

THE SECRETARY MINISTRY OF CONSUMER AFFAIRS A

v.

DR. MAHINDRA BHASKAR LIMAYE & ORS.

(Civil Appeal No. 831 of 2023)

MARCH 03, 2023 B

[M. R. SHAH AND M. M. SUNDRESH, JJ.]

Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 – rr.3(2)(b), 4(2)(c), 6(9) – Validity of – Held: rr.3(2)(b), 4(2)(c), 6(9) which are contrary to the decisions of Supreme Court in State of Uttar Pradesh and Others v. All Uttar Pradesh Consumer Protection Bar Association [2016] 8 SCR 851 and Madras Bar Association v. Union of India and Another [2020] 2 SCR 246 are unconstitutional, arbitrary and violative of Art.14 – rr.3(2)(b) & 4(2)(c) struck down to the extent providing minimum 20 years' and 15 years' experience for appointment as a Member in the State and District Commission, respectively – Central Government and the concerned State Governments to amend the 2020 Rules – Till amendments are made, directions issued for appointment of President and Members of the State Commission and District Commission – A person having bachelor's degree from a recognized University and who is a person of ability, integrity and standing and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs etc., shall be treated as qualified for appointment of President and Members of the State and District Commission – Appointment shall be made on the basis of performance in written test consisting of two papers – Qualifying marks in each paper shall be 50% and there shall be a viva voce of 50 marks – Consumer Protection Act, 2019 – Consumer Protection Act, 1986 – Consumer Protection (Appointment, Salary, Allowance and Conditions of Service of President and Members of State Commission and District Forum) Rules, 2017 – Constitution of India – Art.14, 142.

Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 – rr.3(2)(b), 4(2)(c), 6(9) – Validity of – Held: rr.3(2)(b), 4(2)(c), 6(9) which are contrary to the decisions of Supreme Court in State of Uttar Pradesh and Others v. All Uttar Pradesh Consumer Protection Bar Association [2016] 8 SCR 851 and Madras Bar Association v. Union of India and Another [2020] 2 SCR 246 are unconstitutional, arbitrary and violative of Art.14 – rr.3(2)(b) & 4(2)(c) struck down to the extent providing minimum 20 years' and 15 years' experience for appointment as a Member in the State and District Commission, respectively – Central Government and the concerned State Governments to amend the 2020 Rules – Till amendments are made, directions issued for appointment of President and Members of the State Commission and District Commission – A person having bachelor's degree from a recognized University and who is a person of ability, integrity and standing and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs etc., shall be treated as qualified for appointment of President and Members of the State and District Commission – Appointment shall be made on the basis of performance in written test consisting of two papers – Qualifying marks in each paper shall be 50% and there shall be a viva voce of 50 marks – Consumer Protection Act, 2019 – Consumer Protection Act, 1986 – Consumer Protection (Appointment, Salary, Allowance and Conditions of Service of President and Members of State Commission and District Forum) Rules, 2017 – Constitution of India – Art.14, 142.

- A *and removal of President and Members of State Commission and District Commission) Rules, 2020 – r.6(9) – Held: Under r.6(9), the Selection Committee is empowered with uncontrolled discretionary power to determine its procedure to recommend candidates to be appointed as President and Members of the State and District Commission – Transparency and selection criteria are absent –*
- B *While making the appointment as Members of the District Fora, State Commission there is a need to assess the skill, ability, and competency of the candidates before they are empanelled and recommended to the State Government – 2020 Rules do not contemplate written examination to test the merits of the candidate*
- C *– Written examination which was confirmed by the Supreme Court has been removed under the new 2020 Rules – No justification shown to do away with it – Consumer Protection Act, 2019 – Consumer Protection Act, 1986 – Consumer Protection (Appointment, Salary, Allowance and Conditions of Service of President and Members of State Commission and District Forum) Rules, 2017.*
- D *Tribunals – Quasi-judicial authorities, standards expected from the members – Held: Commissions are quasi-judicial authorities, therefore, the standards expected from the members of the tribunal should be as nearly as possible as applicable to the appointment of judges exercising such powers – Consumer Protection Act, 2019 – Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 – Consumer Protection Act, 1986 – Consumer Protection (Appointment, Salary, Allowance and Conditions of Service of President and Members of State Commission and District Forum) Rules, 2017.*

Disposing of the appeals, the Court

- HELD: 1.1** The High Court in the impugned judgment and order has rightly observed and held that Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Rules, 2020 which are contrary to the decisions of this Court in the cases of *State of Uttar Pradesh and Others Vs. All Uttar Pradesh Consumer Protection Bar Association (UPCPBA)* and the *Madras Bar Association* are unconstitutional and arbitrary. Even otherwise Rule 6(9) lacks transparency and it confers uncontrolled discretion and excessive power to the
- G
 - H

Selection Committee. Under Rule 6(9), the Selection Committee is empowered with the uncontrolled discretionary power to determine its procedure to recommend candidates to be appointed as President and Members of the State and District Commission. The transparency and selection criteria are absent under Rule 6(9). In absence of transparency in the matter of appointments of President and Members and in absence of any criteria on merits the undeserving and unqualified persons may get appointment which may frustrate the object and purpose of the Consumer Protection Act. It cannot be disputed that the Commissions are empowered with the powers of court and are quasi-judicial authorities and empowered to discharge judicial powers with the adequate powers of the court including civil and criminal. Therefore, the standards expected from the members of the tribunal should be as nearly as possible as applicable to the appointment of judges exercising such powers. Under Rule 6(9) of Rules, 2020, the Selection Committee is having power to determine its own procedure. Such provisions are also giving excessive and uncontrolled discretionary powers to the Selection Committee. As rightly observed and held by the High Court, considering the object on behalf of the Consumer Protection Act, 2019, such uncontrolled discretion power to determine its procedure for making its recommendation for appointment of President and Members of the District and the State Commissions is arbitrary and unreasonable. It is always desirable that while making the appointment as Members of the District Fora and/or the State Commission there is a need to assess the skill, ability, and the competency of the candidates before they are empanelled and recommended to the State Government. The Rules, 2020 do not contemplate written examination so as to test the merits of the candidate. In the case of UPCPBA, this Court expressed deep concern over the bureaucratic and political interference in process of appointments. [Paras 6.4, 6.5][319-E, H; 320-A-D]

Madras Bar Association v. Union of India and Another (2021) 7 SCC 369 : [2020] 2 SCR 246; State of Uttar Pradesh and Others v. All Uttar Pradesh Consumer Protection Bar Association (2017) 1 SCC 444 : [2016] 8 SCR 851 – relied on.

A

B

C

D

E

F

G

H

- A 1.2 Mechanism of having written examination was confirmed by this Court which has been removed under the new Rules, 2020. Earlier under Consumer Protection Act, 1986, there were Rules, 2017 in so far as some of the States are concerned and Rules, 2019 so far as the State of Maharashtra is concerned, which provided for a written examination and viva voce, which was under the Consumer Protection Act, 1986. The Consumer Protection Act, 1986 has been repealed and the Consumer Protection Act, 2019 has come into force w.e.f. 24.07.2020 with a sole intention to provide adequate safeguards to the consumers and the pecuniary jurisdiction of the District Fora and State Commissions are enhanced substantially. However, there is no substantial change in the scheme with respect to the adjudication of the consumer disputes. No justification at all is shown to do away with the written examination while framing the Rules, 2020 under the Consumer Protection Act, 2019. Therefore, as rightly observed by the High Court, the Rule 6(9) of the Rules, 2020 is unconstitutional, arbitrary and violative of Article 14 of the Constitution of India, more particularly, when the same is wholly impermissible to override/overrule the earlier decisions of this Court and that too without any justification. This Court is in complete agreement with the view taken by the High Court. [Paras 6.6-6.8][320-E-H; 321-A]
- B 1.3 Under provision 4(1) of Rules, 2020, a person who is eligible to be appointed as a district judge (having minimum experience of 7 years) is qualified to be appointed as President of the District Commission but in order to be appointed as a Member, Rule 4(2)(c) mandates a minimum experience of 15 years which is rightly held to be violative of Article 14 of the Constitution. Similarly providing 20 years' experience under Rule 3(2)(b) also rightly held to be arbitrary and violative of Article 14 of the Constitution. Even under Rule 3(1) a judge of the High Court, present or former, shall be qualified for appointment of the President. As per Article 233 of the Constitution, a lawyer needs to have only 7 years of practice as an advocate in High Court. Under the circumstances to provide 20 years' experience under Rule 3(2)(b) is rightly held to be unconstitutional, arbitrary and violative of the Article 14 of the Constitution of India. This Court is in complete agreement with the view taken by the High

Court. In the case of *Madras Bar Association– MBA III*, this Court directed to consider 10 years' experience, after detail reasoning. [Paras 7.1, 7.2][321-C-F] A

Madras Bar Association v. Union of India & Anr.- MBA III (2017) 7 SCC 369 – relied on.

1.4 There is no reason to interfere with the impugned judgment and order passed by the High Court declaring Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as arbitrary, unreasonable and violative of Article 14 of the Constitution of India. The Central Government and the concerned State Governments have to amend Rules, 2020, more particularly, Rule 6(9) of the Rules, 2020, providing that the Selection Committee shall follow the procedure for appointment as per Model Rules, 2017 and to make the appointment of President and Members of the State Commission and the District Commission on the basis of the performance in written test consisting of two papers of 100 marks each and 50 marks for viva voce and the written test consisting of two papers may be as per the schemes enumerated. The Central Government and the concerned State Governments have also to come with an amendment in the Rules, 2020 to provide 10 years' experience to become eligible for appointment of President and Member of the State Commission as well as the District Commission instead of 20 years and 15 years respectively, provided in Rule 3(2)(b) and Rule 4(2)(c) which has been struck down to the extent providing 20 years and 15 years of experience, respectively. Till the suitable amendments are made in Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as above, in exercise of powers under Article 142 of the Constitution of India and to do complete justice, it is directed that in future and hereinafter, a person having bachelor's degree from a recognized University and who is a person of ability, integrity and standing, and having special B
C
D
E
F
G
H

- A knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the State Commission. Similarly, a person of a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the District Commissions. It is also directed under Article 142 of the Constitution of India that for appointment of President and Members of the State Commission and District Commission, the appointment shall be made on the basis of performance in written test consisting of two papers as per the scheme enumerated. The qualifying marks in each paper shall be 50 per cent and there shall be viva voce of 50 marks. [Paras 8, 8.1, 8.3][321-G-H; 322-A-B, F-H; 323-A-C, G]

Madras Bar Association v. Union of India & Anr. 2021

SCC OnLine SC 463; State of Uttar Pradesh v. All Uttar Pradesh Consumer Protection Bar Association (2018)

- E 7 SCC 423 : [2018] 4 SCR 503 – referred to.

Case Law Reference

	[2016] 8 SCR 851	relied on	Para 2.6
F	[2020] 2 SCR 246	relied on	Para 2.6
	[2018] 4 SCR 503	referred to	Para 6.2
	(2017) 7 SCC 369	relied on	Para 6.3
CIVIL APPELLATE JURISDICTION: Civil Appeal No. 831 of 2023.			
G	From the Judgment and Order dated 14.09.2021 of the High Court of Judicature at Bombay at Nagpur in WP No. 1096 of 2021.		

With

Civil Appeal Nos. 832 and 833 of 2023.

- H

R Venkataramani, A.G., Sanjay Jain, A.S.G., Ms. Sonia Mathur, Sr. Adv., Ms. Shraddha Deshmukh, Ms. Chinmayee Chandra, Sidhant Kohli, Chitvan Singhal, Ms. Mansi Sood, Amrish Kumar, Ms. Harshita Sukhija, Nishank Tripathi, Ms. Tanya Aggarwal, Arkaj Kumar, Padmesh Mishra, Yuvraj Sharma, Dr. Uday Prakash Warunjikar, Pravartak Suhas Pathak, Ms. Ankita Chaudhary, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Ms. Kirti Dadheech, Ms. Astha Sharma, Dr. Tushar Mandlekar, Ravinder Singh, Ms. Raveesha Gupta, Srisatya Mohanty, Sanjeev Kaushik, Mantika Haryani, Shreyas Awasthi, Himanshu Chakravarty, Devvrat Singh, Ms. Muskan Surana, Tejas Fadnavis, Yatin M. Jagtap, Sunil Kumar Sharma, Ms. Kashmira Lambat, Ms. Kishor Lambat, Sachin Pahwa, Vaishnavi Gupta, M/s. Lambat & Legiteam, Rameshwar Prasad Goyal, Gagan Sanghi, Ms. Ankita Chaudhary, Advs. for the appearing parties.

Gagan Sanghi, Ms. Swati P. (Intervenors)

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment and order dated 14.09.2021 passed by the High Court of Judicature Bombay at Nagpur Bench at Nagpur in Public Interest Litigation No. 11/2021 and Writ Petition No. 1096 of 2021, by which, the Division Bench of the High Court has struck down and has declared Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 (hereinafter referred to as the Rules, 2020) as arbitrary, unreasonable and violative of Article 14 of the Constitution of India, the Ministry of Consumer Affairs, Union of India and State of Maharashtra have preferred the present appeals.

2. In exercise of powers conferred by Sections 29 and 43, read with clauses (n) and (w) of Sub-section (2) of Section 101 of the Consumer Protection Act, 2019 (hereinafter referred to as the Act, 2019), the Ministry of Consumer Affairs, Food and Public Distribution (Department of Consumer Affairs) framed the Rules, 2020.

2.1 Rule 3 of Rules, 2020 provides for qualifications for appointment of President and members of the State Commission. Rule 3(2)(b)

- A provided that a person shall not be qualified for appointment as a member of the State Commission unless he possesses a bachelor's degree from a recognized university and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs....
- B 2.2 Rule 4 of Rules, 2020 provides for appointment of President and member of District Commission. Rule 4(2)(c) provided that a person shall not be qualified for appointment as a member of the District Commission unless he is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs.....
- C 2.3 Rule 6 of Rules 2020 provides for procedure for appointment. Rule 6(9) provided that the Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.
- D 2.4 Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) were the subject matter of challenge before the High Court being unconstitutional, arbitrary and violative of Article 14 of the Constitution of India. Rule 3, Rule 4, and Rule 6 reads as under: -
- E **“3. Qualifications for appointment of President and members of the State Commission.—(1)** A person shall not be qualified for appointment as President, unless he is, or has been, a Judge of the High Court;
- F (2) A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses—
 - (a) an experience of at least ten years as presiding officer of a district court or of any tribunal at equivalent level or combined service as such in the district court and tribunal:
- G Provided that not more than fifty percent of such members shall be appointed; or
 - (b) a bachelor's degree from a recognised university and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics,
- H

commerce, industry, finance, management, engineering, technology, A
public health or medicine:

(3) At least one member or the President of the State Commission shall be a woman.

4. Qualifications for appointment of President and member of District Commission.—(1) A person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge. B

(2) A person shall not be qualified for appointment as member unless he— C

(a) is of not less than thirty-five years of age;

(b) possesses a bachelor's degree from a recognised University; and

(c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine. D

(3) At least one member or the President of the District Commission shall be a woman. E

6. Procedure of appointment.—(1) The President and members of the State Commission and the District Commission shall be appointed by the State Government on the recommendation of a Selection Committee, consisting of the following persons, namely:— F

(a) Chief Justice of the High Court or any Judge of the High Court nominated by him- Chairperson;

(b) Secretary in charge of Consumer Affairs of the State Government “ Member;

(c) Nominee of the Chief Secretary of the State—Member. G

(2) The Secretary in charge of Consumer Affairs of the State Government shall be the convener of the Selection Committee.

(3) No appointment of the President, or of a member shall be invalid merely by reason of any vacancy or absence in the H

- A Selection Committee other than a vacancy or absence of the Chairperson.
 - (4) The process of appointments shall be initiated by the State Government at least six months before the vacancy arises.
- B If a post falls vacant due to resignation or death of a member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.
 - (5) The advertisement of a vacancy inviting applications for the posts from eligible candidates shall be published in leading newspapers and circulated in such other manner as the State Government may deem appropriate.
 - (6) After scrutiny of the applications received till the last date specified for receipt of such applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee.
 - (7) The Selection Committee shall consider all the applications of eligible applicants referred to it and if it considers necessary, it may shortlist the applicants in accordance with such criteria as it may decide.
- C
- D
- E The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.
- F The Selection committee shall recommend a panel of names of candidates for appointment in the order of merit for the consideration of the State Government.
 - (10) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.
 - (11) Every appointment of a President or member shall be subject to submission of a certificate of physical fitness as indicated in the annexure appended to these rules, duly signed by a civil surgeon or District Medical Officer.
- G
- H

(13) Before appointment, the selected candidate shall furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as a President or member.” A

2.5 The validity of the aforesaid rules, namely, Rules 3 (2)(b), 4(2)(c) and 6(9) were challenged before the High Court by the original writ petitioner on the following grounds: - B

(a) Uncontrolled discretion and excessive power to the selection committee to determine its procedure to recommend candidates to be appointed is arbitrary, unreasonable and in violation of Article 14 of the Constitution of India. C

(b) Considering the nature of work, the candidate’s competency needs to be tested before being recommended for the appointment to discharge judicial functions. Therefore, the candidates who are being appointed must have a legal background. D

(c) In the absence of the appointment of competent candidates, the object of the Consumer Protection Act is likely to be frustrated.

(d) The president and members of the State and District Commission are empowered with the powers of the Court. In the appointment of Judicial Magistrate First Class (JMFC), the candidates are tested by written examination and viva voce. E

(e) The Draft model rules approved by this Hon’ble Court and accepted by all the parties are not adhered with. Hence, contrary to the directions of this Hon’ble Court. F

(f) The transparency and selection criteria are absent in the said rules.

(g) In absence of transparency in the matter of appointments of Chairman and Members, there is strong apprehension of political and executive interference. G

2.6 It was also the case on behalf of the original writ petitioners before the High Court that this Court in the case of **State of Uttar Pradesh and Others Vs. All Uttar Pradesh Consumer Protection** H

- A **Bar Association; (2017) 1 SCC 444 (hereinafter referred to as the UPCPBA)**, directed to frame model rules under the Consumer Protection Act, 1986. Accordingly, model rules were framed by this Court and accepted by all the parties. It was also the case on behalf of the original writ petitioners that by adopting the model rules, many states
- B notified the Consumer Protection (Appointment, Salary, Allowance and Conditions of Service of President and Members of State Commission and District Forum) Rules, 2017 (hereinafter referred to as the Rules, 2017) on 18.05.2018. It was submitted that model rules 2012 were already in existence in the State of Maharashtra made on 03.01.2012 under Section 30 of the Consumer Protection Act, 1986 and the said Rules
- C already had the provision of written examination of 100 marks for aspiring candidates/applicants for the post of President and Members of District Consumer Forum under Rule 10. It was submitted that the Consumer Protection Act, 2019 (hereinafter referred to as the Act, 2019) came into force with effect from 20.07.2020 by repealing the erstwhile statute
- D Consumer Protection Act, 1986. It was also argued on behalf of the original writ petitioners that under the Rules 2020, the power conferred upon the Selection Committee to determine its own procedure for selection of President and Members of the District and the State Commission constituted under the Act, 2019 is in contravention of the decision of this Court in the case of **UPCPBA (supra)**. It was also argued on behalf of
- E the original writ petitioners that looking at the judicial functions to be performed by President and Members of the District and State Commissions constituted under the Act, 2019, the selection without holding written examination, but, only on the basis of *viva voce*, would result into selection of unsuitable candidates which will further result in denial of justice. It was also argued on behalf of the original writ petitioners that prescribing minimum experience of 20 years and 15 years for President and Members of State and District Commission respectively, is contrary to the directions issued by this Court in the case of **Madras Bar Association Vs. Union of India and Another; (2021) 7 SCC 369**.
- F That thereafter, by the impugned common judgment and order the High
- G Court has declared Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Rules, 2020 as *ultra-virus* and unconstitutional, unreasonable, arbitrary and violative of Article 14 of the Constitution of India and contrary to the observations and directions issued by this Court in the case of **UPCPBA (supra)**. The High Court has specifically observed that granting complete discretion under the Rules 2020 to the Selection Committee to determine
- H

its own procedure would result in creating a situation which has been narrated in the case of **UPCPBA (supra)** and will again lead to wide variations in standards as well as a great deal of subjective, bureaucratic and political interference, and finally it will result in denial of justice which will be in violation of Article 14 of the Constitution of India. That while holding the aforesaid provisions unconstitutional, unreasonable and arbitrary, the High Court has considered the historical background of tribunalisation and the fact that the tribunals are endowed with the judicial functions with a duty to decide the matters in judicious manner. Therefore, the High Court has opined and observed that the standards expected from the judicial members of the tribunals and standards applied for appointing such members, should be as nearly as possible as applicable to the appointment of judges exercising such powers. That thereafter, following the decisions of this Court in the case of **Madras Bar Association (supra)** and **UPCPBA (supra)**, the High Court has concluded and passed the final order as under: -

- i. "The Public Interest Litigation No. 11 of 2021 is allowed; D
- ii. The Writ Petition No. 1096/2021 is partly allowed;
- iii. It is held and declared that Rule 3(2)(b), Rule 4(2) (c) and Rule 6(9) of the Rules of 2020, are arbitrary, unreasonable and violative of Article 14 of the Constitution of India for the reasons recorded herein above and hence are quashed and set aside; E
- iv. The Union of India is directed to provide for appropriately made Rules as substitutes for Rule 3 (2)(b), Rule 4(2)(c) and Rule 6(9) of the Rules, 2020, declared unconstitutional, keeping in view the observations made in the judgment, within four weeks from the date of the judgment and order; F
- v. The vacancy notice dated 2nd February, 2021 issued by the respondent no. 2 for inviting applications for the post of Members of the State Commission and President and Members of the District Commission, is hereby quashed and set aside; G
- vi. The process of selection of Members of the State Commission and President and the Members of the District Commission, initiated in pursuance to the vacancy notice dated 2nd February, 2021, stands cancelled; H

- A vii. Fresh process of selection of members of the State Commission, President and the members of the District Commission be initiated in accordance with the amended Rules and completed at the earliest as directed by the Hon'ble Supreme Court of India;
- B viii. It is made clear that we have not dealt with the validity of appointment made of the President of State Commission, Maharashtra State;
- ix. No orders as to costs."
- C 2.7 The impugned common judgment and order passed by the High Court is the subject matter of present appeals.
3. Shri R. Venkataramani, learned Attorney General for India has submitted that after the matters were heard by this Court on 17.11.2022 and 18.11.2022, where this Court was of the *prima facie* view that Rule 6(9), which deals with the procedure of appointment, left too much discretion in the hands of the selection committee, and that there ought to have been some objective criteria on the basis of which the fitness and suitability of candidates be tested, such as a written examination. It is pointed out that based on the observations that fell from this Court on the previous dates of hearing, the matter was considered by the
- D Government and pursuant thereto, a meeting was called between the Union of India and all the State governments to consider the desirability and feasibility of conducting a written examination for appointment to the State and District Commissions, or in the alternate, to consider as to whether rules or guidelines can be made which would reduce the discretion available to the Search-cum-Selection Committees while
- E carrying out appointments. It is submitted that in the course of discussions between the States, it was observed that most states were not in favour of conducting written tests. It is submitted that based on the discussion in the said meeting, it was observed that a written examination for appointments of members of tribunals as a uniform policy would be neither
- F feasible nor desirable, due to, *inter alia*, the following reasons:
- (i) The number of vacancies to tribunals per year is very low, and in some tribunals only in single digits. It would not be economically or practically feasible to conduct an examination for five or six posts.,

- (ii) Most tribunals require appointment of members with expertise in varied relevant fields, such as consumer affairs, economics, law, securities, finance, telecom, electricity, and so on. A single written examination with a common syllabus would not be possible and one may have to conduct a different examination for each different area of expertise, which would make the whole process arbitrary and unwieldy. A
- (iii) Competent, eminent, and successful persons aged over thirty five or forty or even fifty may not be willing to write a written examination and then have their marks published openly, which would dissuade a large number of people who may be desirable from applying. B C
- (iv) Persons with experience of fifteen or twenty years may no longer have the requisite examination giving skills, and a written examination may unduly favour academics or researchers as opposed to people who are in the field practically or in a corporate environment or in some other non academic field. D
- (v) Conducting a written examination may lengthen the entire process of appointment, which already takes 4-6 months on account of the requirement of advertisement, public notice, receipt of applications and verification of documents, IB inputs, tax and medical reports, and then a personal interaction with the Selection Committee. This may end up increasing the number of vacancies in the tribunals, which is not desirable. E
- (vi) Prescribing a uniform requirement of a written examination across states would fail to take into account the local requirements of each state - for instance, the number of applications received in the smaller states such as Assam or Goa or Sikkim are very low, and sometimes even lesser than the number of posts advertised. A written examination may lead to greater difficulties in filling up the vacant posts. F G
- (vii) Prescribing a uniform requirement of a written examination across tribunals is also not considered desirable, as each tribunal has its own eligibility criteria and different categories of persons would fall in their zone of consideration. For H

- A instance, several posts can only be manned by retired judges, and it would not be appropriate to subject judges of the Supreme Court or the High Courts to a written examination. Equally, very few people are actually eligible to be appointed as technical members to specialised tribunals such as TDSAT or APTEL, and eminent persons in the field of telecom or electricity may not wish to write examinations to leave lucrative careers in their areas of expertise. This would lead to the tribunals losing out on desirable persons, who may otherwise wish to join these tribunals in the spirit of public service.
- B
- C 3.1 Shri R. Venkataramani, learned Attorney General for India has further submitted that based on the further discussions in the meeting held on 13.01.2023 between Union of India and all the States/UTs to consider the uniform measures to guide the Selection Committees in the exercise of their selection processes, it has been proposed that the
- D following proviso, to provide for the issuance of necessary instructions to guide the discretion available to the Selection Committee, could be considered to be inserted below Rule 6(9) of the Rules, 2020: -
- E “Provided that the Selection Committee shall be guided by the instructions, as may be issued, by order, by the Central Government from time to time, while making assessment of a candidate in regard to his suitability for appointment as President or member in the State Commission or the District Commission.”
- F 3.2 It is further submitted that in so far as the development of uniform measures to be applicable to appointments in the State Commissions and the District Commissions (President and Members) across the country is concerned, the following measures, keeping in view the level of the posts, the statutory functions to be discharged by the holders of these posts, the very objective enshrined in the Consumer Protection Act, 2019, are considered to be formulated:-
- G a. The selection of a candidate for appointment as the President or member in the State Commission or the District Commission may be based on the marks secured by him, out of a total of 100 marks. The total marks (100) may be the sum of; (i) 60 marks for an interview; and, (ii) 40 marks for certain special achievements of a candidate.
- H

- b. The aforesaid formulation, if found in order by this Hon'ble Court, can be treated as an instruction under the above said proviso. A
- c. The rationale behind the proposed distribution of marks in such a way where the interview component would outweigh the other, is to ensure the selection of the most suitable candidate, given the level of the posts and duties attached thereto. B
- d. The distribution of 40 marks for special achievements may be considered as under: C

S. No.	Criteria	Maximum Marks	Marking System
1.	Number of years of experience	15	<ul style="list-style-type: none"> (i) For the minimum number of years of experience required in terms of the rules governing the recruitment conditions - 10 marks (ii) For additional experience of every 2 years - 1 mark (maximum 5 marks). <p>In case of experience of fewer than 2 years, maximum marks for experience of 2 years i.e. 1 mark may be apportioned according to the number of years of experience. Experience of fewer than six months may be ignored for this purpose.</p>
2.	Higher Educational Qualifications	15	<ul style="list-style-type: none"> (i) For Graduate - 6 marks (ii) For Post Graduate – 6 marks (iii) For PhD. - 3marks
3.	Prior public service rendered	10	For every 4 years of regular service rendered in or under the Central/State Governments and Constitutional bodies - 2 marks (maximum 10 marks)

3.3 It is submitted that on an overall consideration of the deliberations, it appears that the conduct of a written test which has several handicaps will not be feasible and shall not be most suitable measure for the purpose of selection. G

4. While opposing the present appeals Dr. Uday Prakash Warnjikar and Dr. Tushar Mandalekar, learned counsel appearing on behalf of the respective respondents have vehemently submitted that in the facts and H

- A circumstances of the case the High Court has not committed any error in declaring Rule 3(2)(b) and Rule 4(2)(c) and Rule 6(9) of Rules, 2020 as arbitrary, unreasonable, and violative of Article 14 of the Constitution of India.
 - 4.1 It is submitted that the bone of contention of the present
- B respondent is to have the highest standards and strict scrutiny before the candidates are being appointed in the Consumer State Commission and District Commissions. It is submitted that the selection method under the Rules, 2020 and the process adopted by the appellant will lead to the appointment of incompetent candidates to adjudicate the consumer disputes. It is submitted that under Rule 6(9), the selection committee is empowered with uncontrolled discretionary powers to determine its procedure in the appointment of the President and Members of the State and District Commission. It is submitted that such delegation of uncontrolled powers will cause undesirable results.
- D 4.2 In support of their submissions that Rule 3(2)(b) and Rule 4(2)(c) and Rule 6(9) of Rules, 2020 are arbitrary, unreasonable, and violative of Article 14 of the Constitution of India, it is submitted as under:-
 - (a) That the selection method under Rules, 2020 confers uncontrolled discretion and excessive power to the selection committee to determine its procedure to recommend candidates to be appointed is arbitrary, unreasonable and in violation of Article 14 of the Constitution of India;
 - (b) Considering the nature of work, the candidate's competency needs to be tested before being recommended for the appointment to discharge judicial functions;
 - (c) In the absence of the appointment of competent candidates, the object of the Consumer Protection Act is likely to be frustrated;
 - (d) The president and members of the State and District Commission are empowered with the powers of the Court. In the appointment of Judicial Magistrate First Class, when the candidates are tested by written examination and viva voce, the similar procedure to be adopted for appointment in the District and State Commissions;
- H

(e) The transparency and selection criteria are absent in the Rules, 2020; A

(g) In absence of transparency in the matter of appointments of Chairman and Members, there is strong apprehension of political and executive interference.

4.3 It is further submitted that even the Law Commission in its 272nd Report suggested that the members of the newly constituted tribunals should possess the qualifications akin to the judges of the High Court and District Court. The Report further recommended uniformity in the appointments. B

4.4 It is further submitted that as such this Court in the case of **UPCPBA (supra)** directed to frame model rules under the Consumer Protection Act, 1986. It is submitted that by the said judgment, model rules were approved by this Court and accepted by all the parties. It is submitted by adopting the model rules, many states notified the Consumer Protection (Appointment, Salary, Allowances and Conditions of Service of President and Members of State Commission and District Forum) Rules, 2017 (hereinafter referred to as the Rules, 2017). It is further submitted that the State of Maharashtra also adopted and approved the model rules on 24.05.2019 in exercise of powers conferred under the provisions of the Consumer Protection Act, 1986. It is further submitted that even prior thereto, model rules 2012 were already in existence in the State of Maharashtra under Section 30 of the Consumer Protection Act, 1986 and the said rules already had the provision of written examination of 100 marks for aspiring candidates/applicants for the post of President and Members of District Consumer Forum under Rule 10. C D E

4.5 It is further submitted that as observed hereinabove this Court approved the uniform model rules for appointment, salary, service condition etc., for the effective adjudication of consumer disputes under the Act, 1986. The said model rules were adopted by all the parties. It is submitted that the adjudicatory powers of the consumer fora/commissions are judicial functions. There is no change in the judicial functions of the President and Members of the State and District Commission. There is no change in the judicial functions of President and Members of the State and District Commission even post-Consumer Protection Act, 2019 (Act, 2019) which have come into force with effect from 20.07.2020. It is submitted that there is no change in the legislative scheme concerning F G H

- A adjudication of consumer disputes under the Act of 2019. It is submitted that as such the Consumer Protection Act, 2019 has come into force with effect from 20.07.2020 by repealing the erstwhile statute Consumer Protection Act, 1986. It is submitted that the sole intention of the legislature is to provide adequate safeguards to the consumers due to drastic changes in the modern market and the constantly emerging vulnerability of the consumers. Under the Act, 2019, the pecuniary jurisdictions of the District and State Commissions are enhanced substantially. However, there is no substantial change in the scheme with respect to the adjudication of the consumer disputes. Therefore, consumer commissions are quasi-judicial authorities empowered to
- B discharge judicial functions with the adequate powers of the court, including civil and criminal.

- 4.6 It is submitted that under Section 71 of the Act, 2019, the Commissions are empowered with the powers of the civil court and under Section 72, the Commissions are empowered with the powers of JMFC. It is submitted that despite the above when the Rules, 2020 are framed by the Central Government in exercise of powers under Section 101 of the Act, 2019 which provides for the impugned Rule 3(2)(b) and Rule 4(2)(c) and Rule 6(9) made the things worse than the prevailing, prior to Rules, 2020.
- E 4.7 It is further submitted that therefore, when the State and the District Commissions are performing the quasi-judicial functions and judicial functions and exercising the powers of the Court, to test the competence of the candidate written examination and viva-voce would be necessary. Only interviews of the aspiring candidates would lead to political interference and undeserving results through such a selection process.
- 4.8 It is further submitted that Rule 6(9) provides uncontrolled discretion to the Selection Committee. Uncontrolled discretion in the matter of recommendations of candidates to be appointed to discharge judicial functions is in clear violation of Article 14 of the Constitution of India. It is submitted this Court in the case of **Madras Bar Association (supra)** declared that “Article 14 clearly includes a right to have the person’s rights adjudicated by a forum which exercises judicial powers in an impartial and independent manner, consistent with the recognized principles of adjudication.” It is submitted that in the present case under Rule 6(9) the Central Government has granted complete discretion to

determine the selection procedure without laying down criteria and standards and the same is unreasonable and arbitrary. A

4.9 It is further submitted that even the said provision is also unreasonable on the ground that there is no check and balance under Rules, 2020 over the Selection Committee. The Selection Committee has absolute discretion in the recommendations of the candidates. B

4.10 It is further submitted that there are four sources of candidates to be appointed as president and members of the Commissions, viz., serving judicial officers, retired judicial officers, advocates, or any other individuals having certain knowledge and experience. It is submitted that the Rules direct the selection committee to take into account suitability, a record of past performance, integrity and adjudicatory experience. The selection committee may consider the suitability of the retired or serving judicial candidates based on available record, however, the suitability of the candidates coming from non-judicial sources, cannot be determined without testing the overall competency. It is submitted that the appointments with bias and without transparency would frustrate the object of the Consumer Protection Act. C

4.11 It is further submitted that the Rules, 2020 as such nullify the judgment of this Court in the case of **UPCPBA (supra)**. D

4.12 It is submitted that as observed and held by this Court in the case of **Madras Bar Association Vs. Union of India & Anr.; (2021 SCC OnLine SC 463)** in Writ Petition (C) No. 502/2021 decided on 14.07.2021 that the permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the catena of decision which are as under: - E

“**44.** The permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:

a) The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. G

H

- A b) The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have been cured such that the basis of the judgement pointing out the defect is removed.
- B c) Nullification of mandamus by an enactment would be impermissible legislative exercise [See : *S.R. Bhagwat* (*supra*)]. Even interim directions cannot be reversed by a legislative veto [See : *Cauvery Water Disputes Tribunal* (*supra*) and *Medical Council of India v. State of Kerala*.
- C d) Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.”
- D 4.13 It is further submitted that even the criteria of having experience of minimum 20 years for appointment of Member in the State Commission under Rule 3(2)(b) and criteria of having experience of minimum 15 years for appointment of Member in District Commission as per Rule 4(2)(c) is absolutely arbitrary and illegal and unconstitutional
- E and contrary to the provisions of Article 217 and 233 of the Constitution of India. It is further submitted that even the same is violative of the judgment and order passed by this Court in the case of **Madras Bar Association** (*supra*).
- F 4.14 It is submitted that the High Court has rightly quashed the provision of Rule 4(2)(c) as the requirement of having experience of 15 years for a lawyer in order to get the appointment as Member in District Forum/Commission is arbitrary and illegal. It is submitted that even in accordance with the Article 233 of the Constitution of India a lawyer needs to have only seven years of practice as an advocate in High Court.
- G Even in according to the provisions of Rule 4(1) a person who is eligible to be appointed as a District Judge (having minimum experience of seven years as per Article 233 of Constitution of India) is qualified to be appointed as President of District Commission. But in order to be appointed as Member, the Section 4(2)(c) mandates a minimum experience of 15 years which is violative of Article 14 of the Constitution of India.
- H

4.15 It is further submitted that the scheme envisaged in appointment of President under Rule 3(1) for President of State Commission has a different criteria and that of Member under Rule 3(2)(b) is different and distinct. The person can be qualified to be a President if he is or has been a judge of High Court. However, in order to get appointment as a Member of State Commission the Rule 3(2)(b) mandates a minimum experience of 15 years, which is illegal and violative of Article 14, because the requirement of qualification and experience of a lawyer to get appointed as a High Court Judge is only ten years as per Article 217 of the Constitution of India. It is submitted that therefore, the High Court has rightly declared that Rule 3(2)(b) and Rule 4(2)(c) and Rule 6(9) of Rules, 2020 as ultra-virus, arbitrary and violative of the Article 14 of the Constitution of India. It is submitted that while holding so the High Court has discussed and considered the decision of this Court in the case of **Madras Bar Association (supra) : (2021) 7 SCC 369.**

4.16 Making the above submissions and relying upon the above decisions, it is prayed to dismiss the present appeals.

5. Heard Shri R. Venkataramani, learned Attorney General for India, appearing on behalf of the appellant(s) and Dr. Uday Prakash Warunjikar and Dr. Tushar Mandalekar, learned counsel appearing on behalf of the respective respondent(s).

6. By the impugned judgment and order the High Court has declared Rule 3(2)(b) and Rule 4(2)(c) and Rule 6(9) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as unconstitutional, arbitrary, and violative of Article 14 of the Constitution of India. Rule 3(2)(b) and Rule 4(2)(c) and Rule 6(9) of Rules, 2020 which are declared to be unconstitutional read as under: -

“3. Qualifications for appointment of President and members of the State Commission.—

XXX

(2) A person shall not be qualified for appointment as a member unless he is of not less than forty years of age and possesses—

XXX

- A (b) a bachelor's degree from a recognised university and is a person of ability, integrity and standing, and has special knowledge and professional experience of not less than twenty years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine;
- B **4. Qualifications for appointment of President and member of District Commission.**—(1) A person shall not be qualified for appointment as President, unless he is, or has been, or is qualified to be a District Judge.
(2) A person shall not be qualified for appointment as member unless he—

xxx

- D (c) is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than fifteen years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine.

xxx

- E **6. Procedure of appointment.**

xxx

- F (9) The Selection Committee shall determine its procedure for making its recommendation keeping in view the requirements of the State Commission or the District Commission and after taking into account the suitability, record of past performance, integrity and adjudicatory experience.

xxx

- G 6.1 While considering the correctness of the impugned judgment and order passed by the High Court and while considering the constitutional validity of Rule 3(2)(b) and Rule 4(2)(c) and Rule 6(9) of Rules, 2020, the earlier decisions of this Court, more particularly, the decision in the case of **UPCPBA (supra)** which was under the Consumer Protection Act, 1986 is required to be referred to. The issue with respect to the conditions of eligibility for appointment of non-judicial members was one of the issues before this Court in the case of **UPCPBA (supra)**. This
- H

Court earlier constituted a committee presided over by Mr. Justice Arijit Pasayat, a former Judge of this Court to examine various issues including the conditions of eligibility for appointment of non-judicial members. The Committee in its interim report observed that the Fora constituted under the Consumer Protection Act, 1986 do not function as effectively as expected due to a poor organizational set-up; grossly inadequate infrastructure; absence of adequate and trained manpower and “**lack of qualified members**” in the adjudicating bodies. This Court in paragraphs 4 to 6 noted and observed as under:

“**4.** The quality of presiding members, especially of non-judicial members at the State and district levels is poor. One of the reasons is that the remuneration which is being paid to non-judicial members of consumer for a varies from State to State and is too meagre to attract qualified talent. Most of the non-judicial members are not even capable of writing or dictating small orders. At certain places non-judicial members act in unison against the Presiding Officer, while passing orders contrary to law, damaging the reputation of the adjudicating body. The Presidents, as a result, prefer a situation where such non-judicial members absent themselves from work if only so that judicial work can be carried out by the Presiding Judge impartially and objectively. Many non-judicial members do not maintain punctuality and others attend to work sporadically once or twice a week. The Committee has observed that the problem lies in — (i) absence of proper remuneration; (ii) appointment of former judicial officers who lack motivation and zeal; (iii) appointment of practising lawyers as Presiding Officers of District Fora; and (iv) political and bureaucratic interference in appointments. Many of the non-judicial members attend to the place of work only to sign orders which have been drafted by the Presiding Officer.

5. The Committee has furnished concrete examples of how bureaucratic and political influence has marred the selection process as a result of which the functioning of consumer fora is detrimentally affected. Three instances furnished in the Report of the Committee provided a telling example of the state of affairs:

“(15) The Committee could make out that there has been considerable bureaucratic and political influence/interference in the “selection process” and functioning of the consumer fora.

- A Just to cite a few instances, the Committee found that relatives of politicians, bureaucrats and judicial fraternity have been selected. A non-Judicial Member Mr Jamal Akhtar posted at District Forum, Meerut has been absenting without permission since 11-5-2015. The State Government has failed to take any action against him.
- B Even the plea of the President, State Commission has gone unheeded. The result is that his post has not been declared vacant and another non-Judicial Member posted elsewhere has been attached in his place.
- (16) One non-Judicial Member who had her first term at Lucknow and has now been enjoying her second term, having been appointed for District Forum, Barabanki but has been attached to Greater Noida and as per the reports, comes to Forum once or twice a week. Another woman non-Judicial Member who happens to be wife of a bureaucrat was appointed for District Forum, Baghpat but was attached/posted at Greater Noida. These few instances make it crystal clear that there is definite political influence and interference and in such a scenario, the work of District Consumer Fora is affected as it results in lowering the morale of the President.
- (17) In Haryana, a non-Judicial Woman Member did/does not attend the District Forum regularly, as she has to travel around 150/160 km every day. The President of one District Forum who happens to be former President of Bar Association has been serving the second term as President. Such non-Judicial Members manage to get selected and then misuse their position as Members, as they call themselves “Judges” .
- F 6. The selection of persons as Presiding Officers and as Members of the fora lacks transparency without a fixed criteria for selection. The Committee has, in our view with justification, proposed that a written test should be conducted to assess the knowledge of persons who apply for posts in the District Fora. Issues of conflict of interest also arise when persons appointed from a local area are appointed to a District Forum in the same area.”
- G Ultimately in paragraph 28, this Court issued the following directions: -
- H

“28.1. The Union Government shall for the purpose of ensuring uniformity in the exercise of the rule-making power under Section 10(3) and Section 16(2) of the Consumer Protection Act, 1986 frame model rules for adoption by the State Governments. The model rules shall be framed within four months and shall be submitted to this Court for its approval; A

28.2. The Union Government shall also frame within four months model rules prescribing objective norms for implementing the provisions of Section 10(1)(b), Section 16(1)(b) and Section 20(1)(b) in regard to the appointment of members respectively of the District Fora, State Commissions and National Commission; B

28.3. The Union Government shall while framing the model rules have due regard to the formulation of objective norms for the assessment of the ability, knowledge and experience required to be possessed by the members of the respective fora in the domain areas referred to in the statutory provisions mentioned above. The model rules shall provide for the payment of salary, allowances and for the conditions of service of the members of the consumer fora commensurate with the nature of adjudicatory duties and the need to attract suitable talent to the adjudicating bodies. These rules shall be finalised upon due consultation with the President of the National Consumer Disputes Redressal Commission, within the period stipulated above; C

28.4. Upon the approval of the model rules by this Court, the State Governments shall proceed to adopt the model rules by framing appropriate rules in the exercise of the rule-making powers under Section 30 of the Consumer Protection Act, 1986; D

28.5. The National Consumer Disputes Redressal Commission is requested to formulate regulations under Section 30-A with the previous approval of the Central Government within a period of three months from today in order to effectuate the power of administrative control vested in the National Commission over the State Commissions under Section 24-B(1)(iii) and in respect of the administrative control of the State Commissions over the District Fora in terms of Section 24-B(2) as explained in this judgment to effectively implement the objects and purposes of the Consumer Protection Act, 1986.” E

F

G

H

- A 6.2 That thereafter, vide a further order dated 18.05.2018 **State of Uttar Pradesh Vs. All Uttar Pradesh Consumer Protection Bar Association – Civil Appeal No. 2740/2007 reported in (2018) 7 SCC 423**, this Court considered the draft model rules which were framed by the Union of India. Before this Court the model rules came to be accepted by the counsel representing all the parties before the Court.
- B Therefore, this Court directed that the State Governments shall frame appropriate rules in exercise of the rule-making power under Section 30 of the Consumer Protection Act, 1986 in accordance with the Final Draft Model Rules submitted by the Union of India. It appears that thereafter many States notified the Consumer Protection (appointment, salary, allowances and conditions of service of President and Members of the State Commission and District Forum) Rules, 2017. Rules, 2017 which were adopted provided that in every cases, the selection of Members of the District Fora and State Commission shall be on the basis of a written test of two papers (Rules 5 and 7). It appears that even the State of Maharashtra also adopted and approved the model rules on 24.05.2019 and framed Rules, 2019 which had a written examination of 200 marks. It provided that State Commission shall hold the final examination of 250 marks for the post of Members. Out of 250 marks, 200 marks shall be for written examination and 50 marks shall be for viva-voce examination.
- C In the case of **Madras Bar Association (supra) decided on 27.11.2020 – (2017) 7 SCC 369**, this Court directed that while considering Tribunal/Appellate Tribunal and other Authorities (Qualifications, Experience and other conditions of Service of Members), the Rules, 2020 shall be amended to make advocates with an experience of at least 10 years eligible for appointment as judicial members in the tribunals. That thereafter, the Central Government framed Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 which fell for consideration before this Court in **Writ Petition (C) No. 502/2021 decided on 14.07.2021 – 2021 SCC Online SC 463**. In the said decision this Court also considered the permissibility of legislative override. After considering catena of decisions of this Court on
- D G permissibility of legislative override this Court observed and held in paragraphs 42 to 44 as under: -
- E “42. The judgment of this Court in **Madan Mohan Pathak v. Union of India (1978) 2 SCC 50** requires a close scrutiny as it was adverted to and relied upon by both sides. A writ petition was filed in the High Court of Calcutta for a mandamus directing the Life

Insurance Corporation (LIC) to act in accordance with the terms of settlement dated 24.01.1974 read with administrative instructions dated 29.03.1974. The writ petition was allowed by the learned single Judge against which a Letters Patent Appeal (LPA) was preferred by the LIC. During the pendency of the LPA, the LIC (Modification of Settlement) Act, 1976 came into force. The LPA was withdrawn in view of the subsequent legislation and the decision of the learned single Judge became final. Validity of the said statute was assailed in a writ petition filed under Article 32 by the employees of the LIC. Justice Bhagwati, speaking for the majority, was of the opinion that the judgment of the Calcutta High Court was not a mere declaratory judgment holding an impost or tax as invalid so that a validating statute can remove the defect pointed out in the judgment. He observed that the judgment of the Calcutta High Court gave effect to the rights of the petitioners by mandamus, directing the LIC to pay annual cash bonus. As long as the judgment of the learned single Judge is not reversed in appeal, it cannot be disregarded or ignored. The LIC was held to be bound by the writ of mandamus issued by the Calcutta High Court. Justice Beg, in his concurrent opinion, held that the rights which accrued to the employees on the basis of the mandamus issued by the High Court cannot be taken away either directly or indirectly by subsequent legislation. Thereafter, Madan Mohan Pathak (*supra*) came up for discussion in Sri Ranga Match Industries v. Union of India 1994 Supp(2) SCC 726. Justice Jeevan Reddy was of the opinion that the Madan Mohan Pathak case cannot be treated as an authority for the proposition that mandamus cannot be set aside by a legislative act. Justice Hansaria was not in agreement with such view. Relying upon the judgment of this Court in A.V. Nachane v. Union of India (1982) 1 SCC 205, Justice Hansaria held that the legal stand taken by Justice Beg in the Madan Mohan Pathak case had received majority's endorsement and it was because of this that retrospectivity given to the relevant rule assailed in A.V. Nachane was held to have nullified the effect of the writ and was accordingly invalid. In view of the difference of opinion, the matter was referred to a larger bench. We are informed by the learned Amicus Curiae that the difference of opinion could not be resolved as the case was settled out of court.

A

B

C

D

E

F

G

H

- A 43. In Virender Singh Hooda (2004) 12 SCC 588, this Court did not accept the contention of the petitioners therein that vested rights cannot be taken away by retrospective legislation. However, it was observed that taking away of such rights would be impermissible if there is violation of Articles 14, 16 or any other constitutional provision. The appointments already made in implementation of a decision of this Court were protected with the reason that “the law does not permit the legislature to take away what has been granted in implementation of the Court’s decision. Such a course is impermissible.” This Court in Cauvery Water Disputes Tribunal 1993 Supp (1) SCC 96 (2) declared the ordinance which sought to displace an interim order passed by the statutory tribunal as unconstitutional as it set aside an individual decision *inter partes* and therefore, amounted to a legislative exercise of judicial power. When a mandamus issued by the Mysore High Court was sought to be annulled by a legislation, this Court quashed the same in S.R. Bhagwat v. State of Mysore (1995) 6 SCC 16 on the ground that it was impermissible legislative exercise. Setting at naught a decision of the Court without removing the defect pointed out in the judgment would sound the death knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the Government to defy a law and yet to get away with it.⁵⁰
- B
- C
- D
- E
- F 44. The permissibility of legislative override in this country should be in accordance with the principles laid down by this Court in the aforementioned as well as other judgments, which have been culled out as under:
- G
- H
- a) The effect of the judgments of the Court can be nullified by a legislative act removing the basis of the judgment. Such law can be retrospective. Retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution.
- b) The test for determining the validity of a validating legislation is that the judgment pointing out the defect would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the Court at the time of rendering its judgment. In other words, the defect pointed out should have

been cured such that the basis of the judgement pointing out the defect is removed. A

c) Nullification of mandamus by an enactment would be impermissible legislative exercise [See: S.R. Bhagwat (*supra*)]. Even interim directions cannot be reversed by a legislative veto [See : Cauvery Water Disputes Tribunal (*supra*) and Medical Council of India v. State of Kerala (2019) 13 SCC 185]. B

d) Transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India.” C

6.3 In the said decision, this Court struck down and declared that first proviso to Section 184(1) of the Finance Act, 2017, which provided for 50 years minimum age for appointment as Chairman or Member as unconstitutional by observing that the said first proviso to Section 184 (1) is in violation of the doctrine of separation of powers as the judgment of this Court in the case of **Madras Bar Association Vs. Union of India & Anr. – MBA III - (2017) 7 SCC 369** decided on 27.11.2020, has been frustrated by an impermissible legislative override. D

6.4 Taking into consideration the aforesaid decisions, the High Court in the impugned judgment and order has rightly observed and held that Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Rules, 2020 which are contrary to the decisions of this Court in the cases of **UPCPBA (*supra*)** and the **Madras Bar Association (*supra*)** are unconstitutional and arbitrary. E

6.5 Even otherwise also we are of the opinion that Rule 6(9) lacks transparency and it confers uncontrolled discretion and excessive power to the Selection Committee. Under Rule 6(9), the Selection Committee is empowered with the uncontrolled discretionary power to determine its procedure to recommend candidates to be appointed as President and Members of the State and District Commission. The transparency and selection criteria are absent under Rule 6(9). In absence of transparency in the matter of appointments of President and Members and in absence of any criteria on merits the undeserving and unqualified persons may get appointment which may frustrate the object and purpose of the Consumer Protection Act. It cannot be disputed that the Commissions are empowered with the powers of court and are quasi- F

G

H

- A judicial authorities and empowered to discharge judicial powers with the adequate powers of the court including civil and criminal. Therefore, the standards expected from the members of the tribunal should be as nearly as possible as applicable to the appointment of judges exercising such powers. Under Rule 6(9) of Rules, 2020, the Selection Committee is having power to determine its own procedure. Such provisions are also giving excessive and uncontrolled discretionary powers to the Selection Committee. As rightly observed and held by the High Court, considering the object on behalf of the Consumer Protection Act, 2019, such uncontrolled discretion power to determine its procedure for making its recommendation for appointment of President and Members of the District and the State Commissions is arbitrary and unreasonable. It is always desirable that while making the appointment as Members of the District Fora and/or the State Commission there is a need to assess the skill, ability, and the competency of the candidates before they are empanelled and recommended to the State Government. The Rules, 2020 do not contemplate written examination so as to test the merits of the candidate. In the case of **UPCPBA (supra)**, this Court expressed deep concern over the bureaucratic and political interference in process of appointments.

6.6 At this stage, it is required to be noted that mechanism of having written examination was confirmed by this Court which has been removed under the new Rules, 2020.

6.7 At this stage, it is required to be noted that earlier under Consumer Protection Act, 1986, there were Rules, 2017 in so far as some of the States are concerned and Rules, 2019 so far as the State of Maharashtra is concerned, which provided for a written examination and viva voce, which was under the Consumer Protection Act, 1986.

6.8 The Consumer Protection Act, 1986 has been repealed and the Consumer Protection Act, 2019 has come into force w.e.f. 24.07.2020 with a sole intention to provide adequate safeguards to the consumers and the pecuniary jurisdiction of the District Fora and State Commissions are enhanced substantially. However, there is no substantial change in the scheme with respect to the adjudication of the consumer disputes. No justification at all is shown to do away with the written examination while framing the Rules, 2020 under the Consumer Protection Act, 2019. Therefore, as rightly observed by the High Court, the Rule 6(9) of the Rules, 2020 is unconstitutional, arbitrary and violative of Article 14 of

the Constitution of India, more particularly, when the same is wholly impermissible to override/overrule the earlier decisions of this Court and that too without any justification. We are in complete agreement with the view taken by the High Court.

7. Now so far as the Rule 3(2)(b) and Rule 4(2)(c) of the Rules, 2020 are concerned, the High Court has rightly quashed the said provisions which provided for having a minimum 20 years' experience for appointment as a Member in State Commission under Rule 3(2)(b) and having a minimum 15 years' experience for appointment as a Member in District Commission under Rule 4(2)(c).

7.1 It is required to be noted that under provision 4(1) of Rules, 2020, a person who is eligible to be appointed as a district judge (having minimum experience of 7 years) is qualified to be appointed as President of the District Commission but in order to be appointed as a Member, Section 4(2)(c) mandates a minimum experience of 15 years which is rightly held to be violative of Article 14 of the Constitution.

7.2 Similarly providing 20 years' experience under Rule 3(2)(b) also rightly held to be arbitrary and violative of Article 14 of the Constitution. It is required to be noted that under Section 3(2)(b), a presiding officer of a Court having experience of 10 years is eligible for becoming President of the State Commission. Even under Section 3(1) a judge of the High Court, present or former, shall be qualified for appointment of the President. As per Article 233 of the Constitution, a lawyer needs to have only 7 years of practice as an advocate in High Court. Under the circumstances to provide 20 years' experience under Rule 3(2)(b) is rightly held to be unconstitutional, arbitrary and violative of the Article 14 of the Constitution of India. We are in complete agreement with the view taken by the High Court. At this stage, it is required to be noted that in the case of **Madras Bar Association (supra)** – **MBA III**, this Court directed to consider 10 years' experience, after detail reasoning.

8. In view of the above and for the reasons stated above, we see no reason to interfere with the impugned judgment and order passed by the High Court declaring Rule 3(2)(b), Rule 4(2)(c) and Rule 6(9) of the Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as arbitrary, unreasonable and violative of

A

B

C

D

E

F

G

H

- A Article 14 of the Constitution of India. The Central Government and the concerned State Governments have to amend Rules, 2020, more particularly, Rule 6(9) of the Rules, 2020, providing that the Selection Committee shall follow the procedure for appointment as per Model Rules, 2017 and to make the appointment of President and Members of the State Commission and the District Commission on the basis of the performance in written test consisting of two papers of 100 marks each and 50 marks for viva voce and the written test consisting of two papers may be as per the following schemes: -
- B

	Paper	Topics	Nature of test	Max. marks	Duration
C	Paper-I	(a) General Knowledge and current affairs (b) Knowledge of Constitution of India (c) Knowledge of various Consumers related Laws as indicated in the Schedule	Objective Type	100	2 hours
D	Paper-II	(a) One Essay on topics chosen from issues on trade and commerce consumer related issues or Public Affairs. (b) One case study of a consumer case for testing the abilities of analysis and cogent drafting of orders.	Descriptive type	100	3 hours
E					

- 8.1 The Central Government and the concerned State Governments have also to come with an amendment in the Rules, 2020 to provide 10 years' experience to become eligible for appointment of President and Member of the State Commission as well as the District Commission instead of 20 years and 15 years respectively, provided in Rule 3(2)(b) and Rule 4(2)(c) which has been struck down to the extent providing 20 years and 15 years of experience, respectively. Till the suitable amendments are made in Consumer Protection (Qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal of President and Members of State Commission and District Commission) Rules, 2020 as above, in exercise of powers under Article 142 of the Constitution of India and to do complete justice, we direct that in future and hereinafter, a person having bachelor's
- F
 - G
 - H

degree from a recognized University and who is a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the State Commission. Similarly, a person of a person of ability, integrity and standing, and having special knowledge and professional experience of not less than 10 years in consumer affairs, law, public affairs, administration, economics, commerce, industry, finance, management, engineering, technology, public health or medicine, shall be treated as qualified for appointment of President and Members of the District Commissions. We also direct under Article 142 of the Constitution of India that for appointment of President and Members of the State Commission and District Commission, the appointment shall be made on the basis of performance in written test consisting of two papers as per the following scheme: -

Paper	Topics	Nature of test	Max. marks	Duration
Paper-I	(a) General Knowledge and current affairs (b) Knowledge of Constitution of India (c) Knowledge of various Consumers related Laws as indicated in the Schedule	Objective Type	100	2 hours
Paper-II	(a) One Essay on topics chosen from issues on trade and commerce consumer related issues or Public Affairs. (b) One case study of a consumer case for testing the abilities of analysis and cogent drafting of orders.	Descriptive type	100	3 hours

8.3 The qualifying marks in each paper shall be 50 per cent and there shall be viva voce of 50 marks. Therefore, marks to be allotted out of 250, which shall consist of a written test consisting two papers, each of 100 marks and the 50 marks on the basis of viva voce.

Present appeals are disposed of in terms of the above directions.