

(2009) 12 MAD CK 0109

Madras High Court

Case No: Writ Petition No's. 23404 and 24770 of 2009

P. Vijayasarikar

APPELLANT

Vs

The Secretary, Civil Supplies and
Consumer Affairs and The
Secretary to Government, Law
Department Union Territory of
Puducherry
P. Saravanan Vs
Union Territory of Puducherry
and Others

RESPONDENT

Date of Decision: Dec. 9, 2009

Acts Referred:

- Consumer Protection Act, 1986 - Section 10(1), 10(1A), 24B

Hon'ble Judges: H.L. Gokhale, C.J; N. Paul Vasanthakumar, J

Bench: Division Bench

Advocate: Yashod Vardhan, for C. Anandararaani, in W.P. No. 23404 of 2009, M. Gnanasekar, in W.P. No. 24770 of 2009 and N.R. Chandran, for U. Karunakaran, in W.P. No. 24770 of 2009, for the Appellant; N. Mala, Government Advocate (Pondy) in W.P. Nos. 23404 and 25178 of 2009 and for Respondents 1 to 4 in W.P. No. 24770 of 2009, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

H.L. Gokhale, C.J.

Heard Mr. Yashod Vardhan, learned senior counsel appearing on behalf of Mr. C. Anandaramani for the Petitioner in W.P. No. 23404 of 2009; Mr. M. Gnanasekar, Learned Counsel for the Petitioner in W.P. No. 2470 of 2009; and Mr. N.R. Chandran, learned senior counsel appearing on behalf of Mr. U. Karunakaran for the Petitioner in W.P. No. 25178 of 2009. Ms. N. Mala, learned Government Advocate (Pondy) appears on behalf of both the Respondents in W.P. Nos. 23404 and 25178 of 2009

and also for Respondents 1 to 4 in W.P. No:24770 of 209.

2. All these three writ petitions are concerning the appointment to the post of the President of the District Consumer Redressal Forum for the Union Territory of Puducherry. All the Petitioners seek an early appointment to the said post since it is lying vacant for quite some time now. W.P. No. 23404 of 2009 seeks a direction to fill up that post within a stipulated time frame; W.P. No. 24770 of 2009 seeks a direction that the said post be filled up by bringing an officer from the District Judges of Puducherry on deputation basis; and W.P. No. 25178 of 2009 seeks a direction that a person be appointed from amongst those who participated in the selection process as per the interviews held on 12.8.2009.

3. As far as the appointment to the post of President of the District Consumer Redressal Forum is concerned, Section 10(l)(a) of the Consumer Protection Act, 1986 lays down that each District Forum shall consist of a person who is, or has been a District Judge, who shall be its President. Thus, as the Section is worded, a person who is or has been a District Judge is mentioned first in Section 10(l)(a) of the Act and thereafter, the clause includes a person who is qualified to be a District Judge. Sub-section (1A) of this Section lays down that every appointment under Sub-section (1) of the Act is to be made by the State Government on the recommendation of a Selection Committee consisting of three persons mentioned in that section, i.e., the President of the State Commission as its Chairman; and the Secretary of the Law Department of the State as well as the Secretary in-charge of the Department dealing with consumer affairs in the State as its Members. The proviso to Section 10(1A) is also relevant, in the sense that it lays down that when the President of a 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.

4. In the instant case, it appears that an advertisement calling for applications for appointment to the said post was issued on 22.5.2009, in pursuance to which some advocates did apply. However, no judicial officer had applied therefor and a panel of judicial officers was also not obtained from the High Court and therefore, the Government of Puducherry passed an order on 17.11.2009 cancelling the earlier selection process.

5. An affidavit affirmed by one Smti. P. Priyadarshini, Joint Secretary to Government of Puducherry and Director of Civil Supplies and Consumer Affairs on 23.11.2009 has been filed, wherein it is stated that in pursuance to the order passed by the Government of Puducherry cancelling the earlier selection process, the Registrar General of the Madras High Court was addressed for furnishing the panel of retired District Judges and on receipt of the panel, expeditious action will be taken for filling up the vacancy. Smti. Priyadarshini has affirmed another affidavit on 8.12.2009, wherein it is stated that the Registry of this High Court has furnished a list of retired

District Judges and the list has already been forwarded to the Selection Committee for conduct of the process of selection and to make the selection at the earliest. It is further stated in this affidavit that this whole exercise may be completed within a period of three months.

6. Mr. N.R. Chandran, learned senior counsel appearing for the Petitioner in W.P. No. 25178 of 2009 submits that when advocates had applied earlier, there was no reason for the Government to cancel the earlier selection process.

7. As can be seen from the provisions of the Act itself, Section 10(l)(a) speaks of a person who is, or has been, a District Judge to be the President of the District Consumer Redressal Forum. Of course, it also includes a person who is qualified to be a District Judge, which would mean an advocate.

8. In this regard, it is material to note that the National Consumer Disputes Redressal Commission has issued a directive u/s 24-B of the Act, giving precedence to the District Judges in the matter of appointments to the post of President of the District Forum. The guidelines issued by the National Commission specifically state that if serving or retired District Judges are not available, it will be open to the Selection Committee to make the appointment from amongst the advocates. This guideline has also been approved by a Division Bench of this Court in *C. Lakshmi Narain v. Government of Tamil Nadu* (2008) 4 M.L.J. 1. Paragraph 10 of this judgment reads as follows:

10. In our opinion, the directive issued by the National Commission u/s 24-B of the Consumer Protection Act cannot be said to be contrary to the provisions of Section 10(1-A) of the Consumer Protection Act. All that the directive says is that precedence should be given to the District Judges or retired District Judges having regard to the experience gained by them in discharge of their duties as judicial officer. If serving or retired District Judges are not available, it is always open to the Committee to make appointments from amongst advocates, and it is not correct to say that the advocates are excluded from consideration for the post of President of the District Fora. In our opinion, the National Commission has issued this directive keeping in view the purpose sought to be achieved by enactment of Section 10(1-A) and in the interest of better administration of the District Fora.

9. In this state of affairs, if the Government of Puducherry deemed it appropriate to cancel the earlier selection process since there were no District Judges who had applied for selection, such decision cannot be faulted with. There are two categories of Applicants who are expected. Since one category which is given a precedence under the Act was not available, the advertising body deemed it appropriate that the selection process be cancelled and in our view, such a decision cannot be said to be in any way illegal, especially in view of the directive of the National Commission, as also the above decision of the Division Bench of the High Court.

10. The Government of Puducherry has stated on affidavit that it has now received a panel of retired District Judges from the High Court, which has already been forwarded to the Selection Committee and that a decision will be taken in the matter within a period of three months hereon. This being the position, the prayer of the Petitioner in W.P. No. 24770 of 2009 to appoint a serving judicial officer as the President of the District Forum on an ad hoc basis need not be entertained.

11. All the three writ petitions are, therefore, dismissed. There shall be no order as to costs. Consequently, M.P. Nos. 1, 1 and 1 & 2 of 2009 in the respective writ petitions are closed.