
(2012) 06 MAD CK 0070

In the Madras High Court

Case No : Writ Petition (MD) No. 13581 of 2011

T. Xavier

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 07-06-2012

Acts Referred:

Constitution of India, 1950 — Article 124, 13, 14, 217, 323

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

Citation : (2012) 3 CTC 802 : (2013) LabIC 1201 : (2012) 5 MLJ 495

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Issac Mohanlal, for the Appellant; K. Chellapandian, Additional Advocate General, for K. Mahendran, Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Seeking to quash the impugned Letter No. 29369/H1/2010-9 dated 19.10.2011 issued by the 1st respondent State

Government and the consequent Notification No. 3 of 2011 dated 11.11.2011 issued by the 3rd respondent State Consumer Commission and for

a further direction to the respondents to appoint him as the President of the District Consumer Disputes Redressal Forum in any of the existing

vacancies as per the recommendation of the High Level Selection Committee dated 12.5.2011, the petitioner has come up with the present writ

petition. Facts of the case, as put forth by the petitioner, in the affidavit would run thus:

1.1 The petitioner entered into service on 14.8.1973 with the qualification of B.Sc., B.L. Degrees. He held several positions in the Tamil Nadu

Judicial Service viz., Judicial Magistrate, District Munsif, Subordinate Judge, Chief

Judicial Magistrate, District and Sessions Judge. He attained superannuation on 30.4.2010 and thereafter, he has been serving in the present position as Additional Judge, Evidence Recording-III, City Civil Court, Chennai.

1.2. The 3rd respondent, Tamil Nadu Consumer Disputes Redressal Commission invited applications for appointment to one post of President to the District Consumer Dispute Redressal Forum vide Notification No. 1 of 2011 dated 7.1.2011 by way of Direct Recruitment as provided u/s 10(1 A) of the Consumer Protection Act, 1986, in short, "the Act". Only retired Judges were notified as eligible candidates and they must not have completed 65 years of age as on 1.2.2011. The term of office was for a period of five years from the date of assumption of office or up to the age of 65 years, whichever would be earlier. The appointment should be made on the recommendation of the Selection Committee constituted u/s 10 (1A) of the Act.

1.3 The petitioner submitted application in response to the above notification. Totally, 11 candidates including the petitioner were in competition.

The 3rd respondent called the petitioner for interview on 12.5.2011 at 10.30 a.m. vide Letter dated 5.5.2011. Ten candidates including the

petitioner appeared for interview. The petitioner produced all the necessary materials viz. Bio Data, Educational and Experience Certificates, etc.

The Selection Committee, after an elaborate interview and detailed verification of documents, unanimously selected the petitioner.

1.4 The Selection Committee had been constituted as provided u/s 10(1A) of the Act. It comprises three members, viz., the Chairman of the Tamil

Nadu Consumer Disputes Redressal Commission (a retired Hon'ble High Court Judge), the Secretary to the Government (Department of Law)

and the Principal Secretary to the Government (Department of Co-operation, Food and Consumer Protection).

1.5. The petitioner came to understand that the Selection Committee forwarded its unanimous resolution of selecting and recommending the

petitioner for the said post to the State Government by a Letter dated 12.5.2011 for the issuance of the order of appointment. But, the State

Government, instead of issuing the order of appointment, directed the 3rd respondent Consumer Commission to issue a fresh notification inviting

applications for the same post after the declaration of results of the Local Bodies through the Letter of the 2nd respondent Secretary, dated 29.9.2011.

1.6. In response to the above Letter, the 3rd respondent Registrar seems to have sent a reply to the 2nd respondent Secretary requesting the State

Government to issue necessary orders on the basis of the Selection Committee's earlier recommendation dated 12.5.2011 at an early date in

order to avoid inconvenience to the litigant public, as the post had been remaining vacant for more than five months, which had given rise to

pendency of cases. However, instead of acting upon the said request made by the 3rd respondent Consumer Commission, the 1st respondent

wrote a letter dated 19.10.2011 again requesting suitable candidates for the post and to send the Select List for appropriate orders. In the Letter,

it is further stated that the Government had taken the said decision as it was of the view that the Selection Committee should select a minimum of

three candidates as laid down by the High Court of Kerala in its decision in the case of State of Kerala and Another Vs. K. Reghu Varma Ors.,

1.7 The appointment of the District Presidents is governed by Section 10 of the Act. Section 10(1A) makes it abundantly clear that the

appointment of the President shall be made on the recommendation of the Selection Committee. In the case of the petitioner, the Selection

Committee duly constituted as per the said Section, unanimously selected and recommended him for appointment to the post. According to the

petitioner, the State Government's reference to the decision of the Kerala High Court in State of Kerala v. K. Reghu Varma (supra) has neither

any bearing nor any relevance to the case on hand.

1.8. In the Kerala High Court case, it is mandatory under Rule 7 of the Kerala Consumer Protection Rules, 2005 that the Selection Committee

should recommend a panel not exceeding five candidates per vacancy. There is no similar Rule in vogue in the State of Tamil Nadu. Further, the

point at issue in the Kerala case is altogether different viz.. whether the State Government can be justified in choosing any one of the panel

candidates for appointment without reference to their ranks in the panel. Therefore, the petitioner submits that the above Letter of the State

Government dated 19.10.2011 requesting the 3rd respondent Consumer

Commission to conduct a fresh selection by inviting candidates afresh under a new notification and to submit a panel of three candidates is wholly arbitrary, ultra vires and unconstitutional.

1.9. The 3rd respondent State Commission also recently issued a fresh Notification No. 3 of 2011 on 11.11.2011 inviting applications so as to reach the office on or before 7.12.2011 at 5.45 pm. The Notification also states that the applications already received under the previous Notification No. 1 of 2011 would not be considered and that the applications received under the present notification alone would be considered.

At this stage, the petitioner has come up with the present writ petition challenging the impugned Notifications, as he was not given either any notice or an opportunity of hearing before brushing aside his selection and denying his appointment.

2. On behalf of the 1st and 2nd respondents, a counter affidavit has been filed, wherein, it is stated as follows:

(i) The post of President in the State Commission and the post of President in the District Fora are filled up by the Government of Tamil Nadu, being the appointing authority, in accordance with Section 16(1)(a) and 10(1)(a) read with 10(1A) of the Act, 1986, respectively. Considering the recommendations made by the Selection Committee constituted as per Section 10(1A) of the Act, appointment for the post of President in the District Fora is made by the 1st respondent herein.

(ii) To fill up a vacancy in the post of President, District Consumer Redressal Forum, Madurai, the Selection Committee, after knowing the existing procedure, has recommended the petitioner herein for appointment to the post of President in the District Forum on 12.5.2011.

(iii) On the face of the recommendation, the Government of Tamil Nadu felt that, instead of selecting a single candidate, if a panel consisting of three candidates is recommended, it would be fair and just in the interest of justice to fill up the post of President, District Consumer Disputes Redressal Forum, Madurai, which is equivalent to the cadre of a sitting District Judge. Accordingly, the Government vide Letter No. 29369/H-

1/2010-9 dated 19.10.2011 requested the 3rd respondent to send a panel consisting of three candidates, by issuing a fresh notification.

(iv) The Act is a Central Act and the provisions of the Act will bind the whole of

India (except the State of Jammu & Kashmir). Section 30 of the Act, 1986 empowers the Central Government and State Government to make rules by notification to carry out the provisions contained in the said Act. As per rule 12-A(4) of the Consumer Protection Rules, 1987, the selection of members in the National Commission is being made by the Selection Committee by recommending a panel of names of candidates in the order of merit for consideration of the Central Government. The Central Government, after verifying the credentials and antecedents of the recommended panel of candidates, selects a candidate for appointment to the post of members. Likewise, the Government of Tamil Nadu felt that only if a panel of three candidates is recommended for the post of President, District Consumer Disputes Redressal Forum, Madurai, their merits can be weighed and assessed and according to merit, one candidate can be selected. Therefore, the aforesaid direction for fresh notification was issued by the 1st respondent herein.

(v) The petitioner cannot take advantage of the administrative delay caused in making consequential amendments in the Tamil Nadu Consumer Protection Rules, 1988, following the Central Rules (Consumer Protection Rules, 1987) in respect of recommending panel of candidates for appointment to the post of President in the District Forum.

(vi) The petitioner failed to note that the Act is a Central Act and Rules made thereunder are binding in nature, though consequential amendments are not made in the State Rules. It is a settled law that until the consequential amendments are made in the State Rules, the Central Rules would prevail. As such, Rule 12-A of the Consumer Protection Rules, 1987 framed in respect of the procedure to be followed in making appointment, would prevail over the State Rules till such time the consequential amendments are made in the Tamil Nadu Consumer Protection Rules, 1988.

(vii) The Government of Tamil Nadu is the appointing authority for the post of President in the District Fora and it has every right to call for a fresh notification irrespective of the recommendations of the Selection Committee, if its recommendation is not satisfactory to the Government.

For the foregoing reasons, the respondents pray that the writ petition may be dismissed.

3. Mr. Issac Mohanlal, learned counsel for the petitioner would contend that

inasmuch as the Selection Committee constituted u/s 10(1 A) of the Consumer Protection Act, 1986, having unanimously selected and recommended the petitioner for appointment, the State Government is bound to act upon the same and give appointment to the petitioner. It is his further contention that inasmuch as the selection being for the post of Judicial Officer, the State Government ought to have given due respect to the unanimous recommendation of the Selection Committee.

3a. In support of his case, learned counsel for the petitioner has relied on the following decisions:

(i) The State of Madhya Pradesh Vs. G.C. Mandawar,

On these provisions, the position is that when a law is impugned under Article 13, what the Court has to decide is whether that law contravenes

any of the provisions of Part III. If it decides that it does, it has to declare it void; if it decides that it does not, it has to uphold it. The power of the

Court to declare a law void under Article 13 has to be exercised with reference to the specific legislation which is impugned. It is conceivable that

when the same legislature enacts two different laws but in substance they form one legislation, it might be open to the Court to disregard the form

and treat them as one law and strike it down, if in their conjunction they result in discrimination. But such a course is not open where, as here, the

two laws sought to be read in conjunction are by different Governments and by different legislatures. Article 14 does not authorise the striking

down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory. Nor

does it contemplate a law of the Centre or of the State dealing with similar subjects being held to be unconstitutional by a process of comparative

study of the provisions of the two enactments. The sources of authority for the two statutes being different, Article 14 can have no application.

(ii) Sant Lal Bharti Vs. State of Punjab,

5. Article 14 does not authorise the striking down of a law of one State on the ground that in contrast with a law of another State on the same

subject its provisions are discriminatory or different. Nor does it contemplate a law of the Centre or of the State dealing with similar subjects being

held to be unconstitutional by a process of comparative study of the provisions of two enactments. The source of authority for the two statutes

being different, Article 14 can have no application.

6. See in this connection the decision of this Court in *Prabhakaran Nair v. State of T.N.*

7. Shri S.K. Bagga, learned counsel drew our attention, we must here hasten to add to the different statutes in different States on this aspect. We

cannot say that there was any better provision in those statutes; there were undoubtedly different provisions and those different provisions were

judged by the legislatures of those States to be suited to the needs of those States. It is not necessary for us to examine in detail those very

provisions.

8. Shri S.K. Bagga, learned counsel also drew our attention to the observations of this Court in the case of *Raval & Co. v. K.G. Ramachandran*.

He drew our attention how fair rent should be fixed by relying on certain observations of BHAGWATI, J. as the Chief Justice then was at page

825 of the AIR (SCC pp. 435-36, para 24). In the facts and in the context of this case, it is not necessary to refer to these observations. These

were made entirely in a different context. It must be the function of the legislature of each State to follow the methods considered to be suited for

that State, that would be no ground for judging the arbitrariness or unreasonableness of a particular legislation in question by comparison. What

may be the problem in Madras may not be the problem in Punjab. It must however, be borne in mind that the Act in question was passed in 1949

and it pegged the rent prevalent in the similar houses in 1938 and as such is not unreasonable per se. The rises started tremendously after the end

of the Second World War and after the partition of the country. In that view of the matter, we cannot say that per se there is unreasonableness in

fixing the prices in 1938 level. Having regard to the specific preamble of the Act we find nothing unreasonable in the scheme contemplated u/s 4 of

the present Act.

(iii) *State of Haryana v. State of Punjab and Another* AIR 2002 SC 685 : (2002) 2 SCC 507 : LNIND 2002 SC 34

16.... While the matter stood thus, a news item having appeared in a Delhi newspaper, indicated that the Punjab Chief Minister had rejected any

move to start reconstruction of SYL Canal, the State of Haryana was compelled to file the present suit. In a matter like this, it is true that a decree

of a Court in either way is not that effective, as it is the political will of the authorities and the will of the people that matters. But at the same time, when the political authority becomes dogmatic, unreasonable and indicates an attitude of irresponsible nature and when the Court finds that nothing is moving even though there has been a large-scale drainage of public exchequer and that the decision to have the canal had been reached on an agreement of all concerned, representing the will of the people, the Court must pass appropriate orders and directions. What really bothers us most is the functioning of the political parties, who assume power to do whatever that suits them and whatever would catch the vote bank. They forget for a moment that the Constitution conceives of a Government to be manned by the representatives of the people, who get themselves elected in an election. The decisions taken at the governmental level should not be so easily nullified by a change of Government and by some other political party assuming power, particularly when such a decision affects some other State and the interest of the nation as a whole. It cannot be disputed that so far as the policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any political philosophy, the succeeding Government must be held duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.

(iv) N. Kannadasan v. Ajoy Khose and Others (2009) 7 SCC 1 : LNI 2009 SC 562 : (2009) 4 MLJ 343

150. The Chief Justice of the High Court forwarded a panel of three Judges including the appellant herein. Whether Section 16 of the Act contemplates such a situation is the question.

151. Independence of the judiciary as embedded in Article 50 of the Constitution of India needs no overemphasis.

152. We have noticed hereinbefore that the State of Tamil Nadu in its letter dated 30.5.2008 addressed to the Registrar of the Madras High Court while intimating that a vacancy had arisen in the post of President, State Commission, made a request to him to send a panel of eligible names of

retired High Court Judges after approval by Hon'ble the Chief Justice of the High Court of Madras for its consideration therefore. Pursuant thereto

or in furtherance thereof, the Chief Justice only forwarded a panel of three Judges. The Executive Government of the State made a final choice

therefrom.

153. The process of selection in view of the decisions of this Court in Ashish Handa and Ashok Tanwar and National Consumer Awareness

Group must be initiated by the High Court itself. Having regard to the fact that the Chief Justice has the primacy as regards recommendations of the

name for appointment to the post of Chairman of the State Commission, the method adopted herein, in our considered view, is impermissible in

law. For the said purpose only one name must emanate from the Chief Justice; only one name can be recommended by him and not a panel of

names.

154. Having regard to processual mandate required for the purpose of appointment to the post of Chairman, State Commission, the Executive

Government of the State cannot have any say whatsoever in the matter. The process for preparation of a panel requested by the Executive

Government of the State and accepted by the Chief Justice of the High Court, in our opinion, was impermissible in law. If the State is granted a

choice to make an appointment out of a panel, as has been done in the instant case, the primacy of the Chief Justice, as opined by this Court in the

aforementioned decisions, would stand eroded.

155. It will bear repetition to state that even for the said purpose the procedure laid down by this Court in Supreme Court advocates-on-Record

Assn. as also Special Reference, for recommendation of the name of the High Court Judge, as contained in Article 217 of the Constitution of India,

should be followed. It is accepted at the Bar that by reason of judicial constitutional interpretation of Articles 217 and 124 of the Constitution of

India, the procedures laid down thereunder has undergone a drastic change. A recommendation instead and in place of the Chief Justice of India

must emanate from the Collegium. However, for the purpose of making recommendation in terms of Section 16(1) the opinion of the Chief Justice

alone shall prevail.

156. It is difficult to accept the submission of Mr K.K. Venugopal that such

""consultation"" would not be ""concurrence"" as like the Collegium in the matter of making recommendation for appointment of Judges of the Supreme Court and the High Courts where the view of the Collegium shall have the primacy. For appointment as President of the State Commission, the Chief Justice of the High Court shall have the primacy and thus the term ""consultation"" even for the said purpose shall mean ""concurrence"" only.

157. It is true that if a panel of names is suggested and the State makes an appointment of one out of the three, the question of meeting of mind between the Chief Justice and the executive would not arise but there cannot be any doubt whatsoever that by reason thereof the ultimate authority to appoint would be the executive which in view of the decisions of this Court would be impermissible. Mr. Venugopal would contend that for the aforementioned purpose the principle of purposive interpretation may be resorted to hold that the Chief Justice by sending a panel of Judges is merely recommending the names of the Judges, who in his opinion, are independent and fit persons to be appointed. We are not in a position to accept the same. For the aforementioned purpose, the Court must bear in mind that the constitutional scheme of independence of the judiciary embodied in Article 50 of the Constitution of India should by no means be allowed to be eroded.

(v) V. Madhav and Siva Elango Vs. The Government of Tamil Nadu, The Tamil Nadu State Information Commission and K.S.Sripathi,

24. It is well settled that the State or its instrumentalities cannot take a conflicting stand in a case merely because of the change of Government. In the case of State of Haryana Vs. State of Punjab and Another, their Lordship's held:

16.... The decisions taken at the government level should not be so easily nullified by a change of Government and by some other political party assuming power, particularly when such a decision affects some other State and the interest of the nation as a whole. It cannot be disputed that so far as the policy is concerned, a political party assuming power is entitled to engraft the political philosophy behind the party, since that must be held to be the will of the people. But, in the matter of governance of a State or in the matter of execution of a decision taken by a previous Government, on the basis of a consensus arrived at, which does not involve any

political philosophy, the succeeding Government must be held

duty-bound to continue and carry on the unfinished job rather than putting a stop to the same.

25. It is, therefore, clear that unless it is found that the act done by the Government either in power is either contrary to the Constitutional

provisions or unreasonable or against public interest, the State should not change its stand merely because another political party has come into

power. Political agenda of an individual or a political party should not be subversive of the rule of law.

4. Per contra, Mr. K. Chellapandian, learned Additional Advocate General appearing for the respondents would submit that the petitioner cannot

take advantage of the administrative delay caused in making the consequential amendments in the Tamil Nadu Consumer Protection Rules, 1988,

in respect of recommending panel of candidates for appointment to the post of President in the District Forum. He would also submit that the

Government of Tamil Nadu is the appointing authority for the post of President in the District Fora and it has got every right to call for a fresh

notification irrespective of the recommendations of the Selection Committee, if its recommendation is not satisfactory to the Government.

4a. To substantiate his stand, learned Additional advocate General has relied on the following authorities:

(i) Dr. H. Mukherjee Vs. Union of India and Others,

7. It is obvious from what we have stated above that this Court clearly observed in Jatinder Kumar and Others Vs. State of Punjab and Others,

that the selection made by the Commission was only recommendatory in nature and it was open to the Government to either accept the

recommendation or to depart therefrom. Observations on which the Tribunal relies merely convey that if the Government does not depart from the

recommendation of the Commission the Government must make the appointments strictly adhering to the order of merit as recommended by the

Commission. It cannot disturb the order of merit according to its own sweet will except for good reasons, namely, bad conduct or character but

that does not mean that the Government cannot depart from the recommendation of the Commission. If it departs from the recommendation it must

ultimately comply with the requirement of Article 323 of the Constitution. There is nothing in that article or in the rules to suggest that the

Government cannot take into consideration the developments subsequent to the selection made by the UPSC. Such a view would not be in public

interest and may lead to serious complications if the Government is enjoined to make the appointment notwithstanding certain serious matters

having come to its notice subsequent to the recommendation made by the Commission. Counsel for Respondent 1, however, submitted that a line

of demarcation must be drawn somewhere because the Government cannot be allowed to delay its decision till adverse circumstances appear

against the candidate recommended for appointment. He submitted that this demarcation must coincide with the date on which the

recommendation is made by the Commission and at any rate must be confined to a reasonable period subsequent thereto. We are afraid no hard

and fast line can be drawn in this connection. Besides, in the instant case we do not find as a fact that the Government had deliberately delayed its

decision. In fact immediately after the recommendation was made by the Commission on 18.6.1987, the CBI inquiry commenced in September

1987 and ended in December 1987. The ACC could not take a decision during the pendency of the inquiry. Immediately after the inquiry

concluded and Respondent 1 was exonerated, the ACC proceeded to process the proposal and found an adverse remark in the ACR for the year

1987. This adverse remark was immediately communicated to Respondent 1 and after his representation was disposed of in October 1988 and his

appeal against the decision also failed, the ACC took the final decision on 7.12.1988. In the circumstances it cannot be said that the ACC had

deliberately delayed the decision. Assuming the decision taken by the ACC is justiciable, there can be no doubt that it can be challenged only on

the ground that it smacks of mala fides or arbitrariness. The facts do not reveal that the decision taken by the ACC was either mala fide or

arbitrary.

8. Counsel for Respondent 1 then placed reliance on two decisions, namely Asha Kaul (Mrs) v. State of J & K and Jagtar Singh v. Director,

Central Bureau of Investigation. In our view both these decisions do not assist Respondent 1. The former was a case pertaining to the approval

and publication of the select list of District Munsifs prepared by the J & K Public Service Commission. Several complaints were received in regard to the select lists prepared by the Commission and forwarded to the Government. The Government found prima facie substance in the complaints and, therefore, kept the lists pending. However, the High Court kept on pressing for approval as it was keen to fill in the existing vacancies. The Government, therefore, approved thirteen names and published the list. Those persons were duly appointed but in the meantime a writ petition was filed for a mandamus to command the Government to approve the lists prepared by the Commission. On the Advocate-General's statement that the matter was under the active consideration of the Government, the petition was dismissed. Since the Government did not accord approval a fresh writ petition was filed which came to be allowed against which decision the appeals by special leave came to this Court. In the backdrop of these facts, this Court, while repelling the extreme submission that the Government as the appointing authority wields absolute power to approve or disapprove of the list at its sweet will, observed, that where the Government is satisfied after due inquiry that the selection has been vitiated on account of violation of rules or for the reason that it smacks of corruption, favouritism, nepotism or the like, it may refuse to approve the list in which case it must record the reasons for its action and produce the same in Court, if and when called upon, besides placing the same before the legislature as required by Article 323 of the Constitution. This decision is not an authority for the proposition that the Government must make an order disapproving the list along with the reasons therefore and convey the same to the High Court or the Commission. All that it says is that the Government must record its reasons for the disapproval on the file and if its action is questioned in Court it must disclose the same to the Court if called upon to do so. That requirement has been satisfied in the present case. The Tribunal, however, wrongly thought that subsequent events could not be taken into consideration and that is why it directed the ACC to reconsider its decision without noticing the adverse entry as well as the contents of the CBI report. In fact, to satisfy ourselves we perused the file and found that the reason for disapproval was stated on the file. The subsequent decision turned on its own facts as the Court came to the conclusion that the material placed before the Court did not justify

Government's refusal to make the appointment. Therefore, neither of the two decisions on which reliance is placed come to the rescue of

Respondent 1. It seems well settled that the function of the Public Service Commission being advisory, the Government may for valid reasons to be

recorded on the file, disapprove of the advice or recommendation tendered by the Commission, which decision can, if at all, be tested on the

limited ground of it being thoroughly arbitrary, mala fide or capricious.

(ii) Lakhwinder Singh Vs. Union of India (UOI) and Others,

20. It was lastly submitted that Para 108 of the Regulations for the Army, 1987, which provides for the constitution and duties of Selection

Boards, clearly indicates that the assessment of the Selection Board shall be recommendatory in nature and not binding until approved by the

competent authority, namely, the COAS or the Central Government as the case may be. The said Regulation also provides that both the Central

Government and the COAS have an inherent power to modify, renew, approve with variation or repeal the recommendations of the Selection

Board. It was urged that it was, therefore, evident that the recommendation of the Special Selection Board was not binding and had to be

approved by the Central Government or the Chief of the Army Staff. In support of his aforesaid submission, the learned counsel referred to the

decision of this Court in Union of India v. Lt. Gen. Rajinder Singh Kadyan in which this Court, inter alia, held as follows:

20.... Of course, considering the nature of rigorous standards adopted in the matter of selection of officers from the stage of Lt. Colonel onwards

up to the stage of Lieutenant-General in the usual course it may be that the seniormost officer is selected as the Army Commander. But that does

not debar the Chief of the Army Staff or the Union of India.

(iii) State of Kerala and Another v. K. Reghu Varma and Others (supra) :

6. The point to be considered is, in the Scheme of appointment: what is the scope of the expression "recommendation" u/s 10(1A) of the Act?

Once the Selection Committee recommends a candidate, can the appointing authority, without assigning any reason, ignore such recommendation

made on the basis of merit? The learned Additional Advocate General contends that the Central Rules framed in 1986 having prescribed the

procedure wherein the Selection Committee is bound to indicate the names in

the order of merit and in the State Rules, the Government having not prescribed or followed such a procedure, the Government is free to appoint any candidate from the list. The only restriction is that the appointment should be from the panel. The learned counsel appearing for the candidates already appointed would support the said contention. On the other hand, counsel appearing for the writ petitioners contend that the Selection Committee having indicated the comparative merit of the candidates, it is not open to the appointing authority to arbitrarily pick and choose the candidates. 7.... In other words, the duty cast on the Selection Committee under the Act and the Rules is, by whatever method they deem fit, to assess whether the candidates placed before them by the Government for finalising the panel are duly qualified, in the sense whether they are suitable and qualified to hold the position of either President or Member, and nothing more or nothing less. Under the Kerala State and Subordinate Service Rules, the select list is prepared based on merit and ability and the incumbents are ranked on the basis of such assessment made by the Select Committee; whereas under the Scheme of the Consumer Protection Act and the State Rules the Selection Committee has no such power. The power conferred on them is only to finalise a panel of candidates after subjecting the candidates to whatever test they may deem fit for the purpose of assessing their merit, suitability, etc. for holding the post. The Committee is not expected to or called upon to prepare a select list of candidates in the order of merit and suitability. Thus, all the candidates included in the list of qualified candidates finalised by the Selection Committee are duly recommended by the Selection Committee. Once the Selection Committee recommends a list of qualified candidates, the appointing authority is free to appoint any candidate recommended by the Selection Committee. No doubt unless the appointing authority cannot make any appointment. In other words, the appointing authority, namely the Government, cannot appoint the candidate outside the list of qualified candidates furnished by the Selection Committee and only to that extent there is a fetter or restriction on the power and method of appointment of the President and Members of the various Forums under the Consumer Protection Act and its State Rules, on the Government.

(iv) S. Chandramohan Nair Vs. George Joseph and Others,

15. We have heard the learned counsel for the parties. Section 16(1) of the Consumer Protection Act, 1986 (for short "the Act") lays down that each State Commission shall consist of a President and at least two members, one of whom shall be a woman. The qualifications of the President and the members are also enumerated in that Section. Section 16(1-A), which was added by the Consumer Protection (Amendment) Act, 2002 lays down that every appointment under sub-Section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission as Chairman, Secretary of the Law Department of the State and Secretary in charge of the Department dealing with consumer affairs in the State as members.

76. Rule 17(1) of the Kerala Consumer Protection Rules, 2005 (for short "the Rules") lays down that the President of the State Commission shall be appointed by the Government in consultation with the Chief Justice of the High Court of Kerala. Rule 17(2) envisages calling of the panel of candidates by the Department in charge of the consumer affairs from the High Court of Kerala for appointment as judicial members. Rule 17(3) lays down that in the case of other members, the panel of candidates should be called for from the District Collectors concerned. The first proviso to Rule 17(3) envisages that the Government (Department dealing with the consumer affairs) may also issue advertisement for appointment of other members. The second proviso lays down that the panel obtained by the Department shall, after further scrutiny and short listing, be placed before the Selection Committee. In terms of the third proviso, the Selection Committee is required to finalise the panel of candidates by adopting such methods as it may deem fit and send the same to the State Government for consideration for appointment.

17. An analysis of these provisions shows that appointment of judicial and other members is required to be made by the State Government on the recommendation of the Selection Committee. If the Chairman and/or the members of the Selection Committee do not agree on the candidature of any particular person, then opinion of the majority would constitute recommendation of the Selection Committee. Though, the State Government is not bound to accept the recommendations made by the Selection Committee, if it does not want to accept the recommendations, then reasons for

doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee. If the

appointment made by the State Government is subjected to judicial scrutiny, then it is duty-bound to produce the relevant records including

recommendation of the Selection Committee before the Court to show that there were valid reasons for not accepting the recommendation.

5. Heard the learned counsel for the parties and perused the materials on record.

6. On going through the records, what transpires is that pursuant to the applications invited by the third respondent viz., Tamil Nadu Consumer

Disputes Redressal Commission for appointment to one post of President to the District Consumer Disputes Redressal Forum, Madurai, vide

Notification No. 1 of 2011 dated 7.1.2011 by way of Direct Recruitment, the petitioner, along with ten other persons, submitted applications and

out of eleven persons, ten persons, including the petitioner, attended the interview held on 12.5.2011 by the Selection Committee, consisting of

three members, viz., Chairman of the Tamil Nadu State Consumer Disputes Redressal Commission, Secretary to the Government (Department of

Law) and Principal Secretary to the Government (Department of Co-operation, Food and Consumer Protection). Following the interview, the

Selection Committee, by a resolution, dated 12.5.2011, unanimously recommended to the State Government the name of the petitioner for

appointment to the said post. But, the State Government/ second respondent, instead of issuing the order of appointment, by his letter dated

29.9.2011, directed the third respondent/Commission to issue a fresh notification inviting applications for the same post after the declaration of

results of the Local Bodies. In response to the above Letter, the third respondent sent a reply to the second respondent requesting the State

Government to issue necessary orders on the basis of the Selection Committee's earlier recommendation dated 12.5.2011 at an early date in

order to avoid inconvenience to the litigant public, as the post had been remaining vacant for more than five months, which had given rise to

pendency of cases. However, instead of acting upon the said request made by the third respondent, the first respondent, by the impugned

proceedings, dated 19.10.2011, rejected the recommendation of the Selection Committee and requested a minimum of three candidates for the

post and to send the Select List accordingly for appropriate orders. According to the Government, the said request was made based on a decision

of the High Court of Kerala in the case of State of Kerala and Another v. K. Reghu Varma and Others (supra) cited above.

7. Under the circumstances, the question that arises for consideration is, whether the Government, which is the appointing authority, is bound to

make appointment as per the selection made by the Selection Committee ?

8. To decide the above question, the relevant provision for consideration is Section 10 of the Act, which 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

of 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;

(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.

(1-A) 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;

(in) Secretary in charge 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)-(3)xxxxx

9. As per Section 10(1-A), every appointment under sub-section (1) viz., one President and two Members shall be made by the State

Government on the recommendation of the Selection Committee consisting of (i) President of the State Commission-Chairman; (ii) Secretary, Law

Department of the State-Member and (iii) Secretary in charge of the Department dealing with consumer affairs in the State -Member.

10. Keeping the above provision in mind, if we look at the order impugned, what comes to be known is that the selection made by the Selection

Committee has been rejected by the Government on the ground that a panel of three names has to be recommended for appointment to the single

post of President, District Consumer Forum, Madurai. According to the Government, the said rejection was based on the decision of the Kerala

High Court in State of Kerala and Another v. K. Reghu Varma and Others (supra) case. A part of the judgment of the Kerala High Court, in the

said case, relied upon by the Government for passing the impugned order goes thus:

From the context of the provisions of the Act and Rules, it is absolutely clear that the Selection Committee can only finalise a panel and forward a

list of qualified candidates for appointment and the appointing authority is free to appoint any candidate from the list without assigning any reason.

The appointing authority is not bound to show any reason for making the appointment, in case the appointment is as per the Scheme under the Act

and Rules. In that view of the matter, it is not necessary to advert to the various decisions referred to by the learned counsel appearing for the writ

petitioners, particularly since all those decisions pertain to a fact situation where the appointing authority attempted to make appointment outside

the list recommended by the Selection Committee. In the instant case, the writ petitioners have no case that the appointees are not recommended

by the Selection Committee. Though the Selection Committee has indicated the order of merit of the candidate recommended by them, the

appointing authority is not bound to follow the order thus indicated by the Selection Committee, while making the appointments from the list of

candidates recommended by them. Appointment from the list as we have already noted above, is a matter of subjective choice of the appointing

authority, when the appointment is made from the list of candidates recommended by the Selection Committee.

11. Following on the above ruling, the Government was of the view that the Selection Committee had to select more than one suitable candidate

and send the select list containing names of suitable candidates to the Government and Appointing Authority for making appointment of one of the

suitable candidates from the select list of candidates recommended by the Selection Committee.

12. In fact, I have gone through the judgment of the Kerala High Court in its entirety. With regard to appointment of whole-time members in the

District Forum of Kerala State, a specific procedure is prescribed under the Kerala Consumer Protection Rules, 2005. The relevant Rule 7 reads

as follows:

7. Appointment of whole-time members in the District Forum.- (I) Appropriate panel of candidates for consideration of appointment as whole-

time members in the District Forum shall be called for by the Department in-charge of Consumer Affairs in Government from the concerned

District Collectors and the District Collectors may, after due publicity, furnish a short listed panel of candidates, not exceeding five candidates per

vacancy, with relevant documents and details to the Government after verification and scrutiny of the qualifications and other eligibility criteria

prescribed in the Act and these Rules:

Provided that the Government Department dealing with the Consumer Affairs may, if necessary, advertise directly for the purpose.

(2) The panel of Sitting Judges/Retired District Judges and persons qualified to

be appointed as District Judges shall be obtained from the High Court of Kerala for consideration of appointment to the post of President.

(3) The category-wise panel so obtained, after further scrutiny and short listing, with all relevant documents and details shall be placed before the

Selection Committee at the appropriate time by the Convener of the Selection Committee and the Selection Committee shall finalise a panel of

category-wise candidates, by adopting such methods as the Selection Committee may deem fit, and the list of qualified candidates so finalised,

shall be sent for consideration of appointment by the Government, The Secretary to Government in-charge of the Department dealing with

Consumer Affairs in the State shall be the Convener of the Selection Committee.

13. Thus, in the case of appointment of members of the District Forum in the State of Kerala, there are seven stages viz.,

(1) The District Collector invites applications for the preparation of a panel for appointment.

(2) The District Collector verifies each application as to whether the candidate possesses the required qualification and other eligibility criteria

prescribed under the Rules.

(3) After such verification, he prepares a short listed panel of candidates, not exceeding five per vacancy.

(4) The short listed panel thus obtained from the District Collector is subjected to further scrutiny and short listing by the Government.

(5) Such a list subjected to further scrutiny and short listing is placed before the Selection Committee.

(6) The Selection Committee, adopting its own methods as they deem fit, finalises the panel and that finalised panel of qualified hands (select list) is

forwarded to the Government.

(7) The State Government makes the appointment on the recommendation of the Selection Committee.

The same is the method prevailing in the State of Kerala for selection and appointment of President also, except for the difference that the initial

scrutiny is by the High Court and not by the District Collector.

14. Under Rule 7 above of the Kerala Consumer Protection Rules, 2005, it is mandatory that the Selection Committee should recommend a panel

not exceeding five candidates per vacancy. There is no such Rule in the State of Tamil Nadu. In other words, while the Kerala Consumer

Protection Rules, 2005, provide for a specific provision as to the appointment of Members and President of District Consumer Forum, the Tamil

Nadu Consumer Protection Rules, 1988, are silent on the said aspect. In that situation, in the absence of any local/State law, the only method that

has to be resorted to for appointment of Members and President of District Consumer Forum in this case is the Central law i.e., Section 10(1-A)

of the Consumer Protection Act, 1986, which is exactly followed.

15. With respect to the Division Bench of the Kerala High Court, I would say that even the Kerala State Consumer Protection Rules do not speak

of any supremacy or choice of the Government in appointing the candidates from the select list for the post of Member or President. Further, even

as the Division Bench has held that the Appointing Authority is free to appoint any candidate from the list without assigning any reason, what all the

said Rules say is that the State Government makes the appointment on the recommendation of the Selection Committee. Even the principle laid

down by the Kerala High Court has been overruled by the Supreme Court in *N. Kannadasan v. Ajoy Khose and Others* (supra), relied upon by

the petitioner. In the said case, the Chief Justice of the High Court of Madras forwarded a panel of three Judges including the appellant therein. In

the given situation, the question that arose before the Apex Court was, whether Section 16 of the Act, which deals with the composition of the

State Commission, contemplates such a situation. It was a case where the State of Tamil Nadu, in its letter dated 30.5.2008, addressed to the

Registrar of the Madras High Court while intimating that a vacancy had arisen in the post of President, State Commission, made a request to him to

send a panel of eligible names of retired High Court Judges after approval by the Hon'ble Chief Justice of the High Court of Madras for its

consideration therefore. In furtherance thereof, the Chief Justice only forwarded a panel of three Judges. The Executive Government of the State

made a final choice therefrom. In that regard, the Supreme Court has held that having regard to the fact that the Chief Justice has the primacy as

regards recommendations of the name for appointment to the post of Chairman of the State Commission, the method adopted therein was

impermissible in law and for the said purpose only one name must emanate from the Chief Justice and only one name can be recommended by him

and not a panel of names. Having regard to processual mandate required for the purpose of appointment to the post of Chairman of State

Commission, the Executive Government of the State cannot have any say whatsoever in the matter. The process for preparation of a panel

requested by the Executive Government of the State and accepted by the Chief Justice of the High Court was held impermissible in law. If the

State is granted a choice to make an appointment out of a panel, as has been done in the said case, the primacy of the Chief Justice would stand

eroded and for the purpose of making recommendation in terms of Section 16(1), the opinion of the Chief Justice alone shall prevail. It is further

held therein that if a panel of names is suggested and the State makes an appointment of one out of the three, the question of meeting of mind

between the Chief Justice and the executive would not arise but there cannot be any doubt whatsoever that by reason thereof the ultimate authority

to appoint would be the executive, which would be impermissible. For the aforementioned purpose, the Court must bear in mind that the

constitutional scheme of independence of the judiciary embodied in Article 50 of the Constitution of India should by no means be allowed to be

eroded.

16. In this context, it is to be mentioned, as already stated above, that the Selection Committee, after holding interview for ten persons, selected

the petitioner herein as the fit person for the post, which selection has been rejected by the appointing authority, namely, the Government. A

thorough reading of Section 10 (1-A) would not specifically state as to how many persons the Selection Committee has to recommend for a single

post. What it only says is that every appointment u/s 10(1) shall be made on the recommendation of the Selection Committee. In this case, even as

the Selection Committee found the petitioner alone suitable for the post of President and the other candidates who participated in the interview

along with the petitioner were found unfit for recommendation, in my stand point, the said selection is final and binding on the appointing authority.

Hence, the State Government's reference to the decision of the Kerala High Court has neither any bearing nor any relevance to the case on hand.

17. The other provisions viz., Section 16 and Section 20 of the Act deal with the composition of State Commission and Composition of National

Commission respectively and Rule 12-A of the Consumer Protection Rules, 1987, deals with the procedure for selection of members of the

National Commission. Therefore, the said provisions are not relevant to the present case.

18. The principle underlined by the Supreme Court in *N. Kannadasan v. Ajoy Khose and Others* (supra), while asserting the primacy of judiciary

in appointment of President of the State Commission by recommending the names of judges, who, in its opinion, are independent and fit persons to

be appointed, is the matter for concern. It is true that if a panel of names is suggested and the State makes appointment of one of them, the

question of meeting of mind between the Chief Justice and the executive would not arise but there cannot be any doubt whatsoever that by reason

thereof the ultimate authority to appoint would be the executive. The principle of purposive interpretation may be resorted to hold that for the

purpose of selecting a person to be appointed as President of a District Forum, the process of selection has to be in accordance with the

provisions of the Act and the Rules. Those provisions contemplate that appointment of President is required to be made by the State Government

on the recommendation of the Selection Committee. Then, that recommendation goes to the executive under the scheme of appointment. The

powers of the judicial authority and the executive are underlined therein so also the power to be exercised in selecting a person, which is after a

recommendation from the judicial authority.

19. In the instant case, when the Selection Committee has recommended a single name and that committee, after analysing every factor, selected a

proper person having judicial knowledge to function as President of the District Forum, it is not for the executive to call for a panel of persons to

choose a name of their own choice. The scheme of the Act u/s 10(1-A) contemplates that every appointment shall be made on the

recommendation of the Selection Committee, which is headed by a retired Judge of the High Court. In the solemn functioning of the committee, if

they choose a right person whether is one or more and he is found to be a fit person to be appointed, the executive has to take a decision either to

act on the recommendation or otherwise, but it is not for the executive to call for a panel of names and decide the appointment.

20. Article 50 of the Constitution demarcates separation of judiciary from executive, under which the State shall take steps to separate the

judiciary from the executive in the public services of the State. Such powers for the judiciary and executive are defined under the scheme of the

Act and the provisions made thereunder. When a name is recommended by the Selection Committee under the chairmanship of the State

Commission, it is for the State to act on that. In other words, the Selection Committee, under the Act and the Rules, adopting its own methods as it

deems fit to assess whether the candidates placed before it are duly qualified to hold the post of either President or Member, recommends to the

executive for appointment and, thereafter, the State shall proceed to appoint the person based on the recommendation. The power conferred on

the executive is only to finalise the name (panel) sent by the Selection Committee and not to call upon the judicial authority to send a panel of

names. It is also clear from the scheme of the Act that the appointing authority, namely the executive, cannot appoint the candidate outside the list

of qualified candidates furnished by the Selection Committee and to that extent, there is a fetter or restriction on the power and method of

appointment of the President and Members of the various Forums under the Consumer Protection Act and its State Rules, on the Government. It

is not otherwise to call upon the Selection Committee, which is under the control of Chairmanship of a retired Judge of the High Court, to send a

panel of names. So, the underlined power as per the Constitution and the scheme of the Act has to be understood in such a manner and,

accordingly, the State has to act on the recommendation of the Selection Committee.

21. For the above reasons, the impugned order of the State Government, dated 19.10.2011, rejecting the recommendation of the Selection

Committee for appointment of the petitioner as President of District Consumer Forum and requesting the third respondent/Commission to issue a

fresh notification, calling for eligible candidates, and submit a panel of three names, which notification having been issued accordingly by the third

respondent vide Notification No. 3 of 2011, dated 11.11.2011, is arbitrary, ultra vires and unconstitutional. Thus, the impugned order of the first

respondent, dated 19.10.2011, and the subsequent Notification of the third respondent vide Notification No. 3 of 2011, dated 11.11.2011, are quashed. The first respondent is directed to implement the proceedings of the Selection Committee, dated 12.5.2011, within a period of two weeks. Writ petition is allowed. No costs. Consequently, the connected M.P. (MD).Nos. 1 to 3 are closed.