

ITEM NO.3

COURT NO.6

SECTION PIL-W

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

SUO MOTO WRIT PETITION (CIVIL) NO. 2/2021

IN RE: INACTION OF THE GOVERNMENTS IN APPOINTING
PRESIDENT AND MEMBERS/STAFF OF DISTRICTS AND STATE
CONSUMER DISPUTES REDRESSAL COMMISSION AND INADEQUATE
INFRASTRUCTURE ACROSS INDIA PETITIONER(S)

VERSUS

UNION OF INDIA AND ORS.

RESPONDENT(S)

(MR. GOPAL SANKARANARAYANAN, LEARNED SENIOR ADVOCATE ALONGWITH MR.
ADITYA NARAIN, LEARNED ADVOCATE ARE AMICI.

IA No. 109375/2021 - APPLICATION FOR PERMISSION

IA No. 92052/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 133193/2021 - APPROPRIATE ORDERS/DIRECTIONS

IA No. 82707/2021 - CONDONATION OF DELAY IN FILING

IA No. 148533/2021 - EXEMPTION FROM FILING AFFIDAVIT

IA No. 133189/2021 - INTERVENTION APPLICATION

IA No. 110660/2021 - INTERVENTION APPLICATION

IA No. 92050/2021 - INTERVENTION APPLICATION

IA No. 26636/2021 - INTERVENTION/IMPLEADMENT

IA No. 92053/2021 - PERMISSION TO APPEAR AND ARGUE IN PERSON

IA NO. 155971/2021, EXEMPTION FROM FILING DULY NOTARIZED AFFIDAVIT

IA NO. 155968/2021- SEEKING EXTENSION OF TIME ON BEHALF OF THE
STATE OF WEST BENGAL

IA NO. 155917/2021-EXEMPTION FROM FILING DULY AFFIRMED
AFFIDAVIT

IA NO. 155914/2021- EXTENSION OF TIME ON BEHALF OF THE STATE
OF MANIPUR

IA NO. 137596/2021- INTERVENTION ON BEHALF OF MUMBAI GRAHAK
PANCHAYAT

Date : 01-12-2021 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE M.M. SUNDRESH

Mr. Gopal Sankarnarayan, Sr. Adv. (AC)

Mr. Aditya Narain, Adv. (AC)

Ms. Purna Priyadarshini, AOR

Ms. Priyashree Sharma Ph., Adv.

Ms. Rushali Agarwal, Adv.

Mr. Arnav Narain, AOR.

Ms. Anushree Narain, Adv.

Mr. Arjun Jain, Adv.

Mr. Mishra Raj Shekhar, Adv.

For Petitioner(s) Mr. Omprakash Ajitsingh Parihar, AOR
 Mr. Yudhvir Dalal, Adv.
 Mr. Dushyant Tiwari, Adv.
 Mr. Apurv S., Adv.

For Respondent(s) Mr. Tushar Mehta, SG
 Mr. Aman Lekhi, ASG
 Ms. Neela Kedar Gokhale, Adv.
 Ms. Swarupama Chaturvedi, Adv
 Mr. R.B. Yadav, Adv.
 Mr. B.K. Satija, Adv.
 Ms. Shraddha Deshmukh, Adv.
 Ms. Chinmayee Chandra, Adv.
 Mr. Ankur Talwar, Adv.
 Mr. Kushal Choudhary, Adv.
 Mr. Ilam Paridi, Adv.
 Mr. Amrish Kumar, AOR

Mr. Chirag M. Shroff, AOR

Mr. Tanmaya Agarwal, AOR
 Mr. Wrick Chatterjee, Adv.

Mr. Rahul Chitnis, Adv.
 Mr. Sachin Patil, AOR
 Mr. Aaditya A. Pande, Adv.
 Mr. Geo Joseph, Adv.

Mr. Gurinder Singh Gill, Sr. Adv.
 Mr. P.P. Nayak, Adv.
 Mr. Kuldeep Singh Kuchaliya, Adv.
 Ms. Aashna Gill, Adv.
 Mr. Pratap Singh Gill, Adv.
 Ms. Bhupinder, Adv.
 Ms. Vandana Hooda, Adv.
 Mr. Ajay Pal, AOR

Mr. Anil Grover, Sr. Adv., AAG
 Ms. Noopur Singhal, Adv.
 Mr. Rahul Khurana, Adv.
 Mr. Satish Kumar, Adv.
 Mr. Sanjeev Prakash Upadhyay, Adv.
 Mr. Sanjay Kumar Visen, AOR
 Ms. Babita Mishra, Adv.

Ms. Taruna Ardhendumauli Prasad, AOR
 Ms. Deepika Gupta, Adv.

Mr. Mahfooz Ahsan Nazki, AOR
 Mr. Polanki Gowtham, Adv.
 Mr. Shaik Mohamad Haneef, Adv.
 Mr. T. Vijaya Bhaskar Reddy, Adv.

Mr. K.V. Girish Chowdary, Adv.

Mr. Abhimanyu Tewari, AOR
Ms. Eliza Bar, Adv.

Mr. Manish Kumar, AOR

Mr. Sumeer Sodhi, AOR

Mr. Surjendu Sankar Das, AOR
Ms. Sakshi Tibrewal, Adv.

Ms. Deepanwita Priyanka, AOR

Mr. Vikas Mahajan, Sr. Adv (AAG)
Mr. Ram Subhag Singh, Chief Secretary
Mr. Anil Kumar, Adv.
Mr. Arun Singh, Adv.
Mr. Vinod Sharma, AOR
Mr. Surinder Singh Manak, Adv.
Mr. Parijat Som, Adv.
Mr. Prahlad Narayan Singh, Adv.
Mr. Arvind Kumar, Adv.

Mr. Arunabh Chowdhury, AAG
Ms. Pragya Baghel, Adv.
Ms. Pallavi Langar, AOR

Mr. Shubhranshu Padhi, AOR

Mr. G. Prakash, AOR
Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash, Adv.

Mr. Mrinal Gopal Elker, AOR

Mr. Pukhrambam Ramesh Kumar, AOR
Ms. Anupama Ngangom, Adv.
Mr. Karun Sharma, Adv.

Mr. Upendra Mishra, Adv.
Mr. Avijit Mani Tripathi, AOR
Mr. T.K. Nayak, Adv.

Mr. Siddesh Kotwal, Adv.
Mr. Ana Upadhyay, Adv.
Ms. Maniya Hasija, Adv.
Ms. Pragya Barsaiyan, Adv.
Mr. Akash Singh, Adv.
Mr. Nirnimesh Dube, AOR

Mrs. K. Enatoli Sema, AOR
Mr. Amit Kumar Singh, Adv.

Ms. Chubalemla Chang, Adv.

Mr. Kiran Kumar Patra, AOR

Mr. Sanjay Kumar, Adv.

Mr. Chandra Sekhar Padhi, Adv.

Ms. Uttara Babbar, AOR

Ms. Ranjeeta Rohatgi, AOR

Dr. Manish Singhvi, Sr. Adv.

Mr. Arpit Prakash, Adv.

Mr. Sandeep Kumar Jha, AOR

Mr. Vivek Kohli, Advocate General

Mr. Sameer Abhyankar, AOR

Ms. Yeshi Rinchen, Adv.

Mr. Abhinav Mishra, Adv.

Ms. Nishi Sangatani, Adv.

Mr. Amit Anand Tiwari, Sr. Adv., AAG

Mr. D. kumanan, AOR

M/S. Venkat Palwai Law Associates, AOR

Mr. Shuvodeep Roy, AOR

Mr. Kabir Shankar Bose, Adv.

Mr. Ishaan Borthakur, Adv.

Mr. Jitender Kumar Shetty, DAG

M. Krishnam Mishra, Adv.

Mr. Rajeev Kumar Dubey, Adv.

Mr. Ahiwan Mishra, Adv.

Mr. Anurag Tiwari, Adv.

Mr. Kamendra Mishra, AOR

Ms. Diksha Rai, AOR

Mr. Prateek Bhardwaj, Adv.

Mr. Anand Grover, Sr. Adv.

Mr. Suhaan Mukerji, Adv.

Mr. Vishal Prasad, Adv.

Mr. Nikhil Parikshith, Adv.

Mr. Abhishek Manchanda, Adv.

Mr. Sayandeep Pahari, Adv.

M/S. Plr Chambers And Co., AOR

Ms. G. Indira, AOR

Ms. Habilila Nana, Adv.

Mr. Aravindh S., AOR

Mr. Subodh S. Patil, AOR

Ms. Shirin Khajuria, AOR

Mr. Atul Sharma, AOR

Mr. Jose Abraham, AOR

Mr. M.P. Srivignesh, Adv.

Ms. Anju Joseph, Adv.

Mr. Shankey Agrawal, AOR

Ms. Astha Sharma, AOR

Applicant-in-person

Mr. Piyush Dwivedi, AOR

Ms. Radhika Chaturvedi, Adv.

Mr. Hitesh Kumar Sharma, Adv.

Mr. Akhileshwar Jha, Adv.

Ms. Manju Jaitley, Adv.

Mr. Saurabh Mishra, Sr. Adv., AAG

Mr. Gopal Jha, Adv.

Mr. Nishant Verma, Adv.

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

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IA NO. 155971/2021, application seeking exemption from filing duly notarized affidavit is allowed.

IA NO. 155968/2021- SEEKING EXTENSION OF TIME ON BEHALF OF THE STATE OF WEST BENGAL

On consideration of the application, we take cognizance of the assurance given by the State Government that in view of the delay on account of the facts set out in the application, they seek two months' time to complete the process of appointment of Presidents/Members of the State Consumer

Commission and District Consumer Commissions and for notifying the relevant rules.

We may further note that by our peremptory order dated 11.08.2021, in view thereof, the model rules will apply during the interregnum.

The application stands disposed of.

IA NO. 155917/2021, application seeking exemption from filing duly affirmed affidavit is allowed.

IA NO. 155914/2021- EXTENSION OF TIME ON BEHALF OF THE STATE OF MANIPUR

On consideration of the application, we take cognizance of the assurance given by the State Government that in view of the delay on account of the facts set out in the application, they seek two months' time to complete the process of admission of Presidents/Members in the State Consumer Commission and District Consumer Commissions for notifying the relevant rules.

We may further note that by our peremptory order dated 11.08.2021, in view thereof, rules will apply during the interregnum.

The application stands disposed of.

IA NO. 137596/2021- INTERVENTION ON BEHALF OF MUMBAI GRAHAK PANCHAYAT

We are sufficiently assisted by the Advocates and are thus not inclined to entertain any

application by the applicant. If there are any suggestions to be made, the same can be submitted to the Amici Curiae for their consideration. The difficulties pointed out in this application or suggestions may be examined by the Amici Curiae.

The application stands disposed of.

SMW (CIVIL) NO. 2/2021

VACANCY POSITION

Mr. Aditya Narain, learned Amicus Curiae has taken us to comprehensive status report in respect of compliance of our directions passed on 11.08.2021 qua the appointment of members. What emerges is that the States have been categorized under two headings, i.e., the States that have partially filled the vacancies and the States that have not filled any vacancies. In the second category also, large number of States are stated to be reaching the culmination of the process. There are some difficulties expressed qua the State of Tamil Nadu because of the changes which have taken place in the judicial set up, including, of the Chief Justice. It appears that the acting Chief Justice would have to nominate some Judge and the State Government would promptly approach the acting Chief Justice for the said purpose and we expect the nomination to be made on an urgent basis.

In Punjab, it appears that two persons sought to be appointed facing an interdict from the Court. We would expect the High Court to take a call one way or the other on the same, as early as possible.

It is suggested by the learned Amicus Curiae that two months' time from today, i.e., by the end of January, 2022 should be enough for the States to fully comply, which include the ones which have partially complied but their vacancies have not been filled up, the exception being State of Maharashtra which will have to wait the decision in the special leave petition stated to be filed both by the Union of India and the State but not listed as yet. Learned Additional Solicitor General submits that steps will be taken to mention the same for listing.

We may note that so far as the Union Territory of Lakshadweep is concerned, the Status report shows they have not even constituted the Selection Committee. However, learned ASG submits that further development is that the needful has been done on 30.11.2021 and we expect the process to be completed within the stipulated time as aforesaid.

We may note that developments in State of Rajasthan are brought to the notice of the learned Amici Curiae at the nth moment, something which we

don't appreciate. We have put to learned counsel that if the time schedules directed by this Court are not adhered to we would take that the presence of the Chief Secretary would be required for enforcing our directions. The State to be careful in future.

Learned ASG also assures us that insofar as Ladakh is concerned, there was apparently a communication gap but in any case needful will be done within the time stipulated by the Court and proper information furnished to the learned Amici Curiae.

In order to enable learned Amici Curiae to assist us in a proper manner, the States will within this period of two months send the relevant information to the learned Amici Curiae who require about two weeks' time to process the same and submit a report to us.

Learned Amici Curiae informed us that information is also not forthcoming from the State of Kerela. Learned counsel for the State sought to urge that they had sent the information and needful has been done but then in terms of our last order, we have categorically stated that after submission of the information electronically, it should be verified from the office of the learned Amici Curiae. The State of Kerela is no exception which

will not follow the norm!

Insofar as National Consumer Disputes Redressal Commission is concerned, we are informed by the learned ASG that a Committee headed by the Judge of this Court is in seisin of the issue of selecting the persons to make recommendations.

INFRASTRUCTURE

We may note at the threshold that a Committee headed by Justice (Retd.) Arijit Pasayat was appointed to examine the issue of infrastructure in C.A. No. 2740/2007, titled as, *State of U.P. & Ors. vs. All U.P. Consumer Protection Bar Association*. It appears that the interim reports are now available with the learned Amici Curiae but the final report has not been made available. The Registry of this Court must be in possession of the final report and a copy of the same may be made available to the learned Amici Curiae (or in the alternative they may obtain it from Justice Arijit Pasayat).

We are informed that the learned Amici Curiae and the learned ASG discussed the aspects arising from the legislative impact study *post facto* carried out. It appears that the same was done in a hurry and that too, the data available was based of the Covid period. It is, thus, perceived that possibly,

a more comprehensive legislative impact study would also be required as a continuing process.

One of the crucial aspects qua infrastructure is funding. The Central Government has allocated funds for Consumer Commission infrastructure, the details of which have been shown to us. This allocation is under the Guidelines and Norms (Infrastructural Benchmarks) for the period 2021-2022 to 2025-2026 (Annexure IV of the report to the short affidavit filed on behalf of respondent No. 1/UOI in compliance of our order dated 11.8.2021 at page 121). The report covers both the norms for building purposes and non-building purposes. The assistance for non-building assets are to be released in a single instalment during the aforesaid period. The building grants are released in the ratio of 50:50. Physical and financial progress of building may be furnished with utilization at each level of 50:50. Non-building assets should come only after building is constructed.

State-wise status of pending un-utilized financial assistance has been placed before us as 'Annexure V' to the said report as on 01.09.2021. What this annexure reflects is a large part of pending funds under category of "UC." which does not portray a very happy situation. It must be appreciated that the utilization of the Central

funding in turn requires planning by the States so that the funds do not lapse. The project may be spread over a period of time and if the utilization is on the basis of the total funds available without taking into account the time period within which that infrastructure would be built, there is bound to be a situation of funds lapsing. For example, if 30 crores have to be spent in a financial year, and the projects undertaken are worth 30 crores spread over 3 years, then only 10 crores would be utilized and 20 crores would lapse. Thus, what is required, is to take up as many projects as would result in a utilization of the fund in the given financial year so that the fund does not lapse.

The second aspect of this is that the utilization certificate (UC) has to be submitted in a prescribed form. If that is not met, it will still be kept as, pending a UC certificate. This is a scenario noticed not only qua this fund utilization but a general problem this Court has come across insofar as utilization of central funds are concerned. The bottom line is that there is a lack of coordination and understanding of the Scheme.

We are told that there are Empowered Committees which are multi member committees which are supposed to overlook the whole scenario but in a

very scheme of things of multi member committees, the occasion for them to meet at convenience of all would be a problem. It is suggested to us that in order to facilitate the utilization of funds within the stipulated time and to ensure that utilization certificates are submitted so that no part of the fund lapses, there should be nodel officers assisting the Empowered Committees. We call upon the Central Government and the State Governments as well as the Union Territories to nominate the nodel officers for the said purpose within a week from today. These nodel officers will coordinate and assist the Empowered Committees. We make it clear that the Empowered Committees, the nodel officers, the States and the Union Government are all responsible to ensure that the funds allocated are utilized properly and within the time stipulated with proper utilization certificate to ensure that no fund lapses, and are utilized under the Scheme. Learned Amici Curiae offer to create a web link, upload all the material received from the Union of India, including the short affidavit so that the State counsels have access to it and are not even dependent on the ability of the States to instruct their counsels!

Learned Amici curiae have given an e-mail

address so that the same is utilized by the Union of India and the States, the nodal officers or any one communicating in this behalf at the e-mail address : SM.AMICUS@GMAIL.COM.

The report has made a comprehensive assessment based on the Justice Pasayat Committee report of the deficiencies existing in different States qua infrastructure, possibly little would have been done after that. Funds are now available from Central grant and the States are also responsible to create the requisite infrastructure. Each of the State is required to note the deficiencies pointed out by learned Amici Curiae coupled with the collated data on building space on pages 37 to 44 of the report which follows the deficiencies set out from page 21 to page 36. We make it clear that all these deficiencies have to be made up by the States and it shall be part of the job of the nodal officer to see how the funds have been utilized or are to be utilized to ensure that the deficiencies are covered up. We will not countenance a situation where funds are available from the Central Government and yet these deficiencies are not made up. The nodal officers to also coordinate with the learned Amici Curiae and ensure that all the relevant data in this behalf sought by the learned Amici Curiae are submitted to

them so that they are able to assist the Court.

The suggestion of Mr. Anand Grover, learned senior counsel for the State of West Bengal is recorded that the creation of wash rooms should be for all the three genders.

Staff Vacancies

The staff vacancy position reflects an alarming position. Nine States and UTs. do not even have essential post of Registrar *and Joint Registrar*. The remaining States and Union Territories where the sanctioned posts exist, some or all of the said posts are vacant. The timeline sought to be given by the States for recruiting staff members has expired in certain States while in the others it will expire if this is the way we have to go about it. Some of the States have given almost 1½ year plan. This is not acceptable. If the post of the adjudicating members is being filled in, they are not supposed to do everything themselves but have to be properly assisted. Thus every endeavour has to be made to see that the staffing process also gets completed within the next two months. If sanctioned posts are to be created, the needful be done. We have already set forth the timeline. The completion in two months would require a prelude i.e, wherever sanctioned posts

have to be created, the same may be done within two weeks and wherever advertisements have to be issued, they should be so issued within two weeks to facilitate filling up of posts within the period of two months. The filling up can be either through recruitment or by deputation. The States will scrutinize the report of the learned Amici Curiae closely which reflects in detail the vacancy position based on the input from the States and that all that we have done is to restrict the timeline for completion to two months rather than some of the States taking a longer period.

The suggestion given from pages 52 to 55 of the report are thus accepted by this Court with the timeline stipulated as aforesaid and the States shall follow the same.

Thus as directed aforesaid, having granted two months' time even for these purposes, the compliance report must be filed by the end of two months' period of time.

List for further directions on 23.02.2022.

[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS

[POONAM VAID]
COURT MASTER (NSH)