

(1995) 08 BOM CK 0021

In the Bombay High Court

Case No : Writ Petition No. 1613 of 1995

M/s. Krishna Traders

APPELLANT

Vs

R.G. Khedkar and others

RESPONDENT

Date of Decision : 31-08-1995

Acts Referred:

Administrative Tribunals Act, 1965 — Section 6
Administrative Tribunals Act, 1985 — Section 6
Constitution of India, 1950 — Article 217
Consumer Protection Act, 1986 — Section 10(2), 18A

Citation : AIR 1996 Bom 83 : (1996) 1 BomCR 342 : (1995) 732 BOMLR 97 :
(1995) 2 MhLj 730

Hon'ble Judges : D.R. Dhanuka, J

Bench : Single Bench

Advocate : N.P. Vashi, for the Appellant; Ms. P.D. Ankalesaria, for the Respondent

Judgement

D.R. Dhanuka, J.—By this petition filed under Article 226 of the constitution of India, the petitioner has sought issue of a writ of quo warranto against respondent No. 1 In substance, the petitioner has impugned notification dated 22nd September, 1994 issued by respondent No. 2 appointing respondent No. 1 as the President of Bombay Suburban District Forum u/s 10 of Consumer Protection Act, 1986.

2. The respondent No. 1 is a retired Additional Session Judge. Section 10(1) of the Consumer Protection Act, 1986 provides that each district forums shall consist of a person who is, or has been, or is qualified to be a District judge to be nominated by the State Government, to be its President. The Respondent No. 1 fulfils the requirements of Section 10(1)(a) of the Act.

3. On 30th December 1989 the respondent No. 1 was appointed as the president of the District Consumer Redressal Forum. On 29th October 1991, the respondent No. 1 resigned from the said office. On 25th November 91, the

resignation of respondent No. 1 was accepted by respondent No. 2. The respondent No. 1 is re-appointed as President of the forum by order dt. 22/9/94.

4. Section 18A of consumer protection Act, 1986 provide for filling up of the vacancy in the office of the President. Section 18A of the said act reads as under :

"18A. Vacancy in the office of the President.-- When the office of the president District Forum or the State Commission, as the case may be, is vacant or when any such President is, by reason of absence or otherwise unable to perform the duties of his office, the duties of the office shall be performed by such person, who is qualified to be appointed as President of the District Forum, or, as the case may be, of the State Government may appoint of the purpose."

5. Shri A.K. Chawal, the then President of the Forum proceed on leave. In this situation, the respondent No. 2 issued the impugned notification appointing respondent No. 1 as the President of the Forum. The respondent No. 2 passed the said order in exercise of the power conferred on it by sub-section A of Section 18 of the Consumer Protection Act, 1986.

6. Section 10(2) of the Consumer Protection Act, 1986 reads as under :

10.(2) Every member of the District Forum shall held office for a term of five years or to the age of 65 years whichever is earlier, shall not be eligible for re-appointment :

"Provided that a member may resign office in writing under his hand addressed the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualification mentioned in sub-section (1) in relation to the category of the member who has resigned."

7. It is not the case of the petitioner the respondent No. 1 hand already held the office for the term of five years on 22nd September 1994. It is not the case of the petitioner the respondent No. 1 had already crossed age of 65 year on that date. The age of respondent No. 1 as on 22nd September 1994 was 63 years, 5 months. It is not the case of the petitioner that the re-appointment of respect No. 1 as President of the Forum impugned order dated 22nd September 1994 is in contravention of the main provision contained in Section 10(2) of the Act. The learned counsel for the petitioner submits that on true construction of the proviso appended to section 10(2) of the Act, the Court should take a view that once a member resigned from office, he cannot be re-appointed. The learned counsel for the petitioner submits that the respondent No. 1 was not qualified to be reappointed as President of the Forum in view of the respondent No. 1 having resigned from the said post on 29th October 1991 and the said resignation having been accepted by the Government of Maharashtra on 25th November 1991. In my opinion the learned counsel for the petitioner is in error. The proviso to Section 10(2) of the Act does not create any bar to re-appointment of a member of the District Forum at all. The said proviso cannot be interpreted in a

manner so as to nullify the main part of sub-section (2) of Section 10 of the Act. If a member of the District Forum resigns from office, the said vacancy caused as a result of resignation may be filled up by appointment of any person possessing the qualification mentioned in sub-section (1) of Section 10. The Respondent No 1 does possess such qualifications. The bar to re-appointment comes in only if the member of the five years or has crossed the age of 65 years and not otherwise.

8. The learned counsel for the petitioner invited the attention of the Court to the ratio of the judgment of the Supreme Court in the case of Binay Kant Mani Tripathi Vs. Union of India and others, . In this case, the Apex Court construed Section 6 of the Administrative Tribunals Act, 1965. Section 10 of the Consumer Protection Act, 1966 bears no analogy with Section 6 of the Administrative Tribunal Act, 1985. In my opinion, the ratio of the said judgment has no relevance whatsoever for the purpose of interpreting Section 10(2) of Consumer Protection Act, 1986. The learned counsel for the petitioner also invited the attention of the Court to the Article 217 of the Constitution of India. In my opinion, reference to the said article is equally irrelevant.

9. The learned counsel for the respondent No. 2 points out that this petition has not been filed bona fide as obvious from the date of filing of the petition and the notices issued by the Forum against the petitioner. It appears that a grievance was made by one Miss Margaret Mascarenhas in respect of non-payment of Rs.8,880/-. It is not necessary to decide this contention raised on behalf of respondent . In my opinion, the impugned notification dated 22/9/1994 was issued by respondent No. 21 lawfully and no case is made out for issue of writ of quo warranto.

10. In the result, the petition fails. The petition is dismissed.

11. Issue of certified copy expedited.

12. Petition dismissed.