

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
CWP-12367-2020 (O&M)
Reserved on: 08.02.2021
Decided on: 22.02.2021

Shivdev Singh & othersPetitioners
Versus
State of Punjab & anotherRespondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Gurminder Singh, Senior Advocate
with Mr.Jatinder Singh Gill, Advocate, for the petitioners.

Ms.Lavanya Paul, AAG, Punjab.
(The proceedings have been conducted through video conferencing,
as per instructions but judgment was pronounced in open Court.)

G.S. SANDHAWALIA, J.

Prayer in the present writ petition, filed under Article 226 of the Constitution of India by 7 petitioners, is for issuance of a writ in the nature of certiorari, for quashing the action of the State Government whereby the duly conducted selection process for appointment to the posts of Members of District Consumer Forums which was initiated on the advertisement dated 15.12.2018 (Annexure P-2) was scrapped allegedly arbitrarily in a completely illegal manner without there being any justifiable and cogent reason.

2. Further directions are sought for issuance of a writ in the nature of mandamus to grant appointment to the petitioners as Members of the District Consumer Forums by issuing the requisite notification as the selection process has already been done by the statutory Selection Committee constituted as per the provisions of the Consumer Protection Act, 1986 (for short, the '1986 Act') and the Punjab Consumer Protection (Appointment, Salary, Allowances and Conditions of Service of President and Members of the State Commission and District Forum) Rules, 2018 (for short, the '2018 Rules').

3. It is the admitted case that the petitioners' names had been recommended after proper selection for appointment by respondent No.2, the State Consumer Disputes Redressal Commission, Punjab vide its letter dated 23.12.2019 (Annexure P-7) on the basis of which the prayer is sought for. It is pertinent to notice that in the present writ petition, notice was issued on 27.08.2020 along with notice regarding stay and during the pendency of the writ petition, after filing of the written statement on 09.12.2020, an order dated 01.12.2020 (Annexure A-1) is reported to have been passed by respondent No.1 whereby the decision to cancel the recruitment of Members has been taken and to initiate the recruitment process again. The same having been passed during the pendency of the writ petition and not having been relied upon in the written statement, has, thus, been assailed by counsel for the petitioners and it is prayed that the same be quashed.

4. The reasoning given in the said order is that in the advertisement which was issued, the eligibility criteria had wrongly been mentioned that the person for appointment of Members is to be less 35 years of age whereas it should have been **not less than 35 years**. Reliance is also placed upon the letter issued by the Government of India dated 21/22.09.2020 (Annexure R-1) that vacancies of Presidents and Members in the said Commissions and District Commissions are henceforth to be filled up as per the provisions contained in the Consumers Protection Act, 2019 (hereinafter referred to as the 'New Act') and the new Rules and where the selection process is not complete

though which has commenced as per the old provisions will also be made as per the new Rules. Resultantly, the justification is that there was a mistake in the advertisement and many of the eligible candidates would have been deprived from applying to the advertised posts and in view of the letter dated 21/22.09.2020, the appointment orders cannot be issued and that the selection process will now be made under the 2019 Act.

5. Counsel for the petitioners has also placed on record fresh advertisement issued on 08.01.2021 (Annexure A-1) for 32 posts of Members on whole time basis for the District Consumer Disputes Redressal Forums in the State of Punjab, wherein, applications have been invited and the cut-off date for applying has been fixed as 10.02.2021.

6. Thus, the short and interesting question which arises is whether the petitioners have any absolute right on account of the selection process not having been taken to its logical end by notifying the appointments under Section 9(a) and 10 of the 1986 Act and that whether they have to suffer the process of applying again, in pursuance of the new advertisement under the New Act. It is the case of Senior Counsel for the petitioners that on account of the legitimate right of expectation, though not indefeasible but only cogent reasons and not an arbitrary action, can give the right to the State to deny appointments while placing heavy reliance upon the judgment of the Apex Court in **N.T.Devin Katti & others Vs. Karnataka Public Service Commission (1990) 3 SCC 157** and **Shankarsan Dash Vs. Union of India 1991 (3) SCC 47**.

7. State Counsel, on the other hand, has submitted that there is

no legal vested right of the petitioners and the State has a right to cancel the process. The order dated 01.12.2020 was, accordingly, justified that there were valid reasons for cancelling the process and the new Act had come into force and it was always open to the petitioners to apply fresh while relying upon Shankarshan Dash's case (supra) itself and the judgment of the Apex Court in **Commissioner of Police and another Vs. Umesh Kumar (2020) 10 SCC 448**.

8. In order to apply the precedents of the Apex Court on the said legal issues, it is necessary to crystallize the factual aspects firstly.

It is the case of the petitioners that vide the advertisement dated 15.12.2018 (Annexure P-2), applications were invited for 17 posts of Members in the District Forums which have been established under the 1986 Act. Out of the said posts, 10 posts were reserved for lady members. The Selection Committee was constituted in terms of the 1986 Act. Petitioners No.1 to 5 are stated to be retired Government employees and having vast experience in their respective fields and being fully competent to hold the post in question whereas petitioner No.7 had already worked as Member of the District Consumer Forum as a lady Member. Similarly, petitioner No.6 is also another lady Member aspirant. It has been averred that approximately 300 candidates participated in the selection process and the petitioners had also submitted their applications. In terms of Section 10 of the 1986 Act, the composition of the District Forum has been specified along with the qualifications of the Members. Sub-clause-1A further provides that the

appointment is to be made by the State Government on the recommendations of the Selection Committee which consists of the President of the State Commission-Chairman; Secretary, Law Department of the State and Secretary, Incharge of the Department dealing with Consumer Affairs in the State. Relevant provisions read as under:

“Section 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 person 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) President of the State Commission -Chairman,

(ii) Secretary, Law Department of the State -Member,

(iii) Secretary, incharge of the Department

dealing with consumer affairs in the State -Member:]

[Provided that where the President of the State Commission is, by reason 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.]”

9. Similarly, the 2018 Rules, for selecting the President and Members of the District, provide that the matters relating to the appointment of President and Members of District Fora shall be processed by the President of the State Commission and initiated 6 months before the vacancy arises, after issuing an advertisement in leading newspapers and also circulated in such other manner as the President of the State Commission may deem appropriate. Rule 5(5) further provides that selection of President and Members of the District Fora shall be made by the Selection Committee constituted under sub-section (1A) of Section 10 of the Act. The Selection Committee is to shortlist the applicants as per the procedure provided and in the case of a person having judicial background on the basis of the judgments and

other judicial orders, whereas in case of candidates having experience of working under the Central/State Governments on the basis of their available Annual Confidential Reports for the last 10 years. In other cases, performance in a written test is also required of 2 papers, the syllabus of which was also mentioned. After the interview under Sub-clause (9), the Selection Committee is to recommend the panel of the names of the candidates who were to be appointed as President from amongst the candidates in the order of merit for consideration of the State Government. Under Sub-clause (10), the State Government has to verify the credentials and antecedents of the recommended candidates and proceed thereafter on the basis of the fitness certificate given by the Civil Surgeon/Medical Officer, subject to the undertaking given that the selected applicant does not have any financial or other interests, as is likely to affect prejudicially his functions. It is not disputed that uptill Sub-Clause 9, the procedure has been completed in the present case as respondent No.2 has already sent the names to the State Government on 23.12.2019 (Annexure P-7). Rule 5 reads as under:

“5. Selection of the President and Members of District Fora. --

- (1) Matters relating to appointment of President and Members of District for a shall be processed by the President of the State Commission.
- (2) The process of appointments shall be initiated at least six months before the vacancy arises.
- (3) If a post falls vacant due to resignation or death of a President or a Member or creation of a new post, the process for filling the post shall be initiated immediately after the post

has fallen vacant or is created, as the case may be.

(4) The Advertisement of a vacancy, inviting applications for the posts from eligible candidates will be published in leading newspapers and also circulated in such other manner as the President of the State Commission may deem appropriate.

(5) Selection of President and Members of District Fora shall be made by the Selection Committee constituted under sub-section (1A) of section 10 of the Act.

(6) After scrutiny of the applications received till the last date specified for receipt of applications, list of eligible candidates along with their applications shall be placed before the Selection Committee.

(7) The Selection Committee shall short-list the applicants in the following manner, namely-

- (a) in case of candidates having judicial background, on the basis of the judgements and other judicial orders passed by such candidates;
- (b) in case of candidates having experience of working under the Central Government or any State Government or an undertaking under the Central Government or the State Government, on the basis of their available Annual Confidential Reports for the last ten years and their experience relevant to the post applied for;
- (c) in other cases, on the basis of performance in a written test consisting of two papers as per the following scheme. The qualifying marks in each paper shall be 50%:

Paper	Topics	Nature of test	Max. Marks	Duration
Paper-I	(a) General Knowledge and current affairs	Objective Type	100	2 hours
	(b) Knowledge of Constitution of India			
	(c) Knowledge of various			

Consumer related Laws as
indicated in the schedule

Paper-II (a) One Essay on topics Descriptive 100 3 hours
chosen from issues on
trade & Commerce,
consumer related issues
or Public Affairs
(b) One case study of a
consumer case for testing
the abilities of analysis
and cogent drafting of orders.

(8) The selection committee shall interview all shortlisted candidates in which marks may be awarded giving due weightage to the personality, relevant past experience, knowledge of law, special achievements, aptitude and vision for the assignment to be taken up.

(9) The selection committee shall recommend a panel of names of candidates for appointment as President or Member, as the case may be, from amongst the candidates in the order of merit for consideration of the State Government.

(10) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.

(11) Every appointment of a President or Member shall be subject to submission of a certificate of physical fitness as indicated in the annexure signed by a civil surgeon or District Medical Officer.

(12) Before appointment, the selected applicant shall have to furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as President or Member.”

10. It is an admitted fact that in pursuance of the said advertisement (Annexure P-2), which was also circulated in the newspaper, 'The Tribune', which would be clear from the reply of

respondent No.2, the posts were advertised and the detailed advertisement including the eligibility criteria, tenure, qualifications, format of the application were available on the website at the Food & Supplies Department. On 06.06.2019, the statutory Selection Committee, consisting of the President of the State Commission; Legal Remembrancer and the Secretary to the State of Punjab and respondent No.1, the Principal Secretary to Government of Punjab, Department of Food Supplies and Consumer Affairs, namely Shri K.A.P.Sinha scrutinized the applications and bifurcated them into 3 categories, as per Rule 5, 7 (a) (b) and (c) of the 2018 Rules, apart from weeding out the ineligible candidates. The selection criteria was also finalized along with the fact that a written test would be conducted for the purposes of short-listing the candidates, as per the 2018 Rules, before calling them for the interview. The said proceedings are appended as 'Annexure R-2/2' in the written statement filed by respondent No.2. The written test was, thereafter, held on 15.09.2019 and the candidates were declared eligible on 18.11.2019 and were interviewed on 30.11.2019 (Annexure P-4).

11. On the recommendations of the Selection Committee, 23 male candidates had been short-listed out of which, 8 candidates were subjected to the written test also. 11 persons were called for interview and the Members of the Selection Committee gave them separate marks which were totalled and divided by 3 and the average of the same was calculated and the result was declared on 30.11.2019 (Annexures P-4 & P-5) and posted on the website of the State Commission. It also showed

that the candidate was posted at a particular station. Resultantly, as per the merit, recommendations were made on 23.12.2019 (Annexure P-6) for various vacancies at different districts. Similar exercise was also done for the lady Members out of which, 10 candidates had been short-listed and 8 had been subjected to the written test. 3 candidates had been called for interview out of which, only 2 turned up and were selected and recommended for appointment against the posts in the District Consumer Forum, Patiala and Fatehgarh Sahib. It is not disputed that applications had also been invited for the 11 posts of President in the District Consumer by Annexure P-8. Their names were also forwarded along with the posts of Judicial Members in the State Commission and for posts of Presidents in the District Consumer Forums on 23.12.2019 (Annexure P-7) by respondent No.2 and request was made to issue necessary notifications for appointment as per the recommendations made by the Selection Committee.

12. Resultantly, after more than 6 months on 13.07.2020 (Annexure P-9), the State Government appointed the Presidents of the District Consumer Disputes Redressal Forums leaving out the Members, as such, from appointment. Thus, the present writ petition came to be filed on 18.08.2020 seeking directions for notifying the case of the petitioners also, while placing reliance upon the notification which was done.

13. The defence of the State in its written statement filed by the Additional Secretary, Department of Food, Civil Supplies & Consumer

Affairs, Punjab is that only the names of the candidates had been recommended by the Selection Committee for approval of the State Government but the same had never been approved. Therefore, in the absence of any actual and vested right, the writ petition was liable to be dismissed. The stress upon the appointing authority being the State Government was made that appointment letters were not issued and the same was only to be done after verification of credentials, antecedents, determination of physical fitness and declaration of no interest that would prejudicially affect the function as a Member. Further, the second defence was that while the matter was under consideration of the State Government, the entire gamut in the State legislation was undergoing substantial change under the guidance of the Apex Court in **CA-2740-2007** titled *State of U.P. & others Vs. All U.P. Consumer Protection Bar Association*, decided on 21.11.2016 (Annexure P-13). Reliance was also placed upon the litigation in **CWP-4466-2020** titled **Bhupinder Kumar Sharma Vs. State of Punjab & others**, wherein challenge had been raised to the appointment of the Presidents of the District Forums who had been recommended. It is not disputed that the said writ petition has now been decided against the petitioner therein, which fact is admitted by counsel for the State also and the writ petition has been dismissed on 17.12.2020. The defence, thus, taken was that since the new 2019 Act had been notified by the Central Government, repealing the old Act of 1986 and major changes have been made with regard to the selection and recruitment of the Members of the District Consumer Grievances

Redressal Forums in all States and letter dated 22.09.2020 had been issued by the Government of India that the selection process which was not complete would be made under the provisions of the new Rules thus, justifiable and reasonable grounds are made out to not notify the appointments by the State.

Issue of defect in advertisement:

14. Thus, one aspect is crystal clear that the recruitment process had been set in motion on 15.12.2018 by issuing the requisite advertisement (Annexure P-2) which mentioned that the provisions of Section 10(1)(b) and with further mention that the selection would be made by the Selection Committee as prescribed under Section 10(1A) of the 1986 Act and as per its Rules. The requisition of the candidates having judicial background and other candidates who were required to qualify the written test, were all specified as per the provisions of the Rules which was specifically part of the said advertisement. The remunerations and the other terms and conditions and the qualifications which are mentioned in the 2018 Rules were also referred to in the advertisement. Clause 17 specifically mentioned the detailed terms and conditions as per Punjab Consumer Protection (Appointment, Selection, Allowances and Conditions of Service of Presidents and Members of the State Commission and District Forum) Rules, 2018 are available on the website i.e. Foodsuppb.gov.in. It is not disputed that in pursuance of the said advertisement, around 300 applicants participated in the selection process and this fact has not been denied by the respondent-State. It is

also the categorical case of the petitioners that at the same time, the selection process for the Presidents of the District Foras was also initiated which was also admitted by the State in its reply that it had simultaneously initiated the process of appointment of the Presidents of the District Consumer Forums. As per the reply of respondent No.2-State Commission, the advertisement was also published in the newspaper, 'The Tribune' on 15.12.2018 (Annexure R-2/1). A perusal of the same would go on to show that specific reference was made that the appointment shall be under the provisions of the Act and the Rules and the eligibility criteria and the tenure, qualifications as well as the format of the application was available on the website available at Foodsuppb.gov.in or that it could be available from the office of the State Commission, during the working hours. The necessary applications were to be received by 25.01.2019, which was the cut-off date.

15. At no stage the State felt that the error which had occurred in the advertisement of not mentioning the correct minimum age was an impediment in the recruitment process and no corrigendum was issued. The applications were processed and the statutory Selection Committee comprising of the President of the State Commission; Secretary, Law Department of the State and the Secretary, incharge of the State Dealing With Consumer Affairs, took a decision on 06.06.2019 (Annexure R-2/2) of weeding out the ineligible candidates and dividing the applicants into 3 categories, as per the provisions of Rule 5(7)(a)(b) & (c). A decision was taken that a written test would be conducted to determine the

eligibility of the candidates before calling them for interview. Thereafter, the written test was held on 15.09.2019 and candidates who had cleared the test were declared eligible on 18.11.2019 and called for interview on 30.11.2019. Respondent No.1, the Secretary, Shri K.A.P. Sinha took part in all the proceedings and at no time brought to the notice of the Selection Committee that certain set of persons had not been able to apply on account of the clerical error in the advertisement which is now the ground for cancelling the selection process. It is interesting to note that the said officer has chosen not to file the written statement and the affidavit has been filed by Shri Jaspreet Singh, Additional Secretary on 04.12.2020. As noticed also, this aspect of the clerical error is not part of the defence in the written statement wherein the stand is categorical to the extent that it is the right of the State to make appointment. Thereafter, the order dated 01.02.2021 has now been placed on record by the petitioners by way of additional affidavit wherein they have taken the stand that the same had never been supplied till 27.11.2020 and not annexed with the written statement and thus, the stand taken is that it is for taking a false defence in the case.

16. The petitioners had approached this Court with the categorical case that the selection process was not being completed without any valid reason. The State had initially sought to justify the said action on ground that it had the sole prerogative to proceed ahead or cancel the selection process, but thereafter, the order dated 01.12.2020 has surfaced which have been passed by none other than Shri K.A.P.

Sinha, a member of the Selection Committee. Thus, it is the classic case of the State where the left hand is not knowing what the right hand is doing even in matters of filling up the posts of the Members of the District Consumer Forums. The said officer has not filed his affidavit to rebut the stand that the selection process was wrong or illegal, in any manner and candidates were prejudiced on account of the error in the advertisement which is now the reason given in the order dated 01.12.2020. Therefore, it is only an attempt to justify the inaction of the State till the filing of the written statement and thus, can be termed as totally arbitrary and falling within the ambit of the observations of the Apex Court in Shankarsan Dass (supra). Relevant portion of the judgment reads as under:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions

in [State of Haryana v. Subhash Chander Marwaha](#), [Neelima Shangla v. State of Haryana](#), or [Jitendra Kumar v. State of Punjab](#).”

Discriminatory attitude of the State

17. Another reason for this Court to hold the said action arbitrary though defended by the State on the ground that the appointments of the Presidents of the District Forums was vide a separate advertisement is the discrimination that the State has done inter se the two selection processes which had been completed by the same statutory Committee. As noticed above, the result was declared on 30.11.2019 (Annexures P-4 & P-5) and posted on the website of the State Commission and the posting of the candidates was also shown at the concerned station. The result showed the list of successful candidates not only for the posts of Judicial Members of the State Commission but also for the posts of Presidents in the District Consumer Forums in the Districts of Punjab and for the post of lady Members and for the Members of the District Consumer Forums. On the declaration of the result, the proceedings of the Selection Committee held on 30.11.2019 were forwarded for recommendation for appointments, to respondent No.1. The State chose to notify the said appointments on 13.07.2020 (Annexure P-9) before the Consumer Protection Act, 1986 came into force. No valid reason is available with the State as to why similar treatment was not done regarding the appointment of the Members and the Lady Members inspite of the fact that a period of 6 months had expired by then. It is apparent that the State has failed to take into

consideration that the non-appointment of such Judicial Officers would only lead to the delay in the redressal of the disputes, which are pending before the District Forums, which has led to the arrears at various levels.

18. Petitioners have placed on record the vacancies which are available in the District Forums along with the pendency of cases as Annexure P-2, which would go on to show that out of the total posts of the President, District Forum, 12 posts of President are lying vacant whereas out of the 40 posts of Members of the District Forums, 24 were lying vacant. About 10,000 cases are, thus, pending before various District Forums, as per the averments made in para 12 of the petition and no specific denial has been made by the State to this aspect. Thus, even on this account, the State has not been able to justify why it has exercised step-motherly treatment to the petitioners and other applicants for the posts of Members of the District Forums and on this account also, the action of the State is arbitrary and unjustified. Once the selection process was held in accordance with the prevalent rules, as per the procedure which were in force at the time of advertisement, it would, thus, not lie in the mouth of the State now to fall back on the ground that new Act and Rules have come into force. Only on account of the State dragging its feet, the selection process has not been completed. As noticed the recommendation for appointments were sent on 23.12.2019 but no valid reason has been given to justify the non-appointment and even there was considerable delay of over 6 months in notifying the appointments of the Presidents of the District Forums and thus, now, for the State to contend

that on account of its inaction, the selected candidates have no vested right on account of the fact that new Act and Rules have come into force, is without any basis. The State cannot discriminate once it was aware that the Act of 2019, had been passed but it chose to notify the appointments of the Presidents but without any valid reason, has withheld the appointments of the Members/Lady Members and no justifiable reason has also been mentioned in the impugned order dated 01.12.2020.

19. The legislature has noticed the requirement and the urgency of the appointment of Members since as per Rule 5(2), the process of appointment has to be initiated at least 6 months before the vacancy arises. In the present case, instead of acting positively on the recommendations, the State delayed the appointments for more than 6 months which led to the filing of the present writ petition by the petitioners by alleging that a different treatment was given to the Presidents of the District Forums as their appointments had been notified. It is also to be noticed that the cancellation would not be in the interest of the general public as it would only delay the dispensation of justice delivery system being put in place. It is not disputed that fresh advertisement has now been issued whereby 32 posts of Members on whole time basis for District Consumer Redressal Forums have been found vacant and applications have been invited on 08.01.2021 and the cut-off date of which was 10.02.2021. The requirement for appointment of the Members, thus, is the need of the day. By forcing the petitioners to apply afresh, the State is only delaying the appointment process for the

reasons best known to them and it cannot be appreciated in any manner. The Apex Court in **Mohinder Singh Gill & another Vs. The Chief Election Commissioner, New Delhi & others 1978 (1) SCC 405** held that the grounds for denial have to be mentioned in the impugned order and cannot be supplemented by fresh reasons by way of an affidavit. The said view was followed in **Dipak Babaria & another Vs. State of Gujarat & others 2014 (3) SCC 502** and **State of Punjab Vs. M/s Bandeep Singh & others 2016(1) SCC 724**. Thus, the order dated 01.12.2020 takes a different stance from the affidavit filed by way of written statement.

Effect of New Act & Rules coming into force:

20. Coming to the issue of the other ground in the impugned order that on account of the New Act of 2019 and the Rules therein and the letter issued by the Government of India on 22.09.2020 would go on to show that the Central Government has appointed the 20th day of July, 2020 when the New Act would come into force. In the said letter dated 22.09.2020, there is mention that where the selection process has commenced as per the old provisions and is not complete, it will be also made as per the provisions of the New Rule. However, a perusal of the repealing provisions under Section 107 would go on to show that any action taken or purported to have been taken under the 1986 Act in so far as inconsistent with the provisions of the Act would be deemed to be taken or was taken corresponding to the Act. The said provisions read as under:

“107.(1) The Consumer Protection Act, 1986 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.”

21. The provisions of 1986 Act have already been reproduced above in para No.8. A perusal of Section 28 would go on to show that the composition of the District Consumer Forums has been designated as District Consumer Disputes Redressal Commission to be known as the District Commission to be set up in each districts, which is to contain a President and not less than 2 members. The earlier Act provided that a person had to be a District Judge. Under the 2020 Rules and the new Act, same qualifications are provided for appointment to the post of District Commission but the only difference is that under Rule 4(2)(c), the experience of 10 years has been enhanced to 15 years along with the knowledge in the field of Consumer Affairs & Accountancy. Similarly, under Rule 4(3), it is further provided that one Member of the District Commission shall be a woman. Thus, in para-materia, the qualifications for appointment of a Member continue to be the same. As noticed above, the selection process was already complete till Sub-clause (9) of Section 5 of the earlier Rules and the State Government was only to verify the

credentials and antecedents of the recommended candidates and the medical certificates and obtain undertaking of the selected candidates. For all practical purposes the selection had come to an end and the State Government had no further role in the same and therefore, by cancelling the same it has only put an unnecessary spoke in the wheel and it cannot be said that the letter dated 22.09.2020 would stop the selection process which had already completed. Reliance can be placed upon the judgment in N.T.Devin Katti (supra) wherein the Apex Court held that once candidates have undergone written test or viva-voce and are being considered for selection in accordance with the terms and conditions of the advertisement, they have a right against the same as it crystallized on the date of publication of the advertisement. They may not have absolute right in the matter but if the recruitment rules are amended during the pendency of the selection, they cannot be deprived in view of the New Rules. Thus, the legislature's intent is to be seen if the amended rules are retrospective and it would depend on the facts of each case set out in the terms and conditions of the advertisement and the candidates cannot be deprived of their legitimate rights on account of the amendment of the Rules during the pendency of the procedure unless the relevant rules are retrospective in nature. Relevant part of the judgment reads as under:

“11. There is yet another aspect of the question. Where advertisement is issued inviting applications for direct recruitment to a category of posts, and the advertisement expressly states that selection shall be made in accordance with the existing Rules or Government Orders, and if it

further indicates the extent of reservations in favour of various categories, the selection of candidates in such a case must be made in accordance with the then existing Rules and Government Orders. Candidates who apply, and undergo written or viva voce test acquire vested right for being considered for selections in accordance with the terms and conditions contained in the advertisement, unless the advertisement itself indicates a contrary intention. Generally, a candidate has right to be considered in accordance with the terms and conditions set out in the advertisement as his right crystallises on the date of publication of advertisement, however he has no absolute right in the matter. If the recruitment Rules are amended retrospectively during the pendency of selection, in that event selection must be held in accordance with the amended Rules. Whether the Rules have retrospective effect or not, primarily depends upon the language of the Rules and its construction to ascertain the legislative intent. The legislative intent is ascertained either by express provision or by necessary implication, if the amended Rules are not retrospective in nature the selection must be regulated in accordance with the Rules and orders which were in force on the date of advertisement. Determination of this question largely depends on the facts of each case having regard to the terms and conditions set out in the advertisement and the relevant Rules and orders. Lest there be any confusion, we would like to make it clear that a candidate on making application for a post pursuant to an advertisement does not acquire any vested right for selection, but if he is eligible and is otherwise qualified in accordance with the relevant Rules and the terms contained in the advertisement, he does acquire a vested right for being considered for selection in accordance with the Rules as they existed on the date of advertisement. He cannot be deprived of that limited right on the amendment of Rules during the pendency of

selection unless the amended Rules are retrospective in nature.”

22. Thus, keeping in view the saving clause and the judgments of the Apex Court, this Court is of the opinion that the State Government, thereafter, had no role but to notify the appointments of the Members once the statutory Selection Committee had asked for the appointments on the basis of a legitimate selection process which had stretched for over a period of almost one year. Inaction of the respondents to notify discriminated the Members with the Presidents also and cannot be said to be justified in any manner and the State cannot be permitted to defend its inaction.

23. The judgment relied upon by the State Counsel in Umesh Kumar (supra) would not be of much help. In the said case, the Apex Court was dealing with the issue of the revised result of the candidates. The judgment passed by the Delhi High Court was set aside on the ground that a fresh list had been drawn up on account of the revised list and the respondents had failed to fulfill the cut-off criteria for the OBC category to which they were applicants. It was thus held that they had no vested right for appointment and in such circumstances, the writ of mandamus did not lie. In the present case, no such controversy is there as to the valid selection process which was carried out by the statutory Selection Committee and therefore, the said judgment is not applicable to the facts and circumstances of the case.

24. The controversy would be squarely covered by the arbitrary

inaction which has been proved on record by counsel for the petitioners and further keeping in view the fact that the appointments are for the purposes of Members of the State Consumer Commissions and the selection process had culminated on the recommendations by the statutory Selection Committee. Only on account of the lack of formal notification, the petitioners cannot be denied their dues.

Accordingly, the present writ petition is allowed. The order dated 01.12.2020 (Annexure A-1) which was passed during the pendency of the present petition by respondent No.1 is quashed. A direction is issued to the respondents to notify the appointment of the petitioners within a period of 2 months from the receipt of the certified copy of this order. It will, however, be open to the State to ensure compliance of the provisions of Sub-clause (10) to (12) of Rule 5 of the 2018 Rules regarding the verifications of the antecedents of the petitioners etc.

22.02.2021
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *Yes*