

(2021) 09 BOM CK 0028

In the Bombay High Court

Case No : Public Interest Litigation No. 11 Of 2021, Writ Petition No. 1096 Of 2021

Vijaykumar Bhima Dighe And Others

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 14-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 136, 226, 323A, 323B
Consumer Protection (Qualification For Appointment, Method Of Recruitment, Procedure Of Appointment, Term Of Office, Resignation And Removal Of President And Members Of The State Commission and District Commission) Rules, 2020 — Rule 3, 3(2)(b), 4, 4(2)(c), 6, 6(9)
Consumer Protection Act, 2019 — Section 29, 43, 101(2)(n), 10(2)(w), 71, 101
Consumer Protection Act, 1986 — Section 10(1)(b), 10(3), 16(1)(b), 16(2), 20(1)(b), 24(B)(1), 24(B)(2), 30, 30A

Citation : (2021) 09 BOM CK 0028

Hon'ble Judges : Sunil B. Shukre, J; Anil S. Kilor, J

Bench : Division Bench

Advocate : Uday Warunjikar, S.S. Kate, T.D. Mandlekar, Rohan Malviya, Tajas Fadnavis, Ulhas, Amit Madiwale

Final Decision : Allowed/Partly Allowed

Judgement

Anil S. Kilor, J

1. With great power comes great responsibility. In fact, power howsoever small or big comes with proportionate responsibility as they are complimentary to each other. Whenever the principle of proportionality is violated, the effect would be disastrous. It follows that, greater the power attached to any post, stricter the criteria must be for appointment to such post. The posts to which the Rules under challenge here apply, are the posts governed by this principle.

2. In these two petitions the grievance revolves around the criteria adopted for selection of President and Members of the State Commission and District Commission, constituted under the Consumer Protection Act 2019 (for short 'the

Act of 2019'), which according to the petitioners, is not analogous to the function and powers of Commissions, under the Act of 2019.

3. The facts giving rise to both these petitions, are as follows :

The Ministry of Consumer Affairs, Food and Public Distribution, New Delhi in exercise of the power conferred under Sections 29 and 43 read with clauses (n) and (w) of sub-section 2 of Section 101 of the Act of 2019, framed Rules, vide notification dated 15th July, 2020, called as Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of the State Commission and District Commission) Rules 2020 (In short "the Rules of 2020").

4. The Rules 3(2)(b) and 4(2)(c) of the Rules 2020 deal with the eligibility criteria seeking experience of not less than 20 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, for the post of Members of State Commission and experience in similar fields of not less than 15 years for the post of President and Members of District Commission. Rule 6 of the Rules of 2020, is in respect of procedure of appointment. Sub-rule 9 of Rule 6 permits the Selection Committee to determine its procedure for making its recommendations keeping in view the requirement of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.

5. In pursuance to Rule 6, the State of Maharashtra constituted a Selection Committee vide Government Resolution dated 6th November, 2020. Consequently, the applications were invited for the post of President and Members of State Consumer Disputes Redressal Commission and District Consumer Redressal Commission under the Act of 2019. The said notice inviting applications gave cause to the respective petitioners to file these petitions.

6. The Public Interest Litigation No.11 of 2021 was filed before the Principal Bench of this Court, at Bombay and the same was transferred to Nagpur Bench, to be heard along with pending Writ Petition No. 1096 of 2021.

7. In Public Interest Litigation No. 11 of 2021 the following prayers are made:

A. The Public Interest Litigation may kindly be allowed;

B. This Honourable Court be pleased to hold and declare that the provisions in Rule 6(9) of Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of the President and Member of the State Commission and District Commission) Rules, 2020, is arbitrary, unreasonable and violative of Article 14 of the Constitution of India and be pleased to strike down the same to the extent of determining its procedure for making its recommendation or in the alternatively be pleased to read down the same and declare that the Selection Committee shall conduct a written test and viva voce of the candidate before making

recommendation for the post of President and the Member of the District Commission and the State Commission of State of Maharashtra.

C. During pendency of this Petition, be pleased to restrain the Respondent from appointing any person on the post of the President and the member of the District Commission and the State Commission as per advertisement dated 2.2.2021 without conducting a written test and viva voce in view of the judgment of the Honourable Supreme Court of India in State of UP vs. UP Consumer Protection Bar Association, the Honourable Supreme Court approved the Model Rules of Order dated 18.05.2018 and dated 21.11.2016.

C. Ad-interim relief in terms of prayer clause(c).

D. Any other suitable and equitable relief may kindly be granted in favour of the petitioners, in the interest of justice and facts and circumstances of the case.

Whereas, in the Writ Petition No. 1096 of 2021 the following prayers are made:

i) Quash and set aside the said Rules 2020 framed under Section 101 of the Consumer Protection Act, 2019 (ANNEXURE-P-2) dated 15.07.2020 made by respondent No.3 as the same are illegal and ultra virus, bad in law & violation of directions issued in judgments by Hon Supreme Court in the matter of State of Up Vs. Up Consumer Protection Bar Association in Civil Appeal No:-2740-2007 & Madras Bar Association Vs Union of India, Writ Petition (C) No 804 of 2020, decided on 27.11.2020.

ii) Grant ad-interim, ex-parte stay to the effect, operation and implementation of the said Rules 2020 (ANNEXURE-P-02) dated 15.07.2020 till the decision of instant petition.

iii) Quash and set aside the vacancy Notice dated 02.02.2021 (ANNEXURE-P-01) issued by respondent No.2 for inviting application for the post of the Presidents and the members of the District Commissions and the members of State Commission in Maharashtra as the same is illegal and bad in law for the reasons stated in this petition.

iv) Grant ad-interim, ex-parte stay to the effect, operation and implementation of the Vacancy Notice dated 02.02.2021 (ANNEXURE-P-01) till the decision of petition.

v) Confirm ad-interim ex-parte stay granted as per prayer clause (ii & iv) above till the decision of petition.

vi) Restrain the respondents or their agents and servants from making any appointment of presidents and the members of the District Commissions and the members of State Commission in Maharashtra during the pendency of this writ petition.

vii) Grant any other relief which this Ho'ble Court deems fit in the facts and circumstances of the case in favor of the petitioner.

8. In both these matters, on 30th June, 2021 the selection process initiated for appointment of Members of State Commission, was made subject to the final results of these petitions, by this Court.

9. We have heard the learned counsel for the respective parties.

10. Dr. Uday Warunjikar, learned counsel for the petitioner in Public Interest Litigation No. 11 of 2021, argues that under the Rules of 2020, the power conferred upon the Selection Committee to determine its own procedure for selection of President and Members of the District and State Commission constituted under the Act of 2019, is in contravention of the directions issued by the Hon'ble Supreme Court of India in the case of State of Uttar Pradesh and others Vrs. All Uttar Pradesh Consumer Protection Bar Association 2017 (1) SCC 444 (hereinafter referred as 'UPCPBA'). Thus, he submits that the Rule 6(9) of the Rule 2020 is ultra virus.

11. It is submitted that looking at the judicial functions to be performed by President and Members of the District and State Commissions constituted under the Act of 2019, the selection without holding written examination, but, only on the basis of viva-voce, would result into selection of unsuitable candidates which will further result in denial of justice.

12. Dr. Uday Warunjikar, learned counsel for the petitioner further submits that no justification has been offered by the respondents for not following uniform process across country, for appointments, as directed by the Hon'ble Supreme Court of India in the case of UPCPBA.

13. The learned counsel for the petitioner, fairly concedes that in absence of any challenge raised to the appointment of the President of the State Consumer Dispute Redressal Commission, State of Maharashtra, which was made during the pendency of the petition, he does not want to raise any grievance about the same.

14. Shri Mandlekar, learned counsel for the petitioner appearing in Writ Petition No. 1096 of 2021, reiterated the contentions raised by Shri Warunjikar. However, in addition, he has submitted that, prescribing minimum experience of 20 and 15 years for President and Members of State and District Commission respectively, in the fields stipulated in the advertisement as one of the eligibility criteria, is contrary to the directions issued by the Hon'ble Supreme Court of India in the case of Madras Bar Association Vrs. Union of India 2020 SCC Online SC 962 (herein after referred as "MBA-2020") and in the case of UPCPBA. It is submitted that the said condition would deprive many lawyers who are otherwise qualified and have legal expertise and experience of 10 years or more.

15. Shri Mandlekar, learned counsel for the petitioner in support of his contentions also relies upon the following judgments.

i. Union of India Vrs. R. Gandhi, President, Madras Bar Association 2010 11 SCC(1) (hereinafter referred as "MBA-2010")

ii. Madras Bar Association Vrs. Union of India 2021 SCC Online SC 463 (hereinafter referred as "MBA-2021")

iii. State of Rajasthan and others Vrs. Basant Nahata (2005) 12 SCC 77

16. Per contra, Shri Aurangabadkar, learned ASGI submits that it may not be possible to conduct the written test as demanded by the petitioners, which may further delay the process of selection. He submits that the State Government is expected to exercise complete transparency in the selection procedure. It is submitted that the procedure which has been adopted by the Selection Committee is as per the powers conferred upon the Selection Committee under the Rules of 2020, and therefore there is no illegality committed by the Selection Committee in this matter.

17. Shri Amit Madiwale, appearing for the State, submits that the Respondent-State is following the procedure to fill up the vacancies in the State and District Consumer Commissions, as stipulated under the Rules of 2020. Our attention has been drawn to paragraph 6 of the affidavit in reply filed by the State, dated 29th July, 2021, inter alia stating therein that in response to the advertisement dated 2nd February, 2021, total 1138 applications were received for 25 vacant posts of President, District Consumer Disputes Redressal Commission and Member, District Consumer Disputes Redressal Commission. It is further pointed out that considering the huge number of applications it was not possible to take interviews of all the candidates who are eligible for these posts. Therefore, the Selection Committee decided to take written exam of the candidates through an agency which is on Government Panel.

18. It is further pointed out that considering the vacant posts, the Selection Committee has decided to take interviews of 125 candidates i.e. in 1:5 ratio, on merit as per the decision dated 9th July, 2021. By arguing so, he prays for dismissal of petition.

19. To consider the rival contentions of the parties, we have perused the record and gone through various relevant judgments.

20. Before touching on the challenge raised in these petitions, we are of the opinion that a brief reference to the historical background of Tribunalisation in India, is necessary for better understanding of the controversy.

21. In a democratic country like India, judicial functions and judicial powers constitute the essential attributes of a sovereign State and are entrusted to regularly established Courts by the Constitution of India through a pattern of common law system. There are constitutional rights, statutory rights, human rights and natural rights, protection and implementation of which depends on proper administration of justice.

22. There is a three tier judicial system, in India. The subordinate Courts, the High Courts and the Supreme Court. The subordinate Courts are vested with the original jurisdiction in all matters except those, which are barred either expressly

or impliedly. The High Courts have appellate and revisional jurisdiction along with the jurisdiction to issue prerogative writs. Some of the High Courts have original jurisdiction as well. The Hon'ble Supreme Court has original jurisdiction and advisory jurisdiction where the President of India may seek opinion. It can issue prerogative writs and has appellate jurisdiction. The Supreme Court has also discretion to entertain Special Leave Petition.

23. The delay and backlog in administration of justice had raised a concern. The Law Commission of India therefore, in its Fourteenth Report (1958) made recommendations for reforming the administration of justice delivery system which have been implemented from time to time to revamp the judicial system with a view to reduce delay and enlarge access to justice.

24. The Tribunal, as a result, emerged as an effective mechanism to reduce the backlog and delay in administration of justice.

25. The term 'Tribunal' is derived from the word 'Tribunes', which means 'Magistrate of the Classical Roman Republic'.

26. In India, history of Tribunals dates back to the year 1941, when first Tribunal was established in the form of Income Tax Appellate Tribunal.

27. The Hon'ble Supreme Court of India has in various judgments explicitly held that tribunals have been established with the object of discharging quasi-judicial duties by acting judicially which differentiates them from other administrative bodies. A tribunal is neither a Court nor an executive body, but they have an obligation to act judicially. Tribunals are endowed with the judicial functions as distinguished from purely administrative or executive functions. As a quasi-judicial body, the Tribunal performs the judicial functions for deciding the matters in a judicious manner. It is not bound by law to observe all the technicalities, complexities, refinement, discrimination and restrictions that are applicable to the Courts of record in conducting trials, but at the same time, a tribunal is required to look at all matters from the standpoint of substance as well as form and be certain that the hearing is conducted and the matter is disposed of with fairness, honesty, and impartiality.

28. The Constitution (42nd Amendment) Act of 1976 brought about a massive change in the adjudication of disputes in the Country. It has provided for the insertion of Articles 323-A and 323-B in the Constitution of India, whereby the goal of establishment of Administrative Tribunals by Parliament as well as State Legislature, to adjudicate the matters specified is made possible.

29. The statement of objects and reasons for insertion of Articles 323A and 323B show that it were to reduce the mounting arrears in High Courts and to secure the speedy disposal of service matters, revenue matters and certain matters of special importance in the context of the socio economic development and progress, it is considered expedient to provide administrative and other tribunals for dealing with such matters while presenting the jurisdiction to the Supreme

Court in regard to such matters under Article 136 of the Constitution of India and to make certain modifications in writ jurisdiction of the High Court's under Article 226 of the Constitution of India.

30. Hence, looking to the desperate need to overcome hurdles of delay in administration of justice, creation of tribunals has evolved itself as one solution.

31. The Hon'ble Supreme Court of India in the case of *Roger Mathew Vrs. South Indian Bank Ltd.*, 2020(6) SCC 1 has observed that the delay and backlog in the administration of justice is of paramount concern for any country governed by the rule of law. In our present judicial set up, disputes often take many decades to attain finality, travelling across a series of lower Courts to High Court and ending with an inevitable approach to the Supreme Court. Such Crawling pace of justice delivery system only aggravates the misery of affected parties. It is further observed that it would, however, be wrong to place the blame of such delay squarely on the judiciary, an expirical examination of pending cases clearly demonstrates that the ratio of judges against the Country's population is one of the lowest in the world and the manpower (support staff) and infrastructure provided is dismal. In addition to the delay in administration of justice, another important facet requiring attention is the rise of specialization and increase of complex and commercial aspects, which require esoteric appraisal and adjudication. The existing lower Courts in the Country are not well equipped to deal with such complex new issues which see constant evolution as compared to the stable nature of existing civil, criminal and tax jurisdiction.

32. Thus, due to expansion of Government activities in the social and other similar fields along with commercial ventures in different sectors, a need had arisen for availing the services of persons having knowledge in specialized fields for effective and speedier dispensation of justice, whereas, the traditional mode of administration of justice by the Courts of law was felt to be unequipped with such expertise to deal with the complex issues arising in the changing scenario. Hence, Tribunal not only emerged as an effective mechanism to ameliorate the burden of judiciary but also with the expertise and knowledge in specialized area.

33. However, when the jurisdiction relating to some special matters was shifted from Courts to Tribunals, issues relating to lack of uniformity in the matter of qualification, appointment and service conditions had emerged and surfaced.

34. In the case of *Gujarat Urja Vikas Nigam Ltd vs Essar Power Limited* 2016(9) SCC 103 the Hon'ble Supreme Court of India framed certain questions and requested the Law Commission to give its report on it. Accordingly, the Law Commission on 27th October, 2017 submitted its 272nd report titled as "Assessment of Statutory Frame Work of Tribunals in India", for consideration of Central Government. The questions and conclusions to each of the questions framed by the Hon'ble Supreme Court of India, are tabulated, as follows :

Questions referred by the Hon'ble Supreme Court in the case of *Gujarat Urju Vikas Nigam Ltd., Vrs. Essar Power Ltd.*, to be examined by the Law Commission

Conclusion recorded by the Law Commission.

I. Whether any changes in the statutory framework constituting various Tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of judgment of this Court in Madras Bar Association (Supra) or on any other consideration from the point of view of strengthening the rule of law?

A. In case of transfer of jurisdiction of High Court to a Tribunal, the members of the newly constituted Tribunal should possess the qualifications akin to the judges of the High Court. Similarly, in cases where the jurisdiction and the functions transferred were exercised or performed by District Judges, the Members appointed to the Tribunal should possess equivalent qualifications required for appointment as District Judges.

B. There shall be uniformity in the appointment, tenure and service conditions for the Chairman, Vice-Chairman and Members appointed in the Tribunals. While making the appointments to the Tribunal, independence shall be maintained.

C. There shall be constituted a Selection Board/Committee for the appointment of Chairman, Vice-Chairman and Judicial Members of the Tribunal, which shall be headed by the Chief Justice of India or a sitting judge of the Supreme Court as his nominee and two nominees of the Central Government not below the rank of Secretary to the Government of India to be nominated by the Government. For the selection of Administrative Member, Accountant Member, Technical Member, Expert Member or Revenue Member, there shall be a Selection Committee headed by the nominee of the Central Government, to be appointed in consultation with the Chief Justice of India.

D. The Chairman of the Tribunals should generally be the former judge of the Supreme Court or the former Chief Justice of a High Court and Judicial Members should be the former judges of the High Court or persons qualified to be appointed as a Judge of the High Court.

Administrative Members, if required, should be such persons who have held the post of Secretary to the Government of India or any other equivalent post under the Central Government or a State Government, carrying the scale of pay of a Secretary to the Government of India, for at least two years; OR held a post of Additional Secretary to the Government of India, or any other equivalent post under the Central or State Government, carrying the scale of pay of an Additional Secretary to the Government of India, at least for a period of three years.

Expert Member/Technical Member/Accountant Member should be a person of ability, integrity and standing, and having special knowledge of and professional experience of not less than fifteen years, in the relevant domain. (can be increased according to the nature of the Tribunal). The appointment of Technical/Expert members in addition to the judicial members be made only where the

Tribunals are intended to serve an area which requires specialised knowledge or expertise or professional experience and the exercise of jurisdiction involves consideration of, and decisions into, technical or special aspects.

E. While making the appointments to the Tribunal, it must be ensured that the Independence in working is maintained. The terms and conditions of service, other allowances and benefits of the Chairman shall be such as are admissible to a Central Government officer holding posts carrying the pay of Rs.2,50,000/-, as revised from time to time.

The terms and conditions of service, other allowances and benefits of a Member of a Tribunal shall be such as are admissible to a Central Government officer holding posts carrying the pay of Rs.2,25,000/-, as revised from time to time.

The terms and conditions of service, other allowances and benefits of Presiding Officer/Member of a Tribunal (to which the jurisdiction and functions exercised or performed by the District Judges are transferred) shall be such as are admissible to a Central Government officer drawing the corresponding pay of a District Judge

F. Vacancy arising in the Tribunal should be filled up as early as possible by initiating the procedure well in time, as early as possible, preferably within six months prior to the occurrence of vacancy.

G. The Chairman should hold office for a period of three years or till he attains the age of seventy years, whichever is earlier. Whereas Vice-Chairman and Members should hold the office for a period of three years or till they attain the age of sixty seven years whichever is earlier. It will be appropriate to have uniformity in the service conditions of the Chairman, Vice-Chairman and other Members of the Tribunals to ensure smooth working of the system.

II. Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time?

sible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time? H. Every order emanating from the Tribunal or its Appellate Forum, wherever it exists, attains finality. Any such order may be challenged by the party aggrieved before the Division Bench of the High Court having territorial jurisdiction over the Tribunal or its Appellate Forum.

III. Whether direct statutory appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affect access to justice to litigants in remote areas of the country?

I. The provisions of Section 3(o) of the Armed Forces Tribunal Act, 2007 excludes certain matters from the jurisdiction of the Armed Forces Tribunal (AFT) and the parties aggrieved in those matters can approach the High Court under writ jurisdiction. The Act excludes the jurisdiction of the High Court under Article 227(4) but not under Article 226. In matters, where AFT has jurisdiction, parties must have a right to approach the High Court under Article 226 for the reason that a remedy under Article 136 is not by way of statutory appeal. The issue is pending for consideration before the larger Bench of the Supreme Court.

IV. Whether it is desirable to exclude jurisdiction of all courts in absence of equally effective alternative mechanism for access to justice at grass root level as has been done in provisions of TDSAT Act (Sections 14 and 15)

J. The Tribunals must have benches in different parts of the country so that people of every geographical area may have easy Access to Justice. Ideally, the benches of the Tribunals should be located at all places where the High Courts situate. In the event of exclusion of jurisdiction of all courts, it is essential to provide for an equally effective alternative mechanism even at grass root level. This could be ensured by providing Statelevel sittings looking to the quantum of work of a particular Tribunal. Once that is done, the access to justice will stand ensured.

V. Any other incidental or connected issue which may be considered appropriate?

35. Now, keeping in mind the above referred historical backdrop of Tribunalisation, we will move ahead to consider the controversy involved in this matter.

36. In the year 1986 the Consumer Protection Act (in short the 'Act of 1986') was enacted to provide for better protection of the interest of consumers and for the purpose of making provisions for establishing of consumer protection councils and other authorities for the settlement of consumer disputes etc.

37. The issue relating to deficiencies relating to infrastructure in the adjudicatory fora constituted under the Act of 1986, had cropped up before the Hon'ble Supreme court of India in the case of UCPBA. The Hon'ble Supreme Court of India in the aforesaid matter constituted a Committee presided over by Mr. Justice Arijit Pasayat, a former Judge of the Apex Court, to examine following issues:-

(i) the infrastructural requirements of the State Commissions, deficiencies in infrastructure and remedial measures;

(ii) the position of vacancies of members at the national, state and district level;

(iii) the need for additional Benches at the national, State and district level;

(iv) conditions of eligibility for appointment of non-judicial members;

(v) administrative powers which have been or should be conferred on the

Presiding Officers of the State and District Fora;

(vi) service conditions including pay scales governing the Presiding Officers and members;

(vii) requirements of staff;

(viii) creation of a separate cadre of staff at the national, State and district level; and other relevant issues.

(ix) other relevant issues.

38. Thereupon, the Committee inquired extensively into the matters referred to it and made assessment of the prevailing conditions in the Fora constituted under the Act of 1986, in various States including the State of Maharashtra. The committee consequently, submitted its interim report on

17th October, 2016, whereupon, the Apex Court directed the Union of India and State Governments, as under:-

(i) The Union Government shall for the purpose of ensuring uniformity in the exercise of the rule making power under Section 10(3) and Section 16(2) of the Consumer Protection Act, 1986 frame model rules for adoption by the state governments. The model rules shall be framed within four months and shall be submitted to this Court for its approval;

(ii) The Union Government shall also frame within four months model rules prescribing objective norms for implementing the provisions of Section 10(1)(b), Section 16(1)(b) and Section 20(1)(b) in regard to the appointment of members respectively of the District fora, State Commissions and National Commission;

(iii) The Union Government shall while framing the model rules have due regard to the formulation of objective norms for the assessment of the ability, knowledge and experience required to be possessed by the members of the respective fora in the domain areas referred to in the statutory provisions. The model rules shall provide for the payment of salary, allowances and for the conditions of service of the members of the consumer fora commensurate with the nature of adjudicatory duties and the need to attract suitable talent to the adjudicating bodies. These rules shall be finalized upon due consultation with the President of the National Consumer Disputes Redressal Commission, within the period stipulated above;

(iv) Upon the approval of the model rules by this Court, the state governments shall proceed to adopt the model rules by framing appropriate rules in the exercise of the rule making powers under Section 30 of the Consumer Protection Act, 1986;

(v) The National Consumer Disputes Redressal Commission is requested to formulate regulations under Section 30A with the previous approval of the Central Government within a period of three months from today in order to

effectuate the power of administrative control vested in the National Commission over the State Commissions under Section 24(B)(1) (iii) and in respect of the administrative control of the State Commissions over the District fora in terms of Section 24(B)(2) as explained in this Judgment to effectively implement the objects and purposes of the Consumer Protection Act, 1986.

39. Consequently, the Union Government framed the model rules, whereupon the State Governments were directed to frame rules in accordance with the Final Draft Rules submitted by the Union of India.

40. The State of Maharashtra, appropriately, framed the rules by issuing notification dated 24th May, 2019, in confirmation with the final draft rules, prepared by the Union of India.

41. However, in view of new challenges due to drastic transformation of consumer markets for goods and services, the Act of 1986 was repealed and re-enacted vide Act of 2019. Consequently, the Union of India in exercise of the powers conferred by Sections 29 and 43 r/w Clauses (n) and (w) of sub-section 101 of the Act of 2019, framed the Rules of 2020, vide Notification dated 15.07.2020.

42. In light of above referred facts, to examine the contention of the petitioners that sub-Rule (9) of Rule 6 of the Rules of 2020, is contrary to the directions issued by the Hon'ble the Supreme Court of India in the cases of MBA-2020 and UPCPBA and arbitrary and hence, the same is ultra vires, it is necessary to refer to Sub-Rule (9) of Rule 6 of the Rules of 2020, which read thus :

"6. Procedure of appointment.-(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) ...

(7) ...

(8) ...

(9) The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience."

43. A bare perusal of Sub rule (9) of Rule 6 of the Rules of 2020, makes it clear that each Selection Committee of the respective State, is conferred with a complete discretion to determine its procedure for making its recommendations

keeping in view the requirements of the respective State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicating experience.

44. The Hon'ble Supreme Court of India in the case of L. Chandra Kumar Vrs. Union of India and others 1997(3) SCC 261 has observed that the numerous Tribunals with lack of uniformity in the matter of qualification, appointments, tenure and service conditions is causing the major concern in effective working of the present Tribunal system.

45. In the 272nd report of the Law Commission, a need of uniformity in the appointment, tenure and service conditions for the Chairman, Vice-Chairman and Members appointed in Tribunals, has been expressed.

46. The Hon'ble Apex Court, in the case of UCPBA, has observed that, the difficulty arises because of the vesting of the rule-making power in the State Government, resulting in a lack of uniformity of rules across the country, both in regard to the terms and conditions of service as well as in regard to the modalities to be followed in ensuring that persons appointed as members fulfill the qualifications which are prescribed. It is further noted that in the absence of a uniform pattern and transparency in selection, the result is of wide variation in standards with great deal of subjectivity, and bureaucratic and political interference creeping in. The Hon'ble Apex Court therefore, directed the State Governments to frame appropriate rules in exercise of Rule-making power in accordance with the Final Draft Model Rules prepared by the Union of India and adopt the same. Consequently, the State of Maharashtra, framed the rules vide notification dated 24th May, 2019, prescribing therein a written examination and Viva-voce for selection of President and Members of the District Forum and State Forum.

47. It is notable that, even prior to issuance of aforesaid directions by the Apex Court, a written test was prescribed for selection of President or Members of the District Forum or State Commission, Maharashtra. However, in the case in hand, the said procedure has not been followed and viva-voce as the only criteria for selection, was prescribed.

48. In the case of MBA-2021 the Hon'ble Supreme Court of India while dealing with the contentions of learned Attorney General of India that ordinance cannot be challenged on the ground that it is contrary to judgment of Hon'ble the Supreme Court of India, it is held thus :

44. "The permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

a) The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not

be violative of the fundamental rights guaranteed under the Constitution.

b) The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgement pointing out the defect is removed.

c) Nullification of mandamus by an enactment would be impermissible legislative exercise [See : S.R.Bhagwant (supra)]. Even interim directions cannot be reversed by a legislative veto [See: Cauvery Water Disputes Tribunal (supra) and Medical Council of India v. State of Kerala & Ors.]

d) Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."

49. The Hon'ble Supreme Court of India in the case of MBA-2021 while dealing with the issue of importance of independence of judiciary, in its majority view has observed thus :

32. The constitutional mandate is that the legislature should adhere to the principles laid down in Part-IV of the Constitution of India while enacting legislations. No provision shall be made in legislative acts which would have the tendency of making inroads into the judicial sphere. Any such encroachment by the legislature would amount to violating the principles of separation of powers, judicial independence and the rule of law. Independence of courts from the executive and the legislature is fundamental to the rule of law and one of the basic tenets of the Indian Constitution. Separation of powers between the three organs i.e., the legislature, the executive and the judiciary, is a consequence of the principles of equality as enshrined in Article 14 of the Constitution. Any incursion into the judicial domain by the other two wings of the Government would, thus, be unconstitutional."

50. In the above referred back drop, it is imperative to examine, whether any change has taken place in legislative scheme or in nature of performance of duties and function of adjudicatory authorities after enactment of the Act of 2019 for such deviation and for not following the direction issued by the Hon'ble the Supreme Court of India in the case of UCPBA, relating to bringing uniformity of rules across the country in regard to the modalities to be followed in appointment and selections of President and Members of the District Forum and State Forum.

51. For this purpose, we will compare the relevant functions and powers conferred upon the Fora/Commission under the Act of 1986 and the Act of 2019, respectively. The Hon'ble Supreme Court of India in the aforesaid case of UCPBA, after considering the scheme of the Act of 1986, has held the

adjudicatory powers of the Fora constituted under the Act of 1986, as a 'judicial function'. In the light of aforesaid finding, the comparison is made, which is as under:-

Act of '1986'

'Act of 2019'

Section 13(2)

The District Forum shall, if the complaints admitted by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,-

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegations contained in the complaint, or (ii) ex-parte on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(c) where the complainant fails to appear on the date of hearing before the District Forum, the District Forum may either dismiss the complaint for default or decide it on merits.)

Section 38(3)

The District Commission shall, if the complaint admitted by it under sub-section (2) of section 36 relates to goods in respect of which the procedure specified in sub-section (2) cannot be followed, or if the complaint relates to any services,-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Commission;

(b) if the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Commission, it shall proceed to settle the consumer dispute

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, if the opposite party denies or disputes the allegations contained

in the complaint, or (ii) ex parte on the basis of evidence brought to its notice by the complainant, where the opposite party omits or fails to take any action to represent his case within the time given by the Commission

(c) decide the complaint on merits if the complainant fails to appear on the date of hearing.;

Section 13(3)

Section 38(5)

No proceedings complying with the procedure laid down in subsections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

No proceedings complying with the procedure laid down in subsections (2) and (3) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

Section 13 (3A)

Every complaint shall be heard as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities.

Provided that no adjournment shall be ordinarily granted by the District Forum unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Forum:

Provided further that the District Forum shall make such orders as to the costs occasioned by the adjournment as may be provided in the regulations made under this Act.

Provided also that in the event of a complaint being disposed of after the period so specified this District Forum shall record in writing, the reasons for the same at the time of disposing of the said complaint.

Section 38(7)

Every complaint shall be disposed of as expeditiously as possible and endeavour shall be made to decide the complaint within a period of three months from the date of receipt of notice by opposite party where the complaint does not require analysis or testing of commodities and within five months if it requires analysis or testing of commodities:

Provided that no adjournment shall ordinarily be granted by the District Commission unless sufficient cause is shown and the reasons for grant of adjournment have been recorded in writing by the Commission:

Provided further that the District Commission shall make such orders as to the costs occasioned by the adjournment as may be specified by regulations:

Provided also that in the event of a complaint being disposed of after the period so specified, the District Commission shall record in writing, the reasons for the same at the time of disposing of the said complaint.

Section 13 (3B)

Where during the pendency of any proceeding before the District Forum, it appears to it necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case

Section 38 (8)

Where during the pendency of any proceeding before the District Commission, if it appears necessary, it may pass such interim order as is just and proper in the facts and circumstances of the case.

Section 13(4)

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:-

- (i) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath,
- (ii) the discovery and production of any document or other material object producible as evidence,
- (iii) the reception of evidence on affidavits,
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source.
- (v) issuing of any commission for the examination of any witness, and
- (vi) any other matter which may be prescribed.

Section 38 (9)

For the purposes of this section, the District Commission shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: -

- (a) the summoning and enforcing the attendance of any defendant or witness and examining the witness on oath;
- (b) requiring the discovery and production of any document or other material object as evidence;
- (c) receiving of evidence on affidavits;

- (d) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (e) issuing of commissions for the examination of any witness, or document; and
- (f) any other matter which may be prescribed by the Central Government.

Section 13(5)

Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the district Forum shall be deemed to be a civil court for the purposes of section 195, and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Section 38(10)

(10) Every proceeding before the District Commission shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code, (45 of 1806) and the District Commission shall be deemed to be a criminal court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Section 14

Finding of the District Forum.

(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely.....

Section 39

Findings of District Commission:

(1) Where the District Commission is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services or any unfair trade practices, or claims for compensation under product liability are proved, it shall issue an order to the opposite party directing him to do one or more of the following, namely.....

Section 15 Appeal

Section 41 Appeal against order of District Commission.

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

Any person aggrieved by an order made by the District Commission may prefer an appeal against such order to the State Commission on the grounds of facts or law within a period of forty-five days from the date of the order, in such form and manner, as may be prescribed:

Section 18 : Procedure applicable to State Commissions.-

Section 49 : Procedure applicable to State Commission.

[The provisions of Sections 12, 13 and 14 and the rules made thereunder] for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

(1) The provisions relating to complaints under sections 35, 36, 37, 38 and 39 shall, with such modifications as may be necessary, be applicable to the disposal of complaints by the State Commission.

(2) Without prejudice to the provisions of sub-section (1), the State Commission may also declare any terms of contract, which is unfair to any consumer, to be null and void.

Section 25

Enforcement of orders by the Forum, the State Commission or the National Commission.-

(1) Where an interim order made under this Act, is not complied with, the District Forum or the State Commission or the National Commission, as the case may be, may order the property of the person, not complying with such order to be attached.

(2) No attachment made under sub-section (1) shall remain in force for more than three months at the end of which, if the non-compliance continues, the property attached may be sold and out of the proceeds thereof, the District Forum or the State Commission or the National Commission may award such damages as it thinks fit to the complainant and shall pay the balance, if any, to the party entitled thereto. (3) Where any amount is due from any person under an order made by a District Forum, State Commission or the National Commission, as the case may be, the person entitled to the amount may make an application to the Distt. Forum, the State Commission or the National Commission, as the case may be, and such District Forum or the State Commission and the National Commission may issue a certificate for the said amount to the Collector of the district (by whatever name called) and the Collector shall proceed to recover the amount in the same manner as arrears of land revenue.)

Section 71

Enforcement of orders of District Commission, State Commission and National

Commission.

Every order made by a District Commission, State Commission or the National Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it and the provisions of Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall, as far as may be, applicable, subject to the modification that every reference therein to the decree shall be construed as reference to the order made under this Act.

Section 27 : Penalties.-

(1) Where a trader or a person against whom a complaint is made [or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person ([or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than two thousands rupees but which may extend to ten thousand rupees, or with both:

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the District Forum or the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of the first class for the trial of offences under this Act, and on such conferment of powers, the District Forum or the State Commission or the National Commission, as the case may be, on whom the powers are so conferred, shall be deemed to be a Judicial Magistrate of the first class for the purpose of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) All offences under this Act may be tried summarily by the District Forum or the State Commission or the National Commission, as the case may be.)

Section 72 : Penalty for noncompliance of order

(1) Whoever fails to comply with any order made by the District Commission or the State Commission or the National Commission, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one month, but which may extend to three years, or with fine, which shall not be less than twentyfive thousand rupees, but which may extend to one lakh rupees, or with both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the District Commission, the State Commission or the National Commission, as the case may be, shall have the power of a Judicial Magistrate of first class for the trial of offences under sub-section (1), and on conferment of such powers, the District Commission or the State Commission or the National Commission, as the case may be, shall be deemed to be a Judicial Magistrate of first class for the purposes of the Code of Criminal Procedure, 1973 (2 of 1974)

(3) Save as otherwise provided, the offences under subsection (1) shall be tried

summarily by the District Commission or the State Commission or the National Commission, as the case may be.

52. Having compared the relevant function and powers conferred upon the fora / commission, it is explicitly clear that under the Act of 2019 the District commission and State Commission are continued to be vested and conferred with powers of a Civil Court under the Code of Civil Procedure, 1908, as it was vested under the Act 1986.

53. It is noteworthy that, under Section 71 of the Act of 2019, every order made by Commission shall be enforced by it in the same manner as if it were a decree made by a Court in a suit before it.

54. Furthermore, while re-enacting the Act of 1986, vide the Act of 2019, the word "Consumer" has been re-defined and the concept of "Product Liability" has been newly introduced and defined. Similarly, "e-commerce and electronic service provider" has been defined by inserting the same. The Act of 2019 has also introduced a vital concept of "electronic service provider" and further provided strict penalties for false and misleading advertisement. The Act of 2019 further introduces a new chapter on "Mediation" as an Alternate Dispute Resolution Mechanism in order to resolve the consumer disputes faster without having to approach the Commission.

55. Admittedly, in this case, neither the Union of India nor the State Government in their respective replies, have come up with a case or have pointed out that, after the enactment of Act of 2019 and Rules of 2020, the directions issued by the Hon'ble Supreme Court of India in the case of UPCPBA, have become non-operative or in-effective, relating to the need for having uniformity of rules across the country in regard to the modalities to be followed, ensuring that persons appointed fulfill the qualification prescribed, owing to any valid and justifiable reason.

56. Thus, it is amply clear that there is no change in legislative scheme or performance of judicial function of the State Commission or District Commission, constituted under the Act of 2019, as they were performing under the Act of 1986. Resultantly, we have no hesitation to hold that the directions issued by the Hon'ble Supreme Court of India in the case of UPCPBA, for having uniformity across the country in standards, selection and appointment of President and Members on Fora, are equally binding with full force, even after the enactment of the Act of 2019.

57. The Hon'ble Supreme Court of India, in the case of UPCPBA, has given sufficient reasons to have uniformity across the country as regards standards and modalities in appointments of Presidents and Members of Consumer Dispute Redressal Forum, under the Act of 1986. The Union of India while framing Rules of 2020 under the Act of 2019, ought to have framed the rules in consonance with the directions of the Hon'ble the Supreme Court of India, issued in the case of UPCPBA, to cure defects pointed out in the said judgment, which has

admittedly not been done. Whereas, under the Rules of 2020, the uncontrolled and uncanalised discretion has been granted to the Selection Committee, which will produce undesirable results and which will be in violation of fundamental rights to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution of India, that includes a right to have the person's rights adjudicated by a forum which exercises judicial power in an impartial and independent manner, as held in MBA-2021.

58. In the case of State of Rajasthan and others Vs. Basant Nahata (supra) it has been held by the Hon'ble Supreme Court of India, that the necessity of the legislatures delegating its powers in favour of the executive is a part of legislative function. Such delegation of power, however, cannot be wide, uncanalised or unguided. The legislature while delegating, such power is required to lay down the criteria or standard so as to enable the delegatee to act within the framework of the statute.

59. However, the Union Government has granted complete discretion under the Rules of 2020 to the Selection Committee to determine its own procedure. The ultimate result of the same would be nothing but creating a situation which has been narrated in the case of UPCPBA, which undoubtedly, will again lead to wide variation in standards as well as a great deal of subjective, bureaucratic and political interference, and finally it will result in denial of justice which will be in violation of Article 14 of the Constitution of India.

60. As noted herein above that the Hon'ble the Supreme Court of India in the case of UPCPBA, has held the adjudicatory powers of the Fora under the Act of 1986, as 'judicial functions', it would be appropriate at this juncture to consider the importance of judicial function/ judicial office in people's life to further understand the proportionate responsibility attached to it and importance of having a criteria akin to the responsibility, for appointment.

61. In the case of MBA-2010, the Hon'ble Apex Court, has observed that the rule of law can be meaningful only if there is an independent and impartial judiciary to render justice. An independent judiciary can exist only when persons with competence, ability and independence with impeccable character man the judicial institutions. When the legislature proposes to substitute a tribunal in place of the High Court to exercise the jurisdiction which the High Court is exercising, it goes without saying that the standards expected from the judicial members of the Tribunal and standards applied for appointing such members, should be as nearly as possible as applicable to High Court Judges, which, apart from a basic degree in Law, are reflective of rich experience in the practice of law, independent outlook, integrity, character and good reputation.

62. As Justice Stephen Breyer (Supreme Court of the United States), writes:-

"...When you are a judge...it's important to be able to imagine what other people's lives might be like, lives that your decisions will affect. People who are not only different from you, but also very different from each other... And this

empathy, this ability to envision the practical consequences on one's contemporaries of a law or a legal decision, seems to me to be a crucial quality in a judge."

63. Justice Hidayatulla, former Chief Justice of India has placed observance by judges of punctuality of time, on a very high pedestal. According to him, a Judge who does not observe punctuality of time does not believe in rule of law. Whereas, the Hon'ble Apex Court in the case of *UPCPBA* has observed that in the Fora under the Act of 1986, non-judicial members do not maintain punctuality.

64. It is enounced by Chief Justice Burger (United States) that a sense of confidence in the Court is essential to maintain a fabric of order and liberty for free people. Three things would destroy that confidence and do incalculable damage to the society; that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who had long been exploited in the small transactions of day life come to believe that Courts cannot vindicate their legal rights against fraud and overreaching; that people come to be believe that the law-in larger sense cannot fulfill its primary function to protect them and their families in their homes, at their work and on the public streets.

65. The historical background of Tribunalisation depicts that Tribunals have been established to overcome hurdles of delay in administration of justice and with objects of discharging quasi-judicial duties by acting judicially. The Tribunals are endowed with the judicial functions with a duty to decide the matters in judicious manner.

66. Thus, it is clear that the judiciary is meant to uphold the constitutional values and protect the citizens from encroachment of their constitutional rights. Judiciary is a body of legal and constitutional experts and they are called upon to decide contentions, issues between the parties, strictly in accordance with law and the Constitution. Thus, the judges have a great responsibility and obligation towards the people. They exercise the authority of the State in public, in issues of immense importance for the parties and often to the community at large. The greatest strength of the judiciary is the faith of the people in it and the very existence of administration of justice system depends on the judges.

67. The discussion made herein above, further makes it clear that "Judicial Office" is essentially a public trust and therefore, it is expected that a judge must be a man of high integrity, honesty and shall possess several qualities including legal expertise, ability to handle cases, proper personal conduct and ethical behaviour and shall ensure impartiality, fairness and reasonableness in consideration. Whereas the technical member ensures the availability of expertise and experience related to the field of adjudication for which the Special Tribunal is created.

68. Having considered the importance of judicial function in people's lives and qualities which are needed to be possessed by a judge, we will now proceed to

consider and examine the adverse effects of not having appropriate criteria for selection and uniformity in selection.

69. In this regard, the observations made by the Hon'ble Supreme Court of India, in the case of UPCPBA, are relevant, which depict a sorry state of affairs in the Fora, as under:

- a) The fora do not function as effective as expected.
- b) The quality of presiding members, especially of non-judicial members at the state and district levels is poor.
- c) Most of the non-judicial members are not even capable of writing or dictating small orders.
- d) At certain places non-judicial members act in unison against the presiding officer, while passing orders contrary to law, damaging the reputation of the adjudicating body. Presidents, as a result, prefer a situation where such non-judicial members absent themselves from work if only so that judicial work can be carried out by the presiding judge impartially and objectively.
- e) Many non-judicial members do not maintain punctuality and others attend to work sporadically once or twice a week.
- f) Many of the non-judicial members attend the place of work only to sign orders which have been drafted by the presiding officer.

70. The Hon'ble Apex Court further quoted three instances showing bureaucratic and political influence in selection process as a result of which the functioning of consumer fora is detrimentally affected. The instances are as under.

- i) one non-Judicial Member Mr. Jamal Akhtar posted at District Forum, Meerut has been absenting without permission since 11th May, 2015, which resulted in his post being declared vacant and another non-Judicial member posted elsewhere came to be attached in his place.
- ii) One non-Judicial Member who had her first term at Lucknow and who was enjoying her second term, having been appointed for District Forum, Barabanki but attached to Greater Noida, as per the reports, came Forum once or twice a week. Another woman non-Judicial Member who happened to be wife of a bureaucrat though appointed for District Forum, Baghpat was attached/posted at Greater Noida.
- iii) In Haryana, a non-judicial Woman Member did/ would not attend the District Forum regularly, as she had to travel around 150/160 km every day.

71. The Hon'ble Apex Court has therefore, held that both in relation to the State Commissions and the District Fora, a member must be a person of ability and standing with adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, as broad general categories. The Apex Court has

thus, found the need to conduct written test to assess the knowledge of persons, justifiable.

72. In this matter it seems that the above referred observations of the Apex Court were not brought to the notice of the Selection Committee when it determined its own procedure for selection.

73. The Hon'ble Supreme Court of India, in the case of MBA-2010 has held that the fundamental right to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution, clearly includes a right to have the person's rights, adjudicated by a forum which exercises judicial power in an impartial and independent manner, consistent with the recognized principles of adjudication. The Apex Court in the said case further referred to the case of S.P. Sampath Kumar etc Vrs. Union of India and others (1987) 1 SCC 124, wherein it has held that where the prescription of qualification was found by the court, to be not proper and conducive for the proper functioning of the tribunal, it will result in invalidation of the relevant provisions relating to the constitution of the tribunal. If the qualifications/eligibility criteria for appointment fail to ensure that the members of the Tribunal are able to discharge judicial functions, the said provisions cannot pass the scrutiny of the higher the judiciary.

74. It is further held in the MBA-2010 that the legislature is presumed not to legislate contrary to rule of law and therefore know that where disputes are to be adjudicated by a judicial body other than Courts, its standards should approximately be the same as to what is expected of mainstream judiciary.

75. In the case of MBA-2021, his Lordship Justice S. Ravindra Bhat, while recording concurrence to the judgment authored by his Lordship L. Nageshwar Rao, has observed thus:

19. "..... However, in matters that concerned administration of justices, especially where alternative adjudicatory forums are created, the court's concern is greater. This is because the Constitution does not and cannot be read so as to provide two kinds of justice: one through courts, and one through other bodies. The quality and efficacy of these justice delivery mechanisms have to be the same, i.e., the same as that provided by courts, as increasingly, tribunals adjudicate disputes not only between state agencies and citizens, but also between citizens and citizens as well as citizens and powerful corporate entities. Therefore, it is the "equal protection" of laws, guaranteed to all persons, through institutions that assure the same competence of its personal, the same fair procedure, and the same independence of adjudicators as is available in existing courts, that stands directly implicated....."

76. As discussed herein above, it is clear that the standard expected from the judicial members of the Tribunal and standards applied for appointing such members, should be as nearly as possible applicable to the appointment of Judges, exercising such powers. It is also clear that if the qualification or eligibility criteria for appointment fail to ensure that the Members of the Tribunal

are able to discharge judicial functions, the said provisions cannot pass the scrutiny of the higher judiciary.

77. In the case in hand admittedly no written test was prescribed in the impugned notice for selection of Members of District and State Commissions but, only a viva-voce test. However, during the pendency of the present petition and in the middle of selection process, a decision was taken by the Selection Committee to hold written test for selection, which is contrary to the well settled principle of law that in the middle of the selection process, rules for selection cannot be changed.

78. Moreover, the decision of the Selection Committee to hold the written test, supports the case of the petitioner that looking at the judicial functions needed to be performed by the President and Members of District and State Commissions, the criteria for selection and appointment shall be applied as nearly as possible applicable to the judges in mainstream judiciary, exercising the similar powers.

79. Therefore, for the reasons recorded herein above, we have no hesitation to hold that Sub Rule (9) of Rule 6 of Rules of 2020, framed under the Act of 2019, is ultra vires, and violative of Article 14 of the Constitution of India. Consequently, we find substance in the contention of the petitioner that the advertisement dated 2nd February, 2021 published by the respondent no.2 for the filling up of vacancies for the post of Members of State Commission and President and Members of District Commission, Maharashtra State, is arbitrary, unreasonable, ex-facie bad in law and violative of the directions issued by the Hon'ble Supreme Court of India in the case of MBA-2020 and MBA-2021 as well as in the case of UCPBA.

80. Now, we would deal with the challenge made to the validity of Rules 3 and 4 of the Rules 2020. For the sake of convenience, Rule 3 (2)(b) and Rule 4(2)(c) of the Rules, 2020 are reproduced hereunder, which read thus:

3. Qualifications for appointment of President and members of the State Commission -

(1)....

(2) A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses-

(a)....

(b) a bachelor's degree from a recognised university and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine:

(3)....

4. Qualifications for appointment of President and member of District Commission -

(1)....

(2) A person shall not be qualified for appointment as member unless he-

(a)....

(b)....

(c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine.

(3)...."

81. The Rules 3(2)(b) and 4(2)(c) of the Rules 2020 deal with the eligibility criteria seeking experience of not less than 20 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, for the post of Members of State Commission and experience in similar fields of not less than 15 years for the post of President and Members of District Commission. In the case of MBA-2020, the Hon'ble Supreme Court has directed that the Rules shall be amended to make an advocate with an experience of at least 10 years eligible for appointment as judicial members in the Tribunals.

82. Similarly, in the case of UPCPBA the Hon'ble Apex Court has observed that both in relation to the State Commissions and the district fora, a member must be a person of ability and standing with adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

83. Thus, it is clear that the Hon'ble Supreme Court of India, has repeatedly held that to have 10 years of experience in law and in other specialized fields as prescribed and stipulated under the statute, is sufficient for appointment as a judicial member in the Tribunal.

84. The Rules 3(2)(b) and 4(2)(c) of the Rules of 2020 to the extent prescribing a minimum experience of not less than 20 years for appointment of President and Members of State Commission and experience of not less than 15 years for appointment of Presidents and Members of District Commission under the Act of 2019, is an attempt to circumvent the directions issued in MBA-2020 and UPCPBA.

Hence, they are arbitrarily, illegal and violates principle of equality before law.

85. In the circumstances, we have no hesitation to hold that the Rules 3(2)(b) and 4(2)(c) of the Rules of 2020 prescribing a minimum experience of not less than 20 years for appointment of President and Members of State Commission

and experience of not less than 15 years for appointment of Presidents and Members of District Commission, are unconstitutional and violative of Article 14 of the Constitution of India.

86. During the pendency of the present petitions, the President of State Commission, Maharashtra has been appointed and has joined the office. In absence of challenge to the validity of said appointment, we have refrained ourselves from dealing with its validity.

87. In light of above observations and findings recorded, we pass the following order :-

ORDER

(i) The Public Interest Litigation No.11 of 2021 is allowed;

(ii) The Writ Petition No.1096/2021 is partly allowed;

(iii) It is held and declared that Rule 3(2)(b), Rule 4(2)

(c) and Rule 6(9) of the Rules of 2020, are arbitrary, unreasonable and violative of Article 14 of the Constitution of India for the reasons recorded herein above and hence are quashed and set aside;

(iv) The Union of India is directed to provide for appropriately made Rules as substitutes for Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Rules, 2020, declared unconstitutional, keeping in view the observations made in the judgment, within four weeks from the date of the judgment and order;

(v) The vacancy notice dated 2nd February, 2021 issued by the respondent no.2 for inviting applications for the post of Members of the State Commission and President and Members of the District Commission, is hereby quashed and set aside;

(vi) The process of selection of Members of the State Commission and President and the Members of the District Commission, initiated in pursuance to the vacancy notice dated 2nd February, 2021, stands cancelled;

(vii) Fresh process of selection of members of the State Commission, President and the members of the District Commission be initiated in accordance with the amended Rules and completed at the earliest as directed by the Hon'ble Supreme Court of India;

(viii) It is made clear that we have not dealt with the validity of appointment made of the President of State Commission, Maharashtra State;

(viii) No orders as to costs.

(ANIL S. KILOR, J) (SUNIL B. SHUKRE, J)

At this stage, Shri Aurangabadkar, learned Assistant Solicitor General of India made a request to keep the judgment in abeyance for four weeks. He submits

that since this Court has declared Rule 3(2)(b) and Rule 4(2)(c) and Rules 6(9) of Rule of 2020 as unconstitutional, it will have nationwide effect, as in view of the recent directions of the Hon'ble Apex Court the process in various States for appointment of the President and Members of the State Commission as well as District Commission may be going on. He, therefore, prays to suspend the effect of the present judgment at least for four weeks.

Shri Mandlekar, learned counsel for the petitioner, strongly opposes the said request and states that if the effect of judgment is suspended, there is every possibility that State of Maharashtra may issue appointment orders in favour of 33 candidates, for the post of Members of the State Commission and President and Members of the District Commission.

After considering the effect of declaring the above referred Rules as unconstitutional, we find substance in the submission of Shri Aurangabadkar, learned Assistant Solicitor General of India and accordingly we keep this judgment and order in abeyance for two weeks. However, it is made clear that during this period, the State of Maharashtra shall not issue any appointment order as regards Members of the State Commission and President and Members of the District Commission, unless otherwise directed by the Hon'ble Supreme Court of India.