

(2008) 12 MAD CK 0055

In the Madras High Court

Case No : Writ Petition No's. 18731, 21495 and 21504 of 2008 and M.P. No's. 1 to 7, 1, 2 and 1 to 5 of 2008

Anna Mathew and Others

APPELLANT

Vs

N. Kannadasan Presiding Officer, Tamil Nadu State Consumer Disputes Redressal Commission, The Government of Tamil Nadu, The Union of India (UOI) and The Registrar General

R. Jaikumar and Others Vs High Court of Judicature at Madras and N. Kannadasan Presiding Officer, Tamil Nadu State Consumer Disputes Redressal Commission
Ajoy Khose, M. Muthupandian, R. Kamatchi Sundaresan and V. Porkodi Vs N. Kannadasan Presiding Officer, Tamil Nadu State Consumer Disputes Redressal Commission and Others

RESPONDENT

Date of Decision : 12-12-2008

Acts Referred:

Advocates Act, 1961 — Section 49(1)
Bar Council of India Rules, 1975 — Rule 10(1), 7
Constitution of India, 1950 — Article 124, 124(4), 132(1), 133(1), 134A
Consumer Protection Act, 1986 — Section 16, 16(1), 20(1), 30
Government of India Act, 1935 — Section 2, 222(3)

Citation : (2009) 1 LW 87

Hon'ble Judges : P.K. Misra, J;A. Kulasekaran, J

Bench : Division Bench

Advocate : R. Vaigai, in W.P. Nos. 18731 and 21495/2008 and T. Mohan, in WP. No. 21504/2008, for the Appellant; Ranjeet Kumar for Sathish Parasaran, for Respondent-1 in WP. Nos. 18731 and 21504/2008 and R-2 in WP. No. 21495/08, P.S. Raman, A.A.G. assisted by M. Dhandapani, for Respondent-3 in WP. Nos. 18731 and 21504/2008, A.S. Vijayaraghavan, ACGSC for Respondent-4 in WP. Nos. 18731 and 21504/2008 and R. Muthukumarasamy for A. Jeenasenan, for Respondent-5 in WP. Nos. 18731, 21504/2008 and R-1 in WP. No. 21495/2008, for the Respondent

Judgement

P.K. Misra, J.—W.P. No. 18731 of 2008 has been filed by several Advocates for issuing a Writ of Quo Warranto questioning the legality

and validity of the appointment of Respondent No. 1 as the President of the State Consumer Disputes Redressal Commission. Initially in such writ

petition, the Honourable the Chief Justice of the Madras High Court, was impleaded as Respondent No. 2, but, at the time when the matter was

taken up for admission, counsel for the petitioners deleted the Honourable the Chief Justice from the array of the respondents.

2. W.P. No. 21495 of 2008 has been filed by some other Advocates for issuing a writ of Declaration that the decision taken by the Full Court of

the Madras High Court on 11.7.2008 is unconstitutional and non-est.

3. W.P. No. 21504 of 2008 has been filed by some other practicing Advocates for issuing a writ of Declaration that G.O.Ms. No. 144 dated

26.7.2008, appointing Respondent No. 1 as the President of the State Consumer Disputes Redressal Commission as illegal and unconstitutional.

4. All these writ petitions have been heard together and shall be disposed by the present common judgment. The primary question is relating to

validity of appointment of Respondent No. 1 as the President of the State Consumer Disputes Redressal Commission (hereinafter referred to as

the ""Commission"").

5. Bereft of unnecessary and sordid details, the main allegations made in W.P. No. 18731 of 2008, seeking for the issuance of a writ of Quo

Warranto are to the effect that Respondent No. 1 was appointed as Additional Judge for a period of two years, there was no confirmation or

further extension and, therefore, in the context of the decision of the Supreme Court in S.P. Gupta Vs. President of India and Others, , the first

respondent's continuance as a Judge was considered to be against public interest on the tests of intellectual and moral requirement. Since

Respondent No. 1 had not challenged his non-appointment as Judge after 5.11.2005, the opinion expressed by the Chief Justice of India and the

Collegium of the Supreme Court had become final. Under the above circumstances, the petitioners have raised several contentions regarding the

legality and validity of the appointment of Respondent No. 1 as President of the Commission by posing specifically the following questions:

i) Whether the earlier recommendations of the Constitutional functionaries under Article 217, viz. the Chief Justice of the High Court and the Chief

Justice of India and the Collegium of the Supreme Court and of the Central

Government that a person should not be considered as a Judge on grounds of unsuitability and as being public interest, are not vital and decisive considerations that should weigh with the Chief Justice of the High Court in considering the same person for appointment to any judicial office under the Consumer Protection Act, 1986 or any other similar offices in other Tribunals & Commissions ?

ii) Since an independent and fair judiciary is part of the basic structure of the Constitution of India, can a person found wanting in the necessary

intellectual and moral requirements to be a Judge, be considered again for any other judicial office ?

iii) If the Government considers and appoints such a person to any judicial office, would it not amount to interfering with the independence of the

judiciary contrary to Article 50 of the Constitution of India ?

iv) Whether the expression ""is or has been a Judge of the High Court"" in Section 16 would include even a Judge, who had demitted office on

account of impeachment or unsuitability to hold a judicial office ?

v) Whether an Additional Judge can be considered as a retired Judge to be eligible for appointment to judicial offices in various Tribunals and

Commissions ?

In such writ petition, various averments have been made touching upon the alleged lack of integrity and honesty on the part of Respondent No. 1,

but we do not think it is necessary to recount those allegations in detail.

6. The allegations in W.P. No. 21504 of 2008, filed by a different set of practising Advocates, are substantially similar, but the prayer is slightly

different in the sense that instead of praying for issuance of a writ of Quo Warranto, the prayer is for declaration that G.O.Ms. No. 144, dated

26.7.2008, is illegal and ultra vires of the Constitution of India.

7. In these two writ petitions, the appointment of the first respondent has been challenged on the ground that the first respondent is ineligible to be

considered. The legality of the recommendation made by the Honourable the Chief Justice has also been questioned by alleging that an Additional

Judge, who has not been confirmed, particularly on the basis of allegations touching upon the integrity and honesty, cannot be considered as eligible

to hold any other post requiring exercise of judicial or quasi-judicial power. In

this context, it is also contended that an Additional Judge, who had demitted the office because of the expiry of the term, cannot be considered as "retired Judge" so as to become eligible. It is further stated that the Honourable the Chief Justice's recommendation has been very much clouded by the resolution of the Full Court and amounts to abdication of statutory and constitutional duties. The non-compliance with the provisions contained in the Consumer Protection Act is also highlighted.

8. The allegations in W.P. No. 21495 of 2008 are to the effect that the question as to whether Respondent No. 1 could be considered as a retired Judge was not a matter required to be placed before the Full Court and, therefore, the resolution of the Full Court must be taken to be non-est.

The prayer is to quash such resolution.

9. A counter affidavit has been filed by Respondent No. 1 in W.P. No. 18731 of 2008. Even though no separate counter affidavits have been filed in the two writ petitions, which had been filed subsequently, since all the matters have been taken together and the allegations are substantially similar, it can be assumed that Respondent No. 1 did not have any further counter affidavit to be filed in the two connected writ petitions.

9.1 In the counter affidavit filed on behalf of Respondent No. 1, the contentions raised by the petitioners have been refuted. It has been indicated that the petitioners in W.P. No. 18731 of 2008 have an axe to grind against Respondent No. 1, as the latter, while he was an Advocate for Chennai Corporation and Tamil Nadu Housing Board, had made sincere efforts to defend many cases, which was not to the liking of the petitioners, who were the Advocates in those cases, and because of such past animosity such writ petition has been filed.

10. As already noticed, the Honourable the Chief Justice, even though originally arrayed as Respondent No. 2 in W.P. No. 18731 of 2008, has been subsequently deleted from such array. However, in W.P. No. 21504 of 2008, the Honourable the Chief Justice has been arrayed as Respondent No. 2.

10.1 Papers containing the recommendation as well as the relevant papers relating to Full Court's resolution have been produced through Mr. Muthukumaraswamy, Senior Counsel, appearing for the Registrar General of the High Court. However, no formal counter has been filed by the

Registrar General.

11. Counter affidavit has been filed on behalf of the State Government (Respondent No. 3 in W.P. No. 21504 of 2008) and papers relating to correspondence with the High Court have also been produced.

11.1 In the counter affidavit filed by the State, it has been indicated that on the basis of the recommendations made by the Honourable the Chief

Justice, Respondent No. 1 has been selected and appointed as it had been found that Respondent No. 1 alone could have served the entire tenure

of five years inasmuch as other two persons included in the panel of recommendation of the Honourable the Chief Justice having already crossed the age of 62, would have continued only for a lesser period.

12. A reply affidavit has been filed in W.P. No. 18731 of 2008 reiterating the contentions. Subsequently, a further affidavit has been filed touching upon the notes prepared by the Registry for sending the panel.

13. On the basis of the averments made in the various writ petitions and the counter affidavits and the files produced by the State Government and the High Court, the following undisputed facts can be culled out.

14. Respondent No. 1 was appointed by the President of India as an Additional Judge of the Madras High Court in exercise of power conferred

under Article 224(1) of the Constitution of India for a period of two years from the date of assumption of office. Respondent No. 1 assumed office

on 6.11.2003. Since there was non-extension of his term, Respondent No. 1 ceased to be an Additional Judge with effect from 6.11.2005.

Subsequently, Respondent No. 1 apparently renewed his licence as an Advocate and thereafter appointed as Additional Advocate General of the

State Government with effect from 5.11.2006. Since there was some doubt in the Registry of the Madras High Court as to the entitlement of

Respondent No. 1 regarding pensionary and other benefits available to a retired Judge, a query had been made on 5th April, 2006. It appears that

the Government of India by its letter dated 29.3.2007 indicated that Respondent No. 1 was not entitled to pension since he was only an Additional

Judge of the High Court. However, it was indicated that he would be entitled to medical benefits as per the relevant rules as applicable to any

retired Judge of the High Court. On the question as to whether Respondent No. 1 was eligible for being appointed as Presiding Officer/ Chairman

of the Commission / Tribunal, the letter indicated that such aspect would depend upon the provisions contained in a particular statute. On

24.5.2008, Respondent No. 1 made a representation to the Registry with reference to the Central Government letter dated 29.3.2007, by stating

that ""his name may be included in the list of retired/former Judges of Madras High Court, so as to enable him for being considered for appointment

to the post of Presiding Officer / Chairman of Commissions / Tribunals, etc"". On 30.5.2008, Respondent No. 3, the State Government, wrote a

letter to Respondent No. 5, the Registrar General of the Madras High Court, to forward a panel of eligible names of the retired High Court Judges,

after the approval by the Honourable the Chief Justice for being considered for the office of the President of the Commission. Subsequently, a

reminder was received on 19.6.2008.

14.1 In the meantime, the letter of request sent by Respondent No. 1, on the basis of the endorsement made by the Honourable the Chief Justice,

on 14.6.2008, was placed before the Full Court of the High Court as Subject No. 6 ""for inclusion of N. Kannadasan's name in retired Judges"

panel"". The Full Court minutes indicate as against the said subject as ""Discussed and noted"". On 19.6.2008, a further reminder came from the

State Government and, subsequently, on 2.7.2008, a similar reminder came relating to sending of the panel. On 11.7.2008, the Full Court of the

Judges sitting at the Principal Bench of the Madras High Court at Madras was apparently convened and the minutes of such Full Court indicate

resolved to include N. Kannadasan as one of the retired Judges of the High Court and in the records of the Registry"".

14.2. The Registry prepared a note for the purpose of sending the names for appointment as the President of the State Consumer Disputes

Redressal Commission. It appears that the Section Officer prepared a note on 14.7.2008 and the Registrar Administration endorsed the same.

However, the date put by the Registrar Administration on such note is 15.6.2008. The Honourable the Chief Justice in his own hand had made a

note to the following effect:

I send the panel of three retired Judges of this Hon''ble Court

1. Justice A.R. Ramalingam

2. Justice M. Thanikachalam

3. Justice N. Kannadasan

The date put under the signature is 16.6.2008. [It may be that wrong dates have been inadvertently put by the Registrar Administration as well as

the Honourable the Chief Justice and the correct dates should be treated as ""15.7.2008 and 16.7.2008"" respectively instead of ""15.6.2008 and

16.6.2008"". At any rate, Ms. Vaigai, the learned Counsel for the petitioners has fairly stated that there must have been an inadvertent mistake

while appending the date below the signature]. The recommendation made by the Honourable the Chief Justice was sent on 16.7.2008 to the State

Government, which in its turn selected Respondent No. 1 for appointment as the President of the State Consumer Disputes Redressal Commission

and G.O.Ms. No. 144, dated 26.7.2008, was issued. It is also not in dispute that Respondent No. 1 assumed the office as the President of the

Commission on 28.7.2008.

15. On the basis of the averments made in the petition and the counter affidavits and on the basis of the submissions made by the counsels

appearing at the time of hearing, the following main questions arise for consideration:

(1) Whether Respondent No. 1 was ineligible to be appointed as the President of the State Consumer Disputes Redressal Commission?

(2) Whether the requirement of consultation with the Honourable the Chief Justice had been fulfilled ?

(3) Whether the appointment of Respondent No. 1 can be declared illegal and invalid on the ground that such appointment was against public

interest?

(4) Whether the resolution of the Full Court resolving that Respondent No. 1 may be considered as a retired Judge is legal and valid ?

QUESTION No. 1 - Regarding Eligibility

16. The first writ petition, namely, W.P. No. 18731 of 2008, is for issuing a writ of quo warranto. The other connected writ petition, namely, W.P.

No. 21504 of 2008, is filed as a public interest litigation for declaring G.O.Ms. No. 144, dated 26.7.2008, as illegal and ultra vires of the

Constitution and the Consumer Protection Act. Though prayer in such writ petition is couched differently, essentially such writ petition can also be

construed as a writ of quo warranto or any other appropriate writ similar to a quo

warranto. Therefore, before delving into the questions raised in these writ petitions, it may be appropriate to examine the scope of such proceedings.

17. A writ of quo warranto is issued against a holder of a public office to show under what authority such public office is held by the person concerned. It is a judicial remedy against an intruder or usurper of such public office which raises the question to such person "where is your warrant of appointment by which you are holding this office?" In Corpus Juris Secundum, "Quo warranto" is defined as:

Quo warranto is a proceeding to determine the right to the exercise of a franchise or office and to oust the holder if his claim is not well founded, or if he has forfeited his right.

In Halsbury's Laws of England, the scope of quo warranto has been explained thus:

An information in the nature of quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise or liberty, to enquire by what authority he supported his claim, in order that the right to the office or franchise might be determined.

18. Though initially a writ of quo warranto was being issued by Chancery Court as a matter of right in favour of the Crown against an usurper of public office, in course of time, its scope has widened and in appropriate cases such writ has been issued at the instance of the person who is a rival claimant for a public office and even at the instance of a third party or a member of the public. Since a writ of quo warranto is an extra-ordinary remedy and considered to be a high prerogative writ, it is expected to be exercised sparingly with utmost care, caution and circumspection. Though the locus of the petitioner in such a writ is not examined as minutely as in some other writs, the court is expected to inquire into the motives and conduct of the applicant and the question of public interest likely to be served or damaged by granting or refusing the prayer.

The above seems to be the traditional view of a quo warranto as applicable as a common law remedy as enforced in United States of America and England.

19. There is some controversy relating to width and amplitude of the quo

warranto so far as the Indian Courts are concerned. Some High Courts have taken the view that the scope of issuing a writ of quo warranto or a writ in the nature of quo warranto may be wider in the Indian context, keeping in view the width of and the language contained in Article 226 of the Constitution of India.

20. For the purpose of the controversy now raised, we would prefer to travel a middle path by observing that the Indian Courts need not follow

the very narrow and technical meaning adopted by the American and British Courts by following all the procedural technicalities. In this

connection, it is appropriate to notice the decision of the Supreme Court in T.C. Basappa Vs. T. Nagappa and Another, , wherein it has been

observed as follows:

6. The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High

Courts in India extend to issuing of orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition

and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as

well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these

writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an

order or issue a writ in the nature of certiorari in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental

principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law.

21. The University of Mysore and Another Vs. C.D. Govinda Rao and Another, , Justice Gajendragadkar succinctly explained the underlying

object of quo warranto by observing as follows:

6. ... Broadly stated, the quo warranto proceeding affords a judicial enquiry in which any person holding an independent substantive public office,

or franchise, or liberty, is called upon to show by what right he holds the said office, franchise or liberty; if the inquiry leads to the finding that the

holder of the office has no valid title to it, the issue of the writ of quo warranto ousts him from that office. In other words, the procedure of quo

warranto confers jurisdiction and authority on the judiciary to control executive action in the matter of making appointments to public offices against

the relevant statutory provisions; it also protects a citizen from being deprived of public office to which he may have a right. . .

22. In *B.R. Kapur v. State of Tamil Nadu* : AIR2001SC3435 , it was laid down as follows:

79. . . . A writ of quo warranto is a writ which lies against the person, who according to the relator is not entitled to hold an office of public nature

and is only a usurper of the office. It is the person, against whom the writ of quo warranto is directed, who is required to show, by what authority

that person is entitled to hold the office. The challenge can be made on various grounds, including on the grounds that the possessor of the office

does not fulfil the required qualifications or suffers from any disqualification, which debars the person to hold such office. ...

23. In *B. Srinivasa Reddy Vs. Karnataka Urban Water Supply and Drainage Board Employees' Association and Others*, , pressed into service by

the counsel for Respondent No. 1, it was observed:

49. The law is well settled. The High Court in exercise of its writ jurisdiction in a matter of this nature is required to determine, at the outset, as to

whether a case has been made out for issuance of a writ of quo warranto. The jurisdiction of the High Court to issue a writ of quo warranto is a

limited one which can only be issued when the appointment is contrary to the statutory rules.

It was further observed:

57. It is settled law that a writ of quo warranto does not lie if the alleged violation is not of a statutory nature. . . .

24. In the above backdrop of the legal principles to be applied, the first question is whether Respondent No. 1 can be said to be eligible to be

appointed as the President of the Commission and whether provisions of the statute have been complied with? It is first necessary to refer to the

provisions contained in Section 16 of the Consumer Protection Act, 1986 (hereinafter referred to as ""the Act""). The relevant portion of such

provision is extracted hereunder:

16. Composition of the State Commission.:

(1) Each State Commission shall consist of,:

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court.

(b) not less than two, and not more than such number of Members, as may be prescribed, and one of who shall be a woman, who shall have the

following qualifications, namely:

[(i) and (ii) omitted as not necessary]

(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:

(Proviso and Explanation are omitted as not necessary)

Provided further 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 of 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. . . .

25. A perusal of Section 16(1)(a) indicates that either a sitting Judge of the High Court or a person ""who has been"" a Judge of the High Court can

be considered for being appointed as the President of the State Consumer Disputes Redressal Commission (hereinafter referred to as the

Commission""). The proviso lays down that no appointment of the President can be made except after consultation with the Chief Justice of the

High Court. The Supreme Court has clearly observed in *Shri Ashok Tanwar and Another Vs. State of Himachal Pradesh and Others*, that since a

sitting Judge or a retired Judge of the High Court is being appointed, there is no necessity to consult the Collegium of the High Court, but only the

Chief Justice of the High Court is to be consulted.

Section 16(1)(b), primarily deals with the appointment of Members of the Commission. While laying down the required qualification, it is

contemplated in Section 16(1)(b)(iii) that members shall ""be persons of ability, integrity and standing . . ."" The second proviso to Section 16(1)(b)

prescribes the disqualifications.

26. Section 16 of the Act uses the expression ""who has been a Judge"". Therefore, the relevant question is whether an additional Judge who is not

confirmed and ceases to be an additional Judge on expiry of the initial term of appointment can be considered as a ""person who has been a Judge"".

For considering the above question, one has to find out the meaning of the expression ""Judge"". In the Consumer Protection Act, 1986, such

expression has not been defined.

27. Article 217 of the Constitution provides for appointment and conditions of the office of a Judge of a High Court. Article 217(1) envisages that

every Judge of High Court shall be appointed by the President in consultation with the Chief Justice of India, the Governor of the State and the

Chief Justice of the High Court. It further provides that every Judge shall hold office, in the case of an additional or acting Judge, as provided in

Article 224, and in any other case, until he attains the age of 62 years. As per Article 224(1), the President may appoint duly qualified persons to

be additional Judges of the Court for such period not exceeding two years as may be specified. Under Article 224(2), in case a Judge of the High

Court by reason or absence or for any other reason is unable to perform his duties or is appointed to act temporarily as Chief Justice, the President

may appoint a duly qualified person to act as a Judge of that Court until the permanent Judge has resumed his duties. Article 224(3) envisages that

no additional or acting Judge of a High Court shall hold office after attaining the age of 62 years. Article 217(1) contains three provisos. As per

proviso (a), a Judge may resign his office by writing under his hand addressed to the President. Under proviso (b), a Judge may be removed from

his office in the manner provided in Clause (4) of Article 124 for the removal of a Judge of the Supreme Court. As per proviso (c), the office of a

Judge shall be vacated on his appointment as a Judge of the Supreme Court or on his being transferred to any other Court. Under Article 224-A,

which starts with a non-obstante clause, the Chief Justice of the High Court may with the previous consent of the President, request any person

who has held the office of a Judge"" of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every

such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may determine and have all the

jurisdiction, powers and privileges, but, however he shall not otherwise be deemed to be a Judge of that High Court. Article 220 envisages that

any person who has held office as a permanent Judge of a High Court cannot plead or act in any court or before any authority in India except the

Supreme Court and the other High Courts. Article 221 provides regarding salaries and other allowances of a Judge. Article 222 enables the

President of India to transfer a Judge from one High Court to another, of course after consultation with the Chief Justice of India.

28. An analysis of the aforesaid provisions makes it clear that there is no distinction between a permanent Judge and an additional Judge in the

method of appointment or in their emoluments. Similarly and obviously there is no distinction in the exercise of judicial power and jurisdiction. A

Judge, whether permanent or additional, may be removed from his office by following the procedure of impeachment as contemplated in Article

124(4). Similarly under Article 222, a permanent Judge or an additional Judge can be transferred from one High Court to any other High Court.

29. Thus, though there is no distinction in the method of appointment, exercise of jurisdiction and matters relating to emoluments and privileges and

even matter relating to resignation, impeachment or transfer, can it be said that an additional Judge can be equated with a permanent Judge for all

purposes?

30. Firstly, the permanent Judge holds office till he attains the age of 62 years, whereas an additional Judge holds office for the period not

exceeding two years as specified in the warrant of appointment or till he attains the age of 62, whichever is earlier. Of course there is no embargo

on fresh appointment of an additional Judge for a further term after the expiry of the previous term and similarly there is no embargo on

appointment of an additional Judge as a permanent Judge. So far as the permanent Judge is concerned, he cannot be removed from the office

except in accordance with Article 124(4) of the Constitution, whereas in respect of an additional Judge, though the procedure of impeachment can

be followed, a more practical option of not confirming such additional Judge or not extending the term of such additional Judge is very much

available. As a matter of fact, there are some instances, in recent times, where there has been non-extension of the term of an additional Judge. A

permanent Judge is prohibited under Article 220 from pleading or acting in the very same High Court or before any authority in India except the

Supreme Court and the other High Courts, whereas there is no such prohibition in respect of an Additional Judge or an Acting Judge appointed

under Article 224 of the Constitution. This, according to us, is a very significant difference in the status of a permanent Judge vis-a-vis an additional

Judge. The Constitution at least does not envisage any restriction on an additional Judge appearing or pleading before any authority in India

including the very same High Court, where a person has functioned as an additional Judge. There are many instances, including in the present case

where a former additional Judge of a High Court resuming practice before the same High Court. Even there may be instances where such former

additional Judges of a High Court have resumed their practices before other Courts and Tribunals. At any rate, there seems to be no legal embargo

(save and except Bar Council Regulations, which we will advert to a little later) for a former additional Judge to plead and appear before any

Court or Tribunal, including the State Consumer Forum and even District Forum, for that matter. In this connection, it is also significant to note that

there is no prohibition for a District Judge, who has been appointed as an additional Judge for a fixed term to resume his former duty and capacity

as a District Judge in the event of non-confirmation / non-extension of his term. As a matter of fact, there is an instance where an additional Judge,

who was a member of the Gujarat Judicial Service, before his appointment as an additional Judge of this High Court reverting back to his parent

cadre after non-extension of his term. This would go to indicate that an Advocate or a Member of the Judicial Service, who is appointed as

Additional Judge, can resume his initial capacity as such after expiry of his term as additional Judge in the event of non-confirmation / non-extension

of the term. Therefore, even under the Constitutional scheme, a significant distinction is maintained between a permanent Judge and an additional Judge.

31. Judicial notice can be taken of the fact that in the warrant of appointment, a permanent Judge is appointed by using the expression ""appointed

as a Judge"" of a particular High Court, whereas in the warrant of appointment of an additional Judge it is indicated that appointment is as an

additional Judge. Similarly the oath taken is to the above effect. The warrant of appointment when an additional Judge is made a permanent Judge

is to the following effect:

By virtue of power vested in me by Clause (1) of Article 217 of the Constitution of India, I President of India, do hereby appoint

. . additional Judge of High Court to be a Judge of the High Court.

32. It is no doubt true that in S.P. Gupta Vs. President of India and Others, , it was observed:

39. It is clear on a plain reading of Article 217, Clause (1) that when an Additional Judge is to be appointed, the procedure set out in that article is

to be followed. Clause (1) of Article 217 provides that ""Every Judge"" of a High Court shall be appointed after consultation with the Chief Justice of

India, the Governor of the State and the Chief Justice of the High Court. The expression ""Every Judge"" must on a plain natural construction include

not only a permanent Judge but also an Additional Judge. It is significant to note that whenever the Constitution-makers intended to make a

reference to a permanent Judge, they did so in clear and explicit terms as in Clause (2) of Article 224. Moreover, there is inherent evidence in

Article 217, Clause (1) itself which shows that the expression ""Every Judge"" is intended to take in an Additional Judge as well. Clause (1) of

Article 217 says that: ""Every Judge ... shall hold office, in the case of an Additional Judge . . . as provided in Article 224. . . ."" , which clearly

suggests that the case of an Additional Judge is covered by the opening words ""Every Judge"". We may also consider what would be the

consequence of construing the words ""Every Judge"" as meaning only a permanent Judge. On that construction, Clause (1) of Article 217 will not

apply in relation to appointment of an Additional Judge and it would be open to the Central Government under Article 224, Clause (1) to appoint

an Additional Judge without consulting any of the constitutional functionaries specified in Clause (1) of Article 217. This could never have been

intended by the Constitution-makers, who made such elaborate provisions in the Constitution for safeguarding the independence of the judiciary.

We must therefore, hold that no Additional Judge can be appointed without complying with the requirement of Clause (1) of Article 217.

33. An analysis of the observations made in S.P. Gupta's case clearly indicates that there is no distinction in the method of appointment of an

additional Judge as compared to a permanent Judge, but there is nothing in S.P. Gupta's case, which lays down in categorical terms that an

additional Judge of the High Court is deemed to be "Judge of the High Court for all purposes

34. Apart from the Constitutional provisions, there is only one other statute where the expression "Judge" has been defined to include an Additional

Judge i.e., The High Court Judges (Salaries & Conditions of Service) Act, 1954. As per Section 2(d) "Additional Judge" means a person

appointed as an additional Judge under Sub-section (3) of Section 222 of Government of India Act, 1935 or under Clause (1) of Article 224 of

the Constitution. As per Section 2(g) of the above Act, "Judge" means a Judge of the High Court and "includes the Chief Justice, an acting Chief

Justice, an additional Judge and an acting Judge of the High Court". This definition of a Judge thus includes an additional Judge obviously for the

purpose and in the context of the said Act. Even then in the said Act, an additional Judge is not considered as a Judge in respect of every aspect

inasmuch there is no provision for payment of pension to an additional Judge. It may also be noticed that in the very same definition it is stated that

Judge includes "the Chief Justice, an acting Chief Justice and an acting Judge of the High Court". Does it mean that there is no distinction between a

Judge" and a "Chief Justice"?

35. It is contended by the counsel for the Respondent No. 1 that when the Consumer Protection Act was enacted by the Parliament, it must be

assumed that the Parliament, which has not defined the expression "Judge" in the Consumer Protection Act, was aware of the meaning already

attributed to the expression "Judge", while interpreting the Constitution of India and also the meaning of such expression as contained in The High

Court Judges (Salaries & Conditions of Service) Act, 1954. It is, therefore, contended that in the absence of any definition, the expression "Judge" must be understood in its ordinary parlance, more particularly when such meaning has been accepted for the purpose of Constitution of India to include Additional Judge.

36. As we have already noticed, even for the purpose of the Constitution it cannot be said that an additional Judge is equivalent to a permanent Judge in every aspect and similarly under the High Court Judges (Salaries & Conditions of Service) Act, 1954, an additional Judge is not considered as a permanent Judge in every aspect, though the expression "Judge" includes an additional Judge for certain purposes. If a permanent Judge and an additional Judge are considered to be same for all purposes, then why no pension is payable to an additional Judge and why there is no prohibition on practice in the same Court? In our considered view, it can be said that while at the crease, there is hardly any distinction between the two, but there is a world of difference at the end of the innings.

37. It is contended by the learned Counsels for the petitioners, on the other hand, that the expression "has been a Judge" must be given a purposive interpretation to advance the intention of the Legislature and to ensure the principle of independent and fair judiciary. It is therefore submitted that in the context in which such expression has been used in the statute, such expression should be interpreted to mean a Judge of the High Court, who lays down office in normal course on attaining the age of retirement contemplated in Articles 217 or 224(3) of the Constitution, and an Additional Judge, who is not confirmed and whose term is not extended, should not be construed as coming within the expression "who has been a Judge". In this context, it has been further submitted that in the modern era, inevitably there is increase in the constitution of various Tribunals, which are required to be manned or chaired by either the sitting Judges or the retired Judges. Judicial notice can always be taken of the fact that a permanent Judge of the High Court must have worked for a considerable length of time and, therefore, such experience of a permanent Judge would be very handy in discharging duties as a Chairman or Member of any Tribunal vested with the power of determining disputes in various spheres, such as in service matters, bank litigations, consumer fora and the like.

38. Learned Counsel for the petitioners has also placed reliance upon a Division Bench decision of this Court reported in Thiru. R. Gandhi

President, Madras Bar Association Vs. Union of India (UOI), , wherein the Division Bench held that the Tribunals/Commissions should be manned

by sitting or retired Judges with at least five years of experience, since they discharge important judicial function with enormous powers.

39. Even though the ratio of the above decision may not strictly be applicable, the submission made by the counsel for the petitioners has an

obvious ring of rationality. Though, if construed in a pedantic manner, it may be possible to hold that there is hardly any difference between a

permanent Judge and an additional Judge and an additional Judge, who is not confirmed or whose term is not extended, can be considered as a

person ""who has been a Judge of the High Court"" as expressed in Section 16(1) of the Act, in our considered opinion, such a pedantic and literal

construction would give rise to startling consequences, which would defeat the very object for which the Consumer Protection Act, particularly

Section 16(1), has been enacted.

40. In this context, one has to remember that the non-confirmation / non-extension of the term of an additional Judge would crop up only in a few

limited eventualities, namely:

(i) Lack of need to extend the term of an additional Judge as the requirement contemplated under Article 224 no longer exist. [However, such a

scenario is hardly conceivable inasmuch as it cannot be said that the necessity to continue the services of an Additional Judge in a High Court

would vanish keeping in view the docket explosion and the inevitably high pendency position.];

(ii) Attaining the age of 62 years as contemplated in Article 224(3) of the Constitution;

(iii) Disinclination on the part of the additional Judge to continue further;

(iv) Inability of the concerned additional Judge to continue further on account of physical or mental incapacity; and

(v) Non-extension / non confirmation of the term of the additional Judge in the circumstances not coming within the above.

(vi) Removal of the additional Judge before completion of the term by following the procedure contemplated in Article 124(4) of the Constitution.

41. In S.P. Gupta's case (supra), it was observed by Bhagwati, J as follows:

40. Now, when the term of an Additional Judge expires he ceases to be a Judge and therefore, if he is to continue as a Judge, he must be either

reappointed as an Additional Judge or appointed as a permanent Judge. In either case, Clause (1) of Article 217 would operate and no

reappointment as an Additional Judge or appointment as a permanent Judge can be made without going through the procedure set out in Article

217, Clause (1). Of course, an Additional Judge has a right to be considered for such reappointment or appointment, as the case may be, and the

Central Government cannot be heard to say that the Additional Judge need not be considered. The Additional Judge cannot just be dropped

without consideration. The name of the Additional Judge would have to go through the procedure of Clause (1) of Article 217 and after

consultation with the Chief Justice of India, the Governor of the State and the Chief Justice of the High Court, the Central Government would have

to decide whether or not to reappoint him as an Additional Judge or to appoint him as a permanent Judge.

41. But the question then arises what are the factors which can legitimately be taken into account by the Central Government in deciding whether

or not to reappoint an Additional Judge for a further term or to appoint him as a permanent Judge. The argument of the petitioners was that an

Additional Judge is not on probation. He is as much a Judge as a permanent Judge with the same jurisdiction and the same powers and to treat him

as if he were on probation would not only detract from his status and dignity but also affect his independence by making his continuance as a Judge

dependent on the good opinion of the Chief Justice of the High Court, the Governor of the State and the Chief Justice of India. We find it difficult

to accept this argument in the face of the clear and unambiguous language of Clause (1) of Article 217. There are no limitations in the language of

Clause (1) of Article 217 as to what factors shall be considered and what factors shall not be, but having regard to the object and purpose of that

provision, namely, appointment of a High Court Judge, it is obvious that fitness and suitability, physical, intellectual and moral, would be the

governing considerations to be taken into account in deciding the question of appointment. Now, when, on the expiration of the term of an

Additional Judge, the Central Government is again called upon to consider whether or not he should be reappointed as an Additional Judge or appointed as a permanent Judge, the Central Government would have to apply its mind to the question whether such Additional Judge possesses the requisite fitness and suitability for being reappointed or appointed as the case may be. Public interest requires that only such person should be appointed as a Judge who is physically, intellectually and morally fit and suitable to be appointed as a Judge and it would be contrary to public weal to appoint a person, who does not possess the requisite fitness and suitability. The Central Government would therefore be under a constitutional obligation to consider whether the Additional Judge, whose term has expired, is fit and suitable to be reappointed as an Additional Judge or appointed as a permanent Judge. How can Clause (1) of Article 217 or Article 224 be so interpreted as to require the Central Government to reappoint an Additional Judge for a further term or to appoint him as permanent Judge, even if at the time of such reappointment or appointment as the case may be, he is physically, intellectually or morally unfit or unsuitable to be appointed as a Judge. Of course, at the time when the question of reappointment of an Additional Judge for a further term or his appointment as a permanent Judge comes up before the Central Government for consideration, the Additional Judge would have two weighty circumstances in his favour: one, that he has experience as a Judge for one term and the other, that it would not be desirable to send an Additional Judge back to the Bar. But even with these weighty circumstances in his favour, he would have to satisfy the test of fitness and suitability, physical, intellectual and moral, before the Central Government can, consistently with its constitutional obligation and in public interest, decide to reappoint him as an Additional Judge or appoint him as a permanent Judge.

(Emphasis added)

42. The opinions expressed by the other Hon''ble Judges are similar. Even though S.P. Gupta's case has been partially overruled in Supreme Court Advocates-on-Record Association and another Vs. Union of India, , more particularly in the context of primacy of the Executive vis-a-vis the process of consultation, the views extracted by us have never been doubted.

43. If it is held that an additional Judge, who because of any of the reasons highlighted in S.P. Gupta's case has not been confirmed, yet he would

be considered as a person "who has been a Judge" for the purpose of the Act, it would mean that a person, who has not been found suitable to be

continued either because of the physical or mental incapacity or because of any other weighty reason, would yet be considered eligible for being

appointed as the President of the Consumer Commission or Member of various Tribunals exercising judicial functions. We do not think it would be

possible to hold that it was the intention of the Parliament that, notwithstanding the fact that the term of an additional Judge was not extended

inspite of due consultation between the Constitutional Functionaries and was not made a permanent Judge, yet such person would be found eligible

to head the Consumer Commission exercising judicial functions.

44. In this context, we may again revert to the illustration of a District Judge who becomes an additional Judge of the High Court for a particular

term and thereafter on account of non-extension / non-confirmation reverts back to the judicial service and functions as such. If literal interpretation

of Section 16 would be adopted, obviously such a person, who was an additional Judge for a particular term, can be considered as "has been a

Judge of the High Court" and thus found eligible to be the President of the State Consumer Disputes Redressal Commission, even though at the

time of actual consideration he has already resumed his original and initial capacity as a District Judge. The above logic is also equally applicable to

an Advocate who becomes an additional Judge for a particular term and not confirmed and thereafter resumes his original and initial capacity as an

Advocate. In our considered opinion, such a person would clearly be ineligible.

45. Learned Counsel for Respondent No. 1 by relying upon the decision of the Supreme Court in Ashoka Kumar Thakur Vs. Union of India

(UOI) and Others, has submitted that when the words of a particular statute are plain and unambiguous, such words must be given their natural

meaning and the question of giving any purposive interpretation does not arise.

46. In the present case, the expression "who has been a Judge of the High Court" is reasonably capable of being construed in a manner different

from what is suggested by Counsel for Respondent No. 1. The expression "Judge" has not been defined in the Act itself. The definition of a "Judge

would include an "Additional Judge" in the context of The High Court Judges (Salaries & Conditions of Service) Act, 1954, as already been

analysed, is for the purpose of the said Act and even such inclusive definition does not lay down that an additional Judge shall be deemed to be a

Judge for every purpose. Similarly, as already analysed by us, an additional Judge cannot be deemed to be a Judge for every purpose, though in

the matter of appointment, in the exercise of power and also relating to privileges there is no difference between a permanent Judge and an

additional Judge. Keeping in view such aspects, we are inclined to accept the contention of the petitioners that a purposive and contextual

interpretation has to be given. If the literal interpretation suggested by Respondent No. 1 is adopted, it would mean that a person who is found

unsuitable to be confirmed as a Judge of the High Court would be considered eligible for appointment as the President of the Consumer Forum,

whose main function is to render judicial decisions. Therefore, the decision reported in Ashoka Kumar Thakur Vs. Union of India (UOI) and

Others, , relied upon by the counsel for Respondent No. 1, is not applicable to the peculiar facts and circumstances of the present case.

47. The matter can be viewed from another angle. As we have already noticed Article 224-A contemplates appointment of retired Judges at

sittings of High Courts. Article 224-A envisages that the Chief Justice of the High Court with previous consent of the President may request any

person who has held the office of a Judge to sit and act as a Judge of the High Court. The person thus appointed under Article 224-A is more

conveniently and conventionally described as "ad hoc Judge". There is a subtle distinction between an "Acting Judge" as envisaged in Article

224(2) and "ad hoc Judge" as contemplated under Article 224-A. A duly qualified person i.e., an Advocate of the High Court having 10 years

practice or a member of the Judicial Service having ten years experience may be appointed to "act as a Judge" and such person holds office until

the permanent Judge has resumed his duties. No acting Judge can hold office after attaining the age of 62 years. On the other hand, Article 224-A

contemplates only appointment of retired Judges as ad hoc Judges. The expression used in Article 224-A is "that the Chief Justice may ... with

previous consent of the President, request any person who has held the office of a Judge . . . to sit and act as a Judge of the High Court". The

expression "who has held the office of a Judge" is similar to the expression used in Section 16 of the Consumer Protection Act "who has been a

Judge". The head note of the article refers to appointment of retired Judges.

48. The question arises whether an additional Judge whose term has not been extended or who has not been confirmed can also be considered as

a person eligible to be appointed as an ad hoc Judge under Article 224-A on the basis of a literal interpretation that such additional Judge has held

the office of a Judge. Keeping in view the sentiments expressed in S.P. Gupta's case and the circumstances which result in non-extension or non-

confirmation of an additional Judge, it would be most inappropriate to come to a conclusion that notwithstanding the fact that term of an additional

Judge has not been extended inspite of existence of vacancy, such person would be eligible for being appointed as an ad hoc Judge as

contemplated under Article 224-A. We do not think that the Constitution makers intended that such a person would be eligible.

49. It would be indeed a travesty of all canons of principles of jurisprudence if it is held, by adopting a cussedly narrow literal interpretation, that a

person who was found by the appropriate Constitutional Functionaries, which includes the Chief Justice of the High Court and the Collegium of the

Supreme Court, unsuitable to be continued as an additional Judge yesterday, is eligible today for being appointed as ad-hoc Judge, for which only

a retired Judge is eligible, on the specious plea, that the person "has held the office of a Judge". Every today cannot be considered as a brighter

tomorrow of every dark yesterday. All old wines do not get better with passage of time.

50. It is also the contention that an Additional Judge, who is appointed for a tenure, cannot be considered as a retired Judge.

Reference has been made to the decision of the Supreme Court in Dr. L.P. Agrawal Vs. Union of India and others, . In such decision, it was

observed:

16. . . . Tenure means a term during which an office is held. It is a condition of holding the office. Once a person is appointed to a tenure post, his

appointment to the said office begins when he joins and it comes to an end on the completion of the tenure unless curtailed on justifiable grounds.

Such a person does not superannuate, he only goes out of the office on

completion of his tenure. The question of prematurely retiring him does not arise. The appointment order gave a clear tenure to the appellant. The High Court fell into error in reading "the concept of superannuation" in the said order. Concept of superannuation which is well understood in the service jurisprudence is alien to tenure appointments which have a fixed life span. . . .

51. On the other hand, learned Senior Counsel for Respondent No. 1 submitted that the expression "retirement" takes within its fold all kinds of retirement and may even include a person who has been terminated from service. The expression "retirement" need not be held to be coterminous with retirement on attaining a particular age.

52. In Ashok Tanwar's case it was emphasised that requirement of consultation with the Collegium is not necessary inasmuch as the Chief Justice is required to recommend the name of a sitting or a retired Judge. We have already noticed that Article 224-A envisages appointment of a retired Judge as an ad hoc Judge. In Ashok Tanwar's case, the Supreme Court emphasised that since only a sitting Judge or a retired Judge is required to be appointed, there is no necessity of process of consultation with the Collegium and the recommendation of the Chief Justice alone is sufficient.

In our considered opinion, what Article 224-A envisages or the Supreme Court in Ashok Tanwar's case recognises is that a Judge who lays down office under normal circumstances on attaining the age fixed would be eligible, but an additional Judge who has not been confirmed and whose term has not been extended, obviously cannot be considered as a retired Judge or "has been a Judge" or "has held the office of a Judge".

QUESTION No. 2 - Regarding Consultation

53. Even assuming (and as we have already analysed that there is pedantic plausibility in such submission made by the respondents) that an additional Judge, whose term is not extended and who has not been confirmed, in the absence of any specific definition to the expression "Judge" in the Act, can also be considered as a person "who has been a Judge of the High Court", the question is whether, in the present case, the requirement contemplated in Section 16(1) proviso regarding consultation with the Chief Justice has been complied with.

54. The meaning and content of the expression "Consultation" in the context of

the provisions contained in Articles 217, 222 and 233 of the Constitution of India have been considered in several decisions of the Supreme Court.

55. In *Chandramouleshwar Prasad Vs. The Patna High Court and Others*, , it was observed:

7. Consultation with the High Court under Article 233 is not an empty formality. So far as promotion of officers to the cadre of District Judges is concerned the High Court is best fitted to adjudge the claims and merits of persons to be considered for promotion.... Consultation or deliberation is not complete or effective before the parties thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter-proposal in his mind which is not communicated to the proposer the direction to give effect to the counter-proposal without anything more, cannot be said to have been issued after consultation.

56. The aforesaid observation has been approved in the subsequent decision reported in *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, , wherein, while considering the concept of consultation in the light of Article 222, it was observed by Justice Chandrachud as follows:

37. . . . But there can be no purposeful consideration of a matter, in the absence of facts and circumstances on the basis of which alone the nature of the problem involved can be appreciated and the right decision taken. It must, therefore, follow that while consulting the Chief Justice, the President must make the relevant data available to him on the basis of which he can offer to the President the benefit of his considered opinion. If the facts necessary to arrive at a proper conclusion are not made available to the Chief Justice, he must ask for them because, in casting on the President the obligation to consult the Chief Justice, the Constitution at the same time must be taken to have imposed a duty on the Chief Justice to express his opinion on nothing less than a full consideration of the matter on which he is entitled to be consulted. The fulfilment by the President, of his constitutional obligation to place full facts before the Chief Justice and the performance by the latter, of the duty to elicit facts which are necessary to arrive at a proper conclusion are parts of the same process and are

complementary to each other. The faithful observance of these may well earn a handsome dividend useful to the administration of justice. Consultation within the meaning of Article 222(1), therefore, means full and effective, not formal or unproductive consultation.

(Emphasis added)

57. What is the meaning of consultation in the context of Article 217 was examined in S.P. Gupta's case. Bhagwati, J., observed in para 30 as

follows:

30. The question immediately arises what constitutes "consultation" within the meaning of Clause (2) of Article 124 and Clause (1) of Article 217.

Fortunately, this question is no longer *res integra* and it stands concluded by the decision of this Court in *Sankalchand Sheth* case. It is true that the

question in *Sankalchand Sheth* case related to the scope and meaning of "consultation" in Clause (1) of Article 222, but it was common ground

between the parties that "consultation" for the purpose of Clause (2) of Article 124 and Clause (1) of Article 217 has the same meaning and

content as "consultation" in Clause (1) of Article 222. Chandrachud, J., as he then was, in his judgment in *Sankalchand Sheth* case quoted with

approval the following passage from the judgment given by Justice Subba Rao, when he was a Judge of the Madras High Court in *R. Pushpam v.*

State of Madras (SCC p. 228), "The word 'consult' implies a conference of two or more persons or an impact of two or more minds in respect of

a topic in order to enable them to evolve a correct or at least a satisfactory solution" and added: "In order that the two minds may be able to confer

and produce a mutual impact, it is essential that each must have for its consideration full and identical facts, which can at once constitute both the

source and foundation of the final decision". Krishna Iyer, J. speaking on behalf of himself and Fazal Ali, J. also pointed out that "all the materials in

the possession of one who consults must be unreservedly placed before the consultee" and further "a reasonable opportunity for getting

information, taking other steps and getting prepared for tendering effective and meaningful advice must be given to him" and "the consultant in turn

must take the matter seriously since the subject is of grave importance" (SCC p. 267). The learned Judge proceeded to add (SCC p. 267):

Therefore, it follows that the President must communicate to the Chief Justice all

the material he has and the course he proposes. The Chief Justice, in turn, must collect necessary information through responsible channels or directly, acquaint himself with the requisite data, deliberate on the information he possesses and proceed in the interests of the administration of justice to give the President such counsel of action as he thinks will further the public interest, especially the cause of the justice system." These observations apply with equal force to determine the scope and meaning of "consultation" within the meaning of Clause (2) of Article 124 and Clause (1) of Article 217. Each of the constitutional functionaries required to be consulted under these two articles must have for his consideration full and identical facts bearing upon appointment or non-appointment of the person concerned as a Judge and the opinion of each of them taken on identical material must be considered by the Central Government before it takes a decision whether or not to appoint the person concerned as a Judge....

(Emphasis added)

58. The effect of the Sankalchand Himatlal Sheth's case and Chandramouleshwar's case regarding the nature of consultation was summarised by

Fazal Ali, J in S.P. Gupta's case, in para 569 of the Judgment. The relevant observations are as under:

569...

(1) That the consultation contemplated by Article 222 must be full and effective and is an essential ingredient of the exercise of power under Article 222.

...

(5) The fulfilment by the President of his constitutional obligation and performance of his duty by the C.J.I. are parts of the same process and after this process is fully complied with, the consultation becomes full and effective and not formal or unproductive.

...

(8) The C.J.I. owes a corresponding duty both to the President and to the Judge who is proposed to be transferred to consider every relevant fact before tendering his opinion to the President.

(9) Before giving his opinion the C.J.I. must take into consideration all relevant facts....

59. On the aspect of consultation, Justice Desai observed:

767. ...After the decision in Sheth case it is now the law of the land that wherever the President can exercise power in consultation with the Chief

Justice of India or other constitutional functionaries, the consultation has to be on all relevant aspects which would enter the final verdict. All the

parties involved in the process of consultation must put all the material at its command relevant to the subject under discussion before all other

authorities to be consulted. Nothing can be kept back. Nothing can be withheld. Nothing can be left for the eye of any particular constitutional

functionary....

60. While considering the validity of the Scheme of appointment for Fast Track Courts in State of U.P. Vs. Jai Bir Singh, , it was observed:

9. One of the pleas taken by the parties questioning constitutional validity of the Fast Track Courts Scheme is that the Constitution does not

envisage establishment of Fast Track Courts. This plea is clearly without any substance. As observed by a nine-Judge Bench of this Court in

Supreme Court Advocates-on-Record Assn. v. Union of India appointment of a person to be a District Judge rests with the Governor, but he

cannot make the appointment unless there has been an effective and meaningful consultation with the High Court or the High Court has

recommended the appointment. In order that the requirement of consultation does not end up as an empty formality, in the event of difference of

opinion, there must be an effective interchange of viewpoints. In cases governed by Article 233(2), as a matter of rule, the High Court's

recommendation must be accepted. Departure from the opinion of the High Court should be a rare event....

(Emphasis added)

61. The importance of consultation as envisaged u/s 16(1) of the Act was itself the subject matter of several decisions of the Supreme Court.

In the decision of the Supreme Court reported in Ashish Handa Vs. Chief Justice of High Court of Punjab and Haryana and others, , an Advocate

filed the writ petition challenging the appointment of a former Judge of the Punjab & Haryana High Court as the President of Haryana State

Consumer Disputes Redressal Commission. Such challenge was made on the ground that the appointment was not in accordance with Section 16

of the Act and in consonance of the principles applicable for making such an appointment. Such writ petition was transferred to the Supreme

Court. While analysing the Scheme of the Act, it was observed:

3. ...The scheme is that these three agencies constituted for redressal of consumer disputes at different levels have as its President a person who is,

or has been a Judge at the corresponding level. This is so because the function of these agencies is primarily the adjudication of consumer disputes

and, therefore, a person from the judicial branch is considered to be suitable for the office of the President. The appointment to the office of the

President of the State Commission is to be made "only after consultation with the Chief Justice of the High Court" and to the office of the President

of the National Commission "after consultation with the Chief Justice of India". Such a provision requiring prior consultation with the Chief Justice is

obviously for the reason that he is the most suitable person to know about the suitability of the person to be appointed as the President of the

Commission.... The expression "after consultation with the Chief Justice of the High Court" and "after consultation with the Chief Justice of India

must be construed in the same manner as the expression "after consultation with the Chief Justice of India, ...the Chief Justice of the High Court" in

Article 217 of the Constitution of India made in Supreme Court Advocates-on-Record Assn. v. Union of India. Accordingly, the opinion of the

Chief Justice of the High Court and the requirement of consultation with him according to the proviso in Section 16(1)(a) must have the same status

as that of the Chief Justice of the High Court in the appointment of a High Court Judge under Article 217 of the Constitution of India; and the

process of appointment to the office of the President of the State Commission must also be similar. It is unnecessary to restate the same which is

summarised in the majority opinion in the Judges-II case. This is necessary to maintain independence of the judiciary and to avoid any possibility of

a sitting or a retired Judge depending on the executive for such an appointment.... The requirement of consultation with the Chief Justice in the

proviso to Section 16(1)(a) and Section 20(1)(a) of the Consumer Protection Act being similar to that in Article 217, the principles enunciated in

the majority opinion in the Judges-II case must apply, as indicated earlier, even for initiating the proposal. The executive is expected to approach

the Chief Justice when the appointment is to be made for taking the steps to initiate the proposal, and the procedure followed should be the same

as for appointment of a High Court Judge. That would give greater credibility to the appointment made.

4.... However, we may add that the appropriate course to adopt, as indicated in the Judges-II case, is for the Chief Justice of the High Court to

initiate the proposal and to mention the name approved by him for appointment instead of the Chief Justice only approving the name suggested by

the State Government. It appears from the affidavit of the Registrar that the Chief Justice had indicated to the State Government the proper

procedure relating to initiation of the proposal for filling up the post and he has accorded his approval to the appointment of Shri M.R. Agnihotri

only after considering several names, including that of Shri M.R. Agnihotri. The appointment made in the present case does not, therefore, call for

any interference.

(Emphasis added)

62. The above decision came up for consideration in a subsequent decision of the Supreme Court reported in Shri Ashok Tanwar and Another

Vs. State of Himachal Pradesh and Others, , wherein again the controversy was relating to appointment of the President of the State Consumer

Disputes Redressal Commission. In the said case, initially the State Government mooted the name of a sitting Judge of the High Court for

consideration before the Honourable the Chief Justice. The High Court, however, addressed a letter to the State Government indicating that there

was defect in the process adopted inasmuch as, as per the law, the Chief Justice was required to be consulted and, therefore, the proposal should

be initiated by the Chief Justice. Accordingly, the State Government wrote another letter requesting the Chief Justice to initiate the process for

filling up the vacancy. A letter was communicated recommending that steps could be taken for appointment of the very same sitting Judge as the

President of the Commission and, accordingly, such sitting Judge was appointed as the President. This came to be challenged by a practising

Advocate in a Public Interest Litigation for issuing a writ of Quo Warranto to

quash the appointment mainly on the ground that there was defect in the initiation process as the State Government had initiated the proposal. It was further contended that the Acting Chief Justice did not consult the two seniormost Judges before making the recommendation. In support of the latter contention, reliance has been placed on the decision of the Supreme Court in *Ashish Handa Vs. Chief Justice of High Court of Punjab and Haryana and others*, . The contention however having not been accepted, the matter went to the Supreme Court.

The first contention before the Supreme Court was relating to consultation with the Chief Justice, which according to the appellant on the basis of *Ashish Handa's* case (supra) meant consultation with the Chief Justice and the two Collegium Judges. While discarding such contention with regard to consultation with the Collegium, the Supreme Court observed:

15.... The aforementioned decision of this Court is to be read and understood on the facts and in the context in relation to initiation of the process for the appointment of a sitting or retired Judge as the President of the State Commission....

It was further observed:

22. In that case, as already noticed above, this Court was dealing with initiation of the process for appointment of a sitting or retired Judge as

President of the State Commission. It is in that context this Court held that the process must be initiated by the Chief Justice of the High Court and

not by the executive of the State. The reading of the judgment gives an impression that the consultation process must be the same in respect of

appointment of a sitting or retired Judge to the State Commission as is required for appointment of a High Court Judge in terms of Article 217 of

the Constitution. Firstly, the said judgment should be read and understood in the context of that case, the question that arose for consideration and

what was really decided i.e. initiation of process by the Chief Justice of the High Court. To remove doubt, if any, we make it clear that the

consultation for the purpose of Section 16 of the Act in relation to the appointment of a Judge or a retired Judge of a High Court as President of

the State Commission cannot be taken or equated to consultation process as required under Article 217 of the Constitution, which, in our view, is

the correct position. Certain statements made by this Court in *Ashish Handa* in

para 3, give an impression that the Chief Justice of a High Court has to consult his two seniormost colleagues before recommending a sitting or retired Judge for appointment as President of a State Commission as per Section 16 of the Act. In our view that is not the correct position and we do not approve the same. To put it positively, we state that for the purpose of Section 16 of the Act, a Chief Justice of a High Court need not consult his two seniormost colleagues in the High Court for recommending a sitting or retired Judge of a High Court for appointment as President of a State Commission.

23.... A person to be appointed as President of the State Commission has to be necessarily a sitting or a retired Judge of a High Court and not that any person can be appointed as President of the State Commission. This being the position, it does not stand to reason as to why again in respect of a sitting or retired Judge of a High Court the whole process contemplated under Article 217 of the Constitution must be resorted to. To put in clear terms so as to remove any doubt, we state that in the matter of appointment of a sitting or retired Judge of a High Court as President of the State Commission, process must be initiated by the Chief Justice u/s 16 of the Act and ""consultation"" contemplated in the said section is consultation"" only with the Chief Justice of the High Court and not with the collegium.

(Emphasis added)

63. Even before the ink had dried in the aforesaid decision of the Supreme Court, a similar controversy relating to appointment of President in the State Consumer Disputes Redressal Commission found its way to the Supreme Court in the decision reported in State of Haryana and Another Vs. National Consumer Awareness Group and Others, . The question posed by the Division Bench was as follows:

2. What is the content of the statutory consultation with the Chief Justice of the High Court postulated u/s 16(1)(a) of the Consumer Protection

Act, 1986, is the core issue subjected to debate before us in these two appeals.

It was observed:

14. A careful reading of Ashok Tanwar shows that the Constitution Bench differed from Ashish Handa only on the issue whether consultation with

the Chief Justice meant consultation with the collegium of the High Court. In

other respects, Ashish Handa is approved.

15. Mr. Shanti Bhushan, learned Counsel for the appellants, urged that even with the interpretation of Section 16(1)(a), as decided by the

Constitution Bench in Ashok Tanwar it still leaves undecided the question as to who should initiate the proposal for appointment to be made u/s

16(1)(a). He contended that "consultation" meant meeting of minds between two constitutional authorities of equal rank and there was no reason

why the Chief Justice should not initiate the proposal. We are unable to accept this contention. In the first place, the processual mechanics of

consultation" was decided in Supreme Court Advocates-on-Record Assn. judgment by a decision of nine learned Judges and reiterated in Ashish

Handa with which the Constitution Bench in Ashok Tanwar did not disagree. The only point of disagreement between Ashish Handa and Ashok

Tanwar was on the issue whether the consultation with the Chief Justice meant consultation with the collegium of the High Court. The manner of

initiation of proposal has remained same throughout and it is not open for us to take a different view of the matter. Learned Counsel attempted to

persuade us to refer the matter to a larger Bench. We decline to do so as the law is quite settled; it is binding on us and we agree with it. Thus, the

manner of initiation of proposal for a consultation with the Chief Justice u/s 16(1)(a) of the Act must take place in the manner as laid down by the

judgment of this Court in Ashish Handa case.

(Emphasis added)

64. Thus, the expression "consultation" is a verbal cast of many hues and colours and has to be understood in the context in which it is used. We

may recall the felicitous observation of Justice Verma in Supreme Court Advocates-on-Record Association and another Vs. Union of India, :

433. The hue of the word "consultation", when the consultation is with the Chief Justice of India as the head of the Indian Judiciary, for the purpose

of composition of higher judiciary, has to be distinguished from the colour the same word "consultation" may take in the context of the executive

associated in that process to assist in the selection of the best available material.

65. In the context of its use in Section 16 of the Act, it is obviously something more than mere forwarding of eligible names. It stands on a much

higher pedestal. It is apparent that the process of selection has been left to the

discretion of the Chief Justice rather than of the State Government.

Consultation"" is required to be meaningful and not merely a lip service. Even assuming that an additional Judge, whose term has not been extended

and who has not been confirmed, is otherwise eligible, an onerous statutory duty has been cast on the Consultee (in this case, the Chief Justice) to

render meaningful and effective consultation to the person seeking for such consultation.

66. In the present case, even though the Chief Justice has been made a party W.P. No. 21504 of 2008 (In W.P. No. 18731 of 2008 the Chief

Justice was initially impleaded, but subsequently deleted, while the matter was taken up for admission - obviously in deference to the high position

held by the Chief Justice), no affidavit has been filed on behalf of the Chief Justice as to the materials which were placed before him. Delving into

the background of non-confirmation / non-extension was required not because of any curiosity value , but to uphold the values of life, faith and

expectation of the society and the requirement reflected in Section 16 of the Consumer Protection Act. Though one may not expect the Chief

Justice to file an affidavit himself (it appears that in several matters such as in S.P. Gupta's case affidavit had been filed on behalf of the Chief

Justice), at least an affidavit could have been filed either by the Registrar General, who had been impleaded, or even by the Private Secretary

indicating as to whether the relevant files relating to non-confirmation of Respondent No. 1 had at all been placed for consideration. On the other

hand, from the files, which have been submitted and the note of the Registry, on the basis of which recommendation has been made, it is self-

evident that only the file relating to the Full Court's resolution and the note made by the Registry were placed before the Chief Justice. Such note

as contained in Roc.341/2008-J dated 14.7.2001, refers to the letter of the Government dated 30.5.2008, which is extracted hereunder in

extenso:

D.O. Letter No. 14712/H1/2008-2, dated 30.05.2008

Sub: Consumer Protection - State Consumer Disputes Redressal Commission, Chennai - Appointment of President, Panel of names of Retired

High Court Judges - Requested.

Ref: G.O.(Ms) No. 159, Cooperation, Food and Consumer Protection (H1)

Department, dated 22.08.2005.

- - -

I am to state that the Hon"ble Justice Thiru. K. Sampath, appointed as President, State Consumer Disputes Redressal Commission, in the

reference cited, is due for retirement on superannuation on 05.07.2008 A.N. The post of President, State Consumer Disputes Redressal

Commission, will fall vacant with effect from 06.07.2008 FN.

2. According to Sub-section (1)(a) of Section 16 of the Consumer Protection Act, 1986, a person who is or has been a Judge of a High Court has

to be appointed by the State Government as the President of the State Commission and such appointment has to be made in consultation with the

Hon"ble Chief Justice of the High Court.

3. The term of office of the President of the State Commission will be five years or upto the age of sixty seven years, whichever is earlier and he

will not be eligible for reappointment. The President of the State Commission will be paid their last drawn salary minus pension.

4. With a view to filling up the existing vacancy in the post of President, State Consumer Redressal Commission, Chennai, I am to request you to

send a panel of eligible names of retired High Court Judges to Government after approval by Hon"ble Chief Justice of High Court of Madras for

consideration of the Government, for appointment as President, State Consumer Disputes Redressal Commission, Chennai.

Such note, after quoting Section 16 of the Consumer Protection Act, proceeds as follows:

In view of the above, if your Lordship is so pleased, willingness may be called for from the Hon"ble judges retired in or after the year 2006, so

that, if appointed they may have a tenure of not less than 2-1/2 years.

It is further submitted that the Hon"ble Thiru Justice N. KANNADASAN, Former Judge, who has completed 2 years of service as Additional

Judge, High Court of Madras ceased to hold the Office on and from 06.11.2005. His Lordship's date of birth is 15.11.1955.

Further, it is submitted that the Hon"ble Thiru Justice N. KANNADASAN, Former Additional Judge, High Court, Madras and now Additional

Advocate General has addressed a letter to the Registry in connection with the inclusion of His Lordship's name in the category of Retired/Formal

Judge etc.

As directed by your Lordship, the said matter was placed before the full court which was held on 11th July, 2008 and minuted as follows:

Considered the representation of Hon''ble Thiru Justice N. KANNADASAN, Former Judge of the High Court in the light of the communication of

Ministry of Law and Justice, Government of India dated 29.03.2007.

Discussed the matter

It is resolved that the name of Hon''ble Thiru Justice N. KANNADASAN be included as one of the Retired Judges of the High Court in the

records of this Registry.

Further, it is submitted that the list of Hon''ble Judges, retired during 2006 and 2007 is submitted below 2006:

1. Hon''ble Thiru Justice T.V. MASILAMANI

(Chairman DRAT) - 29.05.2006

Chairman, DRAT

2. Hon''ble Thiru Justice A.R. RAMALINGAM

- 12.11.2006

2007

1. Hon''ble Thiru Justice M. THANIKACHALAM,

(Admission Committee) - 07.03.07

2. Hon''ble Thiru Justice J.A.K. SAMPATHKUMAR

(Chairman, Human Rights Commission,

Puducherry) - 05.05.2007

3. Hon''ble Thiru Justice R. BALASUBRAMANIAN

(Advisor, State Legal Services Authority)

- 15.08.2007

4. Hon''ble Thiru Justice N. KANNADASAN

(D.O.B. - 15.11.1955) - 05.11.2005

The term of Office of the President of the State Consumer Dispute Redressal Commission will be 5 years or up to the age of 67 years.

In this connection, it is respectfully submitted for consideration and orders.

Whether:- the list of retired Hon"ble Judges except
Hon"ble Thiru Justice T.V. MASILAMANI
(Chairman DRAT) and including
N. Kannadasan, Former Additional Judge
may be forwarded to the Government,
for consideration for the post of President
of State Consumer Dispute Redressal
Commission.

Sd/- SO J Sd/-

14.07.2008 15.06.2008 Regr A

I send the panel of three
retired Judges of this Hon"ble
Court

1. Justice A.R. Ramalingam
2. Justice M. Thanikachalam
3. Justice N. Kannadasan

Sd/- CJ

16.06.2008

(As already noticed earlier, the date 15.6.2008 put by the Registrar
Administration and 16.6.2008 put by the Honourable the Chief Justice are
inadvertent mistakes).

67. From the above, it is apparent that the only thing which has been considered
was the list of the retired Judges and the resolution of the Full

Court meeting dated 11.7.2008. The file relating to the correspondence between
the then Hon"ble Chief Justices and the Hon"ble Chief Justice of

the Supreme Court of India relating to continuation / confirmation of Respondent
No. 1 was never placed before the Honourable the Chief Justice.

In other words, panel of three former Judges has been suggested by the
Honourable the Chief Justice even without being made aware of the

circumstances under which there was non-continuation / non-confirmation of
Respondent No. 1. Since an onerous duty has been cast on the

Honourable the Chief Justice to render ""consultation"" which is a statutory

requirement, there cannot be any doubt that before rendering such consultation"" all the relevant factors were required to be considered. When it is apparent that the Consultee has failed to discharge such onerous duty, the resultant appointment obviously becomes vulnerable. In our considered opinion, the circumstances under which there was non-confirmation of Respondent No. 1 as available in the records of the High Court was a very vital aspect which could not have been ignored before making the recommendation. Non-consideration of such vital matter has obviously vitiated the recommendation made by the Honourable the Chief Justice.

68. The observations made by the Supreme Court in All India Judges' Association and Others Vs. Union of India and Others, (extension of age of the District Judges from 58 to 60), which was followed in (2001) 2 SCC 305 (Biswanath Pratap Singh v. State of Bihar) and Brij Mohanlal's case (relating to appointment of Fast Track Court Judges) clearly reflect the anxiety of the Apex Court to ensure proper selection in the matters relating to subordinate judiciary. Decisions in S.P. Gupta's case and the Supreme Court Advocates-on-record Association's case, clearly mirror similar anxiety in the matters relating to proper selection of the Judges for the High Court and their confirmation or otherwise. When the Supreme Court has been insisting on adoption of elaborate measures to maintain lofty standard in the subordinate judiciary and the higher judiciary, is it too much to expect that before making recommendations for appointment to various Tribunals such as the Central Administrative Tribunal, State Administrative Tribunal, Consumer Forum, Debt Recovery Tribunal, etc., the concerned authorities vested with the power of appointment and the power to select or recommend, are required to ascertain about the suitability of the person to be recommended? The obvious answer to such a question is that the concerned authorities are duty-bound to do so. In such scenario, was it not the bounden duty to ascertain ""the reasons as available on record"" for non-confirmation of an additional Judge? (and more so in view of the justified importance assigned to the process of selection).

69. In the counter affidavit of Respondent No. 2 (State Government), it has been stated inter alia that:

13... As has been stated above, the appointment of the President of the State Consumer Disputes Redressal Commission is a statutory process in

terms of the said Act, and the same cannot be equated with the appointment of judges made in Article 217 of Constitution of India. Therefore, the

opinion of the constitutional functionaries formulated under Article 217 is not relevant for the purpose of the present appointment.

70. The aforesaid stand taken in the counter displays the utter disregard of a very important consultative process which is undertaken at the time of

extension of the term of an additional Judge or confirmation of such additional Judge. Such a stand only tends to reflect that irrespective of the

reason for non-extension of the term of an additional Judge or his non-confirmation, by literal interpretation, such a person may be said to be

eligible as he ""has been a Judge"". In other words, it appears to be the stand of Respondent No. 2 (State Government) that, while making a

recommendation as required u/s 16(1) proviso, the Chief Justice is not at all required to find out the background for non-confirmation of an

additional Judge and similarly the State, which has the ultimate responsibility of making the appointment, need not be bothered regarding the said

aspect.

We do not think that such a stand in the counter can ever be countenanced.

71. Learned Counsel for Respondent No. 1 has contended that the High Court cannot sit in appeal over the decision taken by the State

Government and the Honourable the Chief Justice by discarding the appointment made in consultation with the Honourable the Chief Justice. He

has further submitted that the suitability of a person to be appointed to a public post is obviously not a matter to be decided in a quo warranto

proceeding and the only question to be decided is eligibility. It has been further submitted that once the Honourable the Chief Justice in his

discretion makes a recommendation from among the eligible persons, the High Court cannot exercise the power of judicial review either in a quo

warranto proceeding or in a public interest litigation, as such matter is not a matter for judicial review.

72. In support of the aforesaid submission, the learned Counsel for Respondent No. 1 has placed strong reliance upon the decision of the Supreme

Court reported in Union of India (UOI) and Others Vs. Kali Dass Batish and

Another, , in particular he has invited our attention to para 14 of such decision, which is as follows:

14... We note with regret that the High Court virtually sat in appeal, not only over the decision taken by the Government of India, but also over the decision taken by the Chief Justice of India, which it discarded by a side wind. In our view, the High Court seriously erred in doing so. Even assuming that the Secretary of the department concerned of the Government of India had not apprised himself of all necessary facts, one cannot assume or impute to a high constitutional authority, like the Chief Justice of India, such procedural or substantive error. The argument made at the Bar that the Chief Justice of India might not have been supplied with the necessary inputs has no merit. If Parliament has reposed faith in the Chief Justice of India as the paterfamilias of the judicial hierarchy in this country, it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary inputs. The argument, to say the least, deserves summary dismissal.

73. Learned Senior Counsel for Respondent No. 1 has also relied upon the decision of the Supreme Court reported in (1993) 4 SCC 119 (R.K.

Jain v. Union of India), while considering the question of appointment of President of CEGAT, Justice Ahmadi, speaking for himself and Justice

Punchhi, while agreeing with the main judgment rendered by Justice K. Ramaswamy, observed as follows:

6... Under Rule 10(1) the Central Government is conferred the power to appoint one of the members to be the President. Since the validity of the

Rule is not questioned there can be no doubt that the Central Government was entitled to appoint respondent 3 as the President. But it was said

that the track record of respondent 3 was poor and he was hardly fit to hold the post of the President of the CEGAT. It has been averred that

respondent 3 had been in the past proposed for appointment as a Judge of the Delhi High Court but his appointment did not materialise due to

certain adverse reports. Assuming for the sake of argument that these allegations are factually accurate, this Court cannot sit in judgment over the

choice of the person made by the Central Government for appointment as a President if the person chosen is qualified and eligible for appointment

under the Rules. We, therefore, agree with our learned Brother that this Court cannot sit in judgment over the wisdom of the Central Government

in the choice of the person to be appointed as a President so long as the person chosen possesses the prescribed qualification and is otherwise

eligible for appointment. We, therefore, cannot interfere with the appointment of respondent 3 on the ground that his track record was poor or

because of adverse reports on which account his appointment as a High Court Judge had not materialised.

It was observed by Justice Ramaswamy, as follows:

73. Judicial review is concerned with whether the incumbent possessed of qualification for appointment and the manner in which the appointment

came to be made or the procedure adopted whether fair, just and reasonable. Exercise of judicial review is to protect the citizen from the abuse of

the power etc. by an appropriate Government or department etc. In our considered view granting the compliance of the above power of

appointment was conferred on the executive and confided to be exercised wisely. When a candidate was found qualified and eligible and was

accordingly appointed by the executive to hold an office as a Member or Vice-President or President of a Tribunal, we cannot sit over the choice

of the selection, but it be left to the executive to select the personnel as per law or procedure in this behalf....

74. Learned Counsel for Respondent No. 1 has also placed reliance upon the decision of the Supreme Court reported in B. Srinivasa Reddy Vs.

Karnataka Urban Water Supply and Drainage Board Employees' Association and Others, to contend that the High Court cannot probe into the

mind of the concerned authority to issue a quo warranto unless there is a clear violation of law.

75. In the present case, apart from concluding that Respondent No. 1 was not eligible, on the basis of the materials placed, we have concluded

that the Honourable the Chief Justice has not at all adverted to the circumstances in which Respondent No. 1 was found not suitable to be

confirmed as a Judge of the High Court. In the decision relied upon by the counsel for Respondent No. 1, the conclusion of the High Court was to

the effect that the Secretary of the Department and even the Honourable the Chief Justice of India ""might not have been supplied with necessary

inputs". The materials as apparent from the aforesaid reported decision clearly indicate that all the relevant materials had been taken note of by the concerned authorities including the Honourable the Chief Justice of India. In such circumstances, the Supreme Court observed that "it is not open for anyone to contend that the Chief Justice of India might have given his concurrence without application of mind or without calling for the necessary inputs.

76. As already observed, in the present case, it is crystal clear that the only material which was placed before the Honourable the Chief Justice was the Full Court resolution dated 11.7.2008, wherein the Full Court resolved that the name of Respondent No. 1 can be included as a retired Judge, and the list of the retired Judges of the Madras High Court, who had retired after 2004. The note, which is already extracted by us, does not at all indicate that any other material was placed before the Honourable the Chief Justice. As already indicated, there is not even a counter by the Registrar General or by the Private Secretary of the Honourable the Chief Justice that in fact any other material or file had been placed. In our considered opinion, therefore, the ratio of the decision of the Supreme Court in Kali Dass Batish's case (cited supra) is not applicable to the peculiar facts of the present case.

77. Similarly, the ratio of the decision in R.K. Jain's case and B. Srinivasa Reddy's case is not applicable. In the present case, we are not trying to arrogate any appellate jurisdiction nor are we venturing to sit in judgment over the wisdom of the State or the Honourable the Chief Justice. The decision making process has been found to be vitiated. As we have already observed, not only Respondent No. 1 was not eligible but there has also been infraction of the statutory requirement of consultation, the importance of which has been highlighted in several decisions of the Supreme Court including the decisions relating to Section 16 of the Consumer Protection Act. Therefore, in our considered opinion, though there cannot be any quarrel over the proposition elucidated in the aforesaid decision of the Supreme Court, on peculiar facts of the present case, it cannot be said that the said decisions run contrary to the conclusions rendered by us.

78. Judged in the light of the discussion made earlier, the inevitable conclusion is that there has not been any effective consultation mainly on

account of the fact that the Consultee, namely, the Honourable the Chief Justice has recommended the name of Respondent No. 1 without at all

considering the background as available in the High Court records regarding the circumstances under which there was no extension of the term of

Respondent No. 1. It is no doubt true that this Court is neither required nor expected to consider the desirability of a person to be appointed for a

particular post as that is a matter for the authorities concerned; (in this case the State Government and the Honourable the Chief Justice) to

consider. But, where a decision itself is thickly clouded by non-consideration of the most relevant and vital aspect, the ultimate appointment is

vitiated not because the appointee is not desirable or otherwise, but because mandatory statutory requirement of consultation has not been

rendered effectively and meaningfully. Therefore, even assuming that Respondent No. 1 was theoretically eligible for being considered, the process

of consultation having been vitiated, the ultimate order is also vulnerable.

79. It is interesting to note that in the letter sent by the State Government, even though reference has been made to Section 16(1) of the Act,

request is made to send a panel of retired Judges. It is apparent that the State Government was possibly completely oblivious of the provision

which envisages even the appointment of a sitting Judge. It is also important to note that the State Government had requested to send a "panel of

eligible retired Judges", whereas the proper and obvious course should have been to request the Honourable the Chief Justice to "recommend the

name of either a sitting Judge or a retired Judge". It is also interesting to note that even the Registry, while placing the note has completely ignored

the importance of the statutory provision which envisages that even the name of a sitting Judge can be considered. The Registry had only included

the names of retired Judges completely overlooking the possibility of recommending the name of any sitting Judge.

80. In *T. Fenn Walter and Others Vs. Union of India (UOI) and Others*, , the Supreme Court has not discounted the possibility or desirability of

appointing a sitting Judge as the President of the Consumer Commission, but it has only emphasised that once a sitting Judge is appointed, he has

to end his tenure as a Judge obviously by seeking retirement. It is therefore apparent that all the concerned authorities have ignored a very relevant

provision of the statute. However, since we have already held that Respondent No. 1 was not eligible and even assuming that he was eligible, the

consultation process was not in accordance with the statute and, therefore, the appointment is contrary to the provisions contained in the Act, it is

not necessary to proceed further to consider as to whether non-consideration of possibility of appointing any sitting Judge by the State Government

as well as the Chief Justice has vitiated the appointment.

81. Relying upon the observations made in the decisions in Ashish Handa's case, Ashok Tanwar's case and National Consumer Awareness

Group case rendered in the context of Section 16 of the Consumer Protection Act, the learned Counsel for the petitioners has vehemently

contended that, in the present case, the method adopted is not in accordance with the observations made by the Supreme Court in the three cases

referred to above inasmuch as, in the present case, the process has been initiated by the State Government and the ultimate decision to appoint

Respondent No. 1 has been taken by the State Government without completing the process of consultation with the Honourable the Chief Justice.

82. This submission has been resisted by the learned Counsel for Respondent No. 1 as well as by the learned Additional Advocate General for the

State by submitting that in fact, in the present case, it is only the State Government which had brought to the notice of the High Court that the post

of the President was likely to fall shortly and, therefore, a panel may be sent.

83. There is prima facie justification in the contention that by sending a panel of three names without indicating any particular preference may

amount to abdication of the required function inasmuch as the actual selection is left to the discretion of the State Government, whereas, as per the

sentiments expressed by the Supreme Court in Ashish Handa's and Ashok Tanwar's cases, the Honourable Chief Justice is required to

recommend "'a suitable name'" and not a panel of names. In the context of observations made in Ashish Handa's case and Ashok Tanwar's case, it

would have been more appropriate to recommend the name which was most suitable according to the Chief Justice instead of sending a panel of

three names leaving the choice of final selection to the Executive. Be that as it may, since we have already held that the consultation process was

vitiated, it is unnecessary to delve into this aspect any further.

QUESTION No. 3 - Regarding public interest

84. Coming to the third question, learned Counsels for the petitioners contended with much vehemence that keeping in view the background of

non-confirmation of Respondent No. 1, it was most improper to recommend his name, particularly keeping in view the requirement in Section

16(1) read with Section 16(b)(iii) of the Act that a Member of the Consumer Commission is required to be a man of integrity. It is submitted by

the counsel that the requisite qualification for a person to be eligible to be appointed as a member should be a man of integrity, it also applies

equally to the President of the Commission and, therefore, keeping in view the background of non-extension of the Respondent No. 1, he must be

considered to be unsuitable to be appointed as President of the Commission and it was not in public interest to appoint him. The learned Counsel

sought leave of this Court to wade through the entire file containing the correspondence and the discussions touching upon the question of

confirmation of the Respondent No. 1. Even though all such papers have been made available to us by the Addl. Solicitor General appearing for

the Central Government and Shri. Muthukumarasamy, Senior Counsel, for the High Court and no privilege has been claimed, we have not thought

it fit to permit the Counsels for the contesting parties to peruse such papers, because, in our considered opinion, it would open a collateral battle on

the question relating to confirmation of Respondent No. 1, which is not and cannot be an issue. Moreover, it is not for us to decide about the

suitability of Respondent No. 1 for the post of President of the Consumer Commission as that was a matter for the State Government to decide in

consultation with the Chief Justice. If the appointment of a person is otherwise legal, the Judiciary may not be justified in interfering with such

appointment on the ground that it is against public interest. As already noticed, the sentiment expressed in R.K. Jain case is clear on this aspect.

QUESTION No. 4 - Regarding validity of the Full Court resolution

85. The last question relates to W.P. No. 21495 of 2008, wherein the Full Court's resolution dated 11.7.2008 has been sought to be quashed.

Challenge to such Full Court's resolution, dated 11.7.2008, is mainly on the ground that the matter considered by the Full Court did not come

within its scope and need not have been referred to the Full Court by the

Honourable the Chief Justice. It is contended that only certain administrative matters are required to be considered by the Full Court and the matter which was referred to the Full Court was not one such matter and, therefore, the opinion of the Full Court should be considered as non-est.

86. It is no doubt true that the Honourable the Chief Justice need not place all administrative matters before a Full Court and only certain matters relating to disciplinary action are required to be placed before the Full Court. However, merely because a matter is not required to be placed before the Full Court for administrative decision, it does not preclude the Honourable the Chief Justice for placing any matter before the Full Court for arriving at any appropriate administrative decision.

87. Learned Counsel for the petitioners has relied upon a decision of the Supreme Court reported in High Court of Judicature for Rajasthan Vs.

Ramesh Chand Paliwal and Another, . The decision nowhere lays down that even in the matters which can be decided by the Chief Justice, he

cannot place such matter before the Full Court with a view to elicit wider consultation, while taking any decision purely in administrative side. In

our considered opinion, the ratio of the said decision is not applicable to the facts of the present case.

88. Apart from the above, we do not feel that the petitioners can at all be said to be aggrieved either in their individual capacity or as a public

interest litigant by any resolution of the Full Court, which does not have any direct bearing in any matter concerning the Advocates as a class.

Learned Counsel for the petitioners, while arguing W.P. No. 18731 of 2008, has submitted that only because Respondent No. 1 was considered

as a retired Judge, even though in law he cannot be so considered, the Honourable the Chief Justice has made a recommendation for the

appointment of Respondent No. 1 as the President of the Commission. The question as to whether Respondent No. 1 can be considered as a

retired Judge of the High Court or not has been dealt with by us and the conclusion on such aspect has been arrived at on the basis of the

interpretation of the relevant provisions contained in the Constitution of India or any other relevant statute. The resolution of the Full Court in its

administrative side cannot at all control the legal interpretation to be given in any matter to be decided on the judicial side. In other words, so far as

the question as to whether Respondent No. 1 can be considered as eligible has been decided on its own merits and the resolution of the Full Court

in its administrative side cannot have any impact on a decision on the judicial side. The resolution of the Full Court is of no consequence for

deciding the main issue. The question raised in such writ petition is thus purely academic and of no consequence.

89. Ms. Vaigai, learned Counsel for the petitioners, has vehemently urged that keeping in view the march of events, starting from the letter sent by

the State Government and culminating in the Note of the Chief Justice for sending a panel of three former Judges including Respondent No. 1,

clearly reveals that the recommendation made by the Chief Justice was very much influenced by the resolution of the Full Court, wherein the Full

Court of the High Court had decided to include the name of Respondent No. 1 as a retired Judge. In this connection, it has been highlighted that

even though the first request had come on 30.5.2008 and two subsequent reminders were sent by the Government, the Chief Justice made the

recommendation only on 16.7.2008, after the Full Court took the decision on 11.7.2008 to recognize Respondent No. 1 as a retired Judge. It is

also emphasised by her that the Registry prepared the Note only after such a resolution was taken. According to her, all these events, which

happened in close proximity of each other, namely, passing of the resolution of the Full Court, preparation of the Note by the Registry referring to

such resolution of the Full Court and the subsequent order passed by the Chief Justice would clearly indicate that the Chief Justice was very much

influenced by the resolution of the Full Court recognizing Respondent No. 1 as a retired Judge of the High Court. In the above context, it is

emphasised by her that as per Section 16(1) of the Act, the Chief Justice has to take a decision on his own even without consulting the Collegium

and, therefore, the decision taken in the present case being very much influenced by the earlier resolution of the Full Court, should be taken to be

vitiated.

90. It is no doubt true that in the Office Note prepared by the Registry, reference has been made to the resolution of the Full Court deciding to

keep on record the name of Respondent No. 1 as one of the retired Judges and, thereafter, the panel has been sent. However, from the above, it

cannot be concluded that the Chief Justice has surrendered his discretion to the Full Court's resolution. The Full Court's resolution nowhere indicates that such a name is required to be recommended for the office of the President of the Consumer Forum and in fact there was no such proposal placed before the Full Court either on the first occasion on 19.6.2008 or on the subsequent occasion on 11.7.2008. Therefore, the submission of the counsel for the petitioners that the ultimate decision made by the Chief Justice to send the panel of three names is very much influenced by the resolution of the Full Court, is not acceptable. As we have already observed that any resolution of the Full Court on such matter does not have any legal impact in the sense that the question as to whether the person would be eligible or not would depend upon the relevant provisions.

91. Even though we are of the view that the resolution of the Full Court has no relevance for the questions to be decided by us, we are obliged to place on record one disturbing feature.

It is now well known that a Permanent Bench of the Madras High Court has been established at Madurai. The materials on record indicate that the resolution was taken in a Full Court meeting of the Honourable Judges available at Madras on 11.7.2008 and no efforts had been made to place a similar agenda before the Honourable Judges who were sitting at Madurai at the same time. It is no doubt true that the Honourable Judges who attended the Full Court meeting on 11.7.2008 at Madras constituted the majority of all the Honourable Judges of the Madras High Court including those sitting at Madurai Bench, but, in fitness of things, any matter which is placed before the Full Court is expected to be attended by all the Honourable Judges of the Madras High Court, whether at Madras or at Madurai together or, if for any reason that is not possible, it is at least expected that such a matter should also be placed before the Honourable Judges who are sitting at the Madurai Bench at the relevant time. If certain matters are of routine nature, a decision can always be taken by circulation among the Honourable Judges available at both the places and if some matters being important by their very nature, it would be always advisable to have a common meeting of all the Honourable Judges at a convenient place or at least a simultaneous meeting of the Honourable Judges at

both the places.

In our considered opinion, the prayer in W.P. No. 21495 of 2008 is misconceived and, therefore, such writ petition is liable to be dismissed.

ALLIED QUESTIONS:

92. Even though not specifically urged during the hearing of the matters, it has been highlighted in the counter affidavit of the Respondent No. 1 that

the petitioners in W.P. No. 18731 of 2008 were aggrieved by the action of Respondent No. 1, while he was a counsel for Chennai Corporation

and Housing Board long back before, and the writ petition has been filed being actuated by collateral motive.

93. It is no doubt true that there are some decisions, including the decision of the Supreme Court reported in Dr. B. Singh Vs. Union of India

(UOI) and Others, , wherein it has been observed that a Public Interest Litigation can be refused where the petition is filed being actuated by

malice. The counter affidavit does not specify that each of the writ petitioners in W.P. No. 18731 of 2008 is actuated by collateral motive.

Therefore, it cannot be assumed that each of the writ petitioners in W.P. No. 18731 of 2008 had some collateral motive in filing the writ petition.

Moreover, no such allegation has been made by Respondent No. 1 in respect of the petitioners in W.P. No. 21504 of 2008. It is therefore not

necessary to delve further into such matter. To be fair to the counsel for Respondent No. 1, it must be stated that at the time of hearing no such

contention has been pressed into service.

94. In W.P. No. 21504 of 2008, a specific contention has been raised to the effect that Respondent No. 1 had resumed his practice as an

Advocate within six months of laying down the office of Additional Judge in violation of the Bar Council of India Rules. It has been stated that

Chapter III of the Bar Council of India Rules dealing with the conditions for right to practice (Rules u/s 49(1)(ah) of the Indian Advocates Act)

provides as follows:

Rule 7. An officer after his retirement or otherwise ceasing to be in service shall not practice for a period of two years in the area in which he

exercised jurisdiction for a period of three years before his retirement or otherwise ceasing to be in service.

RESOLVED that nothing in these Rules shall prevent any such person from

practising in any Court or Tribunal or Authority of superior jurisdiction to one in which he held office.

Explanation: "Officer" shall include a Judicial Officer, Additional Judge of the High Court and Presiding Officer or Member of the Tribunal or

authority or such Officer or authority as referred to in Section 30 of the Act.

95. In the above context it has been asserted in the writ petition and submitted in course of hearing that Respondent No. 1 has commenced

practice immediately on completion of the tenure in complete disregard with the Bar Council of India Rules and, therefore, Respondent No. 1 must

be held to be ineligible as he has violated such rules.

96. Even assuming that Respondent No. 1 had violated the Bar Council of India Rules in resuming his practice, such violation may give rise to a

cause of action for the Bar Council of India to take any action as contemplated under the Advocates Act or the Rules made thereunder, but we do

not understand as to how such illegal resumption of practice would make Respondent No. 1 ineligible to be considered for the post of President of

the Consumer Forum, if he is otherwise found to be eligible. Moreover, prima facie, the contention that Respondent No. 1 was not eligible to

resume his practice within a period of two years from the date of the end of his tenure, is not acceptable inasmuch as the embargo in Rule 7

contemplates that an officer after his retirement or otherwise ceasing to be in service shall not practice for a period of two years in the area in which

he exercised jurisdiction for a period of three years before his retirement or otherwise ceasing to be in service.

In the present case, Respondent No. 1 has held the office of the additional Judge only for a period of two years and, therefore, on the face of it

Rule 7 appears to be inapplicable. If Respondent No. 1 would have held the office of the additional Judge for a period of three years immediately

before his ceasing to be in office, the embargo contemplated in Rule 7 would have become applicable.

MISCELLANEOUS THOUGHTS:

97. In S.P. Gupta's case it has been observed:

95... The opinion given by any such constitutional authority may be mistaken or erroneous but the corrective for such mistake or error is to be

found in the constitutional provision itself and it cannot be provided by judicial intervention. The Court cannot take evidence for the purpose of determining whether the facts on which the opinion of a constitutional authority required to be consulted is based are true or not or whether the opinion expressed by such constitutional authority is well founded or not.... The court is concerned merely to enquire whether there was, in fact, full and effective consultation with the Chief Justice of Delhi and the Chief Justice of India and not whether the opinion given by the Chief Justice of Delhi or the Chief Justice of India was correct or not. It is possible that the opinion expressed by the Chief Justice of Delhi in the present case was mistaken or erroneous, but that is not an issue which can be examined by the court.

(Emphasis added)

98. A question may arise that non-confirmation of an additional Judge in a particular case was unjustified and yet such a person would be considered ineligible for being nominated to such Tribunal. It is true as observed in S.P. Gupta's case and subsequently in Second Judge's case that the question of confirmation of Judges is not justiciable save and except on the ground of non-compliance with the requirement of consultation with the required authorities. In other words, even if on the basis of an unjustified opinion there is no confirmation, the future of such person would be affected. Though this may be unfortunate fall-out and there may be instances where non-confirmation may be factually unjustified yet, keeping in view the larger perspective, the interest of the individual has to give way to the wider interest of the society. In a particular case the non-confirmation may cause an obvious injustice to a person concerned. However, such a thing cannot be helped. One can only philosophize by observing that everything in life is not always fair.

99. In Shri Kumar Padma Prasad Vs. Union of India and others, , in the context of appointment of a Judge of the High Court, it was observed:

27. It is for the first time in the post-independent era that this Court is seized of a situation where it has to perform the painful duty of determining the eligibility of a person who has been appointed a Judge of High Court by the President of India and who is awaiting to enter upon his office. We looked into the official records and permitted learned Counsel for the parties to

examine the same. We are at a loss to understand as to how the bio-data of Srivastava escaped the scrutiny of the authorities during the process of consultation under Article 217(1) of the Constitution of India. A cursory look at the bio-data would have disclosed that Srivastava was not qualified for appointment as a Judge of the High Court on the admitted facts which have been on the official files all the time. Needless to say that the independence, efficiency and integrity of the judiciary can only be maintained by selecting the best persons in accordance with the procedure provided under the Constitution. These objectives enshrined under the Constitution of India cannot be achieved unless the functionaries accountable for making appointments act with meticulous care and utmost responsibility.

28... We are fully aware of the delicacy and sensitivity of the matter and the stage at which the matter has been brought before us for judicial scrutiny. We make it clear that ordinarily the domain in such matters lies wholly with the constitutional authorities mentioned in Article 217 of the Constitution, but in exceptional circumstances like the present, where the incumbent considered for appointment as a Judge of a High Court does not fulfil the qualification as laid down expressly under the provisions of the Constitution itself, it becomes our bounden duty to see that no person ineligible or unqualified is appointed to a high constitutional and august office of a Judge of a High Court....

(Emphasis added)

We do not think anything more or anything less is required to be stated.

100. For the aforesaid reasons, we are constrained to allow W.P. Nos. 18731 & 21504 of 2008 and G.O.Ms. No. 144 dated 26.7.2008 is

quashed. As already indicated, W.P. No. 21495 of 2008, challenging the administrative decision of the Full Court is to be dismissed as being

misconceived and irrelevant. No costs. Consequently, the connected miscellaneous petitions are closed.

ORDER

P.K. Misra, J.—Immediately after the judgement was pronounced, Mr. Satish Parasaran, the learned Counsel appearing for the 1st

Respondent has orally prayed on behalf of the 1st Respondent that certificate for appeal to the Hon'ble Supreme Court may be granted, as the

question raised in the present case involves substantial question of law as to the interpretation of the Constitution and the also the case involves a

substantial question of law of general importance, which needs to be decided by the Hon"ble Supreme Court.

2. Considering the facts and circumstances, we deem it appropriate to grant certificate for appeal to the Hon"ble Supreme Court, as contemplated

under Article 134A read with Article 132(1) and Article 133(1)(a)&(b), as in our opinion, the case involves a substantial question of law as to the

interpretation of the Constitution and further the case involves a substantial question of law of general importance and it needs to be decided by the

Hon"ble Supreme Court.

3. The learned Counsel for the 1st Respondent has further requested that the operation of judgement may be stayed for a limited period to enable

the 1st Respondent to move the Hon"ble Supreme Court. However, in view of our conclusion in the judgement that the 1st Respondent was not

eligible to be appointed as President of the Consumer Forum, the said request is rejected.