

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.**

**CIVIL APPLICATION (W) NO.1703/2023 IN
WRIT PETITION NO.3680 of 2023**

Dr.Mahendra Bhaskar Limaye

vs.

Union of India, through its Secretary, Ministry of Consumer Affairs Food and Public
Distribution, New Delhi and another.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri T.D.Mandlekar, Advocate for applicant/petitioner.

CORAM :- A.S.CHANDURKAR AND MRS. VRUSHALI V. JOSHI, JJ.

DATE :- 16th JUNE, 2023

Since the petitioner seeks to raise additional challenge to the Notification dated 13.06.2023, the amendment is allowed. The same be carried out by 20.06.2023.

The Civil Application is disposed of.

Writ petition No.3680 of 2023

2. The petitioner seeks to raise a challenge to the advertisement dated 23.05.2023 that has been issued by the respondent no.2- Department inviting applications for the post of Member of State Consumer Disputes Redressal Commission as well as President and Members of the District Consumer Disputes Redressal Commission under the Consumer Protection Act, 2019 (for short, the Act of 2019) It is urged that the procedure for appointment of such members contemplates written examination in two papers. It is submitted that considering the provisions of Sections 38(3), 38(9), (10), (11) (12), 71, 72, 90 and 91 of the Act of 2019, the Commissions have been clothed with judicial adjudicatory powers and hence the respondent no.2 ought to have insisted for the examinees to undergo examination in the subjects of the Code of Civil Procedure, 1908 as well as the Code of Criminal Procedure, 1973, Indian Evidence Act, 1872, etc.

2. It is further submitted that the observations of the Hon'ble Supreme Court and especially paragraph 8.1 thereof as made in its decision in *The Secretary Ministry of Consumer Affairs vs. Dr. Mahindra Bhaskar Limaye and others (Criminal Appeal No.831 of 2023 decided on 03.03.2023)* have not been followed. Referring to provisions of Section 101(2) as well as 102(2), it is submitted that the powers of the Central Government and State Government to make rules have been prescribed. In view of Section 101(2)(n) and (w) of the Act of 2019, it is only the Central Government that is empowered to make Rules with regard to the qualifications for appointment and method of recruitment of the President and Members of the District Commission and State Commission. Such power is not conferred on the State Government under Section 102 of the Act of 2019 and the same is restricted to providing for salaries and allowances of such members amongst other things. On the basis of the advertisement dated 23.05.2023, the written examination is to be held on 25.06.2023.

3. Issue notice to the respondents, returnable on 22.06.2023.

4. Shri N.S.Deshpande, learned Deputy Solicitor General of India waives service of notice for the respondent no.1 and Shri A.M.Deshpande, learned In-charge Government Pleader waives service of notice for the respondent no.2.

5. Authenticated copy of this order be supplied to the learned counsel for the parties.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S.CHANDURKAR, J.)

Andurkar.