

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10067 of 2024

1. Raghupati Singh Son of Ram Narayan Rajput permanent resident of village Kulhurua, P.O.- Janish Nagar, P.S.- Ajitmal, District- Auraiya (Uttar Pradesh)-206121, presently posted as President, Consumer Disputes Redressal Commission, Nalanda.
2. Sarbjeet son of Late Dhanpal permanent resident of House No. 145, Atayar, P.O. and P.S.- Kanwal Majhgawa, Gorakhpur, (Uttar Pradesh)-273411, presently posted as President, Consumer Disputes Redressal Commission, Begusarai.
3. Kishore Kumar Sinha son of Late Kamleshwari Prasad permanent resident of Mohalla- Shastri Nagar, P.O. and P.S. - Jamui (Bihar)-811307, presently posted as President, Consumer Disputes Redressal Commission, Purnea
4. Surendra Prasad Pandey son of Late Sharda Prasad Panday permanent resident of village- Newaj Chhapra P.O. and P.S.-Pipra Bazar Nauragiya, District Kushinagar (Uttar Pradesh), presently posted as a President, Consumer Disputes Redressal Commission, Motihari.
5. Subhas Chand Son of Late Mohit Ram permanent resident of village Bankatiya, P.O. Bhaijala, P.S.- Sahajanwa, District- Gorakhpur (Uttar Pradesh) 237209 presently posted as a President, Consumer Disputes Redressal Commission, Saharsa.
6. Gautam Kumar Jha Son of Anirudh Jha permanent resident of village Kothiya, P.O.- Mahadeopur, P.S.- Amarapur, District - Banka (Bihar) 813101 presently posted as a Member, Consumer Disputes Redressal Commission, Purnea

... .. Petitioner/s

Versus

1. The Union of India through its Secretary, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi.
2. Secretary, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, New Delhi.
3. The State of Bihar, Bihar
4. Principal Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.



5. Secretary, Food and Consumer Protection Department, Government of Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Rajendra Narain, Sr. Advocate
Mr. Anant Kumar Sinha, Advocate
Mrs. Anju Kumar, Advocate
For the Respondent/s : Dr. K. N. Singh, Additional Solicitor General
Mr. Anshuman Singh, Sr. SC, CGST & CX

**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER**

(Per: HONOURABLE THE CHIEF JUSTICE)

2 04-07-2024 The writ petition is concerned with the Consumer Protection (Qualification for Appointment, Method of Recruitment and Procedure of Appointment, Term of Office, Resignation and Removal of The President And Members of the State Commission and District Commission) Rules, 2020 (for brevity “Rules of 2020”). The said rules were challenged before the High Court of Bombay inter alia against Rule 6(1) and Rule 10 of the Rules of 2020.

2. The High Court of Bombay by a common judgment in analogous cases by Annexure-P3 made the following directions. We extract paragraph 31 of the said judgment hereunder :-

31. In the light of aforesaid discussion, the following order is passed :-

(A) Rule 6(1) of the Rules of 2020 is struck down on the ground that the same results in diluting the involvement of



the judiciary in the process of appointment of the President and members of the State Commission and the District Commission. The said Rule is against the spirit of the decision of the Constitution Bench in *Rojer Mathew (supra)*.

(B) Since Rule 6(1) of the Rules of 2020 has been struck down the notifications dated 10.04.2023 and 13.06.2023 would not survive.

(C) Rule 10(2) of the Rules of 2020 to the extent it prescribes the tenure of the members of the State Commission and the President and members of the District Commission to be four years is struck down as not being in consonance with the spirit of the law laid down in the *Madras Bar Association III (supra)*.

(D) Since re-appointment of members of the State Commission and the President as well as members of the District Commission under Rule 10(2) of the Rules of 2020 is on the basis of recommendation to be made by the Selection Committee and as Rule 6(9) of the Rules of 2020 has been struck down in *Vijaykumar Bhima Dighe (supra)*, till the time Rule 6(9) of the Rules of 2020 is suitably amended the Selection Committee can consider following the procedure for the appointment of members of the State Commission and the President as well as members of the District Commission by taking into consideration the procedure that was prevailing vide Rule 8(18) of the Rules of 2019.

(E) The notice issued by the Department of Food, Civil Supplies and Consumer Affairs alongwith the advertisement dated 23.05.2023 in relation to Paper-II is held to be without jurisdiction. Consequently, it would be necessary for the Department to re-conduct the test in Paper-II by following the directions issued by the Hon'ble Supreme Court under Article 142 of the Constitution of India in *The Secretary, Ministry of Consumer Affairs (supra)*.

(F) In view of the decision in *Suhas Milind Untwale Versus The State of Maharashtra [Writ Petition No. 3756 of 2023]* decided today, it is held that the notice annexed to the advertisement dated 23.05.2023 that pertains to the appointment on the post of Member, State Commission would be applicable only to a candidate seeking appointment in terms of Rule 3(2)(b) and not a candidate seeking appointment in terms of Rule 3(2) (a)



of the Rules of 2020.

The said judgment was challenged before the Hon'ble Supreme Court, wherein Annexure-P4 series of orders were passed. As per order dated 21.05.2024, as an interim measure, those of the applicants who were still in service were directed to be continued in service till further orders.

3. By order dated 27.06.2024, which was handed over to us across the Bar, the following order is extracted hereunder:-

We have perused the interim order dated 10th November, 2023. We make it clear that the benefit of the interim order will be available to those Presidents/Chairpersons and Members who were actually in service on the date of the impugned judgment i.e., 20th October, 2023 provided their second term has not expired. We make it clear that the benefit of interim relief granted vide order dated 10th November, 2023 will not be available to those who have completed their second term. We also make it clear that those who are yet to complete their second term, may complete it in terms of the interim order. But they will cease to be the Presidents or Members, as the case may be, immediately on completion of their second term. In short, no one is entitled to continue for the third term/extension on the basis of the interim order of this Court.

4. It is in this context that the learned Senior Counsel appearing for the petitioners, who are holding the post of President and Member of the various District Commissions



have approached this Court for continuation of their tenure. It is also submitted that all of them are in their first term.

5. Learned Advocate General, however, submits that there is no direction that the persons whose first term has expired, should be continued in the second term since that is the prerogative of the Government. It is also pointed out that Rule 10 has been interfered with only to the extent it prescribes the tenure of the members of the State Commission to be of 4 years but does not interfere with the maximum age limit, which is 65 years. It is pointed out that 5 of the petitioners herein would reach the age of 65 years in this year itself and one in the next year.

6. Having perused the orders of the Hon'ble Supreme Court, especially the order dated 27.06.2024, we are of the opinion that even those whose first term had expired, could be continued especially since it would be in the better interest of the justice delivery system and otherwise the post will remain vacant and litigations would pile up. The Hon'ble Supreme Court, in its order had specifically restrained the Courts from continuing the incumbent Presidents, Chairpersons and Members after the second term has also expired. In the above circumstances, we are of the opinion that the petitioners, who



are in their first term can be continued but subject to the condition that they will be continued only up to the maximum age of 65 years.

7. The writ petition stands disposed off since nothing survives for consideration, especially when the Hon’ble Supreme Court is seized of the challenge raised herein.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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