Before Swatanter Kumar & Rajive Bhalla, JJ.

NATIONAL CONSUMER AWARENESS GROUP (REGD.),—*Petitioner*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

C.W.P. No. 174 of 2004

27th May, 2004

Constitution of India, 1950—Art. 226—Consumer Protection Act, 1986—Ss. 16(1)(a) and 16(1)(b) & 16—A (as inserted by Amending Act No. 62 of 2002)—Appointment of President, State Commission—Delay—Public Interest Litigation—S. 16(1)(a) provides that no appointment of the President shall be made except after consultation with the Chief Justice of the High Court—Expression "except after consultation with the Chief Justice"— Meaning and scope of, stated—"Consultation" places an obligation upon the State to seek advice of the C.J. and accept the same with due precedence except in very compelling reasons—State Government would not exceed the limits of its authority in that event even if it suggests another name for appointment—State is entitled to put forward its view and refer the matter to the C.J. for reconsideration—If recommendation is reiterated by the C.J. then the State Government is obliged to give effect to the view expressed by the C.J.—No amendment/alteration in provisions of S. 16(1)(a) of the Act—No effect of the amended provisions of S. 16 upon the statutory scheme provided u/s 16(1)(a) for appointment of President—State directed to take all steps to make appointment of President, State Commission expeditiously and within one month of judgment.

Held, that in no uncertain terms that consultation would obviously be purposeful and the view of the Chief Justice essentially should take precedence while considering the appointment of the Chairman of the Commission. The consultation places an obligation upon the State to seek the advice of the Chief Justice and accept the same with due precedence unless the State had compelling reasons to request the Chief Justice for reconsideration of the suggested name. The State would not exceed the limits of its authority in that event

even if it suggests another name for appointment to the post of President of the Commission. It will better serve the object of the Act as well as the decision making process, if the process for appointment to this post is initiated at the end of the Chief Justice. The precedence is a valuable term and should be understood objectively.

(Para 20)

Further held, the possibility of varied opinions cannot be oblitrated particularly when it is for good and valid reasons. The difference of opinion, if any, must be resolved by mutual discussion, objective and purposeful approach. But, in any case, to break this dead lock finality of opinion must be indicated. In our opinion, the final say in the matter of appointment of the President of the Commission must rest with the Chief Justice. To demean the opinion of the Chief Justice without any strong and cogent reasons would not be a fair practice and would also reasult in undermining the dignity of judiciary and in all probability would hamper proper administration of justice.

(Paras 22 & 23)

Further held, that the provisions of Section 16(1)(a) are unambiguous and so clear in their language that their implementation in consonance with the law would no way be difficult or impracticable. To create an impediment in the smooth operation of the provisions, on the strength of Section 16(1-A) of the Act would defeat the object of the statute, independence of judiciary and would produce undesirable results. The provisions of the amended section should be permitted to operate for and in relation to the appointment of Members of the Commission alone. Section 16(1)(a) controls the entire procedure for appointment to the post of President of the Commission and these are substantive provisions in that behalf. The provisions of Section 16(1-A) are in any case regulatory and procedural. They provide for a methodology, which should be adopted for appointment of the Members of the Commission. Once the appointment of the President is made in conformity with the provisions of Section 16(1)(a), it obviously would amount to substantial compliance of even other provisions.

(Para 38)

Further held, that independence of Judiciary and majesty of law certainly envisage that appointment to the judicial forum of President of the Commission should be made in conformity with the

provisions of Section 16(1)(a) of the Act with definite precedence to the opinion of the Chief Justice. The proposal for this post should normally be initiated by the Chief Justice, so as to avoid unnecessary delay in appointments. Administrative harmony between the two essential components involved in the process of this appointment i.e. the Chief Justice and the State should act in conformity to the law and principles of mutuality to achieve the object of appointing the most befitting person to this coveted post.

(Para 42)

Rajesh Bindal, Advocate, and Rakesh K. Nagpal, Advocate, *for the petitioner.*

Ashok Aggarwal, Advocate General Haryana, with J.S. Sidhu, DAG, Haryana.

M.L. Sarin, Sr. Advocate, with H.S. Giani and Hemant Sarin, Advocate, *for the respondents.*

JUDGMENT

SWATANTER KUMAR, J.

(1) National Consumer Awareness Group (Regd.), hereinafter referred to as the Organisation, the petitioner, claims to be a voluntary Organisation duly recognised by the Goernment of India with its Head Office at Chandigarh. The Organisation is functioning since 1998 and has its sub-offices in various cities in the States of Punjab, Haryana, Himachal Pradesh and Delhi. The Organisation has filed this petition under Articles 226/227 of the Constitution of India praying for issuance of a writ in the nature of Mandamus thereby directing the respondents to follow the procedure prescribed under Section 16 of the consumer Protection Act, hereinafter referred to as the Act, in its letter and spirit, in appointing the President, Haryana State Consumer Disputes Redressal Commission, Chandigarh.

(2) The petitioner—Organisation is the society registered under the provisions of the Registration of Societies Act, 1860. In the petition, the Organisation has hardly referred to the facts of any particular individual, but has jointly approached this Court claiming the above relief on the basis that after the retirement of Mr. Justice Amarjit Chaudhary, who retired on 4th September, 2003, the post of

the Commissioner is lying vacant and no one involved in the process of appointment is looking concerned with the objectives of the Act. As per the scheme of the Amended Act, process should be initiated well in advance by the Committee. According to the petitioner the effect of amended provisions of Sections 13 and 16 and insertion of new Section 16(1—A) that a Selection Committee has been envisaged for recommendation of the name for Members of the State Commission. Not only the Members but every appointment under sub-section (1) of Section 16 shall be made by the State Government on the recommendations of Selection Committee as provided in those provisions. They claim that the process for appointment of the State Commission should have been started well in advance and inordinate delay is causing inconvenience to the public at large and any attempts to give go by to the process as provided under the Amended Act should not be permitted.

(3) Another writ petition being CWP No. 17262 of 2003 has been filed by Shri Dharminder Singh Rawat Advocate practising in this High Court with somewhat similar averments but emphasizing on the view that the Executive should approach the Chief Justice for such appointments and the process should be initiated in the same manner as for the appointment of a Judge to give greater credibility to the appointments made. Reliance is placed by the petitioner on the judgment of the Hon'ble Supreme court in the case of **Ashish Handa** *versus* **Union of India (1),** on these premises the petitioner prays that the respondents should be directed to appoint the President of State Consumer Disputes Redressal Commission, Haryana, expeditiously in the interest of justice. It will be appropriate to mention the stand taken by the High Court and the State Government in both the writ petitions collectively. According to the written statement filed by the Registrar General of Punjab and Haryana High Court, Chandigarh on 26th August, 2003. Hon'ble the Chief Justice received a fax dated 25th August, 2003 from the President, National Consumer Disputes Redressal Commission, New Delhi, addressed to the Chief Secretary to the Government of Haryana, intimating to the effect that as Mr. Justice Amarjit Chaudhary, President of the State Commission had retired on 4th September, 2003, the appointment of the President of the State Commission should be made by the State Government after

(1) AIR 1996 S.C. 1308

consultation with the Chief Justice and, thus, immediate steps should be taken. On the same day, the Chief Justice received letter of even date along with biodata of a Hon'ble Judge, requesting him to communicate his views at the earliest. The Chief Justice informed the Government that the meeting of his Collegium to initiate the proposal in this regard would be held shortly. The Collegium met on 27th August, 2003, considered the names and recommended the name of a retired Judge belonging to Haryana Cadre after having found him more suitable and fit for the appointment. In turn,—*vide* letter dated 29th October, 2003, the Chief Minister requested the Chief Justice to reconsider his recommendations. The Collegium again considered the matter and formed an opinion that unless the reasons for inability of Chief Minister to accept the recommendation were disclosed, it would not be possible to re-consider the recommendations. On 1st December, 2003 some reasons were disclosed. Collegium again met on 3rd December, 2003, noted some facts and that the High Court expected the appointment to come through shortly and prayed that the writ petition be dismissed.

(4) A short affidavit was filed on behalf of the State dated 17th December, 2003 stating that records were produced before the Court. However, a detailed reply on behalf of the State was again filed in writ petition No. 17262 of 2003. It is not disputed that the State Government had proposed the name of another retired Judge and had requested the Chief Justice to convey approval of the proposed name. The stand of the State is quite similar to the case of the petitioner in CWP No. 174 of 2004. It is stated that as per the joint reading of the provisions of the Act as amended, the Selection Committee as envisaged under Section 16(1-A) inserted by Amending Act No. 62 of 2002, would first recommend the name of the eligible former or sitting Hon'ble Judge for appointment as President of the State Commission and thereafter, the said names will be forwarded to Hon'ble the Chief Justice by the State Government for consultation. It is stated that the appointment of the President of the State Commission could only be made after adhering to the procedure laid down in Section 16(1-A) of the Act.

(5) Reliance was also placed upon the letter of Government of India, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi dated 12th November, 2003, Annexure R/Z to the written

statement, where the Government had issued clarification in relation to the Government of NCT, Delhi. Referring to the post in question, the stand taken is that the Collegium of the High Court in its meeting held on 27th August, 2003 shows that only merit was considered qua one of the three names, and the other two names under consideration were not considered on merits for the reason that one of the retired Chief Justice was being member of the Punjab Bar and in case of another Hon'ble sitting Judge of the High Court, the High Court did not like to spare his services at that time. The two members of the Commission are stated to be discharging their duties and day-to-day work of the Commission is being looked after by them.

(6) The learned counsel appearing for the High Court stated that the written statement filed in CWP No. 17262 of 2003 by the High Court should be read as written statement even in the other writ petition as a common question is involved in both the writ petitions.

(7) The Union of India filed written statement in CWP No. 174 of 2004 and took the stand that the provisions of Sections 16(1) and 16(1-A) of the Act have been amended and introduced into the Act and appointment should be made in consonance therewith. It is submitted that it is the responsibility of the State to set up District and State Commissions and to ensure their effective functioning by providing adequate infrastructure staff including the appointments of the President and the Members. It is averred that certain State Governments had sought clarification from respondent No. 1 regarding the manner of selection of President of the State Consumer Disputes Redressal Commission, in view of the amended provisions of the Act, for ensuring that the prescribed procedure is uniformly followed by all the State Governments and Union Territory Administrations. *Vide* letter dated 31st December, 2003, Annexure R/1, the Union of India had issued clarification. The letter dated 31st December, 2003 reads as under :—

> "Some State Governments have sought clarification regarding the manner of selection of the President of the State Consumer Disputes Redressal Commission. The position as per provisions of the amended Act is, therefore, brought to your notice, with a view to ensure that the prescribed procedure is uniformly followed by all States/UT Governments.

2. As per the provisions of Section 16, no appointment be made for the post of President, State Commission without consultation with the Chief Justice of the High Court.

3. As per provisions of Section 16(1A) of the Act, Selection Committee for the appointments made under Section 16 will be chaired by the President of the State Commission. It has further been 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 the High Court to act as Chairman."* This clause may also be used where the President of the State Commission is eligible for reappointment and for this reason, he cannot chair the Selection Committee.

4. The above provision of the Act may kindly be kept in view while making appointment of the President of the State Commission.

Wishing you a very Happy and Prosperous New Year."

(8) In order to examine the effect of the statutory provisions on the merits of the submissions raised before us, it may be necessary to refer to the language of the provisions which reads as under :—

"16. Composition of the State Commission . (1) Each State Commission shall consist of—

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President :

[Provided that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court ;]

(b) not less than two, and not more than such number of members, as may be prescribed, and one of who shall be woman, who shall have the following qualifications, namely :—

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

(ii) possess a bachelor's degree from a recognised university; and

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration :

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

Explanation.—For the purposes of this clause, the expression "persons having a judicial background" shall mean persons having knowledge and experience for at least a period of ten years as a Presiding Officer at the district level Court or any tribunal at equivalent level :

Provided further that a person shall be disqualified for appointment as a member if he—

(a) has been convicted and sentenced to imprisonment for 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 of 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.]

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

(i) President of the State Commission — Chairman;

(ii)	Secretary of Law Department of the State	..	Member
(iii)	Secretary incharge of the Department dealing with Consumer Affairs in the State	..	Member

Provided that where the President of the State Commission is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

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

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

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

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

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

[(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven 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-seven years, whichever is earlier, subject to the condition that he fulfils the qualifications and other coditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is made on the basis of the recommendation of the Selection Committee :

Provided further that a person appointed as a President of the State Commission shall also be eligible for re-appointment in the manner provided in clause (a) of sub-section (1) of this section :

Provided also 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 (1-A) in place of the person who has resigned.

(4) Nothwithstanding anything contained in sub-section (3), 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.]"

(9) At the very outset and before we dwell upon the merits of the intricate questions of law involved in the present writ petition, we may notice that both these writ petitions have been filed as public interest litigations. They, obviously, lack definite and detailed pleadings, supported by proper documentation. Thus, that is the precise reason as to why the Division Bench of this Court had directed the respondents to produce records.

(10) Composition of State Commission can be examined by looking into the relevant provisions for relating to initiation of the process, appointment and the intermediate stage where various competent authorities are required to discharge a definite role. The Act and particularly Section 16 of the Act is a complete procedure in itself and, thus, we will be required to deal with the interpretation of this Section so as to clearly enunciate the procedure and methodology which the various competent authorities are expected to follow.

SCOPE AND INTERPRETATION OF THE EXPRESSION, "EXCEPT AFTER CONSULTATION WITH THE CHIEF JUSTICE OF THE HIGH COURT" AS APPEARING IN SECTION 16(1)(A) FOR APPOINTMENT TO THE POST OF PRESIDENT OF THE STATE COMMISSION :—

(11) The first and fore-most question that we must clearly state is the meaning and scope of the expression "except after consultation with the Chief Justice of the High Court". The language of this proviso to Section 16(1)(a) of the Act is free of ambiguity and clearly indicates that definite legislative intent expressed by the Legislature to the weightage that has to be given to the view of the Chief Justice of the High Court. The Legislature in its wisdom has used the expression "no appointment under this clause to be made except after consultation with the Chief Justice of the High Court." In other words, consultation with the Chief Justice is mandatory to which there is no exception carved out.

(12) The expression, "consultation with the Chief Justice" has to be given wider connotation and a meaning which is effective in consequence. The expression must be understood in apparent counter distinction to its understanding in common parlance. It is certainly not like taking advice, opinion or a formal approval. In view of the consistent view expressed in judicial pronouncements, State is expected to understand its meaning and concept in correct perspective. The expression does not convey as if the State was consulting its Law Officer (s) whose opinion it could accept or reject even on matter of law. The dignity of the office of Chief Justice requires the State to understand the view of the Chief Justice with definite precedence and give effect to it without attempting to find ways and means to circumvent the said opinion. Such an approach is neither permissible statutorily nor by judicial pronouncements.

The expression "consultation" had come up for consideration before the Supreme Court on number of occasions and the view expressed by the Highest Court of the land has been expressed in more definite terms with the passage of time. In the late 1970s while dealing with the case of **Union of India** *versus* **Sankalchand Himatlal Sheth and another, (2)** the Court held as under :—

> "The key words in this Article are consultation and transfer. What is consultation, disctionary-wise and popular parlance-wise ? It implies taking counsel, seeking advice. An element of deliberation together is also read into the concept. "To consult" is to apply to for guidance, direction or authentic information, to ask the advice of - as to consult a lawyer ; to discuss something together ; to deliberate *(Hewey versus Metropolitan Life Ins. Co.).* The word "consult" means to seek the opinion or advice of another; to take counsel; to deliberate together; to confer: to apply for information or instruction. *(C.I.R. versus John A. Wathen Distillery Co.).* "Consult" means to seek opinion or advice of another: to take counsel: to deliberate together: to confer: to deliberate on: to discuss: to take counsel to bring about; devise: contrive: to ask advice of: to seek the Information of: to apply to for information or instruction: to refer to. *Teplitsky versus City of New York* Stround's Law Lexicon defines consultation thus :
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> We consult a physician or a lawyer, an engineer or an architect, and thereby we mean not casual but serious, deliberate seeking of informed advice, competent guidance and considered opinion. Necessarily, all the materials in the possession of one who consults must be unreservedly placed before the consultee. Further, a reasonable opportunity for getting information, taking other steps and getting prepared for tendering effective and meaningful advice must be given to him. The consultant, in turn, must take the matter seriously since the subject is of grave importance. The parties affected are high-level functionaries and the impact of erroneous judgment can be calamitous. Therefore, it follows that the President must

(2) (1977) 4 S.C.C. 193

communicate to the Chief Justice all the material he has and the course he proposes. The Chief Justice, in turn, must collect necessary information through responsible channels or directly, acquaint himself with the requisite data, deliberate on the information he possesses and proceed in the interests of the administration of justice to give the President such counsel of action as he thinks will further the public interest, especially the cause of the justice system. However, consultation is different from consentaneity. They may discuss but may disagree: they may confer but may not concur. And in any case the consent of the Judge involved is not a factor specifically within the range of Article 222."

(13) In the case of **Chandramouleshwar Prasad** *versus* **The Patna High Court and others, (3),** it was held as under :—

"The question arises whether the action of the Government in issuing the notification of 17th October, 1968 was in compliance with article 233 of the Constitution. No doubt the appointment of a person to be a District Judge rests with the Governor but he cannot make the appointment on his own initiating and must do so in consultation with the High Court. The underlying idea of the article is that the Governor should make up his mind after there has been deliberation with the High Court."

"... The Governor cannot discharge his function under Article 233 if he makes an appointment of a person without ascertaining the High Court's views in regard thereto. It was strenuously contended on behalf of the State of Bihar that the materials before the Court amply demonstrate that there had been consultation with the High Court before the issue of the notification of 17th October, 1968. It was said that the High Court had given the Government its view in the matter, the Government was posted with all the facts and there was consultation sufficient for the purpose of Article 233. We cannot accept this. Consultation or deliberation is not complete or effective before the parties

(3) 1969 (3) S.C.C. 56

thereto make their respective points of view known to the other or others and discuss and examine the relative merits of their views. If one party makes a proposal to the other who has a counter proposal in his mind which is not communicated to the proposer the direction to give effect to the counter proposal without anything more, cannot be said to have been issued after consultation. In our opinion, the notification of 17th October, 1968 was not in compliance with Article 233 of the Constitution. In the absence of consultation the validity of the notification of 17th October, 1968 cannot be sustained."

(14) In the case of **S. P. Sampath Kumar** *versus* **Union of India and others, (4),** the Supreme Court was concerned with examining the methodology to be adopted for appointment under the Administrative Tribunal Act to the Central Administrative Tribunal. While emphasizing the constitutional mandate for securing total independence of Judiciary from Executive influences, the Hon'ble Apex Court suggested the mode which could be adopted for making these appointments and giving effective result to the consultation contemplated in the said provisions. Their Lordships held as under :—

"The Constitution-makers have made anxious provision to secure total independence of judiciary from executive pressure or influence. Obviously, therefore, if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from possibility of executive pressure of influence must also be ensured to the Chairman. Vice-Chairman and members of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. I am, therefore, of the view that the appointment of Chairman, Vice-Chairmen and administrative members should be made by the concerned government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective and ordinarily the recommendation of the Chief Justice of India must be

(4) (1987) 1 S.C.C. 124

accepted unless there are cogent reasons, in which event the reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons. There is also another alternative which may be adopted by the government for making appointments of Chairman. Vice-Chairmen and members and that may be by setting up a High Powered Selection Committee, headed by the Chief Justice of India or a sitting Judge of the Supreme Court or concerned High Court nominated by the Chief Justice of India. Both these modes of appointment will ensure selection of proper and competent persons to man the Administrative Tribunal and give it prestige and reputation which would inspire confidence in the public mind in regard to the competence, objectivity and impartiality of those manning the Administrative Tribunal. If either of these two modes of appointment is adopted, it would save the impugned Act from invalidation. Otherwise, it will be outside the scope of the power conferred on Parliament under Article 323-A. I would, however, hasten to add that this judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunal. But if any appointments of Vice-Chairmen or administrative members are to be made hereafter, the same shall be made by the government in accordance with either of the aforesaid two modes of appointment."

(15) In the case of **State of Haryana** *versus* **Subhash Chander Marwaha, (5),** and **State of Jammu & Kashmir** *versus* **A. R. Zakki, (6)** the Hon'ble Supreme Court emphasized the need for effective consultation and also the scope of control and authority of the High Court in relation to judicial services. A Division Bench of this Court after discussing catena of judgments of the Supreme Court in the case of **Rajinder Pal Singh** *versus* **State of Haryana and others, (7)** held as under :—

"....The view of the High Court has to be placed at a higher pedestal even than that of an expert body because on the one hand, the High Court participates effectively in the

(5) 1973 (2) S.L.R. 137
(6) 1992 (3) S.L.R. 3
(7) 2003 (6) S.L.R. 676

formation of rules, regulations and selection of candidates, while on the other hand, it monitors the functioning of the judicial services in the State right from the grass-root level to the apex finality of judgments in the State. The view of the High Court is based upon objective process of thinkings founded on practical realities of the judicial administration in the State. Such is the scheme of the provisions, and methodology to be adopted by the concerned constituents for proper achievements and implementation of constitutional mandate and enforcement of the rules so framed to achieve and optimum maintenance of higher standard in the service, which is responsible for administration of justice at the grass root level."

" .....We have expressly held that the view of the High Court requires to be considered by the Government and the Commission objectively and with precedence. Prescription of high percentage to maintain excellence in service no way violates the right of equality or equal opportunity, for appointment. In view of the judgement of the Hon'ble Supreme Court in the case of Bal Mukand Sah *(supra)*, it is not necessary for us to re-emphasis the role of the High Court and the requirement on the part of the State to adopt the suggestion made by the High Court. Purposeful consultation must essentially be result oriented, object achieving and its decision and conclusion must be given effect to with utmost expedition. That alone would be in the interest of proper administration of justice."

(16) The provisions of Section 16(1)(a) of the Act were subject matter of determination before the Supreme Court in the case of **Ashish Handa Advocate *versus* Hon'ble the Chief Justice of High Court of Punjab & Haryana and others, (8)**. Their Lordships considered the scheme of the Act and in no uncertain terms expressed the view that appointment to the office of President of the State Commission is to be made only after consultation with the Chief Justice and in fact proposal must initiate from the Chief Justice. In order to place the matter beyond ambiguity, it will be appropriate to refer to the relevant conclusions of the Apex Court as under :—

"This is so because the function of these agencies is primarily the adjudication of consumer disputes and, therefore, a

(8) AIR 1996 S.C. 1308 = (1996) 3 S.C.C. 145

person from the judicial branch is considered to be suitable for the office of the President. The appointment to the office of the President of the State Commission is to be made only after consultation with the Chief Justice of the High Court and the office of the President of the National Commission after consultation with the Chief Justice of India. Such a provision requiring prior consultation with the Chief Justice is obviously for the reason that he is the most suitable person to know about the suitability of the person to be appointed as the President of the Commission. The provisions in Section 16(1)(a) for appointment of the President of the State Commission and in Section 20(1)(a) for appointment of the President of the National Commission are in pari materia and have to be similarly construed. The construction of the proviso in Section 16(1)(a) and that in Section 20(1)(a) must be the same because of the identity of the language. The expression after consultation with the Chief Justice of the High Court and after consultation with the Chief Justice of India must be construed in the same manner as the expression after consultation with the Chief Justice of India.... The Chief Justice of the High Court in Article 217 of the Constitution of India made in Supreme Court Advocate —on —Record Association *versus* Union of India (1993)4 SCC 441: (1993 AIR SCW 4101). Accordingly, the opinion of the Chief Justice of the High Court and the requirement of consultation with him according to the proviso in section 16(1)(a) must have the same status as that of the Chief Justice of the High Court in the appointment of a High Court Judge under Article 217 of the Constitution of India: and the process of appointment to the office of the President of the State Commission must also be similar. It is unnecessary to restate the same which is summarised in the majority opinion in the Judges-II case *(supra)*. This is necessary to maintain independence of the judiciary and to avoid any possibilty of a sitting or a retired Judge depending on the executive for such an appointment. Our attention was drawn to certain observations in Sarwan Singh Lamba *versus* Union of India, (1955) 4 SCC 546: (1995 AIR SCW 2706) to suggest that the name for

appointment to the Administrative Tribunal may be suggested even by the executive which may have the effect of initiating the proposal. In the facts of that case, substantial compliance of the requirement of approval by the Chief Justice of India was found proved and, therefore, the appointments were upheld. The requirement of consultation with the Chief Justice in the proviso to Section 16(1)(a) and Section 20(1)(a) of the Consumer Protection Act being similar to that in Article 217, the principles enunciated in the majority opinion in the Judges II case must apply, as indicated earlier, even for initiating the proposal. The executive is expected to approach the Chief Justice when the appointment is to be made for taking the steps to initiate the proposal, and the procedure followed should be the same as for appointment of a High Court Judge. That would give greater credibility to the appointment made.

4. The question now is: Whether there has been due compliance of the proviso to Section 16(1)(a) of the Consumer Protection Act in the present case? The affidavit dated 9th July, 1994 of Shri B.L. Gulati, Registrar of the High Court of Punjab and Haryana mentions the procedure adopted in making the appointment of Shri M.R. Agnihotri, a retired Judge of the High court as the President of the Haryana State Commission. It is atated that the Chief Justice of the High Court of Punjab and Haryana considered the names of certain retired Judges of that High Court and ultimately gave his consent for the appointment of Shri M.R. Agnihotri as the President of the State Commission which was communicated by the Registrar to the Haryana Government on 10th June, 1994 after which the appointment of Shri M.R. Agnihotri was made. In the facts of the present case, we find that there was substantial compliance of the proviso to Section 16(1)(a) of the Act and the appointment of Shri M.R. Agnihotri was made after consultation with the Chief Justice of the High Court. However, we may add that the appropriate course to adopt, as indicated in the Judge-II case, is for the Chief Justice of the High Court to initiate

the proposal and to mention the same approved by him for appointment instead of the Chief Justice only approving the name suggested by the State Government. It appears from the affidavit of the Registrar that the Chief Justice had indicated to the State Government the proper procedure relating to initiation of the proposal for filling up the post and he had accorded his approval to the appointment of Shriek M.R. Agnihotri only after considering several names, including that of Shriek M.R. Agnihotri. The appointment made in the present case does not, therefore, call for any interference.

5. Consequently, the transferred case is dismissed.

17. In a more recent judgment relating to Subordinate Judicial Services and control of the High Court and effect of consultation in State matters, the Supreme Court in the case of **Gauhati High Court versus Kuladhar Phukan, (9)** expressed the view that consultation has to be effective and based on mutuality and objective in its content. Their Lordships of the Supreme Court held as under:—

"..... Merely because the State Government sent a copy of its notifications to the High Court, the requirement of consultation cannot be said to have been satisfied. Neither it was initiated by the State Government nor did the High Court exercise, avail or discharge its power, privilege and obligation of consultation. An invalidity caused by failure to comply with mandatory constitutional requirement, such as of consultation, cannot be cured by sheer inaction on the part of one or both of the functionaries between whom the requirement was to be fulfilled or by mere lapse of time."

"..... The Division Bench of the High Court was unnecessarily influenced by the factum of the High Court having recalled on 17th September, 1996 its notification dated 10th April, 1955 ignoring the reason behind recalling the notification. The notification posting the respondent No.1 as a judicial officer, had to be recalled as it was not carried out and required to be recalled also as to issue another notification

(9) 2002 (2) S.C.T. 768

filing up Judicial Office lying vacant. So also the Division Bench ignored the impact of constitutional provision while forming an opinion that the lien of respondent No. 1 in judicial service stood automatically terminated as the appointment of respondent No. 1 to legal service, whilst he was a member of judicial service, was made without consultation with the High Court and hence was invalid. The question of respondent No. 1 acquiring a lien in legal service and the lien in judicial service being terminated did not arise. The judgment of the Division Bench of the High Court cannot be sustained and is liable to be set aside."

18. In another very recent judgment titled as **Union of India and another *versus* S.B. Vohra and others, (10)** their Lordships of the Supreme Court while dealing with the power of the Chief Justice to frame rules and the Government declining to act on the recommendation of the Chief Justice under Article 229(2) of the Constitution, their Lordships indicated the primacy which should be given to the opinion of the Chief Justice and they held as under:—

"Decisions of this Court, as discussed hereinbefore, in no unmistakable terms suggest that it is the primary duty of the Union of India or the concerned State normally to accept the suggestion made by a holder of a high office like a Chief Justice of a High Court and differ with his recommendation only in exceptional cases. The reason for differing with the opinion of the holder of such high office must be cogent and sufficient. Even in case of such difference of opinion, the authorities must discuss amongst themselves and try to iron out the differences. The appellant unfortunately did not perform its own duties."

"Having regard to the aforementioned authoritative pronouncements of this Court there cannot be any doubt whatsoever that the recommendations of the Chief Justice should ordinarily be approved by the State and refusal thereof must be for strong and adequate reasons. In this case the appellants even addressed itself on the recommendations made by the High Court. They could not have treated the matter lightly. It is unfortunate that

(10) J.T. 2004 (1) S.C. 38

the recommedations made by a high functionary like the Chief Justice were not promptly attended to and the private respondents had to file a writ petition. The question as regard fixation of a revision of the scale of pay of the High Court being within exclusive domain of the Chief Justice of the High Court, subject to the approval, the State is expected to accept the same recommendations save and except for good and cogent reasons."

19. In the light of the consistent view of the Supreme Court in the judgments afore-noticed, now we would proceed to discuss the interpretation of provisions of Section 16(1)(a) in relation to appointment of the President of State Commission, which is the subject matter of the present writ petitions.

20. As far as provisions of Section 16(1)(a) of the Act are concerned despite frequent changes in the Statute, the Legislature in its wisdom has maintained its language without any alterations. Scope and meaning of this provision and effect of consultation has been discussed in the judgments afore-referred by the Highest Court of the land. It has been stated in no uncertain terms that consultation would obviously be purposeful and the view of the Chief Justice essentially should take precedence while considering the appointment of the Chairman of the Commission. The consultation places an obligation upon the State to seek the advice of the Chief Justice and accept the same with due precedence unless the, State had compelling reasons to request the Chief Justice for re-consideration of the suggested name. The State would not exceed the limits of its authority in that event even if it suggests another name for appointment to the post of President of the Commission. It will better serve the object of the Act as well as the decision making process, if the process for appointment to this post is initiated at the end of the Chief Justice. the precedence is a valuable term and should be understood objectively. Such construtions and approach would be further substantiated by the factor that the Chief justice is a constitutional functionary and possesses the expertise to examine, scrutinize and give a fair opinion, which would help to further the cause of administration of justice. The State Commissions is to perform adjudicatory functions under the provisions of the Act and subject to supervisory jurisdiction of the High Court under Article 226 of the Constitution of India. Constitutional Bench

of the Seven Hon'ble Judges in the case of **L.Chandra Kumar** *versus* **Union of India and others, (11)** clearly held that the power vested in the High Court to exercise its superintendence over all the Courts and Tribunals within their respective jurisdiction is also part of the basic structure of the Constitution. The Tribunals are required to discharge supplementary functions and their judgments and orders would be subject to judicial review by the High Court or the Supreme Court, as the case may be. The power of judicial review over legislative action vested in the High Court under Article 226 and in Supreme Court under Article 32 is an integral and essential feature of the Constitution, constituting part of its basic struture. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

21. Still in the case of **Sarwan Singh Lamba and others** *versus* **Union of India and others, (12)** their Lordships of the Supreme Court further held that the final decision would have to be taken by the Chief Justice on recommendation of the Committee and the law was expanded to the extent that normally even an obiter dictum is expected to be obeyed and followed by the State and its agencies. It is not merely the obiter of the Supreme Court but definitely enunciated canons controlling the scope and meaning of the expression "consultation" between the Chief Justice of the High Court and the State Administration. To follow these principles is the obligation of all the components who have to participate in the decision making process culminating into the appointment of the high posts including the Chairman of the Commission. In no uncertain terms it has been stated that the opinion of the Chief Justice must be respected with precedence and normally accepted for very strong and cogent reasons. In the event the State Administration takes recourse to this exception it must give cogent and valid reasons requesting the Chief Justice to re-consider his decision. On mutal discussion or otherwise and upon consideration of the reasons stated by the State, if the Chief Justice reiterates the recommendation, the State normally would be bound by such opinion. The reasons for taking such a view are two-fold. Firstly, appointment to such statutory posts should not be permitted to be delayed un-necessarily. Indefinite delay is bound to have ramification of adversely affecting the larger public interest as it

(11) AIR 1997 S.C. 1125
(12) (1995) 4 S.C.C. 546

would delay the disposal of cases by the Commission. It is bound to effect judicial as well as administrative functioning of the Commission. Secondly, the Chief Justice of the High Court is in a better position than the State administration to recommend a more suitable candidate because of his expertise and pervasive administrative control of justice.

22. The possibility of varied opinions cannot be oblitrated particularly when it is for good and valid reasons. The difference of opinion, if any, must be resolved by mutal discussion, objective and purposeful approach. But, in any case, to break this dead-lock finality of opinion must be indicated. In our view the final say in the matter of appointment of the President of the Commission must rest with the Chief Justice.

23. To demean the opinion of the Chief Justice without any strong and cogent reasons would not be a fair practice and would also result in undermining the dignity of judiciary and in all probability would hamper proper administration of justice.

24. In the pronouncements of the Supreme Court, mainly Article 217 of the Constitution of India has been a subject matter of interpretation, where the appointment of a judge of the High Court has to be made "after consultation with the Chief Justice of India." While interpreting this expression the Courts have emphasized the need for precedence to the opinion of Chief Justice and in the event the recommendation is reiterated by the Chief Justice of India on a back reference, such recommendation would be binding on a State. Under Article 229(2) the rules with regard to salary, allowances, leave or pension be framed by the Chief Justice or an officer authorised in that behalf with the approval of the State. It has been held that State could put its point to view if it had any reservation for grant or approval with its reasons for consideration of the Chief Justice and in the event view is reiterated, the State is expected to accept the view of the Chief Justice with due precedence. The legislature in its wisdom has worded the proviso to Section 16(1)(a) strongly and with greater emphasis of requirement of consultation with the Chief Justice. At somewhat variance to the language of Article 227 of the Constitution, the Legislature has used the words" shall be made except after consultation with the Chief Justice of the High Court." The purpose of the language appears to be not only to give greater weightage and emphasis to the view of the Chief Justice, but even prohibiting an

appointment in absence of such consultation. In the case of **Supreme Court Advocates on Record Association and others** *versus* **Union of India, (13)** their Lordships of the Supreme Court held that for the purposes of Articles 124(2) and 217(1), the opinion of the Chief Justice has primacy in the matter of all appointments and no appointment can be made by the President under these provisions unless it is in conformity with the final opinion of the Chief Justice of India, formed in the manner indicated in the judgment. The Nine Judges Bench of the Hon'ble Supreme Court in Presidential Reference (14), reiterated the principle that opinion formed by the Chief Justice of India in the manner indicated in that judgment has to be given primacy in the matters of appointment. Once the recommendations were made in conformity with the norms and requirements of the consultation process, the opinion, thus, would be binding.

(25) Finality may come from a conflict of ideas.Due consideration need be given to other's opinion. Mutual discussion and healthy arguments are the foundation of an objective decision, but it must be remembered that another view should emerge from cogent and proper reasons while keeping in min[illegible]he object sought to be achie[illegible]ed, which, in the present case, relate[illegible] to a laudable purpose of administration of justice. State is entitled to put forward its view within the ambit and scope of Section 16(1)(a) and refer the matter to the Chief Justice for re-consideration. Once [illegible]hose reasons are dealt with by the Chief Justice and recommendation is re-iterated, then the State is obliged to give effect, free of any further persistence, to the view expressed by the Chief Justice. That is the linch-pin to the entire process of appointment to the post of Chairman of the State Commission. In our view such an interpretation alone will further the cause of the provisions of the statute and up-hold the dignity and freedom of institutions related to administration of justice.

(26) Having dealth with this aspect of the matter. It will be appropriate to notice at this stage itself that a Division Bench of this Court while dealing with the present writ petition,--*vide* its order dated 17th November, 2003, had directed the respondents to produce record in Court. The records which were produced earlier have also been produced before us during the course of hearing. As we are

(13) 1993 (4) S.C.C. 441
(14) AIR 1999 S.C. page 1

primarily dealing with the questions of law arising in these two petitions, we are of the view that as the matter is under effective consideration and has already progressed to quite an advance stage, the interest of justice and propriety would demand that we may not enter into the factual matrix and merits or otherwise of the state of affairs appearing on the basis of the records produced before us. Suffice it to note that the Chief Justice (along with other Hon'ble Judges of Collegium) has re-iterated his opinion after due consideration of the reasons stated by the Chief Minister. It will be for the concerned authorities to take a final view on the matter in light of this judgment.

EFFECT OF THE PROVISIONS OF SECTION 16(1-A) UPON THE STATUTORY SCHEME PROVIDED FOR APPOINTMENT TO THE POST OF PRESIDENT OF THE STATE COMMISSION :—

(27) Various provisions of this Act have been subjected to legislative amendment quite often. Despite such amendments the Provisions of Section 16(1)(a) have not been subjected to any change. After pronouncements of the judgments of the Supreme Court,--*vide* Amendment Act No. 50 of 1993, the Legislature had introduced proviso to Section 16(1)(a) of the Act. Clause (b) of sub-section (1) of Section 16 at that time also provided for constitution of a committee for recommending the names of the Members to be appointed to the Commission who were to be appointed by the State Government.

(28) Substantial amendments, additions and substitutions were introduced to Section 16 of the Act by the Consumer Protection (Amendment)Act, 2002 (62 of 2002). Under section 16(1)(b) the qualifications of the Members were stated. Another proviso introducing the dis-qualifications for appointment as a Member were spelled out. In place of proviso, Section 16(1)(b) was substituted by Section 16(1-A). Further, a proviso was also introduced intending to supply the vacancy of the Chairman of the Selection Committee in the event the President of the Commission was not able to participate because of absence or other reasons. In addition to other amendments, an important amendment was effected making the sitting President of the State Commission eligible for re-appointment in accordance with the provisions of the statute. Despite all this, most noticeable fact is that provisions of Section 16(1)(a) remained un-altered and un-amended. As we have already noticed that Section 16 is a complete Code in itself. It deals with the various facets of consideration of appointment to the

Post of President and Members of the State Commission. The provisions specifically dealing with the arrangement of the President of the State Commission are principally contained in Section 16(1)(a). What was the object of introducing Section 16(1-A) and did the Legislature in its wisdom intend to interfere with the provisions of Section 16(1)(a) or spirit of the process precribed therein, is the moot question that needs consideration by the Court.

29. *Vide* Consumer Protection (Amendment)Act, 1993, the Legislature had amended proviso to Section 16(1)(a) as in the present form, as well as added a new proviso to Section 16(1)(b) of the Act. Thereafter by subsequent amendments existing proviso to Section 16(1)(b) of the Act was deleted and certain amended provisions in terms of Section 16(1)(b), 16(1-A), 16(1-B), 16(2) and 16(3) were added. These provisions relate to terms and conditions, eligibility for appointment to the post of Members of the Commission and also refer to certain powers of the President of the Commission including his eligibility for an extended term. However, the provisions of Section 16(1)(a) alongwith its proviso remained intact and unchanged. Under that proviso, the appointments under Clause (1)(b) were to be made by the State Government on recommendations of the Selection Committee whose members were the President of the State Commission, Secretary of Law Department, Secretary Incharge of the Department dealing with the consumer affairs of the State. Section 16(1-A) was introduced starting that every appointment under sub-section (1) shall be made by the same Selection Committee with the same constitution. These amended provisions primarily related again to the appointment of Member of the Commission and provided that the Chairman of the State Commission was made eligible for re-appointment and in his absence Chief Justice was required to nominate the sitting Judge to act as Chairman of the Selection Commission. The State Government was to appoint even whole time Members on the recommendation of the President of the State Commission. Thus, provisions of Section 16(1-A), 16(1)(b), 16(2) and 16(3) of the Act substantially deal with the method and manner of appointment of the Members of the Commission as well as the authority and power to recommend which vested in the President of the Commission. In other words, the various clauses of this Section do not deal in substance with the appointment of the President of the Commission, who in turn is the Chairman of the Selection Committee. We may also notice that

the Haryana Consumer Protection Rules, 1988 are completely silent in this regard. The mere use of certain words in the opening lines of Section 16(1-A) would not frustrate the entire legislative scheme contemplated in the provisions of Section 16(1)(a) as well as Sub-clauses of Section 16(1-A). This aspect of the matter now requires us to examine the background leading to introduction of the amended provisions of Section 16(1-A).

OBJECTS AND REASONS :—

(30) Statement of Objects and Reasons of a bill, which ultimately enacted into a statute, are not a direct precept to interpretation of statute. In **Central Bank of India** *versus* **Their Workmen (15),** the Court stated that the Statement of Objects and Reasons is not admissible, however, for construing the Section far less can it control the actual words used. It is well settled that statement of objects and reasons accompanying the bill when introduced in Parliament, cannot be used to determine the true meaning and effect of the substantive provisions of the statute, but is of great help for the limited purpose for understanding the background, the antecedents and state of affairs leading to the legislation. Reference could always be made to the objects and reasons of the bill, of course, for a limited purpose. It is a fair indicator or evidence of historical facts or surrounding circumstances which persuaded the Legislature to amend the relevant provisions.

(31) Act No. 62 of 2002, which introduced Section 16(1-A) and number of other amendments to the existing Act had a comprehensive statement of objects and reasons which was presented to the Parliament for acceptance of the bill. Even minutest details in regard to period within which complaint should be admitted and notice should be issued and expeditious disposal. The main object of the amendment as suggested therein was with a view to achieve quicker disposal of consumer complaints by the different forums in the hierarchy specified under the Act. The objects and reasons are completely silent in regard to the intention of the Legislature to introduce any variation in the provisions of Section 16(1) (a), particularly with reference to any historical event which required application of the amended provisions of Section 16 (1-A) to the

(15) AIR 1960 S.C. 12

provisions of Section 16 (1) (a). We have already noticed that amending Acts of 1993 and 1997 suggested no change in the methodology for appointment to the post of President of the Commission as contemplated in the provisions of Section 16 (1) (a). The provisions of Section 16 (1) (a) depict a complete self-contained Section within a Section governing such appointments. The provisions of Section 16 (1) (b) can hardly influence the provisions of Section 16 (1) (a) of the Act. They must be given their due meaning for appointment of the Members of the Commission and permitted to operate in their own field without being read in conflict with the provisions of Section 16 (1) (a) of the Act.

(32) During the course of arguments it was not suggested before us that provisions of the said Section had not shown the desired results and there was difficulty in operating the said provisions in the light of the judgments of the Supreme Court. The records produced before us further go to demonstrate that appointment to the post of President of the Commission was made on the recommendation and initiation of the Chief Justice in the past years. Such recommendation was accepted and implemented and even if there was some doubt, the same was resolved amicably and objectively. In other words, all the concerned authorities under the statute interpreted and understood these provisions in the manner aforesaid-referred and, thus, establishing a practice which is in conformity with law. A good practice supported by law itself makes a precedence and there is nothing in the amended provisions so as to negate such a practice. On the other hand, the judicial pronouncements have affirmed its applicability. In the case of **Ashish Grover** *Versus* **The State of Punjab and others (16),** while following the dictum of the Supreme Court in the case of **Deputy Commissioner of Police and others** *versus* **Mohammad Khaja Ali (17),** held as under :—

> "Once such rule or instruction has been interpreted and applied by the authorities concerned over a reasonable span time, such rule or interpretation would be accepted as correct, in view of the practice adopted, unless such practice was utterly opposed to some granted constitutional protection or to Public Policy."

(16) 2001 (1) P.L.R. 10
(17) 2000 (2) S.L.R. 49

(33) Object sought to be achieved under the provisions of the Act could be different than the stated objects and reasons of a statute in a given case. However, that is not the situation herein. The provisions have been successfully implemented in all the States of the country. Alikeness in the object and statement of objects and reasons of the various amending Acts certainly demonstrate to great extent that no historical fact was the background for introduction of Section 16(1-A) except addition of certain general terms and conditions and re-production of earlier proviso to Section 16(1)(b) with dfifferent language. Cumilative effect of the attendant circumstances and the language of the Section does not suggest legislative intent for necessitating introduction of a new process for appointment to the post of President of the Commission, than the existing process.

(34) A full Bench of this Court in the case of **Kaka** *versus* **Hassan Bano, (18)** stated that the objects and reasons of an act could be brought to aid for knowing the reasons which induced the mover or the Legislature to pass the bill. The Bench held as under:—

> "Statement of objects and reasons appended to a bill should not be treated as an aid to the construction of a statute. Objects and reasons of an Act or bill seek only to the extent what reasons induce the mover to introduce the bill in the House and what object he sought to achieve. It is not necessary that they will always correspond to the objective which the majority of the house had in view while passing the bill into a law. It is also not necessary that the objects and reasons would help in construing the specific or general provisions of the Act. Mr. Justice S.K. Das reiterated these principles in the following expression, "The statement of object and reasons is not admissible. However, for construing the section far less can it control the actual words used." (Refer AIR 1960 SC 12, AIR 1971 SC 1331 and AIR 1973 SC 1293."

(35) One of the know canons of interpretation of statutory provisions is avoidance of absurd results. Where-ever two rival interpretations are put forward before the Court, the one which is in conformity with law and further the cause of the statute would be

(18) 1998 (1) RCR (Criminal) 485

accepted by the Court over the other, which may produce absurd results or even absurd inconvenience. Of course, the argument *ab inconvenienti* is to be applied with great caution. The principle of absurdity correctly applied to the interpretation of piece of legislation would take within its fold avoidance of ridiculous effects. The contention raised on behalf of the State that Section 16(1-A) would control the provisions of Section 16(1)(a) and the process of selection and appointment to the post in question has to be initiated and commenced by the Selection Committee, on the face of it, is without substance. May be, at casual glance of the provisions, such interpretation could be suggested, but once the matter is examined in depth and in light of the enunciated law with some objectivity, the contention deserve to be rejected. Further more, the said interpretation is bound to produce absurd, repugnant and inconvenient results.

(36) If the process of appointment to the post of President of the Commission is to be commenced and initiated by the Selection Committee consisting of the President and two other Members as contemplated under Section 16(1-A) and if it has to consider and recommend the name/names of the eligible persons for appointment to the post in question, including the sitting President of the State Commission himself, who may be entitled to be considered for extension under second proviso to Section 16(3), the possibility of inconvenient and embarrassing results cannot be ruled out. The two members of the Commission who are otherwise lower in status to the President of the State Commission, may even comment that the President of the State Commission is not worthy of re-appointment. The result would be further undesirable, if not absurd, when the Selection Committee is to consider the name of a sitting or even retired Judge of the High Court who would be eligible to be appointed as President of the Commission in terms of Section 16(1)(a). Known tenets of civil administration do not permit even consideration of eligible persons for promotion purposes, by a Selection Committee whose members may be not higher in administrative hierarchy to the post for which appointments are sought to be made.

(37) Another ancillary corollary of the above but pertinent, is that the independence of Judiciary from Executive is to be preserved. It is a constitutional mandate that three organs of the State work in their own respective fields and executive or Legislature should no way

infirnge upon or impair the indenpendence of Judiciary and administration of Justice by Courts and Tribunals. In the case of **Ashish Handa (supra)** the Hon'ble supreme Court while noticed with concern, requirement for maintenance of indenpendent judiciary and least interference by other components of the State in judicial appointments, observed as under:—

> ". . . .Accordingly, the opinion of the Chief Justice of the High court and the requirement of consultation with him according to the proviso in Section 16(1)(a) must have the same status as that of the Chief Justice of the high court in the appointment of a High Court Judge under Article 217 of the Constitution of India; and the process of appointment to the office of the President of the State Commission must also be similar. It is unnecessary to restate the same which is summarised in the majority opinion in the Judges-II case. This is necessary to maintain independence of the judiciary and to aviod any possibility of a sitting or a retired judge depending on the executive for such an appointment." (emphasis supplied by us).

(38) On the presumption that a statute is intended to be just and reasonable, it is necessary that the respective provisions operate in their own fields. An interpretation which would create a conflict while giving effect to the two provisions of the statute, must be avoided. The provisions of Section 16(1)(a) are unabiguous and so clear in their language that their implementation in consonance with the law afore-noticed would no way be difficult or impracticable. To create an impediment in the smooth operation of the provisions, on the strength of Section 16(1-A) of the Act would defeat the object of the statute, independence of Judiciary and would produce undesirable results. The provisions of the amended Section should be permitted to operate for and in relation to the appointment of Members of the Commission alone. Section 16(1)(a) controls the entire procedure for appointment to the post of President of the Commission and these are substantive provisions in that behalf. The provisions of Section 16(1-A) are in any case regulatory and procedural. They provide for a methodology, which should be adopted for appointment of the Members of the Commission. Once the appointment of the President is made in conformity with the provisions of Section 16(1)(a) and enunciating judicial dictum of the Hon'ble Supreme Court, it obviously would amount to substantial compliance of even other provisions.

(39) To us, apparently there appears no conflict between the provisions of these two Sections as they could effectively operate in their respective fields. Viewing it from another angle, the provisions of the amended Section 16(1-A) of the Act would be construed harmoniously to the provisions of Section 16(1)(a) so as to achieve the desired object of the act and the law regulating the same. These provisions can easily be reconciled and read together so as to prevent inconvenient or legally undesirable results. Lord Herschell L.C. indicated, "You have to try and reconcile them as you may. If you cannot, you have to determine which is the leading provision, and which the subordinate provision and which must give way to the other." No one provision can be read so as to render the other provision ineffective or even repeal it impliedly. They must be read together and a substantive provision gets a precedence and the subordinate provisions falls in comety and respect to the substantive mandate of law contained in the principal provisions. The provisions of Section 16(1-A) would have hardly any, much less an effective role in the appointment of the President of the State Commission in terms of Section 16(1)(a).

(40) The argument of the respondent-State indicate an apparent incosistency or conflict between the two provisions. Obviously, nothing of this kind exist and an interpretation, which would create such a conflict or inconsistency, would be impermissible interpretation. At this stage, we may refer to the judgment of the Hon'ble Supreme Court in the case of **Anwar Hasan Khan** *versus* **Mohd. Shafi and others, (19)** where the Court held as under:—

> "It is settled that for interpreting a particular provision of an Act, the import and effect of the meaning of the words and phrases used in the statute have to be gathered from the text, the nature of the subject-matter and the purpose and intention of the statute. It is a cardinal principle of construction of a statute that effort should be made in construing its provisions by avoiding a conflict and adopting a harmonious construction. The statute or rules made thereunder should be read as a whole and one provision should be construed with reference to the other provision to make the provision consistent with the object

(19) (2001) 8 S.C.C. 540

sought to be achieved. The well-known principle of harmonious construction is that effect should be given to all the provisions and a construction that reduces one of the provisions of a "dead letter" is not harmonious construction. With respect to law relating to interpretation of statutes this Court in **Union of India** *versus* **Filip Tiago De Gama of Vedem Vasco De Gama (1990) 1 SCC 277 (SCC p. 284, para 16).**

"16. The parmanent object in statutory interpretation is to discover what the legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. Words are certainly not crystals, transparent and unchanged as Mr. Justice Holmes has wisely and properly warned **(Lowne** *versus* **Eisner) (245 US 418, 425(1918)** Learned Hand, J., was equally emphatic when he said: Statutes should be construed, not as theorems of Euclid, but with some imagination of the purpose which lie behind them. **(Lenigh Vally Coal Co.** *versus* **Yensavage) (218FR 547, 553)."**

Still in other cases reported as **M/s British Airways Plc.** *versus* **Union of India and others, (20) and Rajendra Prasad Yadav and others** *versus* **State of M.P. and others, (21)** the Supreme Court observed that while interpreting provisions of a statute, efforts should be made to give effect to each of the provisions and all provisions should be construed so harmoniously that none of the provisions looses its effect, meaning and operation in its respective fields.

(41) It is a settle principle of interpretation of statute that when the Legislature specifies the extent of power, which an authority can exercise, then it is not permissible to transgress such prescribed power. The legislative intent for funtioning of such Tribunals with complete freedom and judicial independence is obvious from the

(20) AIR 2000 S.C. 391
(21) (1997) 6 S.C.C. 678

provisions of Section 24-B of the Act. The District and State forums are to work under the administrative and supervisory control of the National Commission and/or the State Commission, as the case may be, but with a clear caution that such control should no way interfere with their quasi-judicial freedom. That is the extent of freedom and independence of judicial functioning of these Commission which is intended by the Legislature. Applying this principle on these premises, it can no way be justified that on the strength of the provisions of Section 16(1-A) of the Act, the Committee can intermingle its power of selection with that of the power vested in the Chief Justice of the High Court and the State.

(42) Independence of judiciary and majesty of law certainly envisage that appointment to the judicial forum of President of the Commission should be made in conformity with the proivisions of Section 16(1)(a) of the Act with definite precedence to the opinion of the Chief Justice. The proposal for this post should normally be initiated by the Chief Justice, so as to avoid unnecessary delay in appointments. Administrative harmony between the two essential components involved in the process of this appointment i.e. the Chief Justice and the State should act in conformity to the above enunciated law and principles of mutuality, to achieve the object of appointing the most befitting person to this coveted post. *Verba cum effectu accipienda sunt* is again a know precept to law of interpretation of statutes. Application of such maxim casts an obligation upon the Court to give effect to each word of the statute and permits its applicability and operation freely to achieve the object of the Act. Attainment of such goal is possible only if the concerned components/ authorities involved in such process act and exercise their powe or authority within the prescribed limits of law. We must mention this with some emphasize that conflict must be avoided and the provisions must be harmoniously read. The element of inconsistency vanishes by concerted understanding of law and permitting the statutory provisions to operate in the realm of their respective fields. We have already noticed that neither there is any conflict between the two statutory provisions nor are they destructive or repugnant to each other. Reliance on the principle of harmonious construction is primarily relevant to consider the merits of the contention raised by

the respondents. We have already held that provisions of Section 16(1-A) are no way destructive of the decision making process contemplated under Section 16(1)(a) of the Act. In order to avoid undesirable results and to maintain the dignity of institutions of justice, provisions of Section 16(1)(a) should operate and be applied discernly in case of appointment to the post of President of the Commission.

(43) It is conceded before us that the President of the State Commission retired on 4th September, 2003 and since then the post is lying vacant for non-finalisation of the incumbent. Where public at large is being incovenienced, there the interest of administration of justice is also suffering.

(44) Therefore, we have no hesitation in accepting these writ petitions and directing the State Government, to take all steps in consonance with this judgment to make appointment to the post of resident of the State Commission as expeditiously as possible and in any case not later than one month from the date of pronouncement of this judgment. Inordinate delay must be avoided and timely action taken. To ensure such compliance we further direct that the concerned authorities would take steps and initiate the process for appointment to the post of President of the Commission atleast three months prior to the date when the term of the sitting President is to expire. Common wheel of proper administration of justice can be achieved by avoiding inordinate delay and timely action taken. The approach of the authorities in making such appointments should be objective, pervasive and devoid of microcosm analysis. The need of the common litigant would place an obligation upon the authorities concerned to act with exactitude and rectitude. In such appointments, time is the essence. Thus, we also express a pious hope that in future, timely steps would be taken to fill up the vacancy resulting from retirement or otherwise of the incumbent to the post, to avoid delay in disposal of cases pending before the State Commission.

(45) The writ petitions are accordingly allowed, however, leaving the parties to bear their own costs.

R.N.R.