

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO. 1059 OF 2017

Sanjay M. Chodankar

... Petitioner.

Versus

State of Goa, Thr. Its Chief
Secretary And 3 Ors.,

... Respondents

Mr. Judas Chagas Silva, Advocate for the Petitioner.
Mr. Deep Shirodkar, Additional Government Advocate for the
Respondents.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 18 December 2017.

ORAL ORDER:(Per N. M. Jamdar, J)

By this Petition, the Petitioner has challenged the Selection Process and the appointment of Respondent no. 2 and 3 to the post of President, North Goa Consumer Forum and the President, South Goa Consumer Forum by order dated 30 June 2017.

2. The Petitioner is a practicing Advocate. He was appointed as President of North Goa Consumer Dispute Redressal

Forum on 'part time' basis on 3 February 2011 for a period of five years. It is his contention that the appointment was under Section 10(1)(a) of the Consumer Protection Act, 1986. The Respondent no. 4, Department of Civil Supplies and Consumer Affairs, on the recommendation of the Selection Committee headed by a retired Judge of this Court had recommended the name of the Petitioner and the Petitioner was paid Rs. 700/- per sitting including conveyance. According to the Petitioner, the Petitioner has worked diligently and completed five years from 2011 to 2016. He was also sent for a orientation programme. After the expiry of five years, an advertisement was issued on 14 March 2016 to which the Petitioner applied for reappointment and the Petitioner was again interviewed and based on the recommendation of the Selection Committee was appointed for another term of five years from 18 March 2016 to March 2021 as 'part time' President of North Goa Consumer Disputes Redressal Forum. An advertisement was issued for appointment of the President for South Goa Consumer Forum on whole time basis. The Petitioner submitted his application and the Selection Committee considered the same. It is the case of the Petitioner that in spite of the Petitioner being meritorious, the Selection Committee recommended Respondent no. 2 and 3, who came to be appointed as President of North Goa Consumer Forum and South Goa Consumer Forum respectively. These appointments

have been impugned in the Petition.

3. Learned Counsel for the Petitioner submitted that the Petitioner was validly appointed under Section 10 of the Consumer Protection Act, 1986. He was re-appointed in the year 2016 to hold office till 2021 and he could not have been removed without notice. He submitted that the Petitioner had by then gained substantial experience and also was fully qualified and could not have been removed from service in this manner. It was contended that the Petitioner was even found eligible for re-appointment. According to the Petitioner, that the whole process undertaken to appoint Respondent no. 2 and 3 is in violation of the rights of the Petitioner who was entitled to hold the post till the year 2021, and that Petitioner is more meritorious than the selected candidates. The Learned Additional Government Advocate submitted that the Petitioner participated in the Selection Process and cannot raise any grievance now.

4. The arguments of the Petitioner does not take into consideration the order passed by the Division Bench of this Court on 24 January 2017 in Writ Petition No. 534 of 2016. This Writ Petition was filed making a grievance that there is a large pendency of matters before the Consumer Forums and the State is only

appointing Presidents on part time basis which is in complete breach of the objectives of the Act of 1986. The learned Government Advocate General, at the time of hearing, had accepted the position that the full time President needs to be appointed to ensure expeditious disposal of matters pending before the Consumer Forums. After advertizing Section 10 of the Consumer Protection Act, 1986 the Division Bench observed thus:

“10. On perusal of the said provision, it clearly specifies the position of the District forum. Clause (b) of Sub-Section (1) of Section 10 stipulates the appointment of two Members (Apart from the President) who is to be or should have been or must qualify to be as District Judge. The Rule making power with reference to the provisions of Clause 10(1) (b) is vested in the State Government under Section 30. In such circumstances, the Act itself contemplates that a full time District Forum has to be constituted in terms thereof. In the present case, we find that the action of the Respondents in appointing part time Members for such a long period of time would not meet the objectives of the provisions of the Consumer Protection Act. It is such indifference by the Respondents which renders a well-meaning legislation intended to protect a large body of consumers from exploitation ineffective. In such circumstances, it is difficult to comprehend why the State Government has been indifferent about the need to establish Regular full time District Forum in both the Districts of the State of Goa. It is stated that proceedings are pending for years together which by itself shows the urgency in ensuring that a full time Forum is available to get the disputes of Consumers

redressed. Despite of recommendations, the fact remains that the Respondents have shown no sense of urgency in setting up a full time network for protection of the consumers at the District level. Though there is no dispute that the infrastructure facilities are made available for constituting such District Forum but, however, the Respondents have failed to ensure that a full time District Forum is available for the benefit of the consumers. Under Section 9 of the said Act, it is the responsibility of the State Government to set up a District Forum in the manner stated therein. The State Government cannot absolve itself of this responsibility by adhoc arrangements. As far as the composition of the District Forums are concerned, it is a matter for the State Government to consider in accordance with the provisions of the said Act. But, however, the need to ensure full time District Forums, are available for both Districts, cannot be forgotten.”

This order of the Division Bench has become final as we are not informed of any challenge to this order.

6. The State, thereafter, pursuant to the above order of this Court, issued an advertisement in the newspaper calling for applications for appointment to the post of President of District Forum. It is not that the Petitioner was not aware of the advertisement as the Petitioner applied for the post. There is a distinction between a 'part time' President and a full time President. The Division Bench of this Court has held that the concept of 'part

time' President defeats the purpose of the Act. If the Petitioner had any grievance in respect of this order or the advertisement, it was open to the Petitioner to raise a challenge. The Petitioner, accepting the distinction between a full time and a part time President, applied for the post of full time President. Therefore, we cannot accept the challenge of the Petitioner on the ground that the Petitioner was being validly appointed and could not have been replaced by any other person till 2021.

7. As regards challenge to the selection process, as pointed out by the learned Additional Government Advocate, a Committee was constituted as per Section 10 of the Act. Even this fact is not disputed by the Petitioner. A Committee, therefore, assessed the rival merits of the candidates. Neither in the Petition nor in oral arguments by two different Advocates, it is demonstrated that any of the selected candidates are not qualified and are not eligible. The arguments that the Petitioner was more meritorious than the selected candidates, cannot be accepted. The Committee constituted as per law has found the two candidates more meritorious than the Petitioner. It is not possible for us to sit in appeal to assess the rival merits of the candidates. The argument that there has to be continuity in the post has no merit. The Petitioner who is an Advocate has persisted in his challenge in spite of us giving him

opportunity to reconsider the position, all that he did was to change his Counsel to argue afresh. We expected the Petitioner being advocate to know the law. In the circumstances, the Petition is devoid of any merits and is rejected.

Prithviraj K. Chavan , J.

N.M. Jamdar, J.