

CASE NO.:
Appeal (civil) 3044-3045 of 2005

PETITIONER:
State of Haryana and Anr.

RESPONDENT:
National Consumer Awareness Group and Ors.

DATE OF JUDGMENT: 04/05/2005

BENCH:
K.G. Balakrishnan & B.N. Srikrishna

JUDGMENT:
JUDGMENT

B.N. SRIKRISHNA, J.
Leave granted.

What is the content of the statutory consultation with the Chief Justice of the High Court postulated under Section 16(1)(a) of the Consumer Protection Act, 1986, is the core issue subjected to debate before us in these two appeals.

The Consumer Protection Act, 1986 (hereinafter referred to as 'the Act') was brought into force on 24.12.1986. It 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 Act established fora at district level, state level and national level and laid down the procedure of appointing the members of the fora and their respective Chairmen. The dispute pertains to the statutory procedure contemplated for appointments of the Chairman of the State Commission-the forum at the State level.

Section 16(1) provides for the composition of the State Commission including the appointment of the President and members of the State Commission. As originally enacted, Section 16 read as under :

"16. 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;

(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 and administration, one of whom shall be a woman.

By (Amendment) Act 50 of 1993, which was retrospectively made effective with effect from 18.6.1993, an amendment was made to Section 16 by the addition of a proviso and the amended section read as under :

"16. 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 and 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 the Department dealing with Consumer Affairs in the State. -Member

By a further amendment, vide (Amendment) Act, 62 of 2002, Section 16 (1)(b) was substituted by new provision of sub-sections (1A) and (1B) which were inserted in Section 16. The amended Section 16, brought into force with effect from 15.3.2003, reads as under :

"16. 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) not less than two, and not more than such number of members, as may be prescribed, and one of who shall be a woman, who shall have the following qualifications, namely :-

- (i) be not less than thirty-five years of age;
- (ii) possess a bachelor's degree from a recognised university; and
- (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration:

Provided that not more than fifty per cent. of the members shall be from amongst persons having a judicial background.

Explanation....

Provided further that

- (a) ...
- (b) ...
- (c) ...
- (d) ...
- (e) ...
- (f) ...

(1-A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following members, namely :-

- (i) President of the State Commission-Chairman;
- (ii) Secretary of the Law Department of the State-Member;
- (iii) Secretary incharge of the Department dealing with Consumer Affairs in the State-Member :

Provided that where the President of the 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.

(1-B) (i) The jurisdiction, powers and authority of the State Commission may be exercised by Benches thereof.

(ii) A Bench may be constituted by the President with one or more members as the President may deem fit.

(iii) If the members of a Bench differ in opinion on any point, the points shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ, and make a reference to the President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members and such point or points shall be decided according to the opinion of the majority of the members who have heard the case, including those who first heard it.

(2) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of, the members of the State Commission shall be such as may be prescribed by the State Government.

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the State Commission.

(3)

(4)"

Justice Amarjeet Chaudhary, the then incumbent, was to demit his office on 4.9.2003 on completion of his term as President of the Haryana State Consumer Disputes Redressal Commission (hereinafter referred to as 'the State Commission'). On 25.8.2003 the Chief Minister of Haryana addressed a letter to the Chief Justice of Punjab & Haryana High Court drawing his attention to the vacancy that was likely to arise on 5.9.2003, and expressed his view that Justice R.S. Mongia, retired Chief Justice of Gauhati High Court, would be a befitting incumbent to be appointed to the said post and requested for communication of the views of the Chief Justice of Punjab and Haryana High Court. By a communication dated 26.8.2003, the Chief Justice of the Punjab & Haryana High Court drew the attention of the Chief Minister to the decision of this Court in Ashish Handa v. Hon'ble the Chief Justice of High Court of Punjab & Haryana and Ors.1 and took the stand: "...even for initiation of 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." He, however, postponed a decision, as the seniormost Judge of the collegium was out of station. By a confidential communication dated 27.8.2003, the Chief Justice informed the Chief Minister that the collegium of the High Court had met and considered the names of several persons, and unanimously decided to recommend Justice R.C. Kathuria (retired) of the Punjab & Haryana High Court as most suitable and fit for appointment as President of the State Commission. A copy of the relevant resolution was forwarded for information. The resolution took note of the credentials of the three retired Judges, whose suitability was considered, and decided to recommend Mr. Justice R.C. Kathuria as most suitable and fit for appointment. Justice R.S. Mongia was also one of the three retired Judges, whose suitability was considered by the said resolution.

By a letter dated 29.10.2003 the Chief Minister, Haryana, raised certain objections to the proposal made by the Chief Justice. The collegium of the High Court considered the letter dated 29.10.2003 of the Chief Minister, Haryana and reiterated its earlier recommendation. By a letter of 1.12.2003 the Chief Minister drew the attention of the Chief Justice to what he considered were the deficiencies in the candidature of the learned Judge, whose name was proposed by the High Court. Once again, the High Court after calling for several records and considering various other aspects of the matter reiterated its stand that there was no reason to recall the earlier recommendations to appoint Justice R.C. Kathuria (Retired) as the President of the State Commission. By another letter dated 7.1.2004, the Chief Minister of Haryana drew the attention of the Chief Justice of Punjab & Haryana High Court to the newly introduced Section 16(1A), vide (Amendment) Act 62 of 2002, and stated that since the post of the President of the State Commission was vacant at the moment, a Hon'ble sitting Judge of the Punjab & Haryana High Court was required to be nominated to act as Chairman of the Selection Committee to be constituted under Section 16(1A). There was certain other correspondence about certain representations made, which is not material.

In response to a representation dated 22.12.2003 received from the National Consumer Awareness Group, Respondent No. 1, on 31.12.2003 the Government of India, Department of Consumer Affairs, issued a clarification to all the State Governments/ U.T. Administration including the Government of Haryana State inter alia opining, in substance, that the procedure contemplated for constitution of a Selection Committee would be equally applicable for appointment of the President of the State Commission, though for that purpose the Chief Justice of the High Court be requested to nominate a sitting Judge of the High Court to act as Chairman of the Selection Committee.

In the meanwhile, Civil Writ Petition No. 174/04 was filed by the first respondent before the High Court of Punjab & Haryana at Chandigarh invoking Articles 226/227 of the Constitution for a mandamus to the Union of India, the Chief Justice of Punjab and Haryana High Court, State of Haryana and Department of Consumer Affairs, State of Haryana, to follow the procedure as laid down in Section 16 of the Consumer Protection Act in its letter and spirit for the appointment of the President of the State Commission. Another writ petition, C.W.P. No. 17262/03, which had been filed earlier by one Dharminder Singh Rawat, Advocate, on the connected subject of initiation of the proposal, was heard along with C.W.P. No. 174/04 filed by the first respondent. The High Court by a common judgment allowed the two writ petitions and made appropriate directions to the State Government therein. The High Court followed the decision of this Court in Ashish Handa (supra) which held the field at the material time. By taking the view that the process of consultation contemplated under Section 16 (1)(a) of the Act was almost identical to the process of consultation required under Article 217 of the Constitution, the High Court upheld the appointment of Justice M.R. Agnihotri, a retired Judge of the High Court, as the President of the State Commission, as communicated by the Registrar of the High Court to the Haryana Government on 10.6.1994. Finding that there was substantial

compliance with Section 16(1)(a) of the Act, the appointment of Justice Agnihotri was upheld and the writ petition challenging his appointment was dismissed. On the question of interpretation of the newly introduced Section 16(1A), the High Court was of the view that there was no conflict between the provisions of Sections 16(1)(a) and 16(1A) of the Act as they could effectively operate in their respective fields, which did not overlap. The High Court was further of the view that the provisions of Section 16(1A) would have hardly any, much less an effective, role in the appointment of the President of the State Commission in terms of Section 16(1)(a), and that the Selection Committee contemplated by Section 16(1A) could not be utilized for the selection of the President for which a separate provision was made under Section 16(1)(a). The writ petition was accordingly allowed and appropriate directions were issued.

At the outset, Mr. Shanti Bhushan, learned counsel appearing for the appellant-State of Haryana submitted that the appeal was being pursued not so much for appointment or non-appointment of a particular incumbent - in any event, time the great healer having solved the problem, but only for the purpose of settling the question of interpretation to be placed on the provisions of Sections 16(1)(a) and 16 (1A) of the Act.

In a recent judgment in *Ashok Tanwar and Anr. v. State of Himachal Pradesh and Ors.*², (to which both of us were parties), the Constitution Bench of this Court had occasion to consider the issue of "consultation with the Chief Justice of High Court" under Section 16 of the Consumer Protection Act, 1986. The Constitution Bench specifically overruled the decision in *Ashish Handa* (supra) only on this issue holding that the process and context of "consultation with the Chief Justice of the State High Court" within the meaning of Section 16(1)(a) is not to be equated with the consultation contemplated under Article 217 of the Constitution for appointment of a High Court Judge, observing :

"It is thus clear that the expression "consultation" used in Article 217 of the Constitution in relation to appointment of High Court Judges cannot be read in the same way into "consultation" as contemplated under Section 16 of the Act in the light of what is stated above in *Supreme Court Advocates-on-Record Assn.*³" (vide paragraph 19)

The Constitution Bench pointed out that, though the process may be similar in several other aspects, the two consultations cannot be held to be qualitatively identical as one was for appointment to a statutory post, while the other was a Constitutional appointment. It was also held (vide paragraph 20) that the requirement of consultation with two seniormost Judges of the High Court could not be read into the consultation required under Section 16 (1A) for appointment of the Chairman of the State Commission, and that consultation with the Chief Justice of the High Court was sufficient. Although overruling *Ashish Handa* (supra) on this aspect of the matter, the Constitution Bench referred with approval to the said judgment and said :

"In *Ashish Handa* (supra) this Court, having regard to what is stated above, held that it is the Chief Justice of the High Court, who should initiate the process in the matter of appointment of a Judge, sitting or retired, as President of the State Commission." (vide paragraph 21)

Finally, it concluded thus :

"Certain statements made by this Court in *Ashish Handa* (supra) in para 3, give an impression that the Chief Justice of a High Court has to consult his two seniormost colleagues before recommending a sitting or retired Judge for appointment as President of a State Commission as per Section 16 of the Act. In our view that is not the correct position and we do not approve the same. To put it positively, we state that for the purpose of Section 16 of the Act, a Chief Justice of a High Court need not consult his two seniormost colleagues in the High Court for recommending a sitting or

retired Judge of a High Court for appointment as President of a State Commission." (vide paragraph 22)

A careful reading of Ashok Tanwar (supra) shows that the Constitution Bench differed from Ashish Handa (supra) only on the issue whether consultation with the Chief Justice meant consultation with the collegium of the High Court. In other respects, Ashish Handa (supra) is approved.

Mr. Shanti Bhushan, learned counsel for the appellants, urged that even with the interpretation of Section 16(1)(a), as decided by the Constitution Bench in Ashok Tanwar (supra), it still leaves undecided the question as to who should initiate the proposal for appointment to be made under Section 16(1)(a). He contended that 'consultation' meant meeting of minds between two Constitutional authorities of equal rank and there was no reason why the Chief Justice should not initiate the proposal. We are unable to accept this contention. In the first place, the processual mechanics of 'consultation' was decided in Supreme Court Advocates-on-Record Association (supra) judgment by a decision of nine learned Judges and reiterated in Ashish Handa (supra), with which the Constitution Bench in Ashok Tanwar (supra) did not disagree. The only point of disagreement between Ashish Handa (supra) and Ashok Tanwar (supra) was on the issue whether the consultation with the Chief Justice meant consultation with the collegium of the High Court. The manner of initiation of proposal has remained same throughout and it is not open for us to take a different view of the matter. Learned counsel attempted to persuade us to refer the matter to a larger Bench. We decline to do so as the law is quite settled; it is binding on us and we agree with it. Thus, the manner of initiation of proposal for a consultation with the Chief Justice under Section 16(1)(a) of the Act must take place in the manner as laid down by the judgment of this Court in Ashish Handa's case (supra).

The next contentious issue raised before us is with regard to the import of the amendment in the Act by introduction of Section 16(1A). Shri M. N. Krishnamani, learned counsel for the Union of India, sought to canvass the interpretation given by Government of India (vide D.O. letter dated 31.12.2003) that the provisions of Section 16(1A) may also be used for appointment of the President of the State Commission.

Learned counsel for the Union of India urged that sub-section (1A) of Section 16 itself contemplates that every appointment made under sub-section (1) of Section 16 has to be made on the recommendation of a Selection Committee consisting of - (i) President of the State Commission as Chairman; (ii) Secretary of the Law Department of the State; and (iii) Secretary incharge of the Department dealing with Consumer Affairs in the State as Members. He also emphasized the proviso to sub-section (1A) which has been added to take care of the situation where the President of the State Commission is absent, or otherwise unable to act as Chairman of the Selection Committee in which case the State Government may request the Chief Justice of the High Court to nominate a sitting Judge of that High Court to act as Chairman.

We are unable to accept this contention of the learned counsel for the Union of India. It is inconceivable that sub-section (1A) is intended for appointment of the President of the State Commission itself. In the first place, we cannot accede to the contention that the Chairman of the State Commission, who is or has been a Judge of the High Court, can be selected by a Selection Committee comprising two Secretaries of the State Government. Nothing could be more erosive of judicial independence than such interpretation of sub-section (1A). This conclusion of ours is driven home by the proviso to sub-section (1A). This proviso is intended to take care of a contingency where there exists a President of the State Commission, who is unable to Chair the Selection Committee meeting because of absence or other similar reasons. It is only in such a situation, that the State Government may request the Chief Justice of the High Court to nominate a sitting Judge to act as Chairman of the Selection Committee. If

the argument of the learned counsel of the Union of India and the construction canvassed by him is admitted, it would mean that even where the President of the State Commission is appointed for the first time, the procedure would be that he would be appointed by a Committee of which two Secretaries would be members. That would be obviously destructive of judicial independence.

The learned counsel, alternatively, argued that the scheme contemplated by sub-section (1A) is quite workable even in a situation where there exists already a President, but the question arises of his re-appointment which would make him unable to act as Chairman of the Selection Committee. In such cases, a sitting Judge of the High Court could be nominated by the Chief Justice of the High Court to act as a Chairman. Even this argument does not commend itself to us. A literal reading of sub-section (1A) may prima facie suggest that appointments under clauses (a) and (b) of sub-section (1) are also governed by the procedure contemplated therein, under sub-section (1A), but as rightly held by the High Court the two sub-sections have to be harmoniously construed. The procedure contemplated under sub-section (1A) can apply only in respect of appointment of members falling within the contemplation of clause (b) of sub-section (1) of Section 16. In our view, the High Court has given adequate and justifiable reasons for this interpretation with which we agree. The interpretation given by the circular, and the view taken by the Union of India in the matter of Section 16(1A), is incorrect and we hold that the procedure contemplated therein applies only to the appointments made under clause (b) of sub-section (1) of Section 16.

In our view, no fault can be found with the impugned judgment of the High Court on both the counts. Seeing no merit in these appeals, we dismiss the appeals.

No order as to costs.