
**(1996) 3 AD 105 : AIR 1996 SC 1308 : (1996) 3 JT 248 : (1996) 2 OLR 1 : (1996) 2
SCALE 771 : (1996) 3 SCC 145 : (1996) 3 SCR 474 : (1996) 1 UJ 844**

Supreme Court of India

Case No: Transferred Case (Civil) No. 15 of 1994.

Ashish Handa

APPELLANT

Vs

Chief Justice of High
Court of Punjab and
Haryana and others

RESPONDENT

Date of Decision: March 15, 1996

Acts Referred:

Constitution of India, 1950 " Article 217#Consumer Protection Act, 1986 " Section 10

Citation: (1996) 3 AD 105 : AIR 1996 SC 1308 : (1996) 3 JT 248 : (1996) 2 OLR 1 : (1996) 2
SCALE 771 : (1996) 3 SCC 145 : (1996) 3 SCR 474 : (1996) 1 UJ 844

Hon'ble Judges: N. P. Singh, J; J. S. Verma, J; B. N. Kirpal, J

Bench: Full Bench

Advocate: M.K. Dua and S.M. Sarin, for the Appellant; Kapil Sibal, Suruchi Aggarwal, Indu
Malhotra, J.S Keharr and S. Bagga, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

1. The petitioner is an advocate and a member of the Bar Association of the High Court of Punjab & Haryana. He filed a Writ Petition in the High

Court of Punjab & Haryana challenging the appointment of Shri M.R. Agnihotri, a former Judge of the Punjab & Haryana High Court as the

President of the Haryana State Consumer Disputes Redressal Commission on completion of the term of Shri S.S. Sandhewalia, a former Chief

Justice of the High Court, with effect from June 30, 1994. The challenge was made on the ground that the appointment of Shri M.R. Agnihotri was

not in accordance with Section 16 of the Consumer Protection Act, 1986 and in consonance with the principles applicable for making such an

appointment. That writ petition (C.W.P. No. 7067 of 1994) was transferred to this Court for decision, in view of the importance of the question

involved.

2. The Consumer Protection Act, 1986 prescribes in Section 16 for the composition of the State Commission as under :

Composition of the State Commission - (1) Each State Commission shall consist of -

(a) a person who is or has been a Judge of a High Court appointed by the State Government, who shall be its President :

1 (Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court;)

(b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown

capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall

be a woman :

2 (Provided that every appointment made under this clause shall be made by the State Government on the recommendation of a selection

committee consisting of the following, namely -

(i) President of the State Commission Chairman,

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

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

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service 1 () of, the members of the State

Commission shall be such as may be prescribed by the State Government.

2 (3) Every member of the State Commission shall hold Office for a term of five years or up to the age of sixty - seven years, whichever is earlier

and shall not be eligible for re-appointment.

(4) Notwithstanding anything contained in Sub-section (3), a person appointed as a President or as a member before the commencement of the

Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion

of his term.)

We are, in this matter concerned, primarily with the requirement of Section 16(1)(a) which prescribes the mode of appointment of the President of

the State Commission.

3. The Consumer Protection Act, 1986 is an Act to provide for better protection of the interests of consumers "and for that purpose to make

provision for the establishment of consumer councils and other authorities for the settlement of consumers" dispute and for matters connected

therewith". The National Commission, the State Commission and the District Forum are established as the agencies for the redressal of consumer

disputes by Section 9 of the Act. Section 10 of the Act provides for composition of the District Forum, Section 16 for the State Commission and

Section 20 for the National Commission. The scheme is that these three agencies constituted for redressal of consumer disputes at different levels

have as its President a person who is, or has been a Judge at the corresponding level. This is so because the function of these agencies is primarily

the adjudication of consumer disputes and, therefore, a person from the judicial branch is considered to be suitable for the office of the President.

The appointment to the office of the President of the State Commission is to be made "only after consultation with the Chief Justice of the High

Court" and to the office of the President of the National Commission "after consultation with the Chief Justice of India". Such a provision requiring

prior consultation with the Chief Justice is obviously for the reason that he is most suitable person to know about the suitability of the person to be

appointed as the President of the Commission. The provisions in Section 16(1)(a) for appointment of the President of the State Commission and in

Section 20(1)(a) for appointment of the President of the National Commission are in part materia and have to be similarly construed. The

construction of the proviso in Section 16(1)(a) and that in Section 20(1)(a) must be the same because of the identity of the language. The

expression "after consultation with the Chief Justice of the High Court" and "after consultation with the Chief Justice of India" must be construed in

the same manner as the expression "after consultation with the Chief Justice of India",...the Chief Justice of the High Court" in Article 217 of the

Constitution of India made in 279971 . Accordingly, the opinion of the Chief Justice of the High Court and the requirement of consultation with him

according to the proviso in Section 16(1)(a) must have the same status as that of the Chief Justice of the High Court in the appointment of a High

Court Judge under Article 217 of the Constitution of India; and the process of appointment to the office of the President of the State Commission

must also be similar. It is unnecessary to restate the same which is summarised in the majority opinion in the Judges-II case (supra). This is

necessary to maintain independence of the Judiciary and to avoid any possibility of a sitting or a retired Judge depending on the executive for such

an appointment. Our attention was drawn to certain observations in 290451 to suggest that the name for appointment to the Administrative

Tribunal may be suggested even by the executive which may have the effect of initiating the proposal. In the facts of that case, substantial

compliance of the requirement of approval by the Chief Justice of India was found proved and, therefore, the appointments were upheld. The

requirement of consultation with the Chief Justice in the proviso the Section 16(1)(a) and Section 20(1)(a) of the Consumer Protection Act being

similar to that in Article 217, the principles enunciated in the majority opinion in the Judge-II case must apply, as indicated earlier, even for initiating

the proposal. The Executive is expected to approach the Chief Justice when the appointment is to be made for taking the steps to initiate the

proposal, and the procedure followed should be the same as for appointment of a High Court Judge. That would give greater credibility to the appointment made.

4. The question now is : whether there has been due compliance of the proviso to Section 16(1)(a) of the Consumer Protection Act in the present

case? The affidavit dated 9th July, 1994 of Shri B.L. Gulati, Registrar of the High Court of Punjab & Haryana mentions the procedure adopted in

making the appointment of Shri M.R. Agnihotri, a retired Judge of the High Court as the President of the Haryana State Commission. It is stated

that the Chief Justice of the High Court of Punjab & Haryana considered the names of certain retired Judges of that High Court and ultimately gave

his consent for the appointment of Shri M.R. Agnihotri as the President of the State Commission which was communicated by the Registrar to the

Haryana Government on 10th June, 1994, after which the appointment of Shri M.R. Agnihotri was made. In the facts of the present case, we find

that there was substantial compliance of the proviso to Section 16(1)(a) of the Act and the appointment of Shri M.R. Agnihotri was made after

consultation with the Chief Justice of the High Court. However, we may add that the appropriate course to adopt, as indicated in the Judges-II

case, is for the Chief Justice of the High Court to initiate the proposal and to mention the name approved by him for appointment instead of the

Chief Justice only approving the name suggested by the State Government. It appears from the affidavit of the Registrar that the Chief Justice had

indicated to the State Government the proper procedure relating to initiation of the proposal for filling up the post and he has accorded his

approval to the appointment of Shri M.R. Agnihotri only after considering several names, including that of Shri M.R. Agnihotri. The appointment

made in the present case does not, therefore, call for any interference.

5. Consequently, the transferred case is dismissed.