673.**

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

RESPONDENT(S):

- 1. STATE OF KERALA
REPRESENTED BY ITS SECRETARY
DEPARTMENT OF CONSUMER AFFAIRS, GOVERNMENT OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
- 2. KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
SISUVIHAR LANE, VAZHUTHAKKAD
TRIVANDRUM REPRESENTED BY ITS SECRETARY. 695 001**
- 3. SECRETARY
DEPARTMENT OF LAW, GOVERNMENT OF KERALA, SECRETARIAT
THIRUVANANTHAPURAM 695 001.**
- 4. PRESIDENT
KERALA STATE CONSUMER DISPUTES REDRESSAL COMMISSION
SISUVIHAR LANE, VAZHUTHAKKAD, TRIVANDRUM.695 001**
- 5. SECRETARY
DEPARTMENT OF CONSUMER AFFAIRS, GOVERNMENT OF KERALA
SECRETARIAT, THIRUVANANTHAPURAM 695 001.**
- 6. DIRECTOR OF VIGILANCE AND ANTICORRUPTION BUREAU
VIKAS BHAVAN P.O, TRIVANDRUM 695 033.**

ADDITIONAL RESPONDENTS 7 TO 13:

**7.P.SUDHIR, ASHA NILAYAM, GANESHGIRI P.O., SHORANUR,
PALAKKAD 679 123.**

**8.P.SATHEESH CHANDRAN NAIR, MOOKANOLI, THEKKETHUKAVALA P.O.,
PONUKUNNAM, KOTTAYAM 686 519.**

**9.S.GOPAKUMAR, PONNARAMTHOTTATHU, PONNARAMTHOTTAM,
MAVELIKKARA, ALAPPUZHA - 690 101.**

**10.CHERIYAN K. KURIAKOSE, KOTTALIL, KAVUMPADY,
MUVATTUPUZHA P.O., 686 661.**

**11.P.K.SASI, PONNAMPARAMBIL KOOLIYAT HOUSE,
KANDANASSERY P.O., THRISSUR - 680 102.**

**12.P.R.SHYNI, KOORAKADAM HOUSE, ALAGAPPANAGAR P.O.,
THRISSUR 680 302.**

**13.ROSE JOSE, PUNNELIPARAMBIL HOUSE, KALLETUMKARA P.O.,
THRISSUR 680 683.**

**ADDL.RESPONDENTS 7 TO 13 ARE IMPEADED AS PER ORDER DATED
8.1.2015 IN I.A.NO.267/15.**

**R1,R 3,R 5,R 6 BY GOVERNMENT PLEADER SRI.C.S.MANILAL
R12 BY ADV. SRI.C.S.AJITH PRAKASH
R12 BY ADV. SRI.PAUL C THOMAS
R12 BY ADV. SRI.P.S.SYAMKUTTAN
R7 BY ADV. SRI.SANTHEEP ANKARATH
R7 BY ADV. SRI.ARUN MATHEW VADAKKAN
R11 BY ADV. SRI.RAJIT
R10 BY ADV. SRI.K.ANAND (SR.)
R10 BY ADV. SMT.LATHA KRISHNAN
RADDL. BY ADV. SRI.K.S.MADHUSOODANAN
RADDL. BY ADV. SRI.THOMAS CHAZHUKKARAN
RADDL. BY ADV. SRI.M.M.VINOD KUMAR
RADDL. BY ADV. SRI.P.K.RAKESH KUMAR
RADDL. BY ADV. SRI.K.S.MIZVER
R8 BY ADV. SRI.SERGI JOSEPH THOMAS
RADDL.9 BY ADV. SMT.ASHA ELIZABETH MATHEW**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
07-08-2015 ALONG WITH WPC.1252/2015 & WPC. 3378/2015, THE COURT
ON 19-08-2015 DELIVERED THE FOLLOWING:**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE REQUISITION DATED 8.12.2013 SENT BY THE 1ST RESPONDENT.

EXT.P2: COPY OF THE COMMUNICATION DATED 17.1.2014 SENT BY THIS HON'BLE COURT TO ALL DISTRICT JUDGES IN THE STATE.

EXT.P3: COPY OF THE BIO-DATA SUBMITTED BY THE PETITIONER.

EXT.P4: COPY OF THE CALL LETTER TO ATTEND THE INTERVIEW.

EXT.P4(A): COPY OF THE LIST OF CANDIDATES WHO WERE SENT CALL LETTERS SIMILAR TO EXT.P4.

EXT.P5: COPY OF THE NEWSPAPER REPORTS IN MANGALAM DAILY.

EXT.P6: COPY OF THE REPLY DATED 6.12.2014 FURNISHED BY THE 1ST RESPONDENT ALONG WITH A COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.

EXT.P7: COPY THE REPLY DATED 22.11.2014 FURNISHED BY THE 2ND RESPONDENT ALONG WITH A COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.

EXT.P8: COPY OF THE COMPLAINT DATED 10.12.2014 SUBMITTED BY THE PETITIONER BEFORE THE DIRECTOR OF VIGILANCE AND ANTICORRUPTION DEPARTMENT.

EXT.P9: COPY OF THE NOTIFICATION NO.2553/CA-1/2012(1)/CAD DATED 23.12.2014 ISSUED BY THE CONSUMER AFFAIRS DEPARTMENT.

RESPONDENTS EXHIBITS:

EXT.R1(A): COPY OF LETTER OF THE REGISTRAR, SUBORDINATE JUDICIARY.

EXT.R1(B): COPY OF FORMAT OF NOTICE INVITING THE PERSONS FOR INTERVIEW.

EXT.R1(C): COPY OF MINUTES OF THE SELECTION COMMITTEE MEETING HELD ON 8.10.2014 AND 9.10.2014.

//TRUE COPY//

P.S. TO JUDGE

WP(C).No. 34020 of 2014 (B)

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. COPY OF THE REQUISITION DATED 8.12.13 SENT BY THE 1ST RESPONDENT.

EXHIBIT P2. COPY OF THE COMMUNICATION DATED 17.1.14 SENT BY THIS HONOURABLE COURT TO ALL DISTRICT JUDGES IN THE STATE.

EXHIBIT P3. COPY OF THE BIODATA SUBMITTED BY THE PETITIONER.

EXHIBIT P4. COPY OF THE CALL LETTER TO ATTEND THE INTERVIEW.

EXHIBIT P5. COPY OF THE NEWSPAPER REPORTS IN MANGALAM DAILY.

EXHIBIT P6. COPY OF THE REPLY DATED 6.12.14 FURNISHED BY THE 1ST RESPONDENT ALONG WITH A COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.

EXHIBIT P7. COPY OF THE REPLY DATED 22.11.14 FURNISHED BY THE 2ND RESPONDENT ALONG WITH A COPY OF THE APPLICATION SUBMITTED BY THE PETITIONER.

EXHIBIT P8. COPY OF THE COMPLAINT DATED 10.12.14 SUBMITTED BY THE PETITIONER BEFORE THE DIRECTOR OF VIGILANCE AND ANTICORRUPTION DEPARTMENT.

EXHIBIT P9: COPY OF THE NOTIFICATION NO.2553/CA-1/2012(1)/CAD DATED 23.12.2014 ISSUED BY THE CONSUMER AFFAIRS DEPARTMENT.

RESPONDENT(S)' EXHIBITS

'C.R.'

A.K.JAYASANKARAN NAMBIAR, J.

W.P.(C).NO.34020 OF 2014

&

W.P.(C).NOS.1252 & 3378 OF 2015

Dated this the 19th day of August, 2015

J U D G M E N T

The petitioners in these writ petitions are aspirants for the posts of President of the District Consumer Disputes Redressal Forum (hereinafter referred to as 'DCDRF'). They comprise of persons who have held the office of President DCDRF in the past, Retired District Judges and persons who are qualified to be appointed as District Judges. They are aggrieved by the selection procedure that was followed by the State Government in connection with appointments made to the posts of President of the DCDRF's in Thiruvananthapuram, Pathanamthitta, Kannur, Kozhikode, Ernakulam, Thrissur, Idukki and Palakkad districts of the State.

2. The facts in the writ petitions would indicate that the State Government had, by a letter dated 08.12.2013, requested the High Court to forward a panel of qualified persons comprising of sitting District Judges/retired District Judges and persons qualified to be

appointed as District Judges for considering them for appointment to the posts of President in the eight DCDRF's mentioned above. On receipt of the said letter, the High Court, through an Official Memorandum dated 17.01.2014 addressed to the Principal District Judges of the 14 Districts in the State, requested them to circulate the Government letter to all subordinate courts and bar associations in their district and to obtain and forward the Biodata of eligible candidates who were willing to be considered for appointment to the posts in question. Thereafter, on receipt of applications from candidates, the High Court forwarded the same to the Government. It would appear that, thereafter, the selection committee that was constituted to prepare a select list of eligible candidates for forwarding to the State Government conducted an interview at Thiruvananthapuram, between 8th and 9th of October, 2014. The said committee prepared separate lists, comprising of five candidates each, for each of the 8 districts where an appointment to the post of President of the DCDRF was contemplated. These lists were then forwarded to the State Government for its consideration for appointment to the vacant posts of President of the DCDRF. The State Government, thereafter, selected eight persons to be appointed as

Presidents of the DCDRF in the eight districts mentioned above, and their appointments were duly notified through separate Notifications dated 23.12.2014. As already noticed, the said appointments are challenged in the writ petitions wherein the persons appointed have also been impleaded as respondents.

3. The main grounds of challenge, against the above selection process that was undertaken by the Government, are as follows:

- The selection process was undertaken in a manner that lacked transparency. The selection was made solely based on an interview conducted by the selection committee and there was no rank list prepared of candidates who had attended the interview. Even the interview was conducted in haste and a total of 93 candidates were interviewed in just two days.
- The panel of eligible candidates that was to be drawn up for forwarding to the State Government had to be one that was prepared category wise, as mandated in Rule 7 of the Kerala Consumer Protection Rules. In the instant case, while such a panel was not drawn up, the selection committee proceeded to draw up separate panels of five candidates each for each of the eight districts

where an appointment was to be made to the post of President of the DCDRF.

- In the matter of selection of a candidate to the post of President of the DCDRF, a requirement of consultation with the High Court had to be read into the provisions of the Consumer Disputes Act. As per the provisions of the Act, a person seeking appointment to the post of President of the DCDRF had to be a Sitting District Judge, a retired District judge or a person qualified to be appointed as a District Judge. The qualifications prescribed for the post, therefore, unambiguously indicate that the post in question is a judicial post and it's functioning akin to that of a Court dealing with civil and criminal matters. Similarly, the powers of the DCDRF, as specified in the Consumer Disputes Act, clearly indicate that the forum is to exercise the powers that were earlier exercised by a Court, that now stood transferred to it under the Act, and this is reason enough to deem the President of the forum as a District Judge, within the meaning of the term under Article 236 of the Constitution of India and, consequently, to insist on an adherence to the appointment procedure contemplated under Article 234 of the Constitution, while making appointments to the said post.

4. I have heard Sri. Chandrasekhar and Sri. Thomas Abraham, learned counsel for the petitioners in all these writ petitions and Sri. P.K.Suresh Kumar and Sri. Jaju Babu, learned Senior Counsel, Sri. Madhusoodhanan, Sri. Sergi Joseph Thomas, Sri. Rajat, Sri Ajith Prakash and Sri. C.S.Manilal, the learned Senior Government Pleader, on behalf of the respondents.

5. Before dealing with the arguments of learned counsel in respect of the grounds of challenge enumerated above, it would be profitable to notice the relevant statutory provisions that govern the process of appointment to the post of President of the DCDRF.

The Consumer Protection Act, 1986:

2. Definitions:- (1) In this Act, unless the context otherwise requires,-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)
- (h) "District Forum" means a Consumer Disputes Redressal Forum established under clause (a) of Section 9;
- (i)
- (j)

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

9. Establishment of Consumer Disputes Redressal Agencies:- There shall be established for the purposes of 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.

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 to economics, law, commerce,

accountancy, industry, public affairs or administration:

Provided that a persons 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, 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 reasons 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.]

14. Finding of the District Forum.- (1) If, after the proceeding conducted under Section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:

- (a) to remove the defect pointed out by the appropriate laboratory from the goods in question;
- (b) to replace the goods with new goods of similar description which shall be free from any defect;
- (c) to return to the complainant the price, or, as the case may be, the charges paid by the complainant;
- (d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party:

[Provided that the District Forum shall have the power to grant punitive damages in such circumstances as it deems fit];

- (e) to remove the defects or deficiencies in the services in question;
- (f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;
- (g) not to offer the hazardous goods for sale;
- (h) to withdraw the hazardous goods from being offered for sale;
- (ha) to cease manufacture of hazardous goods and to desist from offering services which are hazardous in

nature;

(hb) to pay such sum as may be determined by it, if it is of the opinion that loss or injury has been suffered by a large number of consumers who are not identifiable conveniently:

Provided that the minimum amount of sum so payable shall not be less than five per cent of the value of such defective goods sold or services provided, as the case may be, to such consumers:

Provided further that the amount so obtained shall be credited in favour of such person and utilised in such manner as may be prescribed;

(hc) to issue corrective advertisement to neutralise the effect of misleading advertisement at the cost of the opposite party responsible for issuing such misleading advertisement;

(i) to provide for adequate costs to parties.

(2). Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

[Provided that where a member, for any reason, is unable to conduct a proceeding till it is completed, the President and the other member shall continue the proceeding from the stage at which it was last heard by the previous member.]

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceeding:

Provided that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.]

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the members of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

24B. Administrative Control.- (1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely:-

(i) calling for periodical return regarding the institution, disposal, pendency of cases;

(ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;

(iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative control over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).

30. Power to make rules.- (1)

(2) The State Government may, by notification, make rules for carrying out the provisions contained in clause (b) of sub-section (2) and sub-section (4) of Section 7, clause (b) of sub-section (2) and sub-section (4) of Section 8A, clause (b) of sub-section (1) and sub-section (3) of Section 10, clause (c) of sub-section (1) of Section 13, clause (hb) of sub-section (1) and sub-section (3) of Section 14, Section 15 and clause (b) of sub-section (1) and sub-section (2) of Section 16 of this Act.]

The Consumer Protection Regulations, 2005

Reg.3. Arrangements in Consumer Forum:- (1) A Consumer Forum, being not a regular Court, shall have the arrangements as to depict it distinct from a Court.

(2) In the hall in which the Consumer Forum shall hear the parties, the dais may not be kept more than 30 c.m. in height than the place earmarked for the parties to occupy.

(3) At the dais of the hall, the President and the members of the Consumer Forum shall use the same type of chairs at the same level and these chairs need not have high backs.

Reg.26:- Miscellaneous:- (1) In all proceedings before the Consumer Forum, endeavour shall be made by the parties and their counsel to avoid the use of provisions of Code of Civil Procedure, 1908 (5 of 1908):

Provided that the provisions of the Code of Civil

Procedure, 1908 may be applied which have been referred to in the Act or in the rules made thereunder.

(2) Every State Commission and every District Forum shall take steps for its computerisation and networking.

(3) The Consumer Forum shall give proper respect and courtesy to the parties who appear in persons and shall provide separate accommodation in the Hall for the convenience of the parties.

(4) The Consumer Forum shall not insist upon the parties to engage advocates.

(5) The Fees collected for inspection of the documents and supply of certified copies shall be deposited in the account maintained for the purpose of depositing fee for filing a complaint as prescribed by the Central Government by rules.

(6) The cases filed by or against the senior citizens, physically challenged, widows and persons suffering from serious ailments shall be listed and disposed of on a priority basis.

The Kerala Consumer Protection Rules, 2005

7. Appointment of whole-time members in the District Forum.- (1) Appropriate panel of candidates for consideration of appointment as whole-time member in the District Forum shall be called for by the Department in charge of Consumer Affairs in Government from the concerned District Collectors and the District Collectors may, after due publicity, furnish a short listed panel of candidates, not exceeding five candidates per vacancy, with relevant documents and details to the Government after verification and scrutiny of the qualifications and other eligibility criteria prescribed in the Act and these Rules:

Provided that the Government Department dealing with the Consumer Affairs may, if necessary, advertise directly for the purpose.

(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.

Provided that the Government Department dealing with the Consumer Affairs may, if necessary, advertise directly for the purpose. In the case of Sitting Judges the applications shall be sent to Government through the High Court of Kerala.

(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 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 the Consumer Affairs in the State shall be the Convener of the Selection Committee.

6. A perusal of the statutory provisions would clearly indicate that a process of consultation with the High Court is not envisaged

while making appointments to the post of President of the DCDRF. The issue to be considered then is, whether such a process has to be read into the statutory provisions? It might not be out of place to mention, at this juncture, that in none of the writ petitions is there a challenge against the provisions of the Statute, to the extent it does not provide for a process of consultation. However, since lengthy arguments were addressed by counsel for the petitioners on this aspect, I cannot but deal with the said arguments, while disposing these writ petitions.

7. As already noticed, the crux of the arguments of learned counsel for the petitioners is that the qualifications prescribed for the post of President of the DCDRF unambiguously indicate that the post in question is a judicial post and it's functioning akin to that of a Court dealing with civil and criminal matters. Similarly, the powers of the DCDRF, as specified in the Consumer Disputes Act, clearly indicate that the forum is exercising the powers that were earlier exercised by a Court, that now stood transferred to it under the Act, and this is reason enough to deem the President of the forum as a District Judge, within the meaning of the term under Article 236 of the Constitution

of India and, consequently, to insist on an adherence to the appointment procedure contemplated under Article 234 of the Constitution, while making appointments to the said post. Reliance is placed on the decisions in **Chandramouleshwar Prasad v. Patna High Court and Others - [AIR 1970 SC 370]; State of Maharashtra v. Labour Law Practitioners' Association and Others - [AIR 1998 SC 1233]; All India Judges Association and Others v. Union of India and Others - [(2002) 4 SCC 247]; Dr.J.J. Merchant v. Shrinath Chaturvedi [(2002) 6 SCC 635]; Ashok Tanwar v. State of H.P. [2005 KHC 602]; Madras Bar Association v. Union of India and Another - [(2014) 10 SCC 1]; and Nawal Kishore Mishra and Others v. High Court of Judicature of Allahabad Through Its Registrar General and Others - [(2015) 5 SCC 479].**

8. Per contra, learned counsel for the respondents would contend, placing reliance on the decisions of the Supreme Court in **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]**, that the DCDRF constituted under the

Consumer Protection Act is not a Court. It is also their contention that under the provisions of the Consumer Protection Act, a procedure for consultation, that is expressly provided for in connection with the appointment of the President of the State CDRF, is deliberately excluded in the case of appointment of the President of a DCDRF, and in the absence of a challenge to the statutory provisions, the petitioners cannot be heard to contend that the selection procedure was illegal on account of a non-consultation. Alternatively, it is contended that, even if a procedure for consultation could be read into the provisions of the Statute, the same could only have application to future appointments and cannot vitiate the selection process already concluded.

9. On a consideration of the rival submissions, I find that the arguments of counsel for the petitioners are premised mainly on the fact that judicial review has now been recognised as a basic feature of our Constitution. One cannot but accept that the task of adjudication under the Constitutional scheme cannot be entrusted to non-judicial bodies. It is well settled through a plethora of judgments of the Supreme Court that the independence of the judiciary is to be ensured

so as to have an effective system of judicial review and consequently, primacy in respect of appointments, removal and transfer of judicial posts should vest with the judiciary itself with minimal involvement of the executive and the legislature. The issue of whether a similar independence from executive pressure needs to be ensured even in respect of members of Tribunals, that are constituted under various enactments as alternative forums to the High Court, came up for consideration before the Supreme Court in **L. Chandrakumar v. Union of India - [(1997) 3 SCC 261]** and it was held that such independence from executive pressure would be mandated only if the alternate forum that was put in place was no less effective than the High Court. The Court also held that the power vested in the High Courts, of judicial superintendence over all courts and tribunals within their respective jurisdictions, was also part of the basic structure of our Constitution. Taking cue from the said judgment, in **Madras Bar Association v. Union of India - [(2014) 10 SCC 1]**, it was found that so long as the power of judicial review of the High Court was not expressly taken away by the enactment in question, the enactment could not be struck down as violative of the basic structure of the Constitution. In the said judgment, the Supreme Court also

went into the issue of whether, while transferring jurisdiction to a newly created court/tribunal, it was essential to maintain the standards and the stature of the court replaced. The findings of the Court on this aspect are as follows:

“110. In addition to the determination on the adjudication of the present controversy on the concept of basic structure, the instant matter calls for a determination on the sustainability of the NTT Act, from other perspectives also. We shall now advert to the alternative contentions. First and foremost, it was the submission of the learned counsel for the petitioners, that it is impermissible for legislature to abrogate/divest the core judicial appellate functions, specially, the functions traditionally vested in a superior court, to a quasi judicial authority devoid of essential ingredients of the superior court. The instant submission was premised on the foundation, that such action is constitutionally impermissible.

111. In order to determine whether or not the appellate functions which have now been vested with the NTT, constituted the core judicial appellate function traditionally vested with the jurisdictional High Courts, we have recorded under the heading - “The Historical Perspective”, legislative details, pertaining to the Income Tax Act, the Customs Act and the Excise Act. We had to do so, for that was the only manner to deal with the instant aspect of the controversy. A perusal of the historical perspective reveals, that as against the initial assessment of tax/duty liability, the first forum for challenge has traditionally been with an executive appellate adjudicatory authority. Legislative details reveal, that for some time there was a power of reference, exercisable on “questions of law”. The adjudication thereof rested with the jurisdictional High Courts. The second appellate remedy has always been before a quasi-judicial appellate authority, styled as an Appellate Tribunal. Across the board, under all the enactments which are relevant for the

present controversy, proceedings before the Appellate Tribunal have been legislatively described as “judicial proceedings”. It is, therefore apparent, that right from the beginning, the clear legislative understanding was, that from the stage of the proceedings before the Appellate Tribunal, the proceedings were of the nature of “judicial proceedings”. Again across the board, under all the enactments, relevant for the present controversy, questions of law were originally left to be adjudicated by the jurisdictional High Courts. The reference jurisdiction, was substituted in all the enactments, and converted into appellate jurisdiction. The instant appellate jurisdiction was vested with the jurisdictional High Court. Under the Income Tax Act, 1961, Section 260A, provided an appellate remedy from an order passed by the Appellate Tribunal, to the jurisdictional High Court. Similarly Section 129A of the Customs Act, 1962, and Section 35G of the Central Excise Act, 1944, provided for an appellate remedy from the concerned Appellate Tribunal to the High Court. The jurisdictional High Court would hear appeals on questions of law, against orders passed by the Appellate Tribunals. It is, therefore apparent, that right from the beginning, well before the promulgation of the Constitution, the core judicial appellate functions, for adjudication of tax related disputes, were vested with the jurisdictional High Courts. The High Courts have traditionally, been exercising the jurisdiction to determine questions of law, under all the above tax legislations. In this view of the matter, it is not possible for us to conclude, that it was not justified for the learned counsel for the petitioners to contend, that the core judicial appellate function in tax matters, on questions of law, has uninterruptedly been vested with the jurisdictional High Courts.

112. Before we proceed with the matter further, it is necessary to keep in mind the composition of the adjudicatory authorities which have historically dealt with the matters arising out of tax laws. First, we shall deal with the composition of the Appellate Tribunals. All Appellate Tribunals which are relevant for the present controversy were essentially comprised of Judicial Members, besides Accountant or Technical Members. To

qualify for appointment as a Judicial Member, it was essential that the incumbent had held a judicial office in India for a period of 10 years, or had practiced as an Advocate for a similar period. It is the above qualification, which enabled the enactments to provide, by a fiction of law, that all the said Appellate Tribunals were discharging "judicial proceedings". The next stage of appellate determination, has been traditionally vested with the High Courts. The income-tax legislation, the customs legislation, as well as, the central excise legislation uniformly provided, that in exercise of its appellate jurisdiction, the jurisdictional High Court would adjudicate appeals arising out of orders passed by the respective Appellate Tribunals. The said appeals were by a legislative determination, to be heard by benches comprising of at least two judges of the High Court. Adjudication at the hands of a bench consisting of at least two judges, by itself is indicative of the legal complications, insofar as the appellate adjudicatory role, of the jurisdictional High Court was concerned. It would, therefore, not be incorrect to conclude, by accepting the submissions advanced at the hands of the learned counsel for the petitioners, that before and after promulgation of the Constitution, till the enactment of the NTT Act, all legislative provisions vested the appellate power of adjudication, arising out of the Income Tax Act, the Customs Act and the Excise Act, on questions of law, with the jurisdictional High Courts.

113. Having recorded the above conclusion, the next issue to be determined is whether the adjudication of the disputes arising out of the provisions under reference, must remain within the realm of the jurisdictional High Courts? The instant proposition has two perspectives. Firstly, whether constitutional interpretation in the manner accepted the world over (details whereof have been narrated by us under the heading - "The Issues canvassed on behalf of the petitioners", under the sub-title - "The second contention"), would be a constitutional mandate, for the appellate jurisdiction pertaining to tax matters, to remain with the High Court? Secondly, whether the express provisions of the Constitution mandate, that tax issues should be decided by the concerned jurisdictional High Court concerned?

113.1. We shall first deal with the first perspective, namely, whether constitutional interpretation in the manner accepted the world over, would be a constitutional mandate for appellate jurisdiction on tax matters, to remain with the jurisdictional High Court. Insofar as the instant aspect of the matter is concerned, reliance was placed on judgments emerging out of the Constitutions of Jamaica, Ceylon, Australia and Canada, rendered either by the Privy Council or the highest Courts of the concerned countries. The contention of the learned counsel for the petitioners was, that the constitutions of the above countries were based on the Westminster model. It was further pointed out, that the Indian Constitution was also based on the Westminster model, and that, the instant position stands recognized in the judgment rendered by this Court in *Union of India v. Madras Bar Association* case (supra). Incidentally, it may be mentioned that we have extracted paragraph 101 of the above judgment herein above, wherein it is so recorded. It is accordingly the contention of the learned counsel for the petitioners, that the judgments relied upon by the petitioners on the instant aspect of the matter, would be fully applicable to the controversy in hand. Under the constitutional convention, adverted to in the judgments referred to on behalf of the petitioners, it was submitted, that judicial power which rested with definite courts at the time of enactment of the constitutions based on the Westminster model, had to remain with the same courts, even after the constitutions had become effective and operational. Furthermore, it was submitted, that the judicial power had to be exercised in the same manner as before, i.e., whether by a judge sitting singly, or with other judges. And therefore it was asserted, that on constitutional conventions well recognized the world over, appellate jurisdiction in respect of tax matters, would have to remain with the jurisdictional High Courts, and would have to be determined by a bench of at least two judges of the High Court, as was the position before the enactment of the Constitution, and, as has been the position thereafter, till the promulgation of the NTT Act.

113.2. We have given our thoughtful consideration

to the submission advanced at the hands of the learned counsel for the petitioners, insofar as the first perspective is concerned. We find substance in the submission advanced at the hands of the learned counsel for the petitioners, but not exactly in the format suggested by the learned counsel. A closer examination of the judgments relied upon lead us to the conclusion, that in every new constitution, which makes separate provisions for the legislature, the executive and the judiciary, it is taken as acknowledged/conceded, that the basic principle of "separation of powers" would apply. And that, the three wings of governance would operate in their assigned domain/province. The power of discharging judicial functions, which was exercised by members of the higher judiciary, at the time when the constitution came into force, should ordinarily remain with the court, which exercised the said jurisdiction, at the time of promulgation of the new constitution. But the judicial power could be allowed to be exercised by an analogous/similar court/tribunal, with a different name. However, by virtue of the constitutional convention, while constituting the analogous court/tribunal, it will have to be ensured, that the appointment and security of tenure of judges of that court would be the same, as of the court sought to be substituted. This was the express conclusion drawn in Hinds case (supra). In Hinds case it was acknowledged, that Parliament was not precluded from establishing a court under a new name, to exercise the jurisdiction that was being exercised by members of the higher judiciary, at the time when the constitution came into force. But when that was done, it was critical to ensure, that the persons appointed to be members of such a court/tribunal, should be appointed in the same manner, and should be entitled to the same security of tenure, as the holder of the judicial office, at the time when the constitution came into force. Even in the treatise "Constitutional Law of Canada" by Peter W. Hogg, it was observed; if a province invested a tribunal with a jurisdiction of a kind, which ought to properly belong to a superior, district or county Court, then that court/tribunal (created in its place), whatever is its official name, for constitutional purposes has to, while replacing a superior, district or county Court, satisfy the requirements and standards of the substituted court. This

would mean, that the newly constituted court/tribunal will be deemed to be invalidly constituted, till its members are appointed in the same manner, and till its members are entitled to the same conditions of service, as were available to the judges of the court sought to be substituted. In the judgments under reference it has also been concluded, that a breach of the above constitutional convention could not be excused by good intention (by which the legislative power had been exercised, to enact a given law). We are satisfied, that the aforesaid exposition of law, is in consonance with the position expressed by this Court, while dealing with the concepts of "separation of powers", the "rule of law" and "judicial review". In this behalf, reference may be made to the judgments in L. Chandra Kumar case (supra), as also, in Union of India v. Madras Bar Association case (supra). Therein, this Court has recognized, that transfer of jurisdiction is permissible, but in effecting such transfer, the court to which the power of adjudication is transferred, must be endured with salient characteristics, which were possessed by the court from which the adjudicatory power has been transferred. In recording our conclusions on the submission advanced as the first perspective, we may only state, that our conclusion is exactly the same as was drawn by us while examining the petitioners' previous submission, namely, that it is not possible for us to accept, that under recognized constitutional conventions, judicial power vested in superior courts cannot be transferred to coordinate courts/tribunals. The answer is, that such transfer is permissible. But whenever there is such transfer, all conventions/customs/practices of the court sought to be replaced, have to be incorporated in the court/tribunal created. The newly created court/tribunal would have to be established, in consonance with the salient characteristics and standards of the court which is sought to be substituted.

113.3. Now we shall deal with the second perspective, namely, whether the provisions of the Indian Constitution itself mandate, that tax issues at the appellate level, must be heard by the concerned jurisdictional High Court. Insofar as the instant aspect of the matter is concerned, learned counsel for the petitioners placed

reliance on Articles 50 and 225 of the Constitution. Article 50 of the Constitution was relied upon to demonstrate the intent of the framers of the Constitution, namely, that they wished to ensure the exclusivity and the separation of the judiciary, from the executive. It is not necessary for us to deal with the instant aspect of the matter, for the reason that, in the judgments rendered by this Court which have been referred to by us herein above, the issue has already been debated with reference to Article 50 of the Constitution.

114. The other provision relied upon by the learned counsel for the petitioners is Article 225 of the Constitution. The tenor of the submission advanced by the learned counsel for the petitioners, has been recorded by us while dealing with the second contention (advanced on behalf of the petitioners). The same may be adverted to. There can be no doubt whatsoever, that Article 225 of the Constitution does expressly provide, that the jurisdiction of existing High Courts and the respective powers of the judges thereof "shall be the same as immediately before the commencement of the Constitution". It is also apparent, that the proviso thereto expressly mandates, "that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in collection thereof was subject immediately before the commencement of the Constitution shall no longer apply to the exercise of such jurisdiction". Insofar as the contention emerging out of the proviso is concerned, it needs to be pointed out, that the same pertains to "the exercise of original jurisdiction by any of the High Courts". It is, therefore apparent, that the issue in hand, namely, the appellate jurisdiction vested with the jurisdictional High Courts, under the provisions of the Income Tax Act, the Customs Act and the Excise Act, has no bearing to the proviso under reference. We may therefore conclude by recording, that the instant submission advanced on behalf of the petitioners, is not made out from Article 225 of the Constitution.

10. It is the above findings of the Supreme Court that the petitioners place reliance upon to contend that, inasmuch as the DCDRF is a forum to which the adjudicatory functions, which were earlier discharged by the civil/criminal courts, were transferred consequent to the enactment of the Consumer Disputes Act, it is essential that the standards and stature of the erstwhile court be maintained while appointing the President of the DCDRF. The argument, in other words is that, inasmuch as the qualifications prescribed for a person to be appointed as President of the DCDRF mandate that he must either be a sitting District Judge, a retired District Judge or a person qualified to be appointed as a District Judge, the process of appointment must be akin to the procedure mandated under Article 233 of the Constitution of India in relation to the appointment of District Judges, if the standards and stature of the erstwhile forum that was discharging adjudicatory functions is to be preserved. Counsel for the petitioners would also rely on the decision of the Supreme Court in **State of Maharashtra v. Labour Law Practitioners' Association and Others - [AIR 1998 SC 1233]** where a procedure of consultation with the High Court was held as mandatory while appointing persons as Presiding Officers of the

Labour Courts. Attractive though the arguments may appear at first blush, I cannot accept the analogy that is sought to be drawn by counsel for the petitioners, between a forum that is constituted pursuant to a transfer of adjudicatory functions from a court that was earlier discharging such functions, and a forum such as the DCDRF that was constituted with the stated objective of creating a quasi-judicial body providing speedy and simple redressal to consumer disputes. Although it may be a fact that some of the powers, conferred on a court under the Civil Procedure Code and the Criminal Procedure Code, have been conferred on the DCDRF as well, it is now well settled through the decision of the Supreme Court in **Laxmi Engineering Works v. P.S.G. Industrial Institute - [(1995) 3 SCC 583]** that the DCDRF constituted under the Consumer Protection Act, 1986 is not a court. It was held by the Supreme Court in the said case that the Forums constituted under the Consumer Protection Act, 1986 are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers and that these forums were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising

between consumers and suppliers of goods and services. That apart, the provisions of the Consumer Protection Regulations, 2005 also clearly indicate that the legislative intention, while providing for the establishment of the DCDRF as well as the State and National Consumer Disputes Redressal Commissions, was to treat these forums as separate and distinct from a regular Court. This can be gathered from a reading of Regulation 3, as also Regulation 26 that expressly states that in all proceedings before the Consumer Forum, endeavour shall be made, by the parties and their counsel to avoid the use of provisions of the Code of Civil Procedure and further, that the consumer forum shall not insist upon the parties to engage advocates. Thus, an overall consideration of the provisions of the Act, Rules and Regulations would suggest that the DCDRF constituted under the CPA, 1986 is not to be treated as a Court, or even as a quasi-judicial body to which functions, that were earlier discharged by a Court, had been transferred. The DCDRF can only be viewed as an alternate dispute redressal forum made available to a litigant in respect of rights that have been conferred on him through the provisions of the CPA, 1986. This aspect has been re-iterated by the Supreme Court in **Dr. J.J. Merchant v. Shrinath Chaturvedi – [(2002) 6 SCC 635]**,

where the Court held that the consumer forum is an alternative forum established under the CPA, 1986 to discharge the functions of a civil court. I am, therefore, of the view that the Presidents of the DCDRF's cannot be seen as akin to District Judges for the purposes of invoking the provisions of Article 233 read with Article 236 of the Constitution in connection with their appointments. The contention of the petitioners with regard to the necessity of maintaining the standards and stature of a civil court while appointing the President of the DCDRF also does not appeal to me as apposite since the statutory provisions clearly indicate that the CDCRF was not envisaged as a forum discharging functions that were earlier discharged by a civil court but merely as an alternate forum to a civil court.

11. I must now consider the other contention advanced by learned counsel for the petitioners namely, that the selection process itself was vitiated on account of a non-compliance with the procedure prescribed in Rule 7 of the Kerala Consumer Protection Rules. The contention is essentially two fold, namely, (i) that while drawing up the panel of eligible candidates for submitting to the State Government, the selection committee did not draw up a category wise

panel as contemplated in Rule 7, but chose instead, to draw up separate panels for each district where there was a vacancy in the post of President of the DCDRF and (ii) that the interview itself was conducted in a hasty manner and there was no proper assessment of suitability of the candidates. Reliance is placed on the decisions in **Krishna Swami v. Union of India and Others - [(1992) 4 SCC 605]**; **Chandran v. Union of India - [2003 KHC 457]**; **Asha Sharma v. Chandigarh Administration and Others - [(2011) 10 SCC 86]** and **Vijay Shankar Pandey v. Union of India and Another - [(2014) 10 SCC 589]** to substantiate the contention that this court would be acting well within its powers of judicial review in interfering with the assessment of suitability conducted by the selection committee in the instant case.

12. Per Contra, learned counsel for the respondents would point out that the category wise panel that is contemplated in Rule 7 (3) is one that has to be prepared in relation to the two categories of members viz. President of the DCDRF and other members of the DCDRF. As the selection in the instant case was only of the Presidents of the DCDRF's, there was no necessity to prepare category wise

panels. Alternatively, it is contended that, even if there was a requirement of preparing a category wise panel for submission to the State Government, the mere fact that such a panel was not prepared could not be viewed as vitiating the entire selection since there was no prejudice caused on account of the non-compliance with this procedural requirement. Reliance is placed on the decisions in **State of Kerala and Others v. K.Reghu Varma and Others - [2009 (3) KHC 582]** and **Susheela P.P. v. State of Kerala and Others - [2015 (2) KHC 78 [DB]]** to fortify the said contention. As regards the contention of the petitioners with regard to suitability assessment, it is the stand of the respondents that this court would not ordinarily interfere with an assessment of suitability, as opposed to an assessment of eligibility. Reliance is placed on the decision of the Supreme Court in **Registrar General, High Court of Madras v. R. Gandhi and Ors - [JT (2014) 4 SC 261]** to contend that an assessment of suitability is not justiciable under Article 226 of the Constitution of India.

13. On a consideration of the rival submissions on this issue, I find that as per the provisions of Section 10 (1A) of the CPA, 1986,

that deals with the procedure to be followed in connection with the appointment of the President and Members of the DCDRF, the appointment, per se, of the President of a DCDRF is to be made by the State Government. The said power of the State Government is, however, qualified by the requirement that the appointment has to be on the recommendation of the selection committee constituted for the purpose. The manner in which the selection committee is to draw up the panel of qualified candidates for forwarding to the State Government is set out in Rule 7 of the Kerala Consumer Protection Rules, 2005, that has already been extracted above. A reading of the above provisions would indicate that when it comes to the preparation of a panel in connection with the appointment of the President of a DCDRF, a panel of sitting District Judges, Retired District Judges and persons qualified to be appointed as District Judges has to be obtained from the High Court of Kerala and the category wise panel so obtained, after further scrutiny and short listing, with all relevant documents and details, has to be placed before the Selection Committee. The selection committee has to then finalise a panel of category-wise candidates, by adopting such methods as it may deem fit, and the list of qualified candidates so finalised has to be sent to

the Government for consideration for appointment. It is apparent, therefore, that when the selection committee does finalise a list of qualified candidates, the said list has to be one that is prepared category-wise, showing qualified candidates in each of the three categories of (i) Sitting District Judges, (ii) Retired District Judges and (iii) Persons qualified to be appointed as District Judges. The insistence on a preparation of such a category-wise list appears to be for the purposes of enabling the appointing authority viz. the State Government, to consider candidates from different categories while making appointments. The said purpose would be defeated if the panel that was sent to it did not mention the category to which a candidate belonged. In the instant writ petitions, it is not in dispute that while a category wise panel of candidates obtained from the High Court was placed before the selection committee, the selection committee, while forwarding a finalised panel of qualified candidates to the State Government, did not draw up or forward a category-wise panel of qualified candidates. The selection committee, on the other hand, adopted a procedure similar to that prescribed in connection with the selection of other members of the DCDRF viz. of forwarding separate panels of five candidates each, for each of the Districts in

which there was a vacancy to the post of President of the DCDRF. It was from such panels sent to it by the selection committee that the State Government proceeded to make the appointments that are impugned in these writ petitions. It is clear, therefore, that the selection committee, while forwarding a finalised panel of qualified candidates to the State Government, did not adhere to the procedure contemplated under Rule 7 of the KCPR, 2005. The question that then arises is whether the said procedural flaw is to be viewed as so material as to vitiate the selection itself? It is relevant in this connection to refer to the observations of the Division Bench of this Court in **State of Kerala v. Reghu Varma - [2009 (3) KLT 634]** – while dealing with the nature of the power exercised by the State Government and the extent to which such power was qualified by the recommendations of the selection committee. In paragraph 7 of the said judgment, this Court found as follows:

“Once the selection committee recommends a list of qualified candidates, the appointing authority is free to appoint any candidate recommended by the selection committee. No doubt, unless recommended by the selection committee, the appointing authority cannot make any appointment. In other words, the appointing authority, namely the Government, cannot appoint the candidate outside the list of qualified candidates furnished by the selection committee and only to that extent there is a fetter or restriction on

the power and method of appointment of the President and Members of the various forums under the Consumer Protection Act and its State Rules, on the Government."

14. The aforesaid view was re-iterated by another Division bench of this court in **Susheela v. State of Kerala - [2015 (1) KLT 1008]** where the Court also found that once the candidates are shown to be in the selection list prepared by the selection committee, there could not be any further judicial review on the materials relating to the comparative evaluation. This latter view also finds support in the decision of the Supreme Court in **Registrar General, High Court of Madras v. R. Gandhi and Ors. - [JT (2014) 4 SC 261]** where it was held that judicial review is permissible only in respect of assessment of eligibility and not in respect of assessment of suitability of candidates. It is apparent, therefore, that once it is established that those selected for appointment were persons included in the select list prepared by the selection committee, the appointment made by the State Government cannot be questioned. Viewed in that backdrop, the mere fact that the panel that was sent to the Government by the selection committee was not a panel that was prepared category-wise cannot be seen as a defect that was so material as to vitiate the

appointments made. This is all the more so when even the State Government, the appointing authority, does not have a case that the exercise of its discretionary power, in the matter of appointment, was in any way affected by the non-furnishing of a category-wise panel of candidates.

The upshot of the above discussions, therefore, is that I do not find any material to hold the appointments made to the posts of President of the DCDRF's as illegal. The writ petitions, in their challenge to the said appointments, therefore, fail and are accordingly dismissed.

**A.K.JAYASANKARAN NAMBIAR
JUDGE**

prp