

Ashish Handa

Vs

Hon'ble the Chief Justice of High Court of Punjab and Haryana

Transferred Case (Civil) No. 15 of 1994

(J. S. Verma, N. P. Singh, B. N. Kirpal JJ)

15.03.1996

JUDGEMENT

J. S. VERMA, J.

1. The petitioner is an Advocate and a member of the Bar Association of the High Court of Punjab and Haryana. He filed a Writ Petition in the High Court of Punjab and Haryana challenging the appointment of Shri M. R. Agnihotri, a former Judge of the Punjab and Haryana High Court as the President of the Haryana State Consumer Disputes Redressal Commission on completion of the term of Shri S. S. Sandhawalia, 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 :

(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 :

(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 subsection (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 prescribed the mode of appointment of the President of the State Commission.

*1. Omitted by the Consumer Protection (Amendment) Act. 1993, (w. e. f. 18th June, 1993).

*2. Inserted by *ibid*".

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' disputes 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 the 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 *pari 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 *Supreme Court Advocates-on-Record Association v. Union of India*, (1993) 4 SCC 441 : (1993 AIR SCW 4101). 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 *Sarwan Singh Lamba v. Union of India*, (1995) 4 SCC 546 : (1995 AIR SCW 2706), 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 to 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 Judges-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 and 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 and 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 had 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. Petition dismissed.