

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2010
(Arising out of S.L.P. (C) No.33694 of 2009)

S. Chandramohan Nair

.....Appellant

Versus

George Joseph and others

.....Respondents

J U D G M E N T**G.S. Singhvi, J.**

1. Leave granted.

2. This appeal is directed against order dated 20.11.2009 passed by the Division Bench of Kerala High Court whereby it allowed the writ petition filed by respondent No.1 and quashed the appointment of the appellant as member of the Kerala State Consumer Disputes Redressal Commission (for short, 'the State Commission').

3. Appellant – S. Chandramohan Nair, Smt. Valsala Sarangadharan, Shri K.V. Thomas and one more person were interviewed on 2.3.2006 by the Selection Committee consisting of Justice T.M. Hassan Pillai, President of the

State Commission, Shri Sainudeen, Law Secretary, Government of Kerala for appointment as members of the State Commission. The Law Secretary and the Food, Civil Supplies & Consumer Affairs Secretary recommended the names of Smt. Valsala Sarangadharan and Shri K.V. Thomas, but the Chairman did not agree with them. He recommended that name of the appellant be included and that of Shri K.V. Thomas be excluded from the panel. This is clearly evident from the minutes of the meeting of the Selection Committee, the relevant portions of which are extracted below:

“Minutes of the Selection Committee meeting held on 2nd March 2006 at 3.00 P.M. in the chamber of Justice T.M. Hassan Pillai, President, Consumer Disputes Redressal Commission, Thiruvananthapuram.

Present:

1. Justice Shri T.M. Hassan Pillai, President, Consumer Disputes Redressal Commission, Thiruvananthapuram (Chairman)
2. Shri. S. Sainudeen, Law Secretary, Government of Kerala, Thiruvananthapuram (Member)
3. Smt. Sheela Thomas, Secretary, Food, Civil Supplies & Consumer Affairs, Government of Kerala, Thiruvananthapuram (Member)

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V. Consumer Disputes Redressal Commission, Thiruvananthapuram.

Secretary-Law and Secretary-Consumer Affairs suggested the following names for inclusion in the panel for selection of member to the Consumer Disputes Redressal Commission:

1. Smt. Valsala Sarangadharan
2. Shri. K.V. Thomas

As per section 16(1)(b) of the Consumer Protection Act, 1986 apart from age and educational qualification, persons to be appointed as members of the State Commission be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

The members concluded that Smt. Valsala Sarangadharan and Shri K.V. Thomas performed satisfactorily in the interview and from their C.V. also it is seen that they have the requisite qualification for appointment to the post of member, State Commission. Smt. Valsala Sarangadharan has experience in the field of law and K.V. Thomas has long experience in administration. Hence they are recommended from among the four persons interviewed for selection to the post of member, State Commission.

The Chairman of the Committee, President, State C.D.R.C. dissented to this recommendation and recommended inclusion of Shri S. Chandramohan Nair and Smt. Valsala Sarangadharan in the panel and exclusion of Shri K.V. Thomas from the panel for the following reasons.”

4. The final minutes containing the recommendation which were signed by the Chairman and both the members read as under:

“I recommend the following persons to be appointed as the members of the State Commission.

1. Shri. S. Chandramohan Nair
2. Smt. Valsala Sarangadharan

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| 1. Justice Shri. T.M .Hassan Pillai, President | Sd/- |
| 2. Shri. S. Sainudeen, Law Secretary | Sd/- |
| 3. Smt. Sheela Thomas, Secretary,
Food, Civil Supplies and
Consumer Affairs | Sd/- |

5. Later, the Chairman of the Selection Committee incorporated the following in the minutes of the meeting:

“Really what transpired at the Selection Committee Meeting held on 2nd March 2006 was that there was no difference of opinion among the President and the Members of the Selection Committee for including the name of Sri. Chandramohan Nair. The only difference of opinion was regarding the inclusion of name of Sri. K.V. Thomas in the panel.”

6. When the aforesaid recommendations were placed before the Minister, Food, Civil Supplies and Consumer Affairs, he recorded the following note:

“Concurs with the majority decision.

Regarding the dissenting note, I have specific doubts that President has mistaken the selection as if for a judicial member, which is not. Both the candidates recommended by the majority members of selection committee are seen to have all necessary qualification and experience stipulated in the Act. Competency in the field of experience is to be the criterion for selection; judicial experience needed by considered only for the appointment of a judicial member. Misinterpretation of section 16(i) (b) is doubted in the dissenting note. Appointment of judicial member as per statute is being taken up separately and the justifications for judicial background shall be considered then:

Appointment of the following persons for State Commission and District Forum are approved.

CDRS, Thiruvananthapuram

- 1) Smt. Valsala Sarangadharan
- 2) Sri K.V. Thomas

Sd/-

15.3.2006

Minister for Food, Civil
Supplies & Consumer Affairs.”

7. As a sequel to the above, the State Government issued notification dated 11.5.2006 appointing Smt. Valsala Sarangadharan and Shri K.V. Thomas as members of the State Commission.

8. The appellant challenged the appointment of Shri K.V. Thomas in Writ Petition (C) No. 13058 of 2006. He pleaded that Shri K.V. Thomas could not have been appointed as member of the State Commission because his name had not been recommended by the Selection Committee. In paragraph 13 of the counter affidavit filed by Smt. Sheela Thomas, the then Secretary, Food and Civil Supplies Department, who was impleaded as respondent No.2 in the writ petition, it was averred that a panel of three names including those of the appellant herein and Shri K.V. Thomas was sent to the State Government. It was further stated that there was difference of opinion among the members of the Selection Committee on the candidature of Shri K.V. Thomas only. Simultaneously, she claimed that Shri K.V. Thomas was appointed on the basis of the recommendations of the majority of the Selection Committee and

keeping in view the fact that he fulfilled the required qualifications and satisfied the conditions of eligibility.

9. On a consideration of the pleadings of the parties and the records produced before him, the learned Single Judge quashed the appointment of Shri K.V. Thomas by observing that even though name of the appellant herein was recommended by the Chairman and two members, the State Government ignored the same without assigning any tangible reason and appointed Shri K.V. Thomas, whose name was recommended only by two members.

10. Shri K.V. Thomas challenged the order of the learned Single Judge in Writ Appeal No.968 of 2007, which was dismissed by the Division Bench vide judgment dated 23.7.2007. The Division Bench referred to the minutes of the Selection Committee and observed that the name of the appellant was recommended only by the Chairman and the finding recorded by the learned Single Judge that it was a unanimous recommendation was not correct. The Division Bench then took cognizance of the fact that an attempt was made to interfere with the process of selection inasmuch as just before the interview, a cover containing names of candidates including that of Shri K.V. Thomas, allegedly sent by the office of the then Minister for Food and Civil Supplies, Government of Kerala was handed over to the members of the Selection

Committee and held that recommendation made in favour of Shri K.V. Thomas was tainted by malafides and extraneous influence.

11. During the pendency of the writ appeal filed by Shri K.V. Thomas, the State Government accepted the recommendation made by the Selection Committee for appointment of the appellant as member of the State Commission and issued notification dated 25.6.2007.

12. Respondent No.1, who had nothing to do with selection and appointment of the members of the State Commission filed Writ Petition No.24963 of 2008 by describing himself as General Secretary of the Kerala Vayapari Vavyasai Ekopana Samati (for short, 'the Samati') and prayed for quashing the appointment of the appellant on the ground that his name had not been recommended by the Selection Committee. In support of this assertion, respondent No.1 relied upon the observations made by the Division Bench of the High Court in the order passed by it in Writ Appeal No.968 of 2007. Respondent No.1 claimed that the appellant's continuance as member of the State Commission was detrimental to the interest of the members of the Samati and, therefore, he was filing the writ petition in public interest. He also pleaded that the appellant was a usurper of public office.

13. In the counter affidavit filed by him, the appellant questioned the *locus standi* and bona fides of respondent No.1 by alleging that the writ petition has been filed at the instance of Shri K.V. Thomas. The appellant also defended his appointment by stating that although his name had been recommended by the Selection Committee, the State Government chose to ignore the same and appointed Shri K.V. Thomas, whose name was initially recommended by two members, but after disposal of Writ Petition No.13058 of 2006, the State Government realised its mistake and appointed him in place of Shri K.V. Thomas. Along with the counter affidavit, the appellant enclosed a copy of the written statement filed by the Secretary, Food, Civil Supplies and Consumer Affairs in Writ Petition (C) No.13058 of 2006 wherein it was admitted that a panel of three names including that of the appellant was recommended to the State Government.

14. The Division Bench of the High Court treated the writ petition filed by respondent No.1 as a writ of quo warranto, referred to the observations made by the Division Bench in Writ Appeal No.968 of 2007 and held that the appellant could not have been appointed as member of the State Commission because his name had not been recommended by the Selection Committee.

15. We have heard learned counsel for the parties. Section 16(1) of the Consumer Protection Act, 1986 (for short, 'the Act') lays down that each State

Commission shall consist of President and at least two members, one of whom shall be a woman. The qualifications of the President and the members are also enumerated in that section. Section 16(1A), which was added by the Consumer Protection (Amendment) Act, 2002 lays down that every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the President of the State Commission as Chairman, Secretary of the Law Department of the State and Secretary in charge of the Department dealing with Consumer Affairs in the State as Members. Rule 17(1) of the Kerala Consumer Protection Rules, 2005 (for short, 'the Rules') lays down that the President of the State Commission shall be appointed by the Government in consultation with the Chief Justice of the High Court of Kerala. Rule 17(2) envisages calling of the panel of candidates by the Department in charge of the Consumer Affairs from the High Court of Kerala for appointment as judicial members. Rule 17(3) lays down that in the case of other members, the panel of candidates should be called for from the concerned District Collectors. The first proviso to Rule 17(3) envisages that the Government (Department dealing with the Consumer Affairs) may also issue advertisement for appointment of other members. The second proviso lays down that the panel obtained by the Department shall, after further scrutiny and short-listing, be placed before the Selection Committee. In terms of the third proviso, the Selection Committee is required to finalize the panel of candidates by adopting such methods as it may deem fit and send the same to the State

Government for consideration for appointment.

16. An analysis of these provisions shows that appointment of judicial and other members is required to be made by the State Government on the recommendation of the Selection Committee. If the Chairman and/or the members of the Selection Committee do not agree on the candidature of any particular person, then opinion of the majority would constitute recommendation of the Selection Committee. Though, the State Government is not bound to accept the recommendations made by the Selection Committee, if it does not want to accept the recommendations, then reasons for doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee. If the appointment made by the State Government is subjected to judicial scrutiny, then it is duty bound to produce the relevant records including recommendation of the Selection Committee before the Court to show that there were valid reasons for not accepting the recommendation.

17. The record of this case shows that just before start of the interview, a cover containing the names of candidates, which was sent from the office of the minister was handed over to the Chairman by Shri K.V. Thomas, who himself was a candidate. The Law Secretary and the Secretary, Food, Civil Supplies and Consumer Affairs Department, who were members of the Selection

Committee appear to have been overawed by this development and this must have been the operative reason for their recommending the names of Smt. Valsala Sarangadharan and Shri K.V. Thomas. The Chairman did not toe their line and recommended inclusion of the name of the appellant and exclusion of that of Shri K.V. Thomas. Finally, the names of the appellant and Smt. Valsala Sarangadharan were recommended to the State Government. The minutes containing the recommendation were signed not only by the Chairman of the Selection Committee but also by the other two members.

18. While deciding Writ Appeal No. 968 of 2007, the Division Bench of the High Court was unduly influenced by the fact that the Chairman of the Selection Committee had initially recorded dissent and at the end of the minutes he separately appended a note suggesting that there was no difference of opinion between him and two members and concluded that name of the appellant was recommended only by the Chairman and not by the members. It appears that attention of the Division Bench was not drawn to the affidavit filed by Smt. Sheela Thomas in Writ Petition No.13058 of 2006 wherein she had categorically averred that a panel of three names including that of the appellant was recommended to the State Government and the difference of opinion was only on the candidature of Shri K.V. Thomas. We have no doubt that if the learned counsel appearing for the parties had properly assisted the Division Bench of the High Court, it may not have recorded the observation that the

name of the appellant was recommended only by the Chairman and not by the members. That apart, be that as it may, we are convinced that the name of the appellant had been recommended by entire body of the Selection Committee i.e., the Chairman and the Members. If this was not so, either of the two Members would have, after coming to know of the minutes recorded by the Chairman, lodged a protest or sent communication to the State Government that they had not recommended the name of the appellant and that the minutes recorded by the Chairman did not reflect the actual recommendations. However, the fact of the matter is that neither of them lodged any objection nor sent any communication to the State Government. Therefore, the contrary observations made by the Division Bench in Writ Appeal No.968 of 2007 cannot but be termed as erroneous and the same could not have been relied upon for quashing the appointment of the appellant.

19. As mentioned above, respondent No.1 had nothing to do with the appointment of the members of the State Commission and who did not place any material on record to show as to how the appointment of the appellant would adversely affect the members of the Samiti. His position was nothing more than that of a meddlesome interloper/busy body and the Division Bench of the High Court gravely erred in entertaining the writ petition filed by him and converting the same into a writ of quo warranto.

20. In the result, the appeal is allowed. The impugned order is set aside and the writ petition filed by respondent No.1 is dismissed. The parties are left to bear their own costs.

.....J.
[G.S. Singhvi]

.....J.
[Asok Kumar Ganguly]

New Delhi
October 5, 2010.

