

(2008) 09 GUJ CK 0066
In the Gujarat High Court

Case No : Special Civil Application No"s. 9023, 11974, 12977 and 19512 of 2007

M.S. Heena N. Thacker

APPELLANT

Vs

State of Gujarat and Others

RESPONDENT

Date of Decision : 25-09-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Consumer Protection Act, 1986 — Section 10(1), 10(1)(A), 10(2), 10(3), 24B

Citation : (2008) 09 GUJ CK 0066

Hon'ble Judges : Jayant Patel, J

Bench : Single Bench

Advocate : Bhushan B. Oza, for the Appellant; Sangeeta Visan, AGP for Respondents 1 and A.J. Shastri, for Respondents 3, for the Respondent

Judgement

Jayant Patel, J.—As in all the petitions, common questions arise for consideration and to some extent, the facts are inter-linked, they are being considered by this common judgement.

2. Special Civil Application No. 9023 of 2007 has been preferred by Ms. Heena N. Thacker, who was appointed as a Member of the District Consumer Redressal Forum for Kutch District under the Consumer Protection Act read with Consumer Protection Rules, 1987 (hereinafter referred to as the "Act" and the "Rules" for the sake of convenience). It is the case of the petitioner that she underwent the training programme in capacity as the Member of the Consumer Redressal Forum (hereinafter referred to as the "Consumer Forum" for the sake of convenience) and she discharged the duty satisfactorily from 2001-2006. On 27.9.2005, as the term of the petitioner was to expire on 14.3.2006, she applied for reappointment as per proviso added to Sub-section (2) of Section 10. The application of the petitioner was forwarded, however, the extension was not granted to the petitioner. On 8.8.2006, as advertisement was published for inviting applications of the eligible persons for appointment as the Member of the District Forum, the petitioner in response thereto, submitted application. The interviews were held

and ultimately, as per the petitioner, she was selected and her name appeared at Sr. No. 1 in the names recommended by the selection committee constituted as per the Act. However, the petitioner was not given appointment, but respondent No. 3, another candidate whose name was also included in the select list, but latter to the petitioner, was given appointment. It is under these circumstances, the said petitioner has approached this Court seeking directions to the respondents to appoint the petitioner as full-time lady Member of the District Forum for a term of five years and it is also prayed in the petition by the concerned petitioner to cancel the appointment made of the person other than the petitioner as the lady Member in the District Forum.

3. Special Civil Application No. 19512 of 2007 is preferred by Ms. Harshaben Shantilal Chauhan, who was also initially appointed in the year 2001 vide order dated 2.7.2001 as the Member in Ahmedabad District Consumer Redressal Forum for a period of five years. On 6.2.2006, the application was made by the petitioner for reappointment and as per the petitioner, her reappointment was recommended by the selection committee, but the reappointment was granted for a period of one year vide order dated 12.5.2006. It is the case of the petitioner that vide letter dated 2.1.2007, she requested for the reappointment for a further period of four years. It is her case that her name was also recommended being deserving candidate for reappointment, but the State Government, instead of extending the period of extending the period of appointment for a further period of four years, issued advertisement on 27.7.2007 in the newspaper inviting the applications for the post of Member in the District Forum. It is under these circumstances, the petitioner has approached this Court by preferring the present petition to seek for appropriate directions to the respondents to appoint the petitioner on the post of Member of District Forum. It deserves to be recorded that pending the petition, the petitioner has brought about the amendment, seeking alternative prayer to direct the respondents to extend the period of appointment for a further period of four years based on the earlier appointment for a period of one year. The petitioner has also challenged the resolution of the State Government dated 30.11.2004 by amendment contending, inter alia, that the said resolution is ultra vires the powers of the State Government for laying down the manner and mode of appointment of the Member in the District Forum, which otherwise is controlled by the Section 10(2) read with Section 30 of the Act.

4. Special Civil Application No. 11974 of 2007 has been preferred by Meenaben J. Dharmani, who was also appointed as the Member in District Forum, Jamnagar in the year 2001 for a period of five years. It is the case of the petitioner that she applied for reappointment under the Act and the selection committee did recommend for reappointment of the petitioner and thereafter the petitioner also pursued the matter, but instead of reappointing the petitioner, an advertisement was published for inviting applications of the eligible persons in Gujarat Samachar and as per the petitioner, there is no uniform policy of the State Government for selection and reappointment of the Members of the District

Forum. Therefore, under these circumstances, the petitioner has approached this Court by the present petition. It has been prayed by the petitioner to issue appropriate directions to the respondents to appoint the petitioner as full-time Member of Jamnagar District Consumer Redressal Forum for a period of five years and it is also prayed for quashing and setting aside the appointment of respondent No. 3, who has been appointed as the Member in the District Forum pursuant to the advertisement in the newspaper.

5. Special Civil Application No. 12977 of 2007 has been preferred by Kumari Hema S. Shukla, who applied for the post of Member in the District Consumer Redressal Forum at Junagadh. It is the case of the petitioner that she was also appointed as the Member in the District Forum. However, as per the petitioner, pursuant to the advertisement, her name was recommended by the selection committee, but the appointment is not given to her and respondents No. 4 and 5 are appointed. Therefore, for challenging the appointment and to restrain respondents No. 4 and 5 from functioning the petitioner has approached this Court by the present petition.

6. Heard Mr. B.B. Oza, Mr. P.A. Mehta, and Mr. Acharya, learned Counsel for the respective petitioners, Ms. Sangeeta Visan, learned AGP for the State Authorities in all the petitions, Mr. Rana, learned Counsel for respondent No. 5 in SCA No. 12977 of 2007, Mr. Shastri, learned Counsel for respondent No. 3 in SCA No. 9023 of 2007 and Mr. Patel, learned Counsel for respondent No. 4 in SCA No. 12977 of 2007.

7. In order to appreciate the controversy, it would be worthwhile to consider the provisions of the Act read with the Rules and, in any case, prior thereto the object of the Act also deserves to be considered. In the object clause the relevant reads as under:

Enacted to provide for a better protection of the interest of the consumers and for that purpose to make provisions for establishment of Consumer Council and other authorities for settlement of consumer disputes and for matters connected therewith.

8. Therefore, the object of the Act itself, inter alia, is to substitute the mechanism for settlement of the consumer disputes. It also deserves to be recorded that prior to enactment of the Act, if the consumer had any grievance against the service provider or any institutions pertaining thereto, he was required to invoke the powers of the Civil Court for adjudication of such disputes and by virtue of the present Act, the jurisdiction, which otherwise had with the Civil Court for settlement of the dispute of the consumers subject to the limits as prescribed under the Act, is now substituted by the present Act with the consumer forum, may be at the District level or at the State level or at the National level. The aforesaid is relevant to record that constitution of the Consumer Forum at any level is by way of a substitution of the power of the Civil Court for administration of justice, may be by way of summary procedure as

prescribed under the Act. The scheme of the Act and the inbuilt mechanism provided under the Act for resolution and adjudication of the disputes goes to show that though such forum cannot be fully equated with all trappings of the Court as known by traditional manner, but the power to be exercised by all consumer forums are no less than the exercise of judicial power holding a considerable share in a system of administration of justice, may be in a restricted field of settlement of consumer dispute.

9. Section 10 of the Act, which is mainly of relevance in the present case reads as under:

"10. Composition of the District Forum. (1) Each District Forum shall consist of-

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university,

(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:

Provided 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 or 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;

(1A) Every appointment under Sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely:

(i) the President of the State Commission Chairman.

(ii) Secretary, Law Department of the State Member.

Secretary incharge of the Department dealing with consumer affairs in the State Member.

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in Clause (b) of Sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

"Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in Sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of Sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum."

Sub-section (1) of Section 10 provides that the District Forum shall consist of a person, who is, or has been, or is qualified to be a District Judge, as the President and two other members, one of whom shall be woman holding the qualification as prescribed, of not less than 35 years of age, holding a Degree from a recognised University, be persons of ability, integrity and standing and having 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 to Sub-section (1) also provides for the disqualification for appointment as a member, if such person is falling in that

category of Clause (a) to (f). Therefore, Sub-section (1) of Section 10 provides for the qualification of the President, the Members, including the woman Member and also the disqualification of a Member. Hence, the person should hold requisite qualification, then only he will be eligible to be appointed, but from amongst the persons qualified to be appointed, if anyone is holding disqualification, he or she would not be appointed. Therefore, the disqualifications are to be read as in contradiction to the qualification for appointment as the Member of the District Forum.

Sub-section (1)(a), which has been amended by the Act of 1993 speaks for regulating the appointment and it provides that the appointment shall be made by the State Government on the recommendation of a Selection Committee, consisting of the President of the State Commission, being Chairman, Secretary of the Law Department of the State Government as the Member, and the Secretary In-charge of the Department as the Member. Therefore, the language of Sub-section (1)(a) is by the words "shall be made by the State Government" and the second is "on the recommendation of the Selection Committee". Hence, the recommendation of the Selection Committee is a must for exercise of the power by the State Government and the language as it is shows an obligation upon the State Government to make the appointment after considering the recommendation of the Selection Committee. As regards the discretion left to the State Government, who is the appointing authority after having received the recommendation from the selection committee shall be an aspect which will be dealt with appropriately at the later stage, but the pertinent aspect is that the condition precedent for appointment is the recommendation of the selection committee for the person concerned and the obligation upon the State Government to consider the recommendation of the selection committee and thereafter only to give the appointment. As in the present case this Court is not concerned with the proviso to Sub-section (1)(a) no discussion may be required.

Sub-section (2) of Section 10 provides for holding of the office by the Member for a period of five years or up to the age of 65 years, whichever is earlier with the further proviso therein that a Member shall be eligible for reappointment for another term of five years or up to the age of 65 years, whichever is earlier, provided he fulfills the qualifications and other conditions for appointment as per Clause (b) of Sub-section (1) and such reappointment is also made on the basis of the recommendation of the selection committee. Therefore, even at the time of reappointment the person concerned in addition the meeting of requirement of Clause (b), providing for the qualification, and not falling in any of disqualifications, there should also be the recommendation of the selection committee and the exercise of the power by the State Government for reappointment should also be on the basis of the recommendation of the selection committee. It further appears that the proviso to Sub-section (2) provides for eligibility of such person to be reappointed for another term of five years or 65 years whichever is earlier. The language is "another term" and not "zother term or other terms" as sought to be canvassed by Mr. Mehta, learned

Counsel appearing for one of the petitioners. It is hardly required to be stated that when the plain and literal meaning of any language of the Statute can be extracted, Courts while interpreting would not add the word, unless it is difficult for the Court to extract the real meaning of a particular statute. The fact that the legislature has used the words "another term", it suggests one term for reappointment and the same could be of five years. Whether the reappointment must be for five years or could be of a lesser period, if considered as it is from the language of the section, it is apparent that the proviso provides for eligibility of a Member to be reappointed for a term of five years, but it does not create a simultaneous obligation on the appointing authority unless the qualification for reappointment is continued for the fullest period of five years or such reappointment is not recommended by the selection committee for a full period of five years.

8. To say in other words, if the person is not recommended by the selection committee for a period of five years and the recommendation is forwarded by the selection committee for reappointment, it would be within the power of the appointing authority to grant reappointment for a period not exceeding five years or 65 years of age, whichever is earlier. It is a different matter if such power is not exercised in bonafide or without considering the ground germane to the exercise of the power, but merely because the recommendation is made by the selection committee and the period is not prescribed, the person concerned, who is holding the eligibility for reappointment cannot seek as of right for reappointment for the maximum period of five years, unless the recommendation by the selection committee is for a period of five years. Therefore, to that extent, the submission of the learned Counsel for the petitioner, seeking right for reappointment for a period of five years, irrespective of the recommendation by the selection committee for a particular period or in absence thereof, creating an obligation upon the State Government to reappoint for a period of five years, cannot be accepted. However, at the same time, it deserves to be recorded that if the person is fulfilling the qualification and not holding any disqualification and his name is recommended by the selection committee for appointment for a period of five years, it would be required for the State Government to reappoint such person for the period as recommended by the selection committee, but subject to the discretion with the appointing authority, as may be dealt with hereinafter.

9. The Act is a law made by the Parliament and for enforcing the provisions contained in the Act, the State Government or the Central Government, as the case may be, are clothed with the power to make Rules as per Section 30 of the Act. Perusal of Section 30(2) of the Act provides the enabling power with the State Government to make Rules for carrying out the provisions contained in Sub-section (3) of Section 10, which relates to fixation of salary and the honorarium and other allowances and the terms and conditions of service of the Members of the District Forum. The pertinent aspect is that no power to make Rules vest to the State Government for carrying out the provisions contained in Sub-section

10(1), Sub-section 10(1)(a) and Sub-section 10(2) of the Act. Further, Section 29 of the Act provides for the power with the Central Government to issue order for removal of the difficulties in implementation of the Act. Therefore, such residuary power vest to the Central Government and not with the State Government. Under these circumstances, keeping in view the provisions of Section 30(2) read with Section 29 of the Act, it appears that the Parliament, while enacting the Act, has kept the mechanism for constitution of the District Forum intact, as provided under Sections 10(1), 10(1)(a), 10(2), leaving no further power with the State Government to regulate the same by Rules or to issue any orders for removal of the difficulties for implementation of the said provisions. Therefore, it can be concluded that as per the Scheme of Section 10(1), Section 10(1)(a) and Section 10(2), it is required for the State Government to strictly go by the Section and the language of the Act and no departure therefrom is permissible, save and except the limit of discretion with the appointing authority as shall be dealt with hereinafter.

10. The aforesaid takes me to examine the discretion left with the State Government in capacity as the appointing authority, after having received the recommendation of a selection committee. The contention raised on behalf of the petitioner is that since it is a matter pertaining to the appointment on judicial post of a Member of District Forum, no discretion is left with the State Government to make a departure therefrom, unless the person concerned is holding any disqualification as provided by Sub-section (1) of Section 10.

11. Whereas on behalf of the State Government, it has been contended by learned AGP for the word "recommendation" used by the legislature itself suggests that it is having recommendatory effect and not binding effect as sought to be canvassed on behalf of the petitioner. It has been submitted that the language of section itself suggests the discretion with the appointing authority, which is the State Government, to make a departure from the recommendation of the selection committee in the matter of appointment if there are valid reasons.

12. The learned AGP heavily relied upon the decision of the Apex Court in case of A. Panduranga Rao Vs. State of Andhra Pradesh and Others, for contending that the recommendation means "suggest as fit for employment" and the State Government, for good reasons, can reject the recommendation. It was submitted that merely because the name is recommended by the Selection Committee would not confer any right in favour of the candidate to be appointed. Therefore, it was submitted that the recommendation of the Selection Committee cannot be read as binding to the State Government, since the final authority for appointment vests to the State Government.

13. So far as the right of the candidate for appointment after having inclusion of his name in the select list is concerned, since the same is a different aspect, it will be considered at the later stage, but on the aspects of effect of the recommendation upon exercise of the power by the State Government, if is to be

considered, as observed hereinabove in the earlier paragraph, the condition precedent for exercise of the power by the State Government for appointing any person as the member of the District Forum are;

- (a) That he should be qualified to be appointed;
- (b) That he should not have been holding any disqualification and;
- (c) That his name must have been recommended by the Selection Committee.

14. Therefore, in absence of the recommendation of the Selection Committee, the person concerned cannot be appointed by the State Government as the Member of the District Forum. The recommendation could be of various types by the Selection Committee and the Select List could be prepared either of the recommendation as per the merit order or of the recommendation of the persons of the same merit. In case of the latter namely; when the Selection Committee has prepared the recommendation by inclusion of the names of the candidates having equal merits, the Government being appointing authority may give appointment to any of such candidates and such discretion may be available to the State Government after having received the recommendation from the Selection Committee. However, in a case where the Selection Committee has examined the merit of each of the candidates and has prepared a recommendation as per the merits of inter se of each candidates and the recommendation is forwarded to the State Government as per the merit order, it would be normally expected for the Government to go by the merit order prepared in the recommendation of the Selection Committee and the reason being that merit of each candidate cannot be given a go-bye by the appointing authority while issuing the appointment order, nor it would be expected for the Government to offer appointment to the candidate having less merit in comparison to the candidate whose name as per the merit order is placed above such candidates. In the matter of public employment maximum weightage deserves to be given to the merit of the candidate concerned and such principles are well established. When the merit order is prepared by any selection committee, it is not open to the appointing authority to sit in appeal over the merit examined by the selection committee. The appointing authority at the most for valid reasons may have the power to exclude the candidate for appointment, but such will not be as if reassessment of the merit or in an arbitrary manner. The valid good reasons for excluding the higher meritorious candidate must be strong, cogent, and sufficient enough to decline appointment, keeping in view the post to be held by such persons and the duties to be discharged by him of such post. Even in case of A. Panduranga Rao (Supra), upon which reliance is placed on behalf of the Government, the Apex Court did observe, inter alia, at para 9 as under:

9. ...Government was not bound to accept all the recommendations but could tell the High Court its reasons for not accepting the High Court's recommendations in regard to certain persons. If the High Court agreed with the reasons in case of

a particular person the recommendation in his case stood withdrawn and there was no question of appointing him. Even if the High Court did not agree the final authority was the Government in the matter of appointment and for good reasons it could reject the High Court's recommendations. In either event it could ask the High Court to make more recommendations in place of those who have been rejected.

15. Therefore, even in the matters where the recommendations were made without preparing any, *inter se*, merit order and only names were forwarded, for rejection of the candidates whose names were forwarded existence of good reasons for rejection was a must even as per the above referred decision upon which the reliance has been placed by the learned AGP.

16. It deserves to be recorded that the legislature u/s 10(1)(A) has not used the words "only the recommendations", but has used the language "the recommendation of a selection committee". Therefore, the essential function of such selection committee is to select the suitability and the merit of all the candidates, who are to be considered. When the Selection Committee is enjoined with examination of the suitability and the merit of the candidates concerned and thereafter has to make recommendation, it would be required for the State Government, who is the appointing authority to go by the recommendation of the merit order prepared by the selection committee after examination of the suitability and the merit of each candidate. In a given case if the Government is desirous to exclude the higher meritorious candidate in the list prepared by the selection committee, there must be strong and cogent circumstances warranting exclusion of such candidates. Not only that, but nothing prevents the Government concerned communicating to the selection committee about such strong and cogent circumstances of the higher meritorious candidate for exclusion and the view of the selection committee on the said aspects may also carry weightage upon the Government for exercise of the power for issuing the appointment orders. It also deserves to be recorded that the Consumer Forum, as observed earlier, is by way of substitution in the field of administration of justice for settling the disputes of the consumer with the service provider. The Apex Court in case of *State of Rajasthan and Others Vs. Anand Prakash Solanki*, while holding the transferability of the President or the Member of the District Forum within the State did observe, *inter se*, at para 8 as under:

8. It cannot be lost sight of that the National Commission, State Commissions and the District Fora have all been constituted to exercise jurisdiction over such grievances of the aggrieved persons, which were earlier available to be raised before the conventional courts established under the Constitution and/or the laws. Inasmuch as the persons appointed to discharge functions under the Act at whatever level exercise judicial powers and are expected to function judicially consistently with the procedure as laid down by the Act or Rules framed thereunder, the very nature of the functions discharged by them needs them to be insulated from the control of, or interference by the Executive. So far as the

District for a are concerned, the purpose is sought to be achieved by Sub-section (1A) of Section 10 as also by Section 24B of the Act. Every appointment under Sub-section (1) of Section 10, though made by the State Government, is dependent on the recommendation of a selection committee which is headed by the President of the 17. State Commission who is, or has been, a Judge of a High Court.

17. Therefore, it would be required for the Government, who is the appointing authority to give full weightage to the recommendation prepared after examining the suitability and merit of the candidate concerned by the Selection Committee and it would not be open to the State government to decline appointment to the higher meritorious candidates on any arbitrary, flimsy, capricious or non-germane consideration, otherwise such power of the appointing authority would result into exclusive domain of the executive, which may hit at the root of exercise of the judicial power by the Members, who are to be appointed being part of the District Forum. Further, even for reappointment same procedure of recommendation by the selection committee is to be followed. Therefore, unless the Government exercises the power, normally to go by the merit order prepared by the selection committee, it may result into pleasure doctrine of the executive, which can never be the intended purpose of the Act while substituting the forum in place of Civil Court in the field of administration of justice for settlement of the consumer dispute, nor such can be said as permissible under the Constitution of India.

18. At this stage it would be worthwhile to refer to the decision of the Division Bench of the Andhra Pradesh High Court in case of *Mrs. M. Raghava Rani Vs. The Govt. of A.P. and Others*, wherein the Division Bench of Andhra Pradesh High Court, after considering the scheme of the Act and having extracted the above referred observations of the Apex Court in case of *State of Rajasthan (Supra)* did observe, *inter alia*, at para 19 as under:

19. It is true that a notification of vacancies merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection by the Selection Committee or by inclusion of their names in the list of selected candidates they do not acquire any right to the post. It is also true that the Selection Committee is only a recommendatory body and the recommendations of the Selection Committee being advisory in nature, undoubtedly, the appointing authority can have a say in finalisation of the appointments. But, when objective criteria for selection have been clearly laid down under a Statute and the business of selection has been entrusted to a Committee constituted under the Statute itself, the question is whether the appointing authority can ignore the recommendation of the Selection Committee according to its own sweet will and pleasure?

20. Thereafter, it was answered at para 25 as under:

25. ... No doubt, the recommendation made by the Selection Committee being advisory in nature, even in the absence of an express provision, the Government

may disagree with the recommendations made by the Selection Committee and take a decision to renotify the vacancies. However such disagreement or disapproval cannot be as a matter of course, but only for valid reasons and on conscious application of mind to the recommendations made by the Selection Committee and the adverse material, if any.

21. It is by now well settled that even if the name of any candidate is included in the select list for any post, there is no vested right with the said candidate for appointment to the post and, therefore, the learned AGP is right in making submission to that effect. But the matter does not end there. The appointing authority, if has exercised the power in an arbitrary manner, by giving a go-bye to the merits of the candidate concerned on any capricious or non-germane consideration, it cannot validly resist the exercise of the power by this Court under Article 226 of the Constitution of India by projecting that there is no vested right with the candidate concerned to be appointed. If such ground is considered on its mere face value, it would result into foreclosure of judicial scrutiny by this Court to the action of the appointing authority and consequence may arise for allowing such arbitrary exercise of the power by the appointing authority to operate, which could not be an ultimate end result for exercise of the power by the Constitutional Courts. Therefore, irrespective of the factum of no vested right with the candidate to be appointed after inclusion of his name in the select list, the Court may undertake the judicial scrutiny of an action of the appointing authority and if found arbitrary or unconstitutional, may strike down the action with a direction to the appointing authority to take decision for appointment after taking into consideration the observations made by the Court to such an action of the appointing authority.

22. In view of the aforesaid the legal position can be deduced as under:

(A) Member of the District Forum appointed is to exercise the judicial power in the system of administration of justice for settling the disputes of the consumer and the service provider as per the Scheme of the Act read with the Rules. Therefore, the Government while dealing with the matter of appointment of the Members of the District Forum would be required to keep in mind that such appointment are to be made of the persons, who are to discharge judicial power.

(B) As per the Scheme contemplated u/s 10 of the Act, a person to be appointed as the Member must be qualified to be appointed and should not be holding any disqualification as provided u/s 10(1) of the Act.

(C) In absence of the recommendation of the Selection Committee, no person can be appointed as the Member of the District Forum.

(D) The selection committee is enjoined with the duty to examine the suitability and the merit of the candidate concerned and has to prepare the merit list of the candidates as per the, inter se, merit and has to recommend to the State Government for appointment.

(E) State Government, after having received the recommendation for giving appointment, would normally go by the merit order prepared by the Selection Committee in its recommendation.

(F) It is only when there are strong, cogent and valid circumstances, the name of non-deserving to the post to be held or duty to be discharged, by such person, higher meritorious candidate in the list of the selection committee can be excluded.

(G) If any candidate is to be rejected in view of the aforesaid strong, cogent and valid circumstances by the Government, it may inform the selection committee for its view on the said aspect. It would be required for the Government to consider the view of the selection committee, if any, for excluding the higher meritorious candidate.

(H) The ultimate decision of the Government for appointment/reappointment of the member can be subjected to judicial review, at the instance of the candidate having higher merit if his name has been excluded by this Court under Article 226 of the Constitution of India.

(I) If the ground for exclusion of higher meritorious candidate on the part of the Government is arbitrary or capricious or flimsy or non-germane consideration, such action can be struck down by this Court in its power under Article 226 of the Constitution of India.

(J) There is no vested right with the candidate for appointment if his name has been included in the select list. However, if the exclusion is found by this Court as arbitrary or unconstitutional, it would be required for the Government to consider the case of the higher meritorious candidate for making appointment to the post of member of the District Forum.

(K) All the aforesaid would apply with the same vigour in a case where a member is to be reappointed.

(L) There is no vested right with a member for reappointment, but it would be required for the Government to extend the period of reappointment as per the recommendation of the Selection Committee, subject to maximum limit of five years or age of 65 years, whichever is earlier.

23. If the facts of the present case are examined in light of the aforesaid legal position, it appears that the only ground contended on behalf of the State Government in all the petitions is to give a chance to a new person and thereby to exclude the higher meritorious candidate, whose name was recommended by the Selection Committee in the merit order at the time of reappointment or at the time of fresh appointment. In the matter of offering appointment to any public post on the basis of inter se merit giving opportunity to a new person and thereby to exclude higher meritorious candidate can hardly be said as a valid consideration germane to the exercise of the power, more particularly when in the present Act after two appointments (one at the time of first appointment and

second at the time of reappointment) room is already made for appointment of a new person, since any member cannot be reappointed three times. Therefore, such a ground on the part of the State Government for excluding the higher meritorious candidate, which is for giving opportunity to new person can be said as arbitrary and capricious and also non-germane to the exercise of the power. Not only that, but no attempt is made on the part of the State Government to invite the views, on the aforesaid aspects of excluding higher meritorious candidates on the ground of giving entry to the new persons, are called for, of the selection committee. Under these circumstances, the ground on the basis of which the appointment has been denied to the higher meritorious candidate recommended by the selection committee cannot be sustained at all and if considered valid, would result into leaving at the pleasure doctrine of the appointing authority, which is neither warranted under the law, nor permissible under the Constitution.

24. If the State Government has offered appointment to the higher meritorious candidate or has gone by the merit order prepared by the selection committee no fault can be found with the same, as such appointment has been in consonance with the principles of law deduced and as stated hereinabove.

25. The petitioners of Special Civil Application No. 9023 of 2007 has applied for the post in response to the advertisement and, therefore, her case would be required to be considered by the State Government as per the merit order prepared by the Selection Committee in the recommendation forwarded to the Government. If the merit order of the petitioner is given a go-bye by the State Government on the aforesaid arbitrary and capricious ground and a candidate next to her is wrongly offered appointment, it would be required for the Government to pass consequential order for terminating the appointment of respondent No. 3 and the offer of appointment of the petitioner for the reminder of the period.

26. The petitioners of Special Civil Application No. 19512 of 2007 has already been granted reappointment for a period of one year, and as observed earlier, the eligibility for reappointment is once. Further, no material is available on record to show as to whether the selection committee recommended for her reappointment by specifying the period or not. Therefore, if the reappointment is curtailed by the State Government dehors the recommendation of the Selection Committee for reappointment for a particular period, it was required for the petitioner to challenge the action at the time when reappointment was given for a lesser period, but as has not been done and at the time when, upon the expiry of the period of reappointment, a fresh advertisement is given the petitioner has approached this Court. Under these circumstances, when the rights of third party namely; respondent No. 3 have been created and it is not a case of the petitioner that the merit order prepared by the Selection Committee is given a go-bye on the alleged ground, no relief in this regard deserves to be granted to the said petitioner. However, qua challenge to the Government Resolution dated

30.11.2004 is concerned, the same was already in existence at the time when the petitioner was offered reappointment for a period of one year. Further, the resolution regulates the other terms and conditions of the Member of the Forum, which cannot be said as ultra vires the powers of the State Government on the ground as sought to be canvassed. In any case, for the purpose of appointment, the legal position as stated hereinabove is to prevail for regulating appointment of the Member in a District Forum, hence no further relief deserves to be granted to the petitioner so far as it relates to challenging the said resolution.

27. The petitioners of Special Civil Application No. 11974 of 2007 did apply for reappointment in response to the public advertisement and her name was at Sr. No. 1 in the merit prepared by the selection committee, whereas the Government has excluded her, on arbitrary and capricious ground for giving opportunity to the new person and has offered appointment to respondent No. 3, whose name was not included in the select list, but was included in the wait list. Therefore, the exclusion of the petitioner by the Government can be said as arbitrary and unconstitutional and at the same time, the appointment offered to the respondent No. 3 can also be said as unconstitutional and arbitrary. It would be required for the Government to issue consequential order in the matter of appointment as the member of the Forum to the petitioner for the remainder of the period, by terminating the appointment of Respondent No. 3.

28. There are disputes about the merit order of the petitioner of Special Civil Application No. 12977 of 2007 from the affidavit-in-reply filed on behalf of the candidate, who have been offered appointment by the Government, concerning to the merit order in the recommendation of selection committee for the post of member in the District Forum. Therefore, it would be required for the Government to strictly go by the merit order prepared in the recommendation of selection committee so far as the appointment to the post is concerned. If the name of the petitioner is shown as above in the merit order in the recommendation of the selection committee, the same treatment as observed for the petitioners of Special Civil Application No. 9023 of 2007 shall be required to be given by passing consequential order, but if the name of the candidate who has been offered appointment and parties to the proceedings are above merit order than the petitioner, no further orders shall be required to be passed by the State Government.

29. Accordingly, Special Civil Application No. 9023 of 2007, Special Civil Application No. 11974 of 2007 and Special Civil Application No. 12977 of 2007 shall stand allowed to the aforesaid extent only, whereas Special Civil Application No. 19512 of 2007 shall stand disposed of accordingly.

30. Rule discharged in Special Civil Application No. 19512 of 2007, subject to the aforesaid observations. Rule in the respective petitions made absolute to the aforesaid extent. No order as to costs.

31. After pronouncement of the judgement, learned AGP prays that operation of

this order be suspended for a reasonable period, so as to enable Government to approach before the higher forum.

32. Whereas on behalf of the petitioner the learned Counsel submitted that some time-bound direction may be issued to the Government for passing consequential order as observed in the judgement.

33. Considering the facts and circumstances, the Government shall pass consequential order within a period of two weeks from today.

34. The learned AGP shall communicate the order. In view of the aforesaid time given, further, order for suspending operation of the judgement may not be required. Even otherwise also, it will create complication about the functioning of the members, whose appointments are found as illegal by this Court. Therefore, the Government shall ensure that until the judgement is implemented, the President of the District Forum is communicated about the present judgement, so as to take care of further/future complication which may arise concerning to the exercise of the judicial power by such member of the District Forum.