

ITEM NO.1 Court 7 (Video Conferencing) SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SUO MOTO WRIT PETITION (CIVIL NO. 2/2021

In RE: Inaction of the Governments in appointing
President and Members/Staff of Districts and State
Consumer Disputes Redressal Commission and inadequate
infrastructure across India Petitioner(s)

VERSUS

Union of India and ors. & ORS. Respondent(s)

(MR. GOPAL SANKARANARAYANAN, LEARNED SENIOR ADVOCATE ALONGWITH MR.
ADITYA NARAIN, LEARNED ADVOCATE IS AMICUS IN INSTANT MATTER.)

Date : 11-08-2021 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE HRISHIKESH ROY

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Mr. Arjun Jain, Adv.
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For Respondent(s) Mr. K. K. Venugopal, AG
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Mr. Geo Joseph, Adv.

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Mr. P. P. Nayak, Adv.

Mr. Kuldeep Singh Kuchalia, Adv.

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Mr. Pratap Singh Gill, Adv.

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Ms. Vandana Hooda, Adv.

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Mr. Rahul Khurana, Adv.

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Mr. Manoj Kumar Singh, Adv.

Mr. Arjun Nanda, Adv.

Ms. Simran Agarwal, Adv.

Mr. Surjendu Sankar Das, AOR

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Ms. Vishaka, Adv.

Mr. Vikas Mahajan, Sr. Adv./AAG
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Mr. Vinod Sharma, AOR
Mr. Surinder Singh Manak, Adv.

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Mr. Shubhranshu Padhi, AOR
Mr. Ashish Yadav, Adv.
Mr. Rakshit Jain, Adv.
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Mr. G. Prakash, AOR
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Mr. Kabir Shankar Bose, Adv.

Mr. Jatinder Kumar Sethi, D.AAG
Mr. Rajeev Kumar Dubey, Adv.
Mr. Ashiwan Mishra, Adv.
Mr. Kamendra Mishra, AOR

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Mr. Harpreet Singh Gupta, Adv.
Mr. Manish Kumar, AOR

Mr. Aravindh Selvaraj, AOR

UPON hearing the counsel the Court made the following
O R D E R

The empowerment of the consumers has been a continuing process with the coming into force of the Consumer Protection Act, 1986 and its current legislative version in the Consumer Protection Act, 2019. That is the Legislative intent. However, the ground reality is quite different as there is little endeavour to translate this Legislative intent into an administrative infrastructure with requisite facilities, members and staff to facilitate the decision on the consumer complaints. Statistics can be deceptive but sometimes statistics reveal the truth. The position prevalent in the State Consumer Forums and the District Consumer Forums is best reflected by the statistics of existing vacancies, insofar as the Chairman and the members are concerned. A Chart has been prepared by the learned Amicus Curiae reflecting the position as under:

"II. Status of vacancies in State Commissions

S. No.	Name of State/UT	Date on which response filed	President: Whether post occupied	Member: Total posts notified as per S.42(3) (b)	Member vacancies: Current+ potential (next months) 6
1.	A&N Islands	09.04.2021 05.08.2021	Yes ^s	NA (4 existing) ^s	4 ^s
2	Andhra Pradesh	09.04.2021 28.07.2021	Yes	4	3+1
3.	Assam	09.04.2021	Yes	Not done	2

				(2 existing)	
4.	Bihar	09.04.2021	Yes	NA	4
5.	Chandigarh	11.04.2021	Yes	4	2 [#]
6.	Dadra & Nagar Haveli	09.03.2021	No	4(2 existing)	4
7.	Delhi	05.05.2021 10.08.2021	Yes	NA (4 existing)	3
8.	Goa	29.04.2021	Yes	4	3
9.	Gujarat	09.04.2021	Yes	8	2+1
10.	Haryana	30.03.2021	Yes	4	1
11.	Himachal Pradesh	09.04.2021 26.04.2021	No	NA (2 existing)	0
12.	Jharkhand	03.05.2021 05.08.2021	No	4	2+2
13.	Lakshadweep	31.03.2021 04.05.2021	Yes	2	2
14.	Madhya Pradesh	22.03.2021 05.07.2021	Yes	Not done	3
15.	Maharashtra	23.04.2021	No	11	6+1
16.	Manipur	09.04.2021	No	NA (2 existing)	0+1
17.	Meghalaya	09.04.2021	No	4	4
18.	Mizoram	09.04.2021 13.07.2021	Yes	Not done (2 existing)	1
19.	Nagaland	09.04.2021	No	2	0
20.	Odisha	09.04.2021 04.08.2021	Yes	4	4
21.	Puducherry	06.07.2021	Yes	Not done (2 existing)	2+2 [#]
22.	Punjab	09.04.2021 28.06.2021	No (fell vacant in July 2021)	4	2
23.	Rajasthan	27.04.2021	Yes	10	3
24.	Sikkim	09.04.2021 09.08.2021	Yes*	Not done (2 existing + 2 proposed)	1+2 [#]
25.	Tamil Nadu	22.07.2021	Yes	NA(2existing)	NA
26.	Telangana	03.04.2021	Yes	NA(2existing)	1
27.	Tripura	09.04.2021	Yes*	4	0
28.	Uttar Pradesh	01.03.2021 25.06.2021	Yes	4	0+1
29.	Uttarakhand	04.05.2021	Yes	4	3
30.	West Bengal	04.05.2021	Yes	Not done (10 existing)	2

II. Status of vacancies in District Commissions

S. No.	Name of State/UT	Date on which response filed	No. of Districts	No. of District Commissions	President vacancies: No. of current + potential (next 6 months)	Member posts: Total posts notified as per S.28(2) (b)	Member vacancies: No. of current + potential (next 6 months)
1	Andhra Pradesh	09.04.2021 28.07.2021	13	17	12+1	34	34

2	Arunachal Pradesh	02.06.2021	25	18+7 (to be set up)	0	54	18
3	Assam	09.04.2021	33	23	3	2	14
4	Bihar	09.04.2021	38	38	23	NA	56
5	Chhattisgarh	26.04.2021	28	27	1+1	54	27
6	Dadra & Nagar Haveli	09.03.2021	3	3	2	NA (6 existing)	6
7	Delhi	05.05.2021 10.08.2021	11	10	7	NA (20 existing)	11
8	Gujarat	09.04.2021	33	26	10+3	52	22
9	Haryana	30.03.2021	22	22	9+3	44	18+4
10	Himachal Pradesh	09.04.2021 26.04.2021	12	Whole time:4 Clubbed:8	2 0(no post)	NA (8 existing) NA(16 existing)	2 3
11	Jharkhand	03.05.2021 05.08.2021	24	24	24	48	45+3
12	Karnataka	30.04.2021	31	33(incl 4 additional)	19	66	34
13	Kerala	31.05.2021	14	14	5	28	1+2
14	Lakshadweep	31.03.2021 04.05.2021	1	1	1	2	2
15	Madhya Pradesh	22.03.2021 05.07.2021	52	51(incl 3 additional)	7+4	102	57+9
16	Maharashtra	23.04.2021	36	40	11+2	80	12+1
17	Manipur	09.04.2021	16	3	3	NA (6 existing)	0
18	Meghalaya	09.04.2021	11	11	4	22	22
19	Mizoram	09.04.2021 13.07.2021	11	8	1	Not done (2 existing)	2
20	Nagaland	09.04.2021	12	11	1	24	6+1
21	Odisha	09.04.2021 04.08.2021	30	31	25+1	62	23+19
22	Puducherry	06.07.2021	2	1+1 [#]	1+1	2	1+1
23	Punjab	09.04.2021 28.06.2021	22	20	9	40	30+5
24	Rajasthan	27.04.2021	33	37	10+3	74	12+1
25	Sikkim	09.04.2021 09.08.2021	4	4	0	8	1
26	Tamil Nadu	22.07.2021	NA	NA	NA	NA	NA
27	Telangana	03.04.2021	31	12	1+1	NA	7+1

						(24 existing)	
28	Tripura	09.04.2021	8	4	0	NA (8 existing)	2+1
29	Uttar Pradesh	01.03.2021 25.06.2021	75	79	9+13	158	44+40
30	Uttarakhand	04.05.2021	13	13	1+1	26	19+1
31	West Bengal	04.05.2021	23	28	7	Not done (50 existing)	3+2

We have endeavoured to hear different States and have emphasized that the States should give their inputs in time so that a picture up to date is presented before us by the learned Amicus Curiae and last minute filing of the affidavits by the States is not acceptable.

On hearing learned Amicus Curiae, we consider it appropriate to issue the following directions to all the States *qua* the issue of appointment of Chairman and Members of the State and District Commissions:

1) Some of the States have not notified the rules under Section 44 of the Consumer Protection Act, 2019. List of these are as under:

"VIII. List of States/UTs that have not yet framed Rules under S.44 of the Consumer Protection Act, 2019 for salaries, allowances and other terms & conditions of service of the President and Members of the State Commission

1. Chandigarh
2. Dadra & Nagar Haveli
3. Gujarat
4. Haryana

5. Himachal Pradesh
6. Lakshadweep
7. Madhya Pradesh
8. Maharashtra
9. Meghalaya
10. Mizoram
11. Nagaland
12. Puducherry
13. Punjab
14. Sikkim
15. Telangana
16. Tripura
17. Uttar Pradesh
18. West Bengal

Status not known for the following States/UTs:

1. A&N Islands
2. Bihar
3. Manipur
4. Rajasthan"

We direct all the States and Union Territories should notify the rules within two weeks from today.

- 2) In order to take care of the position, where still the States dilly dally on the issue of notifying the Rules, we further direct that in the eventuality of the rules under Section 44 of the said Act not being notified within two weeks, the model rules framed by the Government of India will automatically kick off and apply to the concerned States and Union Territories i.e. Consumer Protection and (Salary, allowances and Conditions of service of President and Members of the State Commission and District Commission) Model Rules, 2020.
- 3) In view of the large number of vacancies existing, we direct that all the existing and potential vacancies

should be advertised, if not already advertised, within a period of two weeks. The position of these vacancies is as reflected in the chart prepared by the Amicus Curiae:

"X. List of States/UTs that have not yet advertised existing and potential vacancies in terms of Rule 6(6) of the 2020 Rules:

1. Bihar
2. Chandigarh
3. Dadra & Nagar Haveli
4. Goa
5. Gujarat
6. Haryana
7. Himachal Pradesh
8. Lakshadweep
9. Madhya Pradesh
10. Manipur
11. Mizoram
12. Nagaland
13. Odisha
14. Puducherry
15. Sikkim
16. Tamil Nadu
17. Uttarakhand
18. West Bengal

Status not known for the following States/UTs:

1. A&N Islands
2. Rajasthan
3. Telangana
4. Tripura

- 4) It appears that some of the States and Union Territories have not constituted the Selection Committees. Particulars of these are as under:

"IX. List of States/UTs that have not yet set up a Selection Committee in terms of Rule 6(1) of 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 ("2020 Rules"):

1. Assam
2. Chandigarh
3. Haryana
4. Himachal Pradesh
5. Lakshadweep
6. Madhya Pradesh
7. Manipur
8. Mizoram
9. Puducherry
10. Tamil Nadu

Status not known for the following States/UTs:

1. A&N Islands
2. Telangana
3. Tripura"

The States/ Union Territories are directed to constitute the Selection Committees within four weeks from today.

- 5) All the vacancies whether for the post of President or Members should be finally filled up by the 30 States and Union Territories within a maximum period of eight weeks from today.
- 6) It appears that some of the States are seeking to give an excuse of the matter being held up of selection as the number of posts have not been prescribed/sanctioned in consultation with the Central Government as mandated under Section 42(3)(b) of the said Act. Section 42 deals with the establishment of State Consumer Disputes Redressal Commission and reads as under:

"Section 42 - Establishment of State Consumer Disputes Redressal Commission.

(1) xxx xxx

(2) xxx xxx

(3) Each State Commission shall consist of-

- (a) xxx xxx
- (b) not less than four or not more than such number of members as may be prescribed in consultation with the Central Government."

A reading of the aforesaid provision shows that the mandate is of each State Commission to consist of a President and not less than four members i.e. insofar as the President and four Members are concerned, it is the Legislative mandate. It is only if the number of Members have to be more than four, that such number of Members may be prescribed in consultation with the Central Government. If the State feels that the number of members have to be more than four, that process of discussion cannot derail the process of appointment of President and four members in any case.

- 7) Insofar as the infrastructure and man power requirements are concerned, it appears that as usual most of the affidavits have been filed at the last minute resulting in the inability of the Amicus Curiae in presenting the appropriate picture before us. We are unwilling to countenance such last minute rush of affidavits which derails the effective hearing before this Court when this Court is spending so much time on aspects which really Administration should be doing. We thus, direct that updated position on these aspects should be furnished to the Amicus within two weeks from today, if not already

given, to facilitate the learned Amicus Curiae to assist us in this behalf also. We also take note of his submission in this behalf that for example the post of Registrar is stated to be not have been notified practically all over the State of Uttar Pradesh. Such aspects should never arise. The information *qua* infrastructure should *inter alia* include the aspect whether the premises are rented or owned by the Government. If rented, the location of the rented premises.

- 8) At this stage, learned Amicus Curiae points out that so far as this aspect of infrastructure and man power is concerned, it is appropriate that the response is in a particular format to facilitate preparation of chart in assisting the Court. The format for the same will be circulated by tomorrow in a Google Form. We once again emphasis that wherever the learned Amicus Curiae requires the response in a particular format, the States are bound to respond in that format.

We are informed that out of the six vacancies of the NCDRC which were still to be filled in as noticed in para 13 of our order dated 22.02.2021 and were stated to be still lying with the ACC from July, 2020 as on that date, four vacancies have been filled in leaving two vacancies. One other person has also demitted the office

making it three vacancies now. We are of the view that there is no reason why the Central Government should take more time to fill up the vacancies and thus, the schedule aforesaid laid down for the State Governments to fill the vacancies shall equally apply to the Central Government.

We now turn to an aspect of a part of our order dated 22.02.2021, more specifically, paras 4 to 8. The subject matter for observations was the issue of a Legislative Impact Study and whether the same was undertaken before the new Act of 2019 came into place. This was in the context that the new Act expanded the jurisdiction of the consumer forums which would result in the litigation shifting to the Consumer Tribunals apart from the aspect of the variation in the pecuniary jurisdiction by increasing the jurisdiction of the District and State forums. The latter would also again result in cases being transferred to these forums. Unfortunately, none of this was done before the Act came into force.

The affidavit now filed on behalf of the Union of India affirmed on 05.05.2021, makes a reference to a post facto exercise after the Act has come into force and that too only in respect of the increase in pecuniary jurisdiction. Most of the States have responded to the same.

The Central Government is stated to be assisting the States by a Scheme titled as "Computerization and Computer Networking of Consumer Commissions" (CONFONET) which was

started in 2004-2005 and has been continuing since then. This provides ICT infrastructure to Consumer Commissions and replaces old infrastructure, provides HR support by deployment of technical man power to enable/monitor computer based system in each and every Consumer Commission in India, provides an online module of case monitoring system, facilitate reporting and monitoring at all levels, strengthen transparency and accountability in judicial system etc. This Scheme is stated to be fully funded by the Central Government and is being implemented through the NIC. This being the position, learned Amicus Curiae rightly points out that in this response which has now been called for from the States to be furnished in two weeks, they would inform as to whether they have utilized this opportunity and the funding provided by the Central Government and in what manner.

We are thus, of the view that at least now a comprehensive Legislative Impact Study should be done post the legislation as what has been done by writing a letter post facto is only about the pecuniary jurisdiction. It does not deal with the aspects referred to in para 5 of our order dated 22.02.2021 but is confined only to para 6. The Study should be undertaken and placed before us within four weeks.

The task in this behalf of the Central Government is simpler as Mr. Jatinder Kumar Sethi, learned Deputy Additional Advocate General for the State of Uttarakhand points out that in terms of a judgment of this Court, the past cases will remain in the existing foras and only the future cases will be

filed in a consumer forum. If that be the position, an assessment can easily be made of how many more cases would arise in these foras henceforth to make necessary arrangements for infrastructure and man power.

In the end, learned Amicus Curiae points out that our first direction dated 22.02.2021 calling upon the States to furnish the information to the National Commission within two weeks' time about position of vacancies of the same being uploaded on the website of the National Commission is only partly complied with because some of the States are stated not to have so communicated. The States will duly communicate within two weeks from today failing which they will be treated as in breach of our directions.

In order to ensure that all the aforesaid directions are complied with, we direct that the concerned Chief Secretaries of the States in case of non-compliance within the time frame stipulated by us aforesaid will attend the virtual Court proceedings and so would be the position for Union of India where the concerned Secretary would be the Secretary, Consumer Affairs.

Mr. Gopal Sankaranarayanan, learned Amicus Curiae submits that somehow the Union Territory of Jammu & Kashmir and Union Territory of Ladakh have not responded. Needless to say, they are equally bound to respond to the learned Amicus Curiae and thus, Mr. Aman Lekhi, learned Additional Solicitor General will ensure that the two Union Territories also respond in terms of aforesaid paragraphs.

List on 10.11.2021.

Liberty to the Amicus Curiae to mention and seek directions if the States are not following the schedule laid down by this Court.

[ASHA SUNDRIYAL]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)