



Amrut

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 539 OF 2024**

NELLY HELEN PEREIRA E DSILVA ... Petitioner

VersusTHE STATE OF GOA, THR.
CHIEF SECRETARY AND ANR. ... Respondents

Mr A. F. Diniz, Senior Advocate with Mr Ryan Menezes and Mr Nigel Fernandes, Advocates for the Petitioner.

Mr Manish Salkar, Government Advocate for the Respondents.

CORAM: **M. S. KARNIK &
VALMIKI MENEZES, JJ****DATED :** **29th JULY 2024****ORAL ORDER (Per M. S. Karnik, J)**

1. Heard learned Senior Advocate Mr Diniz for the Petitioner and learned Government Advocate Mr Salkar for the Respondents.

2. The Petitioner is working as a Member of the South Goa District Consumer Dispute Redressal Forum. The Petitioner was appointed by an order dated 26.07.2019 for a term of five years. Section 10 of the Consumer Protection Act, 1986 provided for composition of the District Forum. The appointment of the Petitioner was made by the State Government on the

recommendation of the selection committee constituted in terms of sub section (1)(a) of Section 10 of the Act 1986. The Petitioner's appointment was for a period of five years and her term is to expire on 31.07.2024.

3. The Consumer Protection Act, 2019 was brought into force on 09.08.2019. The Consumer Protection (Qualification for Appointment, Method of Recruitment, Procedure of Appointment, Term of Office, Resignation and Removal of the President and Members of the State Commission and District Commission) Rules, 2020 (the Rules of 2020 for short) were brought into force w.e.f. 15.07.2020. Without going into detail, suffice it to observe that Rules 3(2)(b), 4(2)(c) and 6(9) of Rules of 2020 were challenged in this Court. By judgment and order dated 14.09.2021, which is at page 50 of the paper book, Rules 3(2)(b), 4(2)(c) and 6(9) were struck down. The SLP filed against the said judgment before the Supreme Court was rejected.

4. Rules 6(1) and 10(2) of the Rules of 2020 were amended which came to be challenged before the Bombay High Court. The Bombay High Court struck down Rules 6(1) and 10(2) of the Rules 2020 by judgment and order dated 20.10.2023 which is at page 144 of the paper book. The SLP filed against the said judgment and order dated 20.10.2023 before the Supreme Court

is pending. By order dated 10.11.2023, the Supreme Court at Para 10 observed thus:

10. Appointments were made by the State Government on 5 October 2023 after the judgment was reserved by the High Court on 01 September 2023 but before it was pronounced on 20 October 2023. Since the persons who are working at present would stand to be removed as a consequence of the impugned judgment of the High Court, we direct that the interim stay which was granted by the High Court shall continue to remain in operation till 24 November 2023.

5. It is seen that applications for intervention were filed by the intervenors before the Hon'ble Supreme Court. Further orders came to be passed. The relevant portion of the order dated 27.06.2024 passed by the Hon'ble Supreme Court in the said applications reads thus:

"We have perused the interim order dated 10th November 2023. We make it clear that the benefit of the interim order will be available to those Presidents/Chairpersons and Members who were

actually in service on the date of the impugned judgment i.e., 20th October, 2023 provided their second term has not expired. We make it clear that the benefit of interim relief granted vide order dated 10th November 2023 will not be available to those who have completed their second term. We also make it clear that those who are yet to complete their second term, may complete it in terms of the interim order. But they will cease to be the Presidents or Members, as the case may be, immediately on completion of their second term. In short, no one is entitled to continue for the third term/extension on the basis of the interim order of this Court.”

6. The term of the Petitioner is to expire on 31.07.2024. Learned Senior Advocate Mr Diniz submitted that the Petitioner is eligible for reappointment. It is further submitted that the Petitioner is the only woman member of the South Goa District Consumer Dispute Redressal Commission. It is submitted that the selection committee cannot meet in view of the interim order of the Supreme Court. It is further submitted that since the Supreme Court has protected those members whose second term has not expired or till they reached the age of 65 years, even the present Petitioner should be protected.

7. Sub-section (2) of Section 28 which forms part of Chapter IV of the Act, 2019, provides that each District Commission shall consist of --(a) a President; and (b) not less than two and not more than such number of members as may be prescribed, in consultation with the Central Government. Clause (3) of Rule 4 of Rules 2020 provides that at least one member or the President of the District Commission shall be a woman.

8. We may also refer to Rule 10 of the Rules 2020 which provides for term of office of President or Member. Clause (2) thereof provides that every member of the State Commission and the President and every member of the District Commission shall hold office for a term of five years or upto the age of sixty-five years, whichever is earlier and shall be eligible for reappointment for another term of five years subject to the age limit of sixty-five years, and such reappointment shall be made on the basis of the recommendation of the Selection Committee.

9. Learned Government Advocate Mr Salkar vehemently opposed the petition. It is submitted that the question of reappointment of the Petitioner will arise only after the selection committee meets. According to him, merely because the Petitioner is about to complete the first term the Petitioner will not confer any right to reappointment. It is further submitted by Mr Salkar

that the provisions of Section 32 of the Act of 2019 clearly provides that if, at any time, there is a vacancy in the office of the President or member of a District Commission, the State Government may, by notification, direct- (a) any other District Commission specified in that notification to exercise the jurisdiction in respect of that district also; or (b) the President or a member of any other District Commission specified in that notification to exercise the powers and discharge the functions of the President or member of that District Commission also. This provision according to Mr Salkar clearly indicates that continuation of the Petitioner is not necessary as the expiry of her term will not have any effect on the working of the commission. Mr Salkar also relied upon provisions of Section 36 of the Act of 2019 to submit that every proceeding before the District Commission shall be conducted by the President of that Commission and at least one member thereof, sitting together; meaning thereby that if the District Commission already has a President and Member in place, the requirement of third Member is not necessary.

10. We are not in agreement with the learned Senior Advocate Mr Diniz that the interim order of the Hon'ble Supreme Court will cover the Petitioner's case. The Petitioner's term is yet to expire. The first term expires on 31.07.2024. It is not as if the Petitioner has been reappointed and her second term is in progress

so as to cover the Petitioner's case by the interim order of the Hon'ble Supreme Court. We find force in the submission of Mr Salkar, learned Government Advocate in this regard.

11. However, we find force in the submissions of Mr Diniz that clause (3) of Rule 4 of the Rules 2020 contemplates that at least one member or the President of the District Commission shall be a woman. The Petitioner is a woman member and her term is expiring on 31.07.2024. The Petitioner is not reappointed. Rule 10 contemplates that the Petitioner shall be eligible for reappointment for another term of five years subject to the age limit of sixty five years and such reappointment shall be made on the basis of the recommendation of the Selection Committee. No doubt this stage is yet to reach. The SLP is pending before the Hon'ble Supreme Court. Thus, we find that though in view of clause (2) of Rule 10, the Petitioner shall be eligible for reappointment for another term of five years, for such Selection Committee to meet and make recommendation may take time. The Selection Committee is presently not in a position to make any recommendations. We are of the opinion that as the selection cannot proceed, the functioning of the commission should not be affected. Presently the Petitioner is discharging her duties and is eligible for reappointment subject to her selection by the committee. There is nothing on record to demonstrate that the

work or conduct of the Petitioner is such as would dissuade us from exercising discretion in favour of the Petitioner. Merely because the provisions of Sections 32 and 36 relied upon by learned Government Advocate provide for the arrangement to be made for the functioning of the District Commission and proceedings before the District Commission can be undertaken by any District Commission specified in that notification, is no reason to disturb the present arrangement in the functioning of the Commission as continuing the present arrangement is in the larger interest of the litigants. The need for the Petitioner to continue in the interregnum far outweighs the contention of the Respondents that the Petitioner can seek reappointment for a second term only on a recommendation of the Selection Committee, which cannot meet for the present in view of the pending challenge.

12. Learned Senior Advocate Mr Diniz submits that the Petitioner is willing to continue as a member on the same terms and conditions as she is presently working.

13. We therefore propose to pass the following order:

(a) The Petitioner shall continue as a Member of the South Goa District Consumer Redressal Commission after the expiry of her term subject to

the outcome of the proceedings before the Hon'ble Supreme Court;

(b) The Petitioner shall continue purely as a temporary measure on the same terms and conditions she is presently working;

(c) It is made clear that the Petitioner shall not claim any equity while seeking reappointment on the strength of the present arrangement which is made to obviate inconvenience to the litigants and so as to not disturb the functioning of the Commission in these facts;

(d) Liberty to the Respondents to apply for modification on conclusion of proceedings before the Hon'ble Supreme Court. It will be open for the Respondents to proceed with the selection of a member when the occasion so arises.

14. The petition is disposed of in the above terms. No costs. Liberty to apply.

VALMIKI MENEZES, J

M. S. KARNIK, J