

*** THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO**
AND
THE HON'BLE MRS. JUSTICE ANIS
+ WRIT PETITION No.14559 of 2015

% Dated: 18.01.2016

BETWEEN

T. Ashok Kumar and anotherPetitioners

And

The State of Andhra Pradesh,
Rep. by its Chief Secretary,
A.P. Secretariat, Hyderabad and 3 others ... Respondents

! Counsel for the Petitioners : Smt. K.Udaya Sri

^Counsel for the Respondents : Advocate General (AP)
Government Pleader for Civil Supplies
Government Pleader for GAD

(TG)

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? Citations:

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No.14559 of 2015

ORDER: *(Per Hon'ble Sri Justice Nooty Ramamohana Rao)*

The 2 petitioners in this writ petition are appointed as members of the Andhra Pradesh State Consumer Disputes Redressal Commission, Hyderabad. The 1st petitioner herein was appointed as such for a term of '5' years or up to the age '67' years, whichever is earlier by order contained in G.O.Rt.No.65 Consumer Affairs, Food and Civil Supplies (CS.III) Department, dated 21.07.2011. The 2nd petitioner was appointed, subject to similar terms, by the Government through their G.O.Rt.No.12 Consumer Affairs, Food and Civil Supplies (CS.III) Department, dated 25.01.2012. Both of them have assumed charge as members of the State Consumer Disputes Redressal Commission, Hyderabad (henceforth referred to as "State Commission") and started functioning as such.

The Registrar of the State Commission issued Notification No.2 dated 02.04.2015, as per the directions of the 3rd respondent, the President of the Commission, informing all parties and their counsel that the matters earlier made over to the Additional Bench are re-called and tagged on to the Bench consisting of the President for disposing of the same in accordance with law with effect from 06.04.2015. Earlier thereto Notification No.1 was issued on 01.04.2015 constituting the Bench consisting of the President of the Commission alone in terms and in accordance with Section 16(1B) (ii) of the Consumer Protection Act, 1986 (for short 'the Act').

By virtue of the Andhra Pradesh Reorganization Act 2014, Act No.6 of 2014, the Parliament formed a new State known as State of

Telangana in terms and in accordance with Section 3 of this Reorganisation act. Thus, with effect from 02.06.2014 the new State of Telangana has been formed by carving it out from the composite State of Andhra Pradesh existing hitherto. But, however, the State Commission which was functioning earlier for the composite State continued to function as it is, by deciding the cases arising from the areas falling in the 2 States. On 15.10.2014, the Government of Telangana constituted Telangana State Consumer Disputes Redressal Commission, consisting of one President and 2 members in terms and in accordance with Clause (b) of Section 9 of the Act. The State of Andhra Pradesh also issued a similar notification constituting the Andhra Pradesh State Consumer Disputes Redressal Commission, consisting of one President and 2 members, through its G.O.Ms.No.19 Consumer Affairs, Food and Civil Supplies (CS.II) Department, dated 20.11.2014. This notification dated 20.11.2014 gave rise to an apprehension in the minds of the petitioners herein as it has not dealt with the aspect relating to their continuance or otherwise of their balance tenure of service. Hence, they instituted W.P.No.7695 of 2015 before this Court. A Division Bench, speaking through the Chief Justice of this Court, after noticing that no new members of the State Commission of the State of Andhra Pradesh have been appointed in place and instead of the petitioners herein and hence, held that the writ petition is a premature action and accordingly, closed the writ petition by its order dated 25.03.2015 preserving liberty to the petitioners to approach as and when they are effected by any action of the State of Andhra Pradesh on the said issue. It appears, soon thereafter, the then President of the State Consumer Commission tendered his resignation with effect from 01.04.2015. Hence, the State of Andhra Pradesh issued orders through their G.O.Ms.No.5 Consumer Affairs, Food and Civil Supplies Department, dated 01.04.2015 appointing Hon'ble Sri Justice Noushad Ali, retired Judge of the High Court as the President of the Andhra Pradesh State Consumer

Disputes Redressal Commission Hyderabad, on full time basis for a period of 5 years from the date on which he assumes charge or till attains the age of 67 years whichever is earlier. Justice Noushad Ali assumed charge as the President of the State Commission of Andhra Pradesh on 01.04.2015. That is how the 2 notifications came to be published by the Andhra Pradesh State Commission on 01.04.2015 and 02.04.2015 respectively.

By virtue of notification No.2/2015, dated 02.04.2015 published by the AP State Commission, the 2 petitioners herein have not been assigned any judicial work. By virtue of the notification No.1/2015 dated 01.04.2015, only one Bench was constituted comprising of the President alone and by notification No.2/2015 the entire work which was hitherto handled by the Additional Bench has been tagged on to the Bench presided over by the President of the State Commission. The net effect of these two notifications is that only one Bench presided over by the President of the State Commission is constituted for dealing with the consumer disputes and the work of the Additional Bench has been completely withdrawn, rendering the 2 petitioners herein without any obligation or necessity to perform any work. That is how the present writ petition came to be instituted.

Prior to the bifurcation of the composite State, the State Commission was consisting of a Bench presided over by the President and an Additional Bench comprising of 2 other members. By virtue of the State Reorganization Act, the composite State got bifurcated into 2 separate States and hence, the necessity to make some transitory provisions has arisen. Therefore, in Section 79 of the Reorganisation Act, a provision is made for continuance of the officers holding or discharging duties of any post or office in connection with the affairs of the existing State of AP, in any area, shall continue hold the same post. A further fiction is also contemplated by deeming that on and from the appointed day (02.06.2014) to have been duly appointed to

the post or office in the Successor State. Power is also retained with the Central Government in Section 81 of the said Act to give such directions to the State Government of Andhra Pradesh and the State Government of Telangana as the case may be, appear to the Central Government to be necessary for the purpose of giving effect to the provisions contained in part VIII of the Reorganisation Act, in which part Section 79 was organized. Further, it was made clear that the State Government shall comply with such directions.

Thereafter on 21.04.2015, 2 separate notifications were also issued by the AP State Commission one for filling the office of Member judicial, having judicial background and another to fill up the post of Lady member from non-judicial background, without in any manner dealing with the issue of continuance in service of the 2 petitioners herein.

The Parliament ushered in the 'Act' providing for better protection of the interest of the consumers and for establishment of consumer councils and other authorities for the settlement of consumer disputes and for matters connected therewith. Quasi judicial machinery is sought to be set up at the District, State and Central levels by the enactment by making necessary provision in respect thereof under Section 9 of the Act. Each state was required to constitute a Consumer Disputes Redressal Commission to be known as State Commission. Section 16 of the Act dealt with the composition of the State Commission. It is spelt out in Sub Section 1 thereof that each State Commission shall consist of a President and not less than 2 and not more than such number of members as may be prescribed and one of whom shall be a woman. Thus, it is clear that there shall be a minimum number of 2 members, who should be appointed to the State Commission apart from a President for the same. There can be more number of members appointed to a State Commission, provided, however, such members must be prescribed. The expression

'prescribed' is defined in Section 2(n) of the Act as meaning prescribed by Rules made by the State Government or as the case may be by the Central Government under this Act. The Central Government framed the rules called Consumer Protection Rules 1987. Similarly, AP State Consumer Protection Rules 1987 were also framed, when the State was a composite one. However, Rules have not spelt out the maximum number of members that can be appointed to the State Commission. Rule 6 (7) of the Rules framed by the State of Andhra Pradesh protected the terms and conditions of the service of the President and members of the State Commission by ensuring that they shall not be varied to their disadvantage during their tenure of office. In these set of circumstances, the question that is liable to be resolved is as to what status the petitioners enjoy vis-a-vis State Commission pursuant to the impugned notification dated 02.04.2015.

As was already noticed supra, Section 16 of the Act dealt with the composition of the State Commission and it provided for a President and not less than 2 and not more than such number of members as may be prescribed and one of whom shall be a woman. Section 16 suffered an amendment with effect from 15.03.2003. Section 1(A) was introduced providing for a Selection Committee consisting of the President of the State Commission as Chairman and Secretary of the Law Department of the State and Secretary Incharge of the Department dealing with the consumer affairs of the State as the other 2 members and the State Government is required to make appointments under sub Section 1 of Section 16 based upon the recommendations of the said Selection Committee. Section 1(B) was also introduced to deal with the jurisdiction, powers and authority of the State Commission, which are required to be exercised by the Benches thereof. Whereas clause (ii) thereof vested the President of the Commission to constitute a bench with one or more members as he may deem fit. Sub section 3 of Section 16 would set out that every member of the State Commission shall hold office for a term of 5 years

or up to the age of 67 years whichever is earlier. Thus, the members who are appointed by the State Commission shall continue to hold office for a term of 5 years from the date of their assumption of office pursuant to their appointment or till they attain the age of 67 years whichever occurs earlier. In the instant case, both the petitioners have pointed out that their term of 5 years is not completed as yet and they would also be not attaining the age of 67 years before completing the said term of 5 years. Thus, they are entitled to hold office for the full term of 5 years for which tenure they are appointed.

As was noticed supra, after the composite State of Andhra Pradesh got bifurcated with effect from 02.06.2014 a piquant situation has arisen. The common forum called the State Commission which was hitherto existing continued to function as it is beyond 02.06.2014, till the State of Telangana notified constitution of a separate State Commission by its order contained in G.O.Ms.No.9 Consumer Affairs, Food and Civil Supplies Department, dated 15.10.2014. Thus, by 15.10.2014 a separate State Commission came to be constituted for the State of Telangana. Whereas hitherto functioning of AP State Commission continued to function as it is beyond 15.10.2014. It is only on 20.11.2014 that the State of AP notified constitution of a separate State Commission for the State of AP through their G.O.Ms.No.19 Consumer Affairs, Food and Civil Supplies Department, dated 20.11.2014. The petitioners herein continued to function as members of the existing State Commission not only beyond 15.10.2014, after a separate State Commission is constituted for the State of Telangana, but even continued to function as members of State Commission beyond 20.11.2014, the date on which the State of AP constituted a separate State Commission for the State of AP. It is only on 02.04.2015 that is nearly 5 ½ months after the State of AP passed its order through G.O.Ms.No.19 dated 20.11.2014 constituting a separate State Commission, albeit by virtue of notification issued by

the President of the State Commission the judicial work of the petitioners was divested. Not that by virtue of any provision of the statute or any intended action of the State Government their tenure of office is curtailed.

While the statute has recognised the power of the President of the State Commission to constitute Benches, at the same time the Rules framed by the composite State of Andhra Pradesh known as AP State Consumer Protection Rules 1987, in Rule 6(7) made it clear that the terms and conditions of service of the President and members of the State Commission shall not be varied to their disadvantage during their tenure of office. This brings to the fore, as to who can vary any such terms and conditions of the President and Members of the State Commission. Though, no specific provision is available, but nonetheless, theoretically, we concede, such powers in the hands of the appointing authority, on the authority of the concept that right to appoint comprises the incidental right of termination as well. But surely, the power to curtail the tenure of office of a Member of the State Commission is not vested in the hands of the President of the State Commission. The President, can not vary, all the more so, what even the appointing can do, the terms and conditions of the Members to their disadvantage. Hence, while exercising the power available to constitute 'Benches', the President cannot attempt at some other thing which is not permissible. What cannot be achieved directly cannot be allowed to be achieved indirectly.

If the State of AP ever since 02.06.2014 and the newly appointed President of the AP State Commission have not reckoned or treated the petitioners as Members of the State Commission till 31.03.2015, there would not have been any necessity or action for the President of the State Commission to issue notification No.2/2015 on 02.04.2015 notifying that the work hitherto performed by the petitioners herein is withdrawn. Because they are found discharging their

respective duties as on 01.04.2015, the impulsive action taking out the Notification No.2 dated 02.04.2015 arose, withdrawing the work from them with effect from 06.04.2015. Otherwise, it would be totally uncalled for. It is, therefore, safe to infer that 2 petitioners herein have come to be recognised as the continuing Members of the State Commission of the State of AP beyond 20.11.2014 and up to 01.04.2015. Perhaps, this matter could be viewed in a different perspective: along with the President if the State of AP has also appointed 2 other new members, one of whom, a woman to this newly constituted State Commission pursuant to its notification dated 20.11.2014, the status of the petitioners could have fallen to some ambiguity on 01.04.2015. Whereas the State Government has advisedly appointed only the President for the State Commission on 01.04.2015 and did not choose to appoint the 2 other members to the Commission, even assuming that it could do so, without first dealing with the balance tenure of the petitioners.

Obviously, the State of AP is conscious that by virtue of protection of tenure accorded to the petitioners herein under rule 6(3) of the Rules framed earlier, it could not have curtailed their tenure of 5 years. Thus looked at it from both the perspectives namely the factum of discharge of functions by the petitioners herein till 31.03.2015 and the appointment of the President only by the State of AP on 01.04.2015 but not its members, the State of AP has never intended to curtail the tenure of office, acting in a manner contrary to the protection accorded under rule 6(3) of Rules, 1987 framed by the composite State of AP, which rules are not replaced after the AP State Reorganisation Act came into force on 02.06.2014 and continue to hold the field till then. Necessary provision in this respect is contemplated under Sections 101 and 102 of the Reorganisation Act, 2014.

The impugned notification No.2/2015 issued by the President of the State Commission is also not just and equitable. The President of

the State Commission is not the competent authority to deal with the issue of appointments of the Members of the State Commission. By virtue of section 16 (1A), the President of the State Commission only heads the Selection Committee and the State Government is the competent authority to make appointments of Members based upon the recommendations of the said Selection Committee. Afortiori, the President of State Commission cannot also remove a member from the office. Normally, judicial work is withdrawn, when the necessary exercise of removal of any such person is underway. That was to ensure institutional integrity, to retain public confidence and to save any possible embarrassment. That was not the case on hand.

Every judicial authority is required to be protected from external influence which might come to work on his mind so as to impair his sense of justice and impartiality. Therefore, the concept of protection of the tenure is accorded primacy so that such an appointee need not look every time to the grace of the appointing authority. Every act of the judicial decision making should be kept free from the vice of “fear or favour”. When an assurance is held out against any premature termination of the tenure of appointment, the office holder is entitled to function fearlessly in discharge of his day-to-day functions. He is not required to adopt ‘safety first’ strategy in office. That is the minimum assurance that is liable to be held out to every adjudicator of a dispute.

Otherwise, the quality of the work will imminently suffer and a litigant or a party to a dispute will never have confidence in his mind that justice-complete and wholesome would be done to his cause at the hands of an otherwise insecure adjudicator. Therefore, the impugned notification No.2/2015 travelled not only beyond the boundaries of powers conferred by Section 16 of the Act, but is directly in the teeth of provision contained under rule 6(3) of Rules, 1987.

Further, the judgment rendered by a Division Bench of this Court which decided W.P.No.7695 of 2015 instituted by the petitioners herein clearly offered a clue, when, it observed in the judgment dated

25.03.2015, thus: “..... there is no document annexed to the writ petition showing that Members of the State Consumer Disputes Redressal Commission of the State of Andhra Pradesh have been appointed in place and instead of the petitioners herein.” (emphasis is played now) clearly, the impugned Notification No.2/2015, failed to read through the above order dated 25.03.2015, carefully and properly too.

The side effect of the impugned notification is that the petitioners are liable to be treated as members of the commission and they would be entitled to charge their remuneration in the form of honorarium without in fact rendering any work for which they were appointed. Thus notification No.2/2015 of the state commission has also caused an otherwise avoidable strain on the exchequer.

For the aforesaid reasons, the writ petition stands allowed. The notification No.2/2015 stands quashed and the petitioners herein are entitled to continue to hold the office as the Members of the State Commission till such time they complete the 5 year tenure respectively, with all benefits attached to that office.

Consequently, miscellaneous petitions, if any shall also stand closed. No costs.

JUSTICE NOOTY RAMAMOHANA RAO

JUSTICE ANIS

18.01.2016

Note: L.R. copy to be marked

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