



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI

W.P(MD)Nos.9202 and 21921 of 2017

and

W.M.P(MD)Nos.6995, 6996/2017, 2818, 2819 of 2018 and 18237 to 18239
of 2017

Orders reserved on 02.03.2018	Orders pronounced on 14.03.2018
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W.P(MD)No.9202 of 2017:

V.Varatharajan

.. Petitioner

Vs.

1.The Secretary to Government,
Food and Consumer Protection Department,
Secretariat, Chennai - 600 009.

2.The Secretary to Government,
Law Department, Secretariat,
Chennai - 600 009.

3.The Registrar,
State Consumer Disputes Redressal Commission,
Frazer Bridge Road, VOC Nagar, Park Town,
Chennai - 600 003.

4.Madurai Bar Association of Madurai
Bench of Madras High Court, rep. by
its President, J.Ramamoorthy,
High Court Buildings,
Madurai - 625 023.

[Fourth respondent is impleaded vide order
dated 03.10.2017, made in W.M.P(MD)No.
13487 of 2017].

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to quash the letter dated 24.11.2014 in Ref.No.Lr.RC.A1/4557/2014 insofar as it relates to communicating the alleged policy decision of the National Consumer Disputes Redressal Commission, New Delhi to prefer either sitting Judges or retired



Judges over advocates and only in the event of there being none, to consider the applications of the advocates and quash the same and thereby direct the respondents to fill up the vacancies based on the comparative merit alone amongst the applications.

For Petitioner

: M/s.Karthika
for Mr.G.Kaleeswaran

For Respondents 1 and 2

: Mr.VR.Shanmuganathan,
Special Government Pleader.

For Respondent No.4

: Mr.G.Prabhu Rajadurai

W.P(MD)No.21921 of 2017:

R.Venkatesan

.. Petitioner

Vs.

1.The Government of Tamil Nadu,
rep. By its Chief Secretary,
Secretariat, Chennai - 600 009.

2.The Secretary to Government,
Food and Consumer Protection Department,
Secretariat, Chennai - 600 009.

3.The Secretary to Government,
Law Department, Secretariat,
Chennai - 600 009.

4.The Registrar,
State Consumer Disputes Redressal Commission,
Frazer Bridge Road, VOC Nagar, Park Town,
Chennai - 600 003.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned notification in No.5 of 2017, dated 30.10.2017 issued by the fourth respondent and quash the same as illegal, consequently, direct the fourth respondent to issue fresh notification for the post of President, District Consumer Disputes Redressal Forums only after the publication of the result of the Interview held on 26.04.2017 for the post of President, District Consumer Disputes Redressal Forums.

For Petitioner

: Mr.R.M.Mahesh Kumaravel

For Respondents 1 to 3

: Mr.VR.Shanmuganathan,
Special Government Pleader.

**COMMON ORDER**

[Common Order of the Court was made by **T.S.SIVAGNANAM, J.**]

The petitioners in both the writ petitions are Advocates, practicing before this Court as well as the District Courts at Madurai and Tiruchirappalli respectively. In W.P(MD)No.9202 of 2017, the petitioner challenges the communication sent by the Registrar of the State Consumer Disputes Redressal Commission to the Secretary, Madurai Bar Association, the fourth respondent herein, informing about the policy decision of the National Consumer Disputes Redressal Commission, New Delhi. The petitioner is aggrieved by the said Circular as it states that for appointment as President of District Consumer Disputes Redressal Forum, preference will be given to either sitting Judges or retired District Judges and only if no retired District Judges are available, the applications will be received from advocates and can be considered for appointment to the Post of President.

2.The petitioner contends that the provisions of the Consumer Protection, 1986, [Act 68 of 1986], provide for constitution of National, State and District Level Tribunals. Section 10(1)(A) provides a person, who is, or has been, or is qualified to be a District Judge, shall be the President of the District Consumer Disputes Redressal Forum. Further, the said Section provides as to how the appointments should be made. In terms of the statutory provisions, appointments to the District Consumer Redressal Forums should be made on comparative merits and when the statute prescribes the same, the Circular issued by the National Commission, stating that preference will be given to either sitting Judges or retired District Judges and only if no retired District Judges are available, the application received from the Advocates can be considered for appointment to the post of President, virtually nullifies the provisions of the Act and infringes on the fundamental rights of Advocates to be considered for selection and appointment to the said posts. Further, it is submitted that circulars cannot over-ride the statute and such a policy decision of the National Commission cannot be a basis to nullify the statute and deprive Advocates of being considered and therefore, the Circular is liable to be quashed. When the policy decision is contrary to the provisions of the statute, it requires to be struck down as being illegal and without jurisdiction.

3.In W.P(MD)No.21921 of 2017, the petitioner prays for issuance of a writ of certiorarified mandamus to quash the Notification No.5 of 2017, dated 30.10.2017, issued by the State Consumer Disputes Redressal Commission, by which, applications were invited for appointment to the post of Presidents in various District Consumer Disputes Redressal Forums in the State of Tamil Nadu by direct recruitment under Section 10(1)(a) of the Act.



4. The petitioner would state that in the year 2014, similar notification was issued calling for applications for appointment to the post of President of District Forums and since the petitioner has a Post Graduate degree in Law and 19 years of practice as Advocate and was aged about 44 years, he was eligible to be considered to the post of District Judge as per the norms and therefore, applied for the post of President of District Consumer Disputes Redressal Forum. The petitioner received a call letter, dated 08.09.2014 for an interview on 23.09.2014. But, the interview was not conducted and subsequently, another call letter, dated 26.09.2014 was issued for the interview on 10.10.2014 and the petitioner attended the interview, however, was not selected nor any other Advocate, who attended the interview, were selected. Subsequently, the fourth respondent issued Notification No.3 of 2015, dated 16.03.2015, calling for applications for recruitment to fill up six vacancies in the post of President of various District Consumer Disputes Redressal Forums and the petitioner applied for the said post and attended the interview on 28.04.2015 and was eagerly awaiting the results. The fourth respondent issued another Notification No.4 of 2015, dated 09.04.2015, calling for applications to fill up further four vacancies in the post of President of District Consumer Disputes Redressal Forums and the petitioner applied and attended the interview on 28.04.2015. However, the results were not published till date. In the mean time, the impugned notification, dated 30.10.2017 was issued and therefore, the petitioner filed the writ petition challenging the said notification.

5. The petitioner would further state that when Advocates are eligible to be appointed as President of District Consumer Disputes Redressal Forums for the past 25 years, only two Advocates have been appointed as President and by relying upon the Circular issued by the National Commission, the respondents are not justified in refusing to consider the petitioner's candidature.

6. The petitioner placed reliance on the observation made by the Hon'ble Division Bench in W.P(MD)No.21087 of 2014, dated 05.02.2015, which was filed by the Secretary of the Madurai Bar Association, for issuance of a writ of mandamus to direct the respondents therein to fix a ratio for appointment to the post of President of District Consumer Disputes Redressal Forums from the Advocates and retired District Judges as 1:1. The said writ petition was disposed of with certain observations to the effect that while carrying out selection process, the aspect of their being two streams should naturally be kept in mind and noting that for the past 25 years only two Advocates are stated to have been appointed as President and the objective of the petition appears to be only wake up the concerned authorities to the effect that there are actually two sources and since Advocates are appointed to the post of Civil Judges, Additional District Judges and High Court Judges, it is difficult for the Bar Association to accept that this long period of time only two Advocates were found to be qualified to be



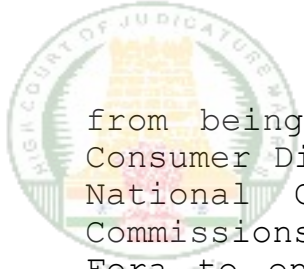
appointed as Presidents of District Consumer Forums. It is submitted that inspite of the observation made by the Hon'ble Division Bench, the respondents have not selected any Advocate to the post of President.

7. It is further submitted that the petitioner filed W.P(MD) No.21766 of 2014, for a writ of mandamus to direct the respondents to publish the results of the interview held on 28.04.2015 and the said writ petition was disposed of, by order, dated 08.02.2017, by recording the submission of the learned Government Advocate appearing for the respondents that since the petitioner had already applied for the post under Notification No.4 of 2015, dated 09.04.2015, he need not apply afresh and the petitioner will be called for interview for the post of President. Accordingly, the petitioner was called for interview on 11.04.2017 and however, the results have not been published till date. It is further submitted that the delay in publishing the results of the interview conducted on 26.04.2017, deprived the petitioner's rights as the petitioner has crossed the maximum age limit prescribed for applying to the post. Therefore, the petitioner seeks to quash Notification No.5 of 2017, dated 30.10.2017.

8. The learned counsel appearing for the petitioners reiterated the stand taken in the affidavits filed in support of the writ petitions and contended that the Court should issue a direction to the respondents to consider the applications given by the Advocates, without referring to the Circular issued by the National Commission, as the same is without jurisdiction.

9. Mr. R. Prabhu Rajadurai, learned counsel appearing for the fourth respondent-Madurai Bar Association, attacked the validity of the Circular, by contending that the National Commission being a creature under the Consumer Protection Act, 1986, cannot take a policy decision to restrict the choice of selection only to retired District Judges and only if no retired District Judges are available, the Advocates will be considered, as a decision, which is not only without jurisdiction to infringe the rights of Advocates for being considered to the said post, though several of them are fully qualified and it violates Article 14 of the Constitution of India.

10. The learned Special Government Pleader appearing for the official respondents, while seeking to sustain the impugned circular, submitted that the directive issued by the National Commission is by virtue of the power conferred under Section 24-B of the Act and the same has been issued to ensure the objects and purpose of the Act are best served without interfering with the quasi-judicial freedom. Further, it is submitted that the National Commission has issued directive that preference should be given to the District Judges or retired District Judges, having regard to the experience gained by them in discharge of their duties as Judicial Officer. However, the directive have not excluded the Advocates



from being considered for the post of President of the District Consumer Disputes Redressal Forum. It is further submitted that the National Commission has administrative control over the State Commissions as the power to oversee the functioning of the District Fora to ensure the objects and purpose of the Act are fulfilled. Further, it is submitted that the communication of the fourth respondent, dated 24.11.2014 is not an order passed by the Registrar of said Commission, but only a communication sent to the Special Officer of the Hon'ble Chief Minister's Special Cell and the Secretary, Madurai Bar Association, for information.

11. Further, it is submitted that insofar as the petitioner Mr. R. Venkatesan, is concerned, he had applied for the post of President pursuant to Notification Nos. 3 and 4 of 2015 and participated in the interview, but was not selected by the Selection Committee. It is further submitted that the petitioner, having applied and participated in the selection, is not entitled to challenge the notification, as being illegal. Further, the notification does not indicate the exclusion of Advocates from seeking appointment for the post of President of the District Forum. Further, merely because the petitioner has applied for the post and participated in the interview, it will not give him any right to be appointed as President of the District Consumer Disputes Redressal Forum.

12. In support of his contention, the learned Special Government Pleader appearing for the official respondents, relied upon the decision of the Hon'ble First Bench in W.P. Nos. 15364 of 1998 etc. batch, dated 13.03.2008 and submitted that all contentions as raised by the petitioners were considered and correctness of the directive issued by the National Commission under Section 24-B of the Act was considered and it was upheld. Therefore, the petitioners cannot once again reargue the settled position.

13. Heard the learned counsel appearing for the parties and perused the materials placed on record.

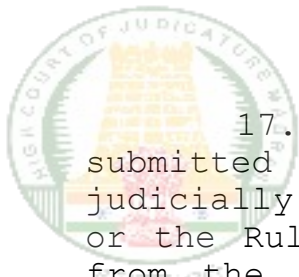
14. As noticed above, both the petitioners are Advocates practicing before this Court and the District Courts. One of the petitioners himself was an applicant for the post of President of District Consumer Disputes Redressal Forum, not once but thrice, but was unsuccessful in being selected and appointed. The Bar Association, in which, he is a member, is supporting his case and challenging the validity of the policy decision taken by the National Commission. The impugned communication, dated 24.11.2014, cannot be construed to be an order, as it is only a communication to the Hon'ble Chief Minister's Special Cell, intimating about the policy decision taken by the National Commission. A copy of the said communication has been sent to the Secretary, Madurai Bar Association. Therefore, technically, the petitioner cannot be stated to be aggrieved by the letter sent by the Registrar, State Consumer Disputes Redressal Commission to the Hon'ble Chief



Minister's Special Cell, Chennai. In any event, since arguments were advanced, questioning the validity of the policy decision taken by the National Commission, we have heard the learned counsels on the said submission.

15. It may not be necessary for us to dwell deep into the issue as the same has been settled by the Hon'ble Division Bench in the case of C.Lakshmi Narain v. Government of Tamil Nadu and others [W.P.Nos.15364 of 1999 etc. batch]. In the batch of cases, the Hon'ble First Bench considered various prayers that were sought for, such as, to fill up the vacancies in the post of Presiding Officers of all Courts, appointment of Presidents of State Commission to ensure the District Consumer Disputes Redressal Forums in all districts of Tamil Nadu are made fully functional with appointment of President and Members without delay and with adequate infrastructure including staff. The Hon'ble Division Bench noted that the Minister for Agriculture and Consumer Affairs, Government of India, had addressed a letter, dated 09.06.2016, to the Chief Minister of Tamil Nadu, wherein it has been observed that the serving District Judges, since they come under the control of High Courts, are more accountable and committed to effective timely disposal of consumer grievance, and therefore, as far as possible, the State Government may appoint only serving District Judges, to the posts of Presidents in the District Fora. In the light of the said letter of the Minister for Agriculture and Consumer Affairs, Government of India, the State Commission addressed a letter to the High Court seeking its views for appointing serving District Judges as Presidents of the District Fora on service lent basis for a minimum period of three years.

16. The High Court, vide its communication, dated 29.12.2006, accepted the proposal in principle, provided the cadre strength of the District Judges in the Tamil Nadu State Judicial Service is increased by 24. However, the Government is yet to take a decision on the said communication. It was further pointed out that the National Commission, New Delhi, has addressed a letter, dated 17.05.2007, to the Government of Tamil Nadu, highlighting among other things, the policy decision taken to the effect that the District Judges or retired District Judges alone will be considered for the appointment as Presidents of the District Forums. The Advocate General, however, submitted that under Section 10(1-A) of the Act, a retired or serving District Judge or a person, who is qualified to be a District Judge, is eligible to be appointed as President of District Forum and therefore, it is not permissible to give any precedence, particularly, to the retired District Judges and in practice, there would not be any distinction between the retired District Judge and an Advocate. Therefore, it was pointed out that the letter of the National Commission is only recommendatory nature and it has no binding effect and in any event, such a recommendation would be contrary to the expression provisions of Section 10(1-A) of the Act.

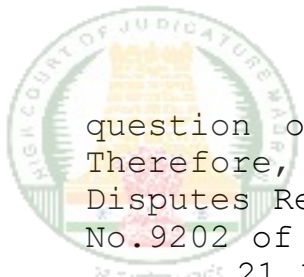


17. The counsel, who appeared for the State Commission, submitted that, as the persons appointed are expected to function judicially consistent with the procedures as laid down under the Act or the Rules framed there-under, there is a need to insulate them from the control of, or interference by the executive and that purpose is sought to be achieved by sub-section (1-A) of Section 10 as also by Section 24-B of the Act. Therefore, it was submitted that the direction issued by the National Commission binds all concerned. Further, it was submitted that the direction of the National Commission has been followed by the State Commissions of almost all other States where as a matter of fact, preference is given to serving and retired District Judges for appointment to the posts of President and in the absence of serving and retired Judges, the posts are being filled up from amongst the Advocates.

18. The Court then proceeded to examine the power of the National Commission under Section 24-B of the Act and by referring to the decision of the Hon'ble Supreme Court in *State of Rajasthan v. Anand Prakash Solanki* reported in 2003(7) SCC 403, observed that Section 24-B of the Act spells out administrative control in favour of the National Commission over all the State Commissions and District Fora within its jurisdiction and the various clauses contained therein have to be liberally and widely interpreted. After noting the aforementioned decision, the Hon'ble First Bench held that the directive issued by the National Commission under Section 24-B of the Act cannot be said to be contrary to the provisions of Section 10(1-A) of the Act, as the directive says that precedence should be given to the District Judges or retired District Judges having regard to the experience gained by them in discharge of their duties as judicial officer. If serving or retired District Judges are not available, it is always open to the Committee to make appointments from Advocates and it is not correct to say that the Advocates are excluded from consideration for the post of President of the District Fora.

19. Therefore, it was held that the National Commission has issued the directive keeping in mind the purpose sought to be achieved by enactment of Section 10(1-A) and in the interest of better administration of the District Fora. Thus, it was held that the State Government was legally bound to implement the recommendations made by the Selection Committee. Therefore, the contentions advanced by the learned counsel appearing for the petitioners as well as the learned counsel appearing for the Madurai Bar Association are fully answered by the decision in the case of *G.Lakshmi Narain v. Government of Tamil Nadu* rep. By its Chief Secretary, Chennai - 9 [W.P.Nos.15364 of 1999 etc. batch].

20. Admittedly, the petitioner has not challenged the policy decision of the National Commission, but would argue that the directive issued by the National Commission is without jurisdiction. Since, this position having already been considered by the Division Bench, in our considered view, in a very elaborate manner, the



question of arriving at a different conclusion, does not arise. Therefore, the communication sent by the Registrar, State Consumer Disputes Redressal Commission, dated 24.11.2014, impugned in W.P(MD) No.9202 of 2017 cannot be interfered with.

21. In so far as the challenge to the Notification No.5 of 2017 is concerned, the same has to necessarily fail, as already vacancies have been filled up and order to the said effect has been issued on 28.12.2017, by which, the Government had appointed 10 retired District Judges as Presidents of various District Consumer Disputes Redressal Forums in the State. That apart, the petitioner Thiru.R.Venkatesan having participated in the selection process by attending the interview, cannot challenge the notification or part thereof. In the counter affidavit, a specific stand has been taken to the effect that the petitioner applied for the said post pursuant to the Notification Nos.3 and 4 of 2015, participated in the interview, but was not selected by the Selection Committee, this decision has not been put to challenge and therefore, on this ground also, the relief sought for by the petitioner has to be negatived.

22. Thus, for all the above reasons, the prayers sought for in both the writ petitions cannot be granted and accordingly, the writ petitions fail and they are dismissed. No costs. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To

1. The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.
2. The Secretary to Government,
Food and Consumer Protection Department,
Secretariat, Chennai - 600 009.
3. The Secretary to Government,
Law Department, Secretariat, Chennai - 600 009.
4. The Registrar,
State Consumer Disputes Redressal Commission,
Frazer Bridge Road, VOC Nagar, Park Town,
Chennai - 600 003.

+2CC TO M/S.G.KALEESWARAN, ADVOCATE, SR NO.54990

+2CC TO M/S.R.M.MAHESH KUMARAVEL, ADVOCATE, SR NO.54989

+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.55636

COMMON ORDER MADE IN
W.P(MD)Nos.9202 and 21921 of 2017 and
W.M.P(MD)Nos.6995, 6996/2017, 2818,
2819 of 2018 and 18237 to 18239 of 2017
14.03.2018