

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 18289 of 2023**

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Bibha Kumari Sinha W/o Rakesh Kumar, R/o Lawkush Vihar, Mahesh Nagar,  
P.S. - Keshari Nagar, Dist. - Patna, Ex-Member Consumer Dispute Redressal  
Commission, Jahanabad, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Food and Consumer Protection  
Department Government of Bihar, Old Secretariat, Patna - 1.
2. The Secretary, Food and Consumer Protection Dept. Government of Bihar,  
Old Secretariat, Patna - 1.
3. The Special Secretary, Food and Consumer Protection Department Govt. of  
Bihar, Old Secretariat, Patna - 1.
4. The Law Secretary cum Law Advisor, Law Dept, Government of Bihar, Old  
Secretariat, Patna - 1.

... .. Respondent/s

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**Appearance:**

For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate  
For the Respondent/s : Mr. Amit Prakash (GA- 13)

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**ORAL JUDGMENT**

**Date: 03-09-2024**

The present writ petition has been filed for  
quashing the letter dated 22.06.2023, issued by  
the Special Secretary, Food & Consumer Protection  
Department, Government of Bihar i.e. the



respondent no. 3, whereby and whereunder the request of the petitioner for extension of her services has been rejected. It is further prayed that the respondents be directed to grant statutory extension by way of re-appointment of the petitioner for another term of four years as a Member of the District Consumer Dispute Redressal Commission, Jehanabad.

2. The brief facts of the case, according to the petitioner, are that the petitioner was appointed as Female Member of the District Consumer Forum, Jehanabad vide notification dated 09.05.2018 for a term of five years i.e. up to 13.05.2023, whereafter the petitioner had submitted her joining and had worked satisfactorily till the expiry of her term. In the meantime, the Consumer Protection (Qualification for appointment, Method of recruitment, procedure of appointment, Terms of office, resignation and removal of the President & Members of the State Commission and District Commission) (Amendment) Rules, 2022 was notified for the purposes of amending Rule 10 of



the Rules, 2020 and the amended Rule 10 stipulates that every member of the District Commission shall be eligible for re-appointment for another term of four years subject to age limit of 65 years. Hence, the petitioner had also made a representation before the Minister, Food & Consumer Protection, Government of Bihar on 15.04.2023, since her tenure was to expire on 13.05.2023, for extension of her services for another term. Thereafter, the petitioner had filed an application on 10.05.2023, before the Secretary, Department of Consumer Protection, Government of Bihar, Patna requesting for extension of her tenure in the District Consumer Forum, Jehanabad for another four years, however, the same has been rejected by the impugned letter dated 22.06.2023, issued by the respondent no. 3.

3. The learned counsel for the petitioner has submitted that the Hon'ble Apex Court by an order dated 27.06.2024 passed in **SLP (C) No. 25612 of 2023 (Ganeshkumar Rajeshwarrao Selukar & Ors. vs. Mahendra Bhaskar Limaye & Ors.)** has



held that the benefit of the interim order dated 10.11.2023 will be available to those Presidents/Chairpersons and Members who were actually in service on the date of the impugned judgment i.e. 20<sup>th</sup> October, 2023, passed by the High Court of Judicature at Bombay at Nagpur, provided their second term has not expired, hence in the present case since the petitioner was yet to start her second term, she is required to be granted extension. The learned counsel for the petitioner has also relied on a judgment dated 04.07.2024, passed by the Ld. Division Bench of this Court in the case of **Raghupati Singh & Ors. vs. The Union of India & Ors. (CWJC No. 10067 of 2024)**, to submit that it has been directed therein that even those whose first term has expired can be continued in service, thus the case of the petitioner is required to be considered for extension of her service.

4. *Per contra*, the learned counsel for the respondent-State has submitted, by referring to the counter affidavit filed in the present case, that the



petitioner was appointed vide Notification dated 09.05.2018. Thereafter, the new Consumer Protection Act, 2019 came into force with effect from 09.08.2020 and by virtue of Section 107 (1) of the Consumer Protection Act, 2019, the old Consumer Protection Act, 1986 has stood repealed. In light of Section 101 of the Consumer Protection Act, 2019, the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President & Members of the State Commission and District Commission) Rules, 2020 (herein after referred to as the "Rules, 2020"), came into force on 20.07.2020. Rule 6 of the Rules, 2020 provides for the procedure for selection of the President and Members of the State Commission. Therefore, all the new appointments on the post of President as well as Members of the District Consumer Forum as also that of the State Commission are required to be made in terms of the Consumer Protection Act, 2019 and the Rules, 2020, as amended by the Consumer Protection



(Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of the President & Members of the State Commission and District Commission) Amendment Rules, 2023 (herein after referred to as the “Amendment Rules, 2023”), hence the petitioner is required to fulfill the eligibility criteria mentioned therein and moreover, there is no provision in the Rules, 2020/Amendment Rules, 2023 to continue/ reappoint/grant extension to a serving President or Member. In fact, as per the provision contained in the amended Rule 6(9) of the Consumer Protection Rules, 2020/Amendment Rules, 2023, the Selection Committee is required to determine its procedure for making its recommendation, keeping in view the requirements of the State Commission or the District Commission as also taking into account the suitability, record of past performance, integrity and adjudicatory experience of the candidates apart from short-listing the applicants on the basis of their performance in the written Test and Viva Voce.



5. The learned counsel for the respondent State has submitted that the Hon'ble Apex Court, in the case of ***The Secretary, Ministry of Consumer Affairs Vs. Dr. Mahindra Bhaskar Limiye and Ors.*** (Civil Appel No. 831/2023), has held that under the provision of Rules, 2020/ Amendment Rules, 2023, the concerned authority/government will conduct the written examination of 200 marks and hold viva voce for selection of the President and Members of the State Consumer Commission as well as for selection of the President and Members of the District Consumer Forum and selection will be made on the basis of performance in the written examination/ viva voce. Thus, the Hon'ble Apex Court has held that new appointments, against the post of President, Members of the State Consumer Commission as well as President and Members of the District Consumer Forum will be made on the basis of the provisions contained in the Rules, 2020/ Amendment Rules, 2023. It is further submitted by the learned counsel for the respondent-State that



the respondent-Department had sought an opinion from the Law Department with regard to the extension of the term of the petitioner/reappointment of the petitioner on the same post, in light of the judgment dated 03.03.2023, passed by the Hon'ble Apex Court in the case of **Secretary, Ministry of Consumer Affairs Vs. Dr. Mahindra Bhaskar Limiye & Ors.** (Civil Appeal No. 831 of 2023), whereafter, the respondent-Department had considered the claim of the petitioner, in light of the judgment dt. 03.03.2023, passed in the case of **Dr. Mahindra Bhaskar Limiye and Ors.** (Supra) as well as taking into account the opinion of the Law Department, Govt. of Bihar, Patna, whereupon, it has been decided that the claim of the petitioner for re-appointment is not tenable in the eyes of law, hence vide letter no. 2737 dated 22.06.2023, the claim of the petitioner has been rejected.

6. In fact, in the case of "Inaction of the Government in Appointing President and Members/ Staff of District and State Consumer Disputes



Redressal Commission and Inadequate Infrastructure Across India Vs. Union of India” (Suo Moto Writ Petition (Civil) No(s). 2/2021), the Hon'ble Apex Court has held that the appointment on the post of President/Members of State Consumer Commission as well as President/Members of District Consumer Forum will be made only on the basis of Rules, 2020/ Amendment Rules, 2023. Lastly, it is submitted that on 09.01.2024 the meeting of the Selection Committee, under the Chairmanship of Hon'ble Mr. Justice Ashutosh Kumar, Hon'ble Judge, Patna High Court, had been convened and the Selection Committee has taken the following decisions:-

*(a) The Committee recommends the State Government, through the Food and Consumer Protection Department to notify and accept the amendment made through Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of appointment, Terms of office, Resignation and Removal of the President and Members of the State Commission and District Commission) Rules, 2023 vide the Govt of India Notification GSR No. 681 dated 22.09.2023.*



*(b) The Department will consult with Bihar Public Service Commission, Bihar Technical Service Commission and Bihar Combined Entrance Competitive Examination Board priority-wise to conduct the written examination and if possible, Viva Voce also, for appointment of President and Members. In case of non-availability of such government agency, other non-government exam conducting agencies may be considered.*

*After Selection of agency the department will intimate the vacant posts of President and Members to Agency for advertisement for seeking the application and conduct of tests.*

*(c) It was unanimously resolved that as per the opinion of the Law Department, any fresh appointment or re- appointment after direction of the Hon'ble Supreme Court dated 03.03.2023 will be made on the basis of written exam and viva voice both, as laid down by the Hon'ble Supreme Court. The Selection Committee confirm the action taken by the Food and Consumer Protection department for rejecting the applications received for reappointment and also authorized the department to dispose of the other applications being received for reappointment in the said manner.*

*(d) It was also resolved that process of appointment against vacancies,*



*existing/resulting/ anticipation in next six months, if any, after obtaining an updated report from the State Commission or determination by the department be also conducted by issuing an advertisement accordingly.*

7. I have heard the learned counsel for the parties and perused the materials on record. Admittedly, the Hon'ble Apex Court in the case of ***Mahendra Bhaskar Limaye & Ors.*** (supra) has held that the concerned authority/Government will conduct the written examination of 200 marks for making selection of President and Members of the State Consumer Commission as also that of the District Consumer Forum and their appointment shall be made on the basis of performance in the written examination as also it has been observed that new appointments will be made only on the basis of the provisions contained in the Rules, 2020/ Amendment Rules, 2023. In fact, the Hon'ble Apex Court in the case of ***Inaction of the Government in appointing President and Members/Staff of District & State Consumer Disputes Redressal Commission and***



***Inadequate Infrastructure across India*** (supra) has held that the appointment against the post of President and Members of the State Commission as also that of the District Consumer Forum will be made only in accordance with the Rules, 2020/ Amendment Rules, 2023. Thus, it is clear that fresh appointments/ re-appointments are to be made only as per the provisions contained in the Rules, 2020/ Amendment Rules, 2023 and on the basis of the performance of the candidates in the written exam and viva voce. It is also apparent that the Rules, 2020/ Amendment Rules, 2023 do not provide for extension of the term of a President/ Members, either of the State Commission or of the District Consumer Forums, after their tenure has lapsed.

8. Now, coming to the order referred to by the learned counsel for the petitioner, passed by the Hon'ble Apex court, in the case of ***Mahendra Bhaskar Limaye & Ors.*** (supra), it would be appropriate to first reproduce paragraph no. 10 of the order dated 10.11.2023, passed by the Hon'ble



Apex Court herein below:-

*“10. Appointments were made by the State Government on 5 October 2023 after the judgment was reserved by the High Court on 01 September 2023 but before it was pronounced on 20 October 2023. Since the persons who are working at present would stand to be removed as a consequence of the impugned judgment of the High Court, we direct that the interim stay which was granted by the High Court shall continue to remain in operation till 24 November 2023.”*

9. At this juncture, it would also be relevant to reproduce the relevant portion of the order dated 27.06.2024, passed by the Hon’ble Apex Court in the case of **Mahendra Bhaskar Limaye & Ors.** (supra) herein below:-

*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.*

*We further make it clear that in the case of Presidents / Members whose appointments were terminated and who have filed writ petitions before the High Court, it will be open for the High Court to decide their petitions in accordance with law. We make it clear that the observations made in this order are only for the purposes of considering and disposing of the prayer for interim relief.*

*List the matters on 15th July, 2024 for directions before an appropriate Bench.*

10. Now, it would be pertinent to refer to the observation made by the learned Division Bench of this Court in the case of **Raghupati Singh & Ors.** (supra) vide order dated 04.07.2024, paragraphs no. 6 & 7 whereof are reproduced herein below:-

*“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."*

11. A bare perusal of the interim order dated 10.11.2023 and the one dated 27.06.2024, passed by the Hon'ble Apex Court in the case of **Mahendra Bhaskar Limaye & Ors.** (supra) would show that the benefit of the interim order shall inure to such Presidents/Members of the State Consumer Commission/ District Consumer Forum, who were actually in service on the date of impugned judgment i.e 20.10.2023, however, in



the present case the tenure of the petitioner had already stood expired on 13.05.2023, hence the petitioner cannot derive any benefit from the aforesaid orders, passed by the Hon'ble Apex Court, which in any view of the matter would not be applicable in the case of the petitioner. As far as the order passed by the learned Division Bench of this Court in the case of **Raghupati Singh & Ors.** (supra) is concerned, the same opines that since the petitioners of the said case are in their first term, they can be continued but subject to the condition that they will be continued only up to the maximum age of 65 years, however, in the present case the tenure of the petitioner had expired, more than a year back i.e. on 13.05.2023, hence the petitioner cannot derive any benefit out of the said order dated 04.07.2024 as well, thus she has got no case, whatsoever, more so in view of the deliberations made in the preceding paragraphs and the contentions put forth by the respondents, as have been discussed herein above.

12. Having regard to the facts and circumstances



of the case, and for the foregoing reasons, I do not find any merit in the present writ petition, hence the same stands dismissed.

**(Mohit Kumar Shah, J)**

S.Sb/-

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