

**D.B. Binu vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1806362](https://sooperkanoon.com/1806362)

**Court :** Kerala

**Decided On :** Dec-07-2020

**Judge :** Honourable Smt. Justice P.V.Asha

**Appeal No. :** WP(C)/20141/2020

**Appellant :** D.B. Binu

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE SMT. JUSTICE P.V.ASHA MONDAY,  
THE 07TH DAY OF DECEMBER 2020 / 16TH AGRAHAYANA, 1942  
PETITIONER: D.B. BINU BEENA SADANAM, THIRUMALABHAGAM  
P.O. CHERTHALA, ALAPPUZHA DISTRICT, KERALA 688 540. BY  
ADVS. SRI.P.CHANDRASEKHAR SRI.P.V.VIJU RESPONDENT:  
STATE OF KERALA REPRESENTED BY ITS SECRETARY,  
CONSUMER AFFAIRS DEPARTMENT, GOVERNMENT  
SECRETARIAT, THIRUVANANTHAPURAM 695 001. R1 BY  
SRI.RANJITH THAMPAN,ADDL.ADVOCATE GENER ADV.SRI.SABU  
GEORGE, SRGP. THIS WRIT PETITION (CIVIL) HAVING COME UP  
FOR ADMISSION ON 07.12.2020, THE COURT ON THE SAME DAY

DELIVERED THE FOLLOWING:

## JUDGMENT

Dated this the 07th day of December 2020

The Government had issued Ext.P1 notification dated 10.02.2020 inviting applications for selection and appointment to the post of President of Consumer Disputes Redressal Forum, Ernakulam. The last date fixed for receipt of application was on 12.03.2020. The petitioner submitted his application, as he is fully qualified in tune with the notification. The qualification fixed for the applicants as per Ext.P1 notification was: District Judge/Retired District Judge/those who are having the qualification for appointment as District Judge. The tenure of appointment was fixed as 5 years or till 65 years of age which ever is earlier. Those who have qualification for appointment as District Judge were directed to furnish their bio-data along with qualifying certificates to the Secretary, Department of Consumer Affairs, Government Secretariat, Thiruvananthapuram. The District Judges/Retired

District Judges were to submit an application to the Registrar of the High Court of Kerala, Ernakulam. It was stated that the appointment would be made after conducting an interview by the selection committee to be appointed by the Government, from among the applicants who submitted applications from all sources. Even though the petitioner submitted his application on 04.03.2020, no action was taken thereafter. The petitioner points out that based on applications invited as per Ext.P6 and similar notifications, appointment of Presidents of CDRFs were made in Thiruvananthapuram, Idukki, Thrissur, Palakkad, Kozhikode and Kannur. At the same time appointments are not made in Ernakulam, Malappuram and Alapuzha.

2. The respondent has filed a statement stating

that the Government had taken hasty steps for filling up the vacancies of Presidents in Thiruvananthapuram, Thrissur and Kannur Districts, conducting

interview for selection. It is stated that the interview for selection to the post of President in the Consumer Disputes Redressal Forum, Kozhikode was fixed on 22.02.2020 but it could not be conducted because of COVID-19 pandemic. It is stated that pursuant to Ext.P1 notification for selection for appointment in Consumer Disputes Redressal Forum, Ernakulam, the Government received 32 applications including that of the petitioner. But interview could not be conducted due to the out break of COVID-19 pandemic. It is further stated that the Consumer Protection Act, 1986 was replaced as per Section 107 of the Consumer Protection Act, 2019 which came into force on 20.07.2020. Under Section 102 of the Consumer Protection Act, 2019, the State Government may by notification frame rules for carrying out the provisions of the Act. It is stated that the State Government has not framed the Rules and only thereafter further steps can be taken

in the matter of appointment.

It is also stated

Commission as well as State Commission are to be determined in accordance with Section 29 read with 101 of the Central Act. It is also stated that the respondent is not in a position to continue the selection process on account of the repealing of the 1986 Act.

3. Sri.P.Chandrasekhar, the learned counsel appearing for the petitioner points out that when

the vacancy arose on 13.02.2020 and when the notification was issued at a time when the 1986 Act was in force appointments are liable to be made in accordance with the pre-amended rules. It is also pointed out that there is no change in respect of the qualification in the new Act or conditions of service of the President, though there is a change in the nomenclature of the District authority from Forum as Commission. It is also pointed out that so far no Commission is established in the State and no change is effected to the existing Forums.

4. At the same time Sri. M.R. Sabu, learned Senior Government Pleader, points out that there is a vast difference in the selection committee to be

constituted under the new Act. The selection can be conducted only by a selection committee consisting of Chief Justice or a nominated judge in his place and the Secretary to Consumer Affairs Department and Chief Secretary and his nominee. It was argued that the State Government has to frame rules/regulations for the same and selection has to be made in tune with the provisions in the 2020 Act and Rules and the rules to be framed by Government.

5. Admittedly the Consumer Protection Act, 2019 ('the 2019 Act') came into force, in supercession of the Consumer Protection Act, 1986. Some of the provisions of the 2019 Act came into force with

effect from 15.07.2020 and some provisions

were established in each district of the State under Section 9 of the 1986 Act. In this context it is necessary to have a comparative analysis of the provisions contained in both the Acts with respect to the selection and appointment of Presidents of the district Forum/Commission.

6. Section 28 of the Consumer Protection Act, 2019 under Chapter IV, provides for establishment of District Consumer Disputes Redressal Commission, which reads as follows;

28. (1) The State Government shall, by notification, establish a District Consumer Disputes Redressal Commission, to be known as the District Commission, in each district of the State: Provided that the State Government may, if it deems fit, establish more than one District Commission in a district.

(2) 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.

7. Section 29 enables the Central Government to make rules to provide for qualifications, method of recruitment, procedure for appointment, term of office, resignation and removal of the President and members of the District Commission.

As per Section 31 which is the Transitional provision, any person appointed as President or, as the case may be, a

member of the District Commission immediately before the commencement of this Act shall hold office as such as President or, as the case may be, as member till the completion of his term for which he has been appointed. The Central Government has, in exercise of its powers conferred under Section 29 and 43 read with Clauses (n) and (w) of Sub Section

(2) of Section 101 of the Consumer Protection Act

2019(35 of 2019) framed the Consumer P

office, resignation and removal of the President and

members of the State commission and

follows; 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-

(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.

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

8. Under the repealed Consumer Protection Act,

1986, composition of District Forum, the qualification, constitution of selection committee and procedure for appointment were provided under Section 10 which read as follows; 10. Composition of the District Forum: Each District Forum shall consist of,-

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, one of whom shall be a woman, who shall have the following qualifications, namely:-

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a

recognised university, (iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration: Provided that a persons shall be disqualified for appointment as a member, if he-

(a) has been convicted and sentenced to imprisonment fo an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent court; or

(d) has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or

(f) has such other disqualifications as may be prescribed by the State Government;

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

(i) President of the State Commission Chairman.

(ii) Secretary, Law Department of the State

Member. (iii) Secretary, incharge of the Department Member: dealing with consumer affairs Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

(2) Every member of the District Forum shall

hold office for a term of five years or up to the age of sixty-five years, whichever is earlier: Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he

fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub- section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee: Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned. Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection(Amendment) Act, 2002, shall continue to hold such

office as President or member, as the case may be, till the completion of his term.

(3) The salary or honorarium and other

allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government: Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.

9. The procedure of appointment is given in Rule 6 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, which reads as follows: 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:-

(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.

(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 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(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.

(10) 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.

(11) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.

(12) 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.

(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.

10. Rule 7 of the Kerala Consumer Protection Rules, 2005, provided for appointment of whole-time members in the District Forum which read as follows: 7. Appointment of whole-time members in the District Forum:-

(1) Appropriate panel of candidates for

consideration of appointment as whole-time member in the District Forum shall be called for by the Department in charge of Consumer Affairs in Government from the concerned District Collectors and District Collectors may, after due publicity, furnish a short listed panel of candidates not exceeding five candidates per vacancy, with relevant documents and details to the Government after verification and scrutiny of the qualifications and other eligibility criteria prescribed in the Act and these Rules: Provided that the Government Department dealing with consumer Affairs may, if necessary, advertise directly for the purpose.

(2) The panel of sitting Judges/Retired District Judges and persons qualified to be appointed as District Judges shall be obtained from the High Court of Kerala for consideration of appointment to the post of President.

(3) The category wise panel so obtained,

after further scrutiny and short listing, with all relevant documents and details shall be placed before the Selection Committee at the appropriate time by the Convener of the Selection committee and the Selection Committee shall finalise a panel of category wise candidates, by adopting such methods as the Selection Committee may deem fit, and the list of qualified candidates so finalized, shall be sent for consideration of appointment by Government. The Secretary to Government in charge of the Department dealing with Consumer Affairs in the State shall be the Convener of the Selection Committee.

11. On examination of the provisions contained

in the 2019 Act and 2020 Rules as well

qualifications prescribed, there is vast difference in the procedure for appointment provided under the new Act and the old Act. Therefore I am of the view that no direction can be issued to make appointments in accordance with the repealed 1986 Act, as claimed by the petitioner. Though applications were invited by publication, it is seen

that the procedure provided for selecti

sources, the composition of the selection committee, etc, are different in the new Rules.

12. As pointed out by the learned counsel for

the petitioner the State Government has not so far established the District Commission as provided in Section 28 of the Act. It is pertinent to note that nothing is stated in the Act relating to the change of nomenclature of the existing District Forums as District Consumer Redressal Commissions. I am of the view that the contention of the learned counsel that appointments are to be made in accordance with the notification already issued, since the 2019 Act does not have any retrospective effect, cannot be accepted, as there is a vast difference in the procedure for selection for the appointment. Though the learned Counsel for the

petitioner argued that the rules as on the date of occurrence of vacancy should govern the method of appointment as well as manner in which selection is to be conducted and that as on 13.02.2020, when the vacancy arose, the 2019 rules had not come into force, I find that such a proposition cannot be accepted unless there is such a provision in the rules governing appointment, as held in a series of judgments of the Apex Court. Appointments can be made only in accordance with the rules in force at the time of appointment. In the present case the interview is not yet over. A candidate who has only submitted an application for selection and appointment to a post cannot have any right to insist that appointment has to be made in

accordance with the rules as on the

provides for appointment of the President or Members of the Commission, based on the provisions in the repealed Act or rules. The provisions relating to transition or the saving provisions also do not provide for the same.

13. The Government has to take steps in tune

with the provisions contained in the 2020 Rules. As pointed out by the learned Government Pleader, Government is yet to frame Rules. It is seen that Section 102(1) of the Act provides as follows;

102. Power of State Government to make rules.- (1) The State Governments may, by notification, make rules for carrying out the provisions of this Act: Provided that the Central Government may, frame model rules in respect of all or any of the matters with respect to which the State Government may make rules under this section, and where any such model rules have been framed in respect of any such matter, they shall apply to the State until the rules in respect of that matter is made by the State Government and while making any such rules, so far as is practicable, they shall conform to such model rules. XXXXXXX

14. Therefore the State Government need not wait for framing of the Rules for filling up the

vacancies in the post of President.

It is seen th

Judges to the Registrar of the High Court. However the applications already submitted before the registrar of the High Court and can be forwarded to the Convener. The State Government shall also issue a notification inviting applications for the post in tune with the provisions in Rule 4 of Ext.P3 Rules-Consumer Protection (qualification for appointment, method of recruitment, procedure of appointment, term of office, resignation and removal President and Members of the State Commission and District Commission) Rules, 2020 and make selection in accordance with the 2020 Rules. Though the learned Counsel for the petitioner argued that the rules as on the date of occurrence of vacancy should govern the method of appointment as well as manner in which selection is to be conducted and that as on 13.02.2020, when the vacancy arose, the 2019 rules had not come into force, I find that such a proposition cannot be accepted unless there is such a provision in the rules governing appointment, in view of the judgments of the Apex Court in *Deepak Agarwal v. State of U.P.*: (2011) 6 SCC 725, *State of Tripura v. Nikhil Ranjan Chakraborty*: (2017) 3 SCC 646, *Rajasthan State Sports Council v. Uma Dadhich*,

(2019) 4 SCC 316, *State of Orissa v. Dhirendra Sundar Das*, (2019) 6 SCC 270, etc., appointments can be made only in accordance with the rules in force at the time of appointment. In the present case the

interview is not yet over. An applicant for a post cannot have any right to insist that appointment has to be made in accordance with the rules as on the date of occurrence of vacancy, at this stage. Though there is no retrospective effect to the Act and though the Commission is not established so far and nothing is stated in the Act about the change of nomenclature of the existing District Forum as District Commission, no provision is available for appointment of the President or Members based on the repealed Act. The provisions relating to transition or the saving provisions also do not provide for the same. At any rate the 2019 Act or 2020 Rules do not envisage a situation of keeping the vacancies unfilled. Provisions in the rules would show that the intention is not to keep vacancies unfilled, as steps for selection are to be taken at a time when there is 6 months for the retirement/vacating of the office by the present incumbent. In view of the

provisions contained in Section 102 of the Act, according to which the State Government shall follow the model rules framed by

Central Government, till rules are framed by State

Government to take expeditious steps to fill up the vacancy of President in Ernakulam District in accordance with the model rules framed by Government at the earliest. Respondents would be free to call for applications by issuing an addendum notification, proceed with the process of selection and to make appointments in accordance with the provisions contained in the 2019 Act as well as in the 2020 Rules at the earliest and at any rate within a period of three months from the date of receipt of a copy of the judgment. Sd/- P.V.ASHA JUDGE DM

APPENDIX PETITIONER'S EXHIBITS: EXHIBIT P1 TRUE COPY OF NOTIFICATION DATED 10.2.2020 FOR THE SELECTION OF PRESIDENT IN CDRF, ERNAKULAM. EXHIBIT P2 TRUE COPY OF APPLICATION SUBMITTED BY THE PETITIONER WITHOUT ITS ANNEXURES DATED 4.3.2020. EXHIBIT P3 TRUE COPY OF NOTIFICATION DATED 15.07.2020 ISSUED BY THE MINISTRY OF CONSUMER AFFAIRS. EXHIBIT P4 TRUE COPY OF NOTIFICATION DATED 29.7.2020 ISSUED BY THE MINISTRY OF CONSUMER AFFAIRS. EXHIBIT P5 TRUE COPY OF REPRESENTATION DATED 22.9.2020 SENT BY THE PETITIONER ALONG WITH ITS POSTAL RECEIPT WITHOUT ITS ANNEXURES. EXHIBIT P6 TRUE COPY OF NOTIFICATION FOR APPOINTMENT OF PRESIDENTS OF CDRFS IN THIRUVANANTHAPURAM IDUKKI, THRISSUR, PALAKKAD, KOZHIKODE AND KANNUR DISTRICTS DATED 09.10.2019. EXHIBIT P7 TRUE COPY OF NOTIFICATION FOR APPOINTMENT OF RESIDENT OF CDRF IN MALAPPURAM DISTRICT DATED 13.11.2019. EXHIBIT P8 TRUE COPY OF NOTIFICATION FOR APPOINTMENT OF PRESIDENT OF CDRF IN ALAPUZHA DISTRICT DATED 19.6.2019. EXHIBIT P9 TRUE COPY OF THE LETTER NO.CA1/11/2020CAD DATED 02/11/2020 OF THE ADDITIONAL SECRETARY TO GOVERNMENT, DEPARTMENT OF CONSUMER

AFFAIRS THIRUVANANTHAPURAM.

//TRUE COPY// PA TO JUDGE

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