



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

WRIT PETITION NO. 3756/2023

Mrs. Suhas Milind Untwale,
Aged about 56 years, Occupation : Ex. President,
District Consumer Disputes Redressal Forum, Akola,
R/o Shree Nath Nivas, Agarkar Marg,
Akola, Tq. & Dist. Akola.

PETITIONER

.....VERSUS.....

The State of Maharashtra, Through Joint Secretary,
Food, Civil Supplies and Consumer Protection Department,
Mantralaya, Mumbai.

RESPONDENT

Shri Anil Mardikar, Senior Advocate with Shri V.R. Deshpande and Shri D.P.
Singh, counsel for the petitioner.
Shri Anand Deshpande, In-Charge Government Pleader for the respondent.

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

DATE ON WHICH ARGUMENTS WERE HEARD : AUGUST 07, 2023

DATE ON WHICH JUDGMENT IS PRONOUNCED : OCTOBER 20, 2023

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and the learned counsel for the parties have been heard at length.

2. The petitioner on being duly qualified came to be appointed as President of the District Consumer Disputes Redressal Commission, Buldana on 06.02.2013. On completion of her tenure of five years, she sought re-appointment on the post of President, District Consumer Disputes Redressal Commission by moving an application dated 17.10.2017. After conducting *viva-voce* examination in accordance with the Model Rules, 2012, the

petitioner was re-appointed on the said post by the order dated 05.02.2018. The tenure of the petitioner was till 10.02.2023. However in view of the orders passed **Public Interest Litigation No. 11 of 2021** [*Vijaykumar Bhima Dighe Versus Union of India & Others*], the said tenure was extended till 01.03.2023. In absence of any further order of continuation the petitioner demitted Office on 01.03.2023.

3. In *Vijaykumar Bhima Dighe* (supra) the constitutional validity of Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of President and Members of State Commission and District Commission) Rules of 2020 (for short, 'the Rules of 2020') were challenged. The Division Bench by its judgment dated 30.07.2021 upheld the said challenge and declared Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Rules of 2020 to be arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The Union of India was directed to provide for appropriately made Rules as substitute for the Rules that were held to be unconstitutional. The Secretary, Ministry of Consumer Affairs challenged the aforesaid judgment before the Hon'ble Supreme Court in *The Secretary Ministry of Consumer Affairs Versus Dr.Mahindra Bhaskar Limaye & Others* [**2023 LiveLaw (SC) 161**]. The said appeals were decided by the Hon'ble Supreme Court on 03.03.2023. The Hon'ble Supreme Court did not interfere with the

judgment of this Court declaring the aforesaid Rules to be arbitrary, unreasonable and violative of Article 14 of the Constitution of India. It however issued directions under Article 142 of the Constitution of India indicating the course to be followed till the said Rules were amended.

4. In accordance with the directions issued under Article 142 of the Constitution of India, the respondent-Department of Food, Civil Supplies and Consumer Protection through its Joint Secretary issued a notice dated 23.05.2023 inviting applications for the posts of Member of State Consumer Disputes Redressal Commission as well as the President and members of the District Consumer Disputes Redressal Commission under the Consumer Protection Act, 2019 (for short, 'the Act of 2019'). Alongwith the said advertisement a notice was published prescribing the qualification criteria which reads as under:-

“Qualification Criteria for the Post of Member, State Consumer Disputes Redressal Commission, President and Member of District Consumer Disputes Redressal Commission (as per Hon’ble Supreme Court Judgment dated 3.3.2023 in C.A.831/2023) :- a person having bachelor’s degree from a recognized University and who is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine shall be treated as qualified.”

5. According to the petitioner, she was eligible to apply for appointment on the post of Member, State Consumer Disputes Redressal

Commission under Rule 3(2)(a) of the Rules of 2020 since she claimed to have experience of at least ten years as the Presiding Officer of a Tribunal at equivalent level. Since the advertisement and the notice published alongwith it did not indicate the manner in which applications in accordance with Rule 3(2)(a) of the Rules of 2020 could be made, the petitioner has approached this Court by virtue of the present writ petition seeking to challenge the said advertisement as being contrary to the Act of 2019 and the Rules of 2020. Alternatively, it is prayed that it be clarified that the petitioner who seeks appointment by virtue of claiming to be eligible to apply under Rule 3(2)(a) of the Rules of 2020 was not required to appear for the written examination and *viva-voce*.

6. On 23.06.2023, we had heard the learned counsel for the parties on the prayer for grant of interim relief since the petitioner alongwith others had sought a stay to the conduct of the written examination that was scheduled to be held on 25.06.2023. While declining the prayer for grant of staying the examination it was directed that the appearance of the petitioner in the said examination would be without prejudice to the challenge raised in the writ petition. It is however informed that the petitioner has not appeared in the said examination.

7. Shri Anil Mardikar, learned Senior Advocate for the petitioner invited attention to Rule 3(2) of the Rules of 2020 and submitted that the

qualification prescribed for appointment on the post of Member of a State Commission was prescribed by Clauses (a) and (b) thereof. Under Clause (a), a candidate having experience of at least ten years as presiding officer of a district court or of any tribunal at equivalent level or combined service as such in the district court and tribunal was qualified for appointment as a Member. As per the proviso not more than fifty percent of such members could be appointed under Clause (a). Under Clause (b) a candidate was required to have a bachelors degree from a recognized university and in addition ought to be a person of ability, integrity and standing and having special knowledge and professional experience of not less than twenty years in the subjects stated therein. According to the learned Senior Advocate, Clauses (a) and (b) operate independently and form separate classes through which eligible candidates could seek appointment. Considering the requirements of both the clauses it was clear that the candidates seeking appointment under Clause (a) could not be clubbed with the candidates seeking appointment under Clause (b). In *Vijaykumar Bhima Dighe* (supra) the validity of Rule 3(2)(b) alone had been challenged and this Court had struck down Clause (b) of Rule 3(2) of the Rules of 2020. Rule 3(2)(a) continued to operate. The Hon'ble Supreme Court maintained the decision of this Court and in exercise of power under Article 142 of the Constitution of India issued directions to hold written tests consisting of two papers in the manner stipulated therein. Since Rule 3(2)(a) of the Rules of 2020 was neither the subject matter of challenge before this Court or the Hon'ble

Supreme Court, the directions issued for conducting a written test were applicable only to those candidates who were seeking appointment on the basis of qualifications prescribed by Rule 3(2)(b) of the Rules of 2020. The respondent was not justified in requiring the candidates who were eligible to apply for appointment under Rule 3(2)(a) of the Rules of 2020 to also undergo the written test in terms of the impugned advertisement. To bring home this contention, the learned Senior Advocate referred to paragraphs 2.4, 2.5, 6.1 and 7 of the judgment of the Hon'ble Supreme Court in the *Secretary, Ministry of Consumer Affairs* (supra). Placing reliance on the decision in *State of Rajasthan Versus Ganesh Lal* [(2008) 2 SCC 533] it was submitted that the directions issued in the *Secretary, Ministry of Consumer Affairs* (supra) was restricted to the candidates applying under Rule 3(2)(b) of the Rules of 2020 and the ratio thereof could not be applied to the candidates seeking appointment under Rule 3(2)(a) of the Rules of 2020. He also referred to the decision in *Joginder Nath & Others Versus Union of India & Others* [(1975) 3 SCC 459] in that regard. As regards the scope of jurisdiction under Section 142 of the Constitution of India reliance was placed on the decisions in *Supreme Court Bar Association Versus Union of India & Others* [(1998) 4 SCC 409] and *M.C. Mehta Versus Kamal Nath & Others* [(2000) 6 SCC 213]. It was thus submitted that it be held that the petitioner who was seeking appointment pursuant to the eligibility prescribed by Rule 3(2)(a) of the Rules of 2020 was not liable to appear in the written test as directed.

8. Shri Anand Deshpande, learned In-Charge Government Pleader for the respondent opposed the aforesaid submissions. Inviting attention to the prayers made in *Vijaykumar Bhima Dighe* (supra) it was submitted that the alternate prayer as made therein for conduct of a written test and *viva-voce* came to be accepted by the Court in the public interest litigation. The Hon'ble Supreme Court while upholding the aforesaid decision had in clear terms directed conduct of a written test of two papers of hundred marks each with fifty marks for *viva-voce*. It was necessary for all the candidates seeking appointment under Rule 3(2) to appear in the written test and the distinction as sought to be made out by the learned Senior Advocate was not in consonance with the said Rules of 2020 or the directions issued by the Hon'ble Supreme Court in the *Secretary, Ministry of Consumer Affairs* (supra). Referring to the affidavit-in-reply, it was submitted that Clauses (a) and (b) had been effectively merged by virtue of the judgment of the Hon'ble Supreme Court and hence no distinction could be made between the said clauses of Rule 3(2) of the Rules of 2020. The advertisement was published in accordance with the directions issued by the Hon'ble Supreme Court and hence there was no reason to interfere with the same. Moreover the petitioner had failed to appear for the written test and hence she was not entitled to any relief whatsoever.

9. We have heard the learned counsel for the parties at length and with their assistance we have gone through the documents placed on record. We have given thoughtful consideration to the rival submissions.

10. The factual aspects involved are not in dispute inasmuch as the validity of Rule 3(2)(b), 4(2)(c) and 6(9) of the Rules of 2020 was the subject matter of challenge in *Vijaykumar Bhima Dighe* (supra). These rules have been held to be violative of Article 14 of the Constitution of India and have thus been quashed. The judgment of the Division Bench has been maintained by the Hon'ble Supreme Court in *The Secretary, Ministry of Consumer Affairs* (supra) and directions under Article 142 of the Constitution of India have been issued that are to operate till the time suitable amendments are made in the Rules of 2020. Pursuant to the said judgment, the respondent has published a notice inviting applications for the post of Member of the State Consumer Disputes Redressal Commission as well as the President and Members of the District Consumer Disputes Redressal Commission. The notice published alongwith the said advertisement refers to the qualification criteria for the said posts and treats the person having a bachelor's degree from a recognized university and who is a person of ability, integrity and standing with special knowledge and professional experience of not less than ten years in various subjects stated therein to be treated as qualified.

The short question therefore to be considered is whether in the light of the directions issued under Article 142 of the Constitution of India the petitioner who seeks consideration of her claim for appointment under Rule 3(2)(a) of the Rules of 2020 is also required to undergo the said written test as directed ?

11. Section 29 of the Act of 2019 prescribes that in the matter of providing for the qualifications, mode of recruitment, procedure for appointment, term of office and other ancillary matters, the Central Government can make Rules by issuing notification in that regard. Pursuant to the aforesaid provision, the Rules of 2020 have been framed. A perusal of Rule 3 indicates that it provides the qualifications for appointment as President and as Members of the State Commission. Under sub-Rule (2), a person is not qualified for appointment as Member unless he attains the age of forty years. Thereafter, sub-Clauses (a) and (b) prescribe the eligibility of such persons seeking appointment. Under sub-Clause (a) experience of at least ten years as Presiding Officer of the District Court or of any Tribunal at equivalent level or combined service as such in the District Court and Tribunal is required. As per the proviso thereto not more than fifty percent of such members are to be appointed which means that persons satisfying the requirements of Clause (a) cannot constitute more than fifty percent of the Members of the State Commission. At the end of the proviso, the word “or” finds place. As per Clause (b) the requirement prescribed is possessing a bachelors degree

from a recognized university and also being a person of ability, integrity and standing with special knowledge and professional experience and not less than twenty years in the subjects mentioned therein.

On a plain reading of Rule 3 in its entirety it becomes clear that Rule 3(2) of the Rules of 2020 provides for two different sources through which a Member of the State Commission can be appointed. Rule 3(2)(a) is independent in its requirement than what is provided under Rule 3(2)(b) of the Rules of 2020. Notably the word 'or' finds place between Rule 3(2)(a) and Rule 3(2)(b). It is thus clear that the requirements prescribed in the said sub-Rule are mutually exclusive. A candidate can either seek appointment by virtue of Rule 3(2)(a) or Rule 3(2)(b) of the Rules of 2020 subject to possessing the requirements stipulated therein. In the present case, the petitioner seeks consideration of her request for appointment as Member of the State Commission by virtue of Rule 3(2)(a) of the Rules of 2020.

12. As stated above, Rule 3(2)(b) of the Rules of 2020 alongwith Rule 4(2)(c) and Rule 6(9) of the Rules of 2020 were subjected to challenge in *Vijaykumar Bhima Dighe* (supra). The Hon'ble Supreme Court while upholding the judgment of this Court wherein the said Rules were held to be violative of Article 14 of the Constitution of India proceeded to issue directions in exercise of powers under Article 142 of the Constitution of India. The observations contained in paragraph 8 as well as the directions as contained in paragraphs 8.1 to 8.3 that are relevant read as under:-

“8. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court declaring Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The Central Government and the concerned State Governments have to amend Rule, 2020, more particularly, Rule 6(9) of the Rules, 2020, providing that the Selection Committee shall follow the procedure for appointment as per Model Rules, 2017 and to make the appointment of President and Members of the State Commission and the District Commission on the basis of the performance in written test consisting of two papers of 100 marks each and 50 marks for viva voce and the written test consisting of two papers may be as per the following schemes:-

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 Consumers related Laws as indicated in the Schedule			
Paper-II	(a) One Essay on topics chosen from issues on trade and commerce consumer related issues or Public Affairs.	Descriptive type	100	3 Hours
	(b) One case study of a consumer case for testing the abilities of analysis and cogent drafting of orders			

8.1 Till the suitable amendments are made in Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as above, in exercise of powers under Article 142 of the Constitution of India and to do complete justice, we direct that in future and

hereinafter, a person having bachelor's degree from a recognized University and who is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the State Commission. Similarly, a person of a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the District Commissions. We also direct under Article 142 of the Constitution of India that for appointment of President and Members of the State Commission and District Commission, the appointment shall be made on the basis of performance in written test consisting of two papers as per the following scheme:-

Paper	Topics	Nature of test	Max.marks	Duration
Paper-I	(a) General Knowledge and current affairs (b) Knowledge of Constitution of India (c) Knowledge of various Consumers related Laws as indicated in the Schedule	Objective Type	100	2 Hours
Paper-II	(a) One Essay on topics chosen from issues on trade and 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	Descriptive type	100	3 Hours

8.3 The qualifying marks in each paper shall be 50 per cent and there shall be viva voce of 50 marks. Therefore, marks to be allotted out of 250, which shall consist of a written test consisting two papers, each of 100 marks and the 50 marks on the basis of viva voce.”

13. In this regard, it is seen that while issuing the aforesaid direction, it has been categorically observed that a person having bachelor's degree from a recognized University and who is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the State Commission. Similarly, a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the District Commissions. It is thus clear that the said directions are in the context of Rule 3(2)(b) of the Rules of 2020 that have been struck down. It has been observed that "till the suitable amendments are made in the Rules of 2020" the directions as issued are to operate.

14. It is not in dispute that after the Act of 2019 came into force, the Rules of 2020 were enacted. The challenge to Rules 3(2)(d) and 4(2)(c) of the Rules of 2020 pertains to appointment of Members of the State Commission and District Commission from persons of ability, integrity and

standing having professional experience as prescribed under the said Rules. Perusal of the judgment in *The Secretary, Ministry of Consumer Affairs* (supra) in its entirety indicates that the Hon'ble Supreme Court was concerned only with the conditions of eligibility for appointment of non-judicial members on the State Commission and District Commission. It is in that context that it has been observed that though in the earlier Rules including the Rules of 2019 a written examination of 200 marks had been contemplated, the same had been done away with in the Rules of 2020. This was notwithstanding the fact that the mechanism of having a written examination had been confirmed earlier by the Hon'ble Supreme Court. It is in this context that the directions issued under Article 142 of the Constitution of India in the aforesaid judgment would have to be construed. The validity of Rule 3(2)(a) was not the subject matter of challenge or consideration before the Hon'ble Supreme Court. The directions issued under Article 142 of the Constitution of India are to operate only till such time suitable amendments are made in Rule 3(2)(b) and Rule 4(2)(c) of the Rules of 2020 that were struck down. It is thus clear that the intent and purport of the directions issued under Article 142 of the Constitution of India relate only to the appointment of non-judicial members to be made on the basis of performance in the written test consisting of two papers.

15. In the light of aforesaid discussion, it is held that the advertisement issued by the respondent is restricted to the qualification

criteria prescribed in the notice annexed to the advertisement dated 23.05.2023 which pertains to the appointment on the post of Member, State Consumer Disputes Redressal Commission of a non-judicial candidate. The said advertisement and note annexed to it shall be read in the light of directions issued under Article 142 of the Constitution of India so as to occupy the field in place of Rule 3(2)(b) of the Rules of 2020 that has been struck down. The candidature of the petitioner shall be considered in accordance to Rule 3(2)(a) of the Rules of 2020. Rule is disposed of in aforesaid terms with no order as to costs.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

APTE

At this stage, the learned counsel for the respondent pray that the effect and operation of the judgment be stayed for a period of eight weeks. This request is opposed by the learned counsel for the petitioner.

Considering the facts of the case, the judgment delivered today shall operate after a period of four weeks from today.

(MRS. VRUSHALI V. JOSHI, J.)

(A.S. CHANDURKAR, J.)

APTE