

(2015) 02 KAR CK 0214

In the Karnataka High Court

Case No : R.P. No. 517/2014 [In W.P. No. 50856/2012 (S-RES-PIL)] and W.P. No. 23015/2014 (GM-RES)

State of Karnataka and Others

APPELLANT

Vs

Basavanagouda Patil and Others

RESPONDENT

Date of Decision : 13-02-2015

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(1A), 10(1-A), 16, 20

Citation : (2015) 4 KarLJ 414 : (2015) 4 SCT 73

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J.

Bench : Division Bench

Advocate : A.S. Ponnanna, A.A.G. and Shwetha Krishnappa, HCGP, for the Appellant; Jayna Kothari, Advocates for the Respondent

Final Decision : Disposed off

Judgement

B.V. Nagarathna, J.—Review Petition No. 517/2014 has been filed by the State seeking review of order dated 3.6.2013 passed in W.P. No. 50856/2012, which was filed in public interest.

2. W.P. No. 23015/2014 is filed by one of the practicing advocates of Bangalore, who claims to have been selected pursuant to notification dated 20.10.2011 issued by the Karnataka State Consumer Disputes Redressal Commission (hereinafter referred to as "State Commission" for the sake of convenience). He has assailed Notification - I and Notification - II issued by the second respondent on 16.5.2014 (Annexure L and M respectively). He has also sought a direction to respondent Nos. 1 and 2 to issue appointment letter to the petitioner appointing him as President - Bangalore District Forum claiming to have been selected on the basis of resolution dated 22.7.2013 (Annexure-B).

3. By order dated 29.5.2014, this Court had granted an interim order, staying operation of the two impugned notifications. Subsequently, review petition has been filed by the State. As the review Petition has a vital bearing on the writ

petition, by order dated 1.8.2014, this Bench directed that the writ petition pending consideration before the learned single Judge be listed along with the review petition.

4. These two matters have been connected together, as they have a chequered history and are closely linked to each other.

5. The facts leading up to the filing of the writ petition as well as the review petition can be succinctly stated. By notifications dated 24.9.2011 and 13.10.2011, the State Commission called for applications from eligible candidates for recruitment to the post of Members of Consumer Disputes Redressal Forum (hereinafter referred to as "District Forum") at Kolar, Bidar, Hassan and Kodagu Districts. Thereafter, notification dated 20.10.2011 was issued by the State Commission calling applications from eligible candidates for filling up the post of President in District Forum at Kolar, Bidar, Hasan and Kodagu Districts. By notification dated 13.7.2012, the State Commission invited applications for recruitment to the post of President, Bangalore (Urban District Forum). When the process of recruitment was under way, W.P. No. 50856/2012, which is a public interest litigation (PIL), was filed by Basavanagouda Patil and others seeking inter alia immediate filling up of vacant posts of President and Members in various District Fora across the State. During the pendency of that writ petition, on 21.12.2012 the State Government inserted Rule 2E to the Karnataka Consumer Protection "Rules", 1988 (hereinafter referred to as "Rules" for the sake of brevity).

6. By then, W.P. No. 14256-258/12 was filed by some of the applicants, who had applied pursuant to the aforesaid notifications, challenging the transfer of Presidents from other Districts to fill up the vacancies in respect of which notifications were issued, calling applications to fill up those posts by recruitment. On 16.1.2013 a Division Bench of this Court held that the transfers were illegal and arbitrary. Another set of cases namely, W.P. Nos. 28482-485/12 were filed, assailing notifications dated 24.9.2011, 30.10.2011 and 20.10.2011 referred to above, inviting applications to the post of President and Members of various District Fora, on the ground that they had not been published in two daily newspapers having wide circulation. Those writ petitions were also dismissed by the Division Bench on 16.1.2013 by holding that publication in a newspaper was only an alternative mode of communication and that the aforesaid notifications had been widely circulated on the Notice Board of the State Commission and in the Bar Associations throughout the State; in all District Consumer Fora, District Court and other Courts. It is significant to note that in that proceeding, the State Government did not bring to the notice of the Court insertion of Rule-2E to the Rules. Thereafter on 21.3.2013, an advertisement was issued calling for applications to fill up the posts in various District Fora in Deccan Herald, English Daily News paper.

7. W.P. No. 50856/12(PIL) was disposed by the Division Bench of this Court on 3.6.2013 directing the State Commission to send the list of selected candidates

to the State Government within a period of one week from that date and the State Government to make appointments to the vacant posts within three weeks after receiving list of candidates.

8. Also one of the candidates had filed W.P. No. 23740/2013 challenging the composition of the selection committee. That writ petition was dismissed on 15.7.2013, against which, W.A. No. 4405/2013 was filed and the same was also dismissed by the Division Bench on 4.9.2013.

9. When the matter stood thus, in W.P. No. 50856/2012 (PIL), which was disposed on 3.6.2013, State filed an application (I.A.1/14) seeking extension of time by five months to complete "the entire recruitment process after notification and in strict adherence to Rule-2(E) to fill up all the vacancies of Members in respect of the Karnataka State Consumer Disputes Redressal Commission and all District Forums in the State of Karnataka wherever vacancy exists". That application was disposed on 29.4.2014 by extending time till 30.6.2014 to complete the process of selection. That order was made on the basis of the submission of counsel for the petitioners and respondent No. 3 as well as learned Addl. Government Advocate, while disposing the main writ petition on 3.6.2013. It is against the order dated 3.6.2013 that the review petition has been filed by the State.

10. Also, W.P. Nos. 8714-8716/013 filed as PIL seeking expedition in the process of appointment of President/Members of the District Consumer Fora were disposed on 29.4.2014 following order passed on IA No. 1/14 in W.P. No. 50856/2012 on the same day.

11. Learned Addl. Advocate General Sri. Ponnanna, appearing for the State, contended that the State Commission had no authority to call for applications to fill up the post of Presiding Officers/Members of the District Consumer Forum and that under Section 10 of the Consumer Protection Act, 1986 (hereinafter referred to as "Act"), it is only the State Government which has the authority to appoint Presiding Officers/Members of the District Consumer Forum. Under sub-section (1) of Section 10 of the Act, a selection committee chaired by the President of the State Commission for making recommendation of the candidates to be appointed is constituted, but the power to call for applications for recruitment of the Presiding Officers/Members as well as to make appointments is with the State Government. In the instant case, notifications were issued by the State Commission which was impermissible. Also Rule-2E of the Rules was not followed. Hence the State Government decided to cancel those notifications and call for fresh applications pursuant to notifications dated 16.5.2014. Therefore, both on the authority of the State Commission to call for applications as well as notifications calling for applications not complying with Rule-2E of the Rules, necessitated that those notifications be cancelled and fresh recruitment process be initiated for which purpose notifications dated 16.5.2014 were issued. He further contended that on account of the order passed by this Court on 3.6.2013, the hands of the State Government have become constrained and that is the

reason for filing the review petition impugning the said order passed in W.P. No. 50856/2012. He contended that the order under review be recalled or modified so as to enable the State Government to proceed with the recruitment pursuant to notifications dated 16.5.2014.

12. Per contra, learned counsel appearing for the petitioner in W.P. No. 23615/2014 and also for the petitioners in W.P. No. 50856/2012 who are the respondents in the review petition, contended that it is not the State Government which has the authority to issue notifications calling for applications for the purpose of making appointments to the post of Presiding Officer/Member of the District Consumer Fora. All the District Consumer Fora come under the supervision of the State Commission and as and when vacancies arise, the State Commission would have to issue notifications calling for applications from eligible persons and after completing the selection process, the selection committee has to recommend the names to the State Government and the State Government would have to consider and appoint the recommended candidates. It was contended that in the instant case, the State Commission had issued notifications on various dates calling for applications from eligible candidates for filling up of the post of Presiding Officers/Members of the various District Fora and till the issuance of the notification on 13.10.2012, the new Rule i.e. Rule-2E had not been incorporated into the Rules and those notifications cannot be assailed on the premise that they are in violation of Rule 2E of the Rules. In so far as subsequent notifications issued by the State Commission are concerned, it was contended that they are also valid as there was sufficient publicity given to the notifications even though the notifications calling for applications from eligible candidates were not published in the newspapers in terms of the requirement of Rule-2E, was the submission. It was contended that the process of recruitment in the State has been grossly delayed due to various reasons including pendency of writ petitions before this Court and at this point of time, when the selection list has been prepared and sent to the State Government for the purpose of making appointments, the State Government cannot frustrate the selection made by Selection Committee by seeking review of order dated 3.6.2013 and by issuance of notifications dated 16.5.2014 and that there is no merit in the review petition.

13. Learned counsel further contended that in terms of notification dated 24.9.2011 issued by the State Commission, five persons have already been appointed and therefore it is not necessary to redo that selection. In terms of that notification, in respect of a post meant for a lady member of the Bangalore Rural Urban-II Addl. District Fora, has not been appointed and the same has been re-notified. It was contended that all notifications prior to 21.12.2012, when Rule-2E was incorporated into the Rules, have to be upheld, as those notifications were issued by the State Commission prior to insertion of Rule -2E of the Rules and therefore, the selection of Presiding Officers and Members to various District Fora pursuant to those notifications cannot be interfered with. As far as notifications issued subsequent to 21.12.2012 are concerned, it was contended that there has been substantial compliance with Rule-2E of the Rules

and this Court at this point of time need not interfere with the selection process, as the District Fora have been deprived of the Presiding Officers and Members for a long time and the work of the District Consumer Fora in the State has come to a virtual standstill. They further contended that the impugned notifications dated 16.5.2014 be quashed and the State Government be directed to complete the process of selection and appoint the selected candidates in accordance with law and by following orders dated 16.1.2013 passed by this Court.

14. In response, learned Additional Advocate General reiterated that all notifications issued by the State Commission would have to be quashed and fresh selection would have to be made pursuant to the notifications dated 16.5.2014 by dismissing W.P. No. 23015/2014. Alternatively, it was also contended that notifications issued from 12.3.2013 onwards would have to be cancelled and the review petition would have to be allowed so as to enable the State Government to proceed with the recruitment process afresh.

15. On considering the aforesaid submissions, the following points would arise for our consideration:--

"1) Whether order dated 3.6.2013 calls for any modification?

2) Whether the petitioner in W.P. No. 23015/2014 is entitled to any relief?

3) What order?"

16. Since the aforesaid points are inexplicably linked to each other, they are considered and answered together.

17. From the narration of facts what emerges is that the State Commission has issued notifications dated 24.9.2011, 13.10.2011, 20.10.2011, 13.7.2012, 4.9.2012, 12.3.2013, 6.9.2013 and 23.1.2014 inviting applications for recruitment to the vacant posts of Presidents/Members of various District Consumer Fora throughout the State. Subsequent to issuance of the notifications dated 13.10.2011, 20.10.2011, 13.7.2012, 4.9.2012 and 13.10.2012, the State Government amended the Rules by insertion of Rule -2E to the Rules. The said Rule reads as under:

"2E - Procedure for appointment of Members of State Commission, President and members of District Consumer Forum:

The notification inviting applications from the eligible candidates to fill up the vacant posts of members of the State Commission, the President and Members of the District Consumer Forum, shall be published in the Karnataka Gazette and at least two leading Kannada newspapers and one English news paper having wide circulation in the State and also in the websites of the State Commission and the Food and Civil Supplies and Consumer Affairs Department." 18. The aforesaid rule was gazetted on 21.12.2012. Thereafter, notifications dated 12.3.2013, dated 6.9.2013 and dated 23.1.2014 were issued by the State Commission calling for applications to fill up the posts of President/Members of

the various District Fora throughout the State. During that period when various notifications were issued by the State Government referred to above by the State Commission, there were several litigations filed and disposed before this Court. A reference can be made to those writ petitions at this stage.

"(a) W.P. Nos. 14256-258/2012(D.B) were disposed on 16.1.2013 with the following observations:--

"5. The law laid down by the Supreme Court in the decision cited above makes the position explicitly clear that even in the absence of express provision for transfer of President of a District Forum from one place to another place, the implication of the provisions of Section 10(1-A) empowers the Government to effect transfer only on the recommendation of the Committee constituted under Section 10(1-A) of the Act. The broad guidelines for effecting transfers are also laid down and essentially the transfers are to be effected only in public interest and not for any extraneous consideration.

6. In the present case, we evidently notice that a pressure is sought to be built up by respondent No. 6 to effect his transfer from Bellary to Kodagu by getting recommendation letters from political functionaries. The conduct of respondent No. 6 is highly depreciable so also the conduct of respondent No. 2 in effecting transfer of respondent Nos. 4 to 6 bypassing the procedure under Section 10(1-A) is highly depleted. It is strenuously argued by the learned Advocate General that the request for transfer of Respondent Nos. 4 to 6 was pending for several months and that the Chairman did not convene a meeting to consider the said request. Therefore, in the context of the extreme situation, respondent No. 2 has effected the transfers. The explanation sought to be given by learned Advocate General to justify the conduct of respondent No. 2 does not appear to be convincing. In the first place, unlike appointments and promotions, there is no legal right to seek consideration of the request for transfer. If the application for transfer is not considered or taken up for consideration, it is deemed to have been rejected. However, in case of promotions and appointments, a person has the right to be considered, but that is not the proposition of law in respect of a request for transfer. Therefore, when the Chairman did not convene a meeting to consider the request for transfers, the request is deemed to have been rejected. The fact that on earlier occasions, requests for transfers have been considered by the Committee and favourably recommended is also not a ground to hold that respondent Nos. 4 to 6 have a legal right to contend that their request for transfer has to be considered.

7. The effect of transfer orders issued by respondent No. 2 unilaterally and arbitrarily bypassing the Committee has virtually scuttled the opportunity of the petitioners to be considered for appointment to the post of President of District Forums of Kolar, Bidar, Hassan and Kodagu districts. The transfer orders are issued by respondent No. 2 after inviting applications for filling up the post of President of the abovesaid districts. Learned Advocate General submits that although the transfer orders were made, they were not given effect to and

Respondent Nos. 4 to 6 are still working in their place of posting and not at the place of transfer.

8. In view of the abovesaid submissions, the order of transfers at Annexure-E is quashed. The writ petitions are allowed. The Committee shall proceed with the selection process on the basis of the notification issued at Annexure-A."

(b) W.P. Nos. 28482-485/2012(D.B) were also disposed on 16.1.2013 in the following manner:--

"8. The contention that the notifications calling for applications to the posts of President are mandatorily to be published in the two daily newspapers circulated in Karnataka and failure to do so would vitiate the notifications appears to be an untenable contention. The provisions of Rule 12-A and the guidelines framed by the State Commission at Annexure-R1 stipulate the publication in two newspapers is only an alternative mode of communication. The notifications issued calling for applications produced at Annexures-B, C and D along with the notification at Annexure-D disclose that notifications issued calling for applications to fill up the posts of President of the above said District Forums have been circulated to the following officers:

"To

Compiler, Karnataka Gazette, Bangalore with hard and soft copy for the purpose of publication of this publication urgently in the Karnataka Gazette and it is requested to send two printed copies of the Gazette to the State Commission for information and record.

Copy to:

1. Principal Secretary to Government, Food and Civil Supplies and Consumers Affairs Department, Vikasa Soudha, Bangalore - 560001.
2. Secretary to Government, Justice, Law and Human Rights Department , Vidhana Soudha, Bangalore.
3. Chairman, District Consumers Disputes Redressal Forum (to all the District Forums) for taking necessary action to display in the Notice Board of the concerned District Forum and also in the Notice Board of the District Court and in the Notice Board of the District Bar Association.
4. Principal District Judge (all Districts) - to bring to the kind notice of the concerned Presiding Officers.
5. Notice Board of the State Commission.
6. Website of the State Commission.
7. Office copy
8. Director, Information and Broadcasting Department, Shivajinagar Bus Stand,

Bangalore for the purpose of publishing the brief publication enclosed along with this publication for publishing in all the daily newspapers free of cost."

9. The notifications apart from being sent to Bar Associations, District Courts, State Consumer Forums. Director of Information and Broadcasting Department have also been displayed on the website of the State Commission, which serve as a sufficient and adequate publication of the notifications to the persons aspiring to apply for the posts. There is no rule which prescribes mandatory publication of the notifications in the newspapers. Therefore, it is untenable for the petitioners to contend that failure of publication in the newspapers has resulted in lack of wide publicity to give an opportunity to eligible persons to apply for the posts.

10. In the writ petitions, a mandamus is sought for to frame rules to lay down the procedure for publication of the notifications calling for applications and also to fix remuneration of the members. In view of the ruling of the Supreme Court in State of Jammu and Kashmir Vs. A.R. Zakki and others, , the mandamus sought for cannot be issued.

In that view, the writ petitions are dismissed."

(c) W.P. No. 50856/2012 was disposed on 3.6.2013 with the following observations:--

"3. Learned counsel for the petitioners today submits that the selection process has been underway and she also submits that respondent No. 3 has prepared the list of the selected candidates and the same would have to be approved by the State Government for the purpose of making appointment to the vacant posts.

4. Learned counsel for respondent No. 3 as well as learned Additional Government Advocate also submit that the State Government would have to approve the list of selected candidates and in that regard the list of selected candidates would have to be forwarded by respondent No. 3 to respondent No. 2 and if the same is done, then the appointments could be made. The submission of the learned counsel for the respondents in this regard is recorded.

5. Therefore, the grievance of the petitioners with regard to filling up of vacancies to Members has been assuaged by way of this Writ Petition. Therefore, we direct respondent No. 3 to send the list of the selected candidates to the State Government within a period of one week from today. If the same is forwarded to the State Government, then within a period of three weeks therefrom the appointments shall be made to the vacant posts."

(d) W.P. No. 23740/2013 challenging the composition of the selection committee was dismissed on 15.7.2013, against which W.A. No. 4405/13 was also dismissed in the following manner :--

"19. A conjoint reading of these Rules makes apparent flexibility in the working of the Government or what popularly stated as a "free play in the joints". On an

overall consideration of the Rules, we do not find any infirmity in the Deputy Secretary of the Department of Food Civil Supplies and Consumer Affairs participating in the selection process in the instant case. There is also an authorization or delegation given to the said officer to participate in the selection process by the Secretary to the Department. In that view of the matter, learned Single Judge was right in declining to interfere with the selection process. We find no merit in the appeal. It is accordingly dismissed." (e) W.P. Nos. 8714-8716/14 (PIL) disposed on 29.4.2014 in the following manner:--

"1. In view of the order made today on I.A. 1/2004 in W.P. No. 50856/2012, present petitions are not surviving, at this stage. It can be hoped that all vacancies in various District Consumer Forums as also in Karnataka State Consumer Forum will be filled-up as expeditiously as practicable.

With this observation, petitions are disposed at this stage with no order as to cost."

(f) Order dated 29.4.2014 was passed on I.A.1/14 in Public Interest Litigation W.P. No. 50856/2012 disposed on 3.6.2013. The relevant portion of the order reads thus:--

"4. In the writ petition, which was a public interest litigation, a direction was sought against respondent Nos. 1 and 2 to fill-up vacancies of members in State Commission and all District Forums in Karnataka within a fixed time. In the order dated 03.6.2013, at paragraphs 3 to 5, it is stated as hereunder:

"3. Learned counsel for the petitioners today submits that the selection process has been underway and she also submits that respondent No. 3 has prepared the list of the selected candidates and the same would have to be approved by the State Government for the purpose of making appointment to the vacant posts.

4. Learned counsel for respondent No. 3 as well as learned Additional Government Advocate also submit that the State Government would have to approve the list of selected candidates and in that regard the list of selected candidates would have to be forwarded by respondent No. 3 to respondent No. 2 and if the same is done, then the appointments could be made. The submission of the learned counsel for the respondents in this regard is recorded.

5. Therefore, the grievance of the petitioners with regard to filling up of vacancies to Members has been assuaged by way of this writ petition. Therefore, we direct respondent No. 3 to send the list of the selected candidates to the State Government within a period of one week from today. If the same is forwarded to the State Government, then within a period of three weeks therefrom, the appointments shall be made to the vacant posts."

5. Learned counsel for respondent No. 3 states that on 04-09-2013, list of selected candidates was sent to the State Government in compliance of the directions issued in this writ petition subsequent to the disposal of W.A. No. 4405/2013. I.A. 1/2014 is now filed seeking extension of time for the purpose of

redoing the entire recruitment process. We have applied our mind to the prayer sought by the State. Having regard to the statements made on behalf of respondents in paragraphs 4 and 5 of the order extracted supra, time is granted till 30th June 2014 to complete the process of selection.

I.A. 1/2014 is accordingly disposed of."

19. It is significant to mention that there has been no challenge to any of the aforesaid orders except order dated 3.6.2013 by filing this review petition. Prior to that the State Government issued two notifications dated 16.5.2014 which are impugned in the writ petitions. By Notification-I, the following previous notifications issued by the State Commission with regard to recruitment of Presidents of District Fora and notifications with regard to recruitment of Members of District Fora were cancelled.

By Notification-II also dated 16.5.2014, applications are called for filling up of various posts of President/Members to various District Fora and also member of State Commission i.e. 16 full time presidents; 18 full time members and 17 full time women members.

20. On a combined reading of those two notifications, it is noted that notification dated 24.9.2011 issued by the State Commission has not been cancelled. It is submitted at the Bar that as the candidates were already appointed on 8.2.2013 pursuant to that notification and the recruitment was completed, the same was not cancelled. Justification for cancellation of the other notifications issued by the State Commission is based on the amendment made to Rule -2E by contending that the procedure prescribed in that Rule was not complied with by the State Commission while calling for applications for filling up various posts. Of course, it was also contended by Addl. Advocate General that the State Commission had no jurisdiction to initiate the recruitment process and it was only the State Government which could have issued the notifications. The said contention is considered in light of the relevant provisions of the Act and Rules. Section 16 of the Act reads as under:

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 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 recognized university; and

(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 not more than fifty percent of the members shall be from amongst persons having a judicial background.

Explanation- For the purpose of this clause, the expression "persons having a judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a presiding officer at the district level court or any tribunal at equivalent level:

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 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 members, namely:--

(i) President of the State Commission Chairman;

(ii) Secretary of the Law Department of the State Member;

(iii) 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.

Section 10(1A) of the Act reads as follows:--

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) President of the State Commission - Chairman
- (ii) Secretary, Law Department of the State -Member.
- (iii) 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."

Rule 12-A of the Consumer Protection Rules, 1987 (Central Rules) reads as under:--

"12A. Procedure for selection of members - (1) Save as otherwise provided in sub-rule(2), the process of appointment of a member shall be initiated at least three months before the vacancy arises.

(2) If a post falls vacant due to resignation or death of a member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.

(3) An advertisement of a vacancy inviting applications from eligible candidates may be published in leading newspapers in India or by vacancy circulars or both, as may be decided by the Central Government.

(4) After scrutiny of the applications received till the last date specified for receipt of applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee constituted under the third proviso to sub-section (1) of section 20.

(5) The Selection Committee shall consider all the applications of eligible applicants referred to it.

(6) The Selection Committee shall, subject to the provisions of sub-rule (6A, assess the suitability of the candidates for the post of Member:

Provided that all the Selection Committee may, if it considers necessary depending on the number of candidates, short list them on the basis of comparative merit and experience of such candidates for selection. (6A) The Selection Committee shall assess the suitability of the candidates and where short listing is done, from among the short-listed candidates, for the post of Member in the following manner, namely:--

(a) In the case of candidates having judicial background, by assessing them on the basis of the judgments and other judicial orders passed by such candidates;

(b) In the case of candidates having experience of working under the Central

Government or any State Government or an undertaking under the Central Government or a State Government, by assessing such candidates on the basis of their Annual Confidential Reports and their experience relevant to the post applied for;

(c) In other cases, the suitability of the short listed candidates shall be assessed by the Selection Committee on the basis of personal interview conducted by it:

Provided that notwithstanding anything contained in this sub-rule, the Selection committee may, for assessing the suitability of a class or category of candidates, if it considers necessary, call such class or category of candidates for interview for assessing their suitability for the post of Member. (7) The Selection Committee may, on the basis of its assessment made by it, recommend a panel of names of candidates for appointment as members from amongst the applicants referred to in sub-rule(5) in order of merit for the consideration of the Central Government.

(8) The Central Government shall, before seeking approval of the Appointments Committee of the Cabinet, verify or cause to be verified the credentials and antecedents of the candidates selected by the Central Government from the panel recommended by the Selection Committee and satisfy the suitability of such candidates for appointment as members.

(9) Every appointment of a member shall be subject to the submission of a certificate of physical fitness as indicated in the Annexure, signed by a Civil Surgeon or District Medical Officer, to the President, National Consumer Disputes Redressal Commission."

On a reading of Section 10 of the Act along with the Rules, it becomes clear that as far as appointment of the Presiding Officer and Members of the District Fora are concerned, the appointment has to be made by the State Government on the recommendation of the Selection committee consisting of the President of the State Commission, Secretary, Law Department of the State and Secretary in charge of the Department dealing with consumer affairs of the State. There is no provision which empowers the State Government to initiate recruitment by calling for applications from the eligible candidates. In contrast, as far as appointment of the President of the State Commission is concerned, sub-section (1) of Section 16 categorically states that the President must be a person who is or has been a Judge of the High Court and is appointed by the State Government and the said appointment shall be made after consultation with the Chief Justice of the High Court. Thus in the case of the President of the State Commission, it is the State Government which makes the appointment in consultation with the Chief Justice of the High Court. The State Government initiates the process of appointment of the President of the State Commission. This is unlike the case of appointments to be made to the posts of President and Members of the District Fora where sub-section (1A) of Section 10 only states that the State Government on the recommendation of a Selection Committee make appointments under sub-

section (1) of Section 10 of the Act. Therefore, it is inferred that the State Government is not empowered to initiate recruitment to fill up the post of Members of the State Commission or President and Members of District Fora and such initiation has to be made by the State Commission depending upon the vacancy position and accordingly issue notifications in that regard.

21. At this stage, the Rules, applicable in State of Karnataka for the procedure for selection of members can be contrasted with that of the National Commission. Sub-rule(3) of Rule-12A of Central Rules, categorically states that advertisement of a vacancy to the post of Members, National Commission, inviting applications from eligible candidates may be published in leading newspapers in India or by vacancy circulars or both as may be decided by the Central Government. Thus in the case of appointment of Members of the National Commission, the Central Government has to initiate recruitment process. But as far as appointment of Members of State Commission is concerned, it is similar to that of the appointment of the President and Members of the District Fora. Thus, Rule-12A of the Central Rules and sub-section (1A) of Section 10 of the Act are in not in pari materia. In the case of appointment of the Members of the State Commission as well as District Fora, the State Government has to appoint on the recommendations of the Selection Committee comprising of three persons referred to above. Both the Act as well as the Rules are silent with regard to the State Government initiating recruitment to fill up the vacancies of the President and Members of the District Fora as well as the Members of the State Commission.

22. Rule-2E only mandates that the notification inviting applications from the eligible candidates to fill up the above said vacant posts must be published in the Karnataka Gazette and in at least two daily Kannada newspapers and in one English newspaper having wide circulation in the State and also in the website of the State Commission and the Food and Civil Supplies and Consumer Affairs Department. Thus we hold that in the absence of there being a provision similar to sub-rule (3) of 12(A) of the Central Rules, it is only the State Commission which can initiate recruitment to fill up the vacancies to the post of Members of the State Commission and to the posts of President and Members of the District Fora. We reject the argument of the learned Addl. Advocate General that it is only the State Government who can initiate recruitment. In that view of the matter, Notification-II dated 16.5.2014 issued by the State Government calling for applications for filling up the posts of President/Members of various District Fora and also Members of the State Commission is liable to be quashed and is quashed.

23. The next point that arises for our consideration is as to whether order dated 3.6.2013 calls for any modification. By a subsequent order dated 29.4.2014, State Government was given time till 30.6.2014 to complete the recruitment process, which order is not assailed. Subsequent to that order, State Government issued Notification-I dated 16.5.2014 cancelling ten notifications issued by the

State Commission calling for applications from eligible candidates for various posts. According to the State, those notifications were not followed by newspaper publications as per Rule-2E of the Rules and therefore, the selection of candidates is illegal and contrary to Rule-2E. Learned Addl. Advocate General sought to justify Notification-I by contending that the State Commission had no authority to issue notifications or even to initiate the recruitment process. We have already held that it is only the State Commission which can initiate the recruitment process and not the State Government. Having said so, we have to consider the validity of the notifications dated 16/05/2014, issued by the State Commission in light of Rule-2E of the Rules issued by State Government. That Rule was inserted into the statute book by notification dated 21.12.2012. However, the State Government has cancelled ten notifications issued by the State Commission starting from 20.10.2011 to 23.1.2014 by Notification-I dated 16.5.2014.

24. In this context, learned counsel for respondents in the review petition as well as for petitioner in W.P. No. 23015/2014 contended that it was not correct on the part of the State Government to cancel all the notifications issued by the State Commission. That all selection made prior to insertion of Rule-2E to the Rules could be saved, was the submission.

25. We find considerable force in the said submission, as selection made pursuant to notifications issued by the State Commission prior to 21.12.2012 were not hit by Rule-2E which was inserted into the statute book only on that date. Therefore, in our view, selection made pursuant to notifications dated 20.10.2011, 13.7.2012, 04/09/2012 and 13/10/2012 issued with regard to recruitment of President and Members of District Fora cannot be interfered with. We have held that the State Commission had the authority to initiate recruitment process and it has rightly done so and when the recruitment of those posts took place, Rule-2E was not on the statute book and therefore the selection made to the various posts pursuant to the aforesaid notifications would have to be saved.

26. It is stated at the Bar by the learned counsel for the State Commission that the list of the selected candidates has been submitted to the State Government. Therefore, the State Government would have to be directed to verify the said list and make the recommendations for the purpose of appointments to the respective posts.

27. As far as notifications issued subsequent to 21/12/2012 with regard to recruitment of President and Members of District Fora are concerned, those notifications were issued by the State Commission subsequent to insertion of Rule-2E to the Rules. But, the procedure mandated under Rule-2E has not been followed in those cases. We are conscious of the fact that in W.P. No. 28482-485/2012 disposed on 16.1.2013, it has been observed that there was no rule which prescribed mandatory publication of the notification in the newspapers. When that order was passed neither petitioners in those writ petitions who had filed the petitions in public interest nor the State represented

by the learned Advocate General brought to the notice of the Division Bench of which one of us (Nagarathna. J) was a member about the insertion of Rule-2E to the Rules. Be that as it may, the points to be considered is as to whether the selection made pursuant to notifications issued subsequent to insertion of Rule-2E without complying with the mandatory requirement of Rule-2E, are valid. We find that notifications referred to above were all issued subsequent to insertion of Rule-2E were not published in the newspapers as mandated in Rule-2E and therefore on account of there being non-compliance with the mandatory requirement prescribed in Rule-2E, selection made to those posts is vitiated. As the selection process conducted was in violation of Rule-2E of the Rules, being vitiated the State Commission is directed to re-issue fresh notifications, in lieu of notifications dated 06.09.2013 and 23.01.2014 calling for applications from eligible candidates for post of President of District Fora notified therein. Similarly, selection of Members of District Fora pursuant to notification dated 13.7.2012 and 4.9.2012 issued by the State Commission are valid. But selection made pursuant to notification dated 12.3.2013, 6.9.2013 and 23.1.2014 are in violation of Rule-2E of the Rules and hence, illegal and would have to be quashed. But, Notification-I dated 16.5.2014, issued by the State Government could not have cancelled all the ten notifications referred to above. Therefore Notification-I dated 16.5.2014, is liable to be quashed entirely. However, we need not quash notifications dated 12.3.2013, 6.9.2013 and 23.1.2014 issued by the State Commission. Though those notifications issued by the State Commission are valid, the subsequent steps taken for making selection to the posts are invalid in absence of compliance with Rule-2E of the Rules. Hence, the State Commission is directed to issue fresh notifications for those posts by complying with Rule-2E and complete the selection process expeditiously. But, notifications dated 24.9.2011 pursuant to which appointments have been made is not interfered with and is saved. Also notifications dated 20.10.2011, 13.7.2012, 4.9.2012 and 13.10.2012, are saved and not interfered with, as those notifications were issued prior to insertion of Rule-2E to the Rules. In coming to the aforesaid conclusion, we have applied the doctrine of severability so as to cause least interference in the process of recruitment.

28. As we have held that it is only the State Commission, which can initiate recruitment, Notification-II dated 16.5.2014, is quashed as that notification has been issued by the State Government. In view of the aforesaid reasoning, it is not necessary to modify order dated 3.6.2013 except for directing that the State Government would have to complete the process of appointment to be made to various posts within time frame, in so far as selection made to all posts prior to insertion of Rule-2E to the Rules. Accordingly, point No. 1 is answered.

29. With regard to the relief that has to be granted to the petitioner in W.P. No. 23015/2014 is concerned, it is stated at the Bar that the petitioner therein has been selected pursuant to notification dated 20.10.2011 which notification has not been interfered with by us. Therefore, further process of recruitment pursuant to notification dated 20.10.2011 issued by the State Commission would

have to be completed. Similarly, the process of appointment in respect of all notifications issued prior to 21.12.2012 would have to be completed expeditiously. To that extent, W.P. No. 23015/2014 is allowed and accordingly point No. 2 is answered.

30. It has also been brought to our notice that in the newly created Districts such as, Chikkaballapur, Ramnagar and Yadgir, District Fora have not been set up. We think it appropriate to direct the State Government to take steps to set up District Consumer Fora in the newly created Districts, in co-ordination with the State Commission.

31. In the result, we pass the following order:--

"(1) We hold that, it is only the State Commission, which can initiate recruitment to the post of Members of the State Commission as well as President and Members of the District Fora and not the State Government.

(2) That the State Government shall make appointments to the post of Members of the State Commission and President and Members of the District Fora, on the basis of the recommendation of the Selection Committee, as stipulated in sub-section (1A) of Section 16 and sub-section (1A) of Section 10 of the Act respectively. Consequently, notifications - I and II dated 16/05/2014, issued by the State Government are quashed.

(3) Selection of candidates made pursuant to notifications issued prior to insertion of Rule-2E to the Rules, i.e., prior to 21/12/2012, are not disturbed.

(4) The State Government is directed to appoint the selected candidates where the selection has been made prior to Rule-2E in accordance with sub-section (1A) of Section 10 of the Act, within a period of two months from the date of receipt of the certified copy of this order.

(5) Selection of candidates made by issuance of notifications subsequent to insertion of Rule-2E to the Rules are quashed on account of noncompliance with Rule-2E.

(6) The State Commission is directed to issue fresh notifications for filling up all vacancies, if any, in the post of Members of State Commission and vacancies in the post of President and Members in the District Fora, for the purpose of making fresh selection in lieu of selections, which have been quashed by this order.

(7) On the selection process being completed, the State Government shall make appointments in terms of sub-rule (1A) of Section 16 or sub-rule (1A) of Section 10, as the case may be.

(8) The aforesaid exercise shall be completed within a period of four months from the date of issuance of the notifications by the State Commission.

(9) The State Commission shall issue the notifications calling for applications from eligible candidates to all vacant posts within a period of one month from the

date of receipt of the certified copy of this order and also comply with Rule-2E of the Rules.

(10) The selection of the petitioner in W.P. No. 23015/2004, is not disturbed and therefore, his appointment is to be made in accordance with sub-section (1A) of Section 10 of the Act.

(11) The order dated 03/06/2013, passed in the review petition stands modified to the aforesaid extent.

(12) We direct the State Government to establish and constitute the District Consumer Redressal Fora in newly created Districts in the State such as, Chikkaballapur, Ramnagar and Yadgir, by providing the necessary infrastructure and also by making appointments in coordination with the State Commission, in an expeditious manner and preferably, within a period of six months from the date of receipt of a certified copy of this order."

The review petition and writ petition are disposed in the aforesaid terms.

Parties to bear their respective costs.