CORAM :- V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.

DATED :- 24.03.2022

COMMON JUDGMENT (PER : AMIT B. BORKAR, J.) :-

1. Since all these petitions seek the same relief and involve a similar factual matrix, we are disposing of them by one judgment.

2. Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

3. Since we treat Criminal Writ Petition No.199/2021 as a lead petition, we refer to parties and pleadings as stated in Criminal Writ Petition No.199/2021. By this petition under Articles 226 and 227 of the Constitution of India, the petitioners are seeking the following reliefs:-

> *"(A) Declare Section 29A of the Consumer Protection Act, 1986 to be ultra-vires the Constitution of India.*
> *(B) Quash and set aside the order dated 17th February 2020 (Annexure-P1) passed by the learned Additional District Consumer Disputes Redressal Forum, Nagpur in Consumer Complaint No. 232 of 2018; and*
> *(C) Remand the Consumer Complaint no. 232 of 2018 for a re-hearing before the learned Additional District Consumer Disputes Redressal Forum, Nagpur; and*
> *(D) Quash and set aside the prosecution of offence under Section 72 of the Consumer Protection Act, 2019 in case bearing no. EA/20/84 pending before the learned Additional District Consumer Disputes Redressal Forum, Nagpur; and*

(E) Stay the effect, operation, and execution of the order dated 17th February 2020 (Annexure-P1) passed by the learned Additional District Consumer Disputes Redressal Forum, Nagpur in Consumer Complaint no. 232 of 2018 and consequently, case bearing no. EA/20/84 pending before the learned Additional District Consumer Disputes Redressal Forum, Nagpur during the pendency of this petition; and

(F) Grant ad-interim relief in terms of Prayer Clause (E) above; and

(G) Grant such other relief that this Hon'ble Court deems just and proper in the facts and circumstances of the case."

4. The facts necessary for adjudication of challenge to the constitutional validity of Section 29A of the Consumer Protection Act, 1986 (in short, "the Act") are as under:-

On 17.02.2020, the District Consumer Forum passed an order signed by only two Members without the President being party to it. By the said order, the petitioners-developers were directed to execute the Sale Deed of Plot No. 34 and deliver possession of the said plot. The petitioners, instead of availing statutory remedy under the provisions of the said Act, have filed the present petition under Articles 226 and 227 of the Constitution of India challenging the validity of the judgment mainly on the ground that the exercise of powers by the District Consumer Forum without the President being its party is illegal. Section 29A of the Act, which permits the District Forum to pass judgment without the President, violates Article 14 of the Constitution of India.

5. This Court, on 02.03.2021, issued notice to the respondents. Respondent no. 3 filed its reply stating that the petitioners have the statutory remedy of appeal and, therefore, the petition is not maintainable. Respondent no. 3 has placed reliance on the unreported judgment of this Court in the case of ***Yashwant Mahavidyalaya Sahakari Pat Sanstha, Wardha Vs. Kishor S/o. Gangasagarji Dube (Writ Petition No. 4036/2018)*** and ***Yashwant Mahavidyalaya Sahakari Pat Sanstha, Wardha Vs. Ashadevi Gangasagarji Dube (Writ Petition No. 2751/2018)*** decided on 31.07.2019. Reliance is also placed on Section 22 of the Act, which deals with the contingency of the vacancy of the President. It is submitted that Hon'ble Apex Court, while delivering the judgment in ***State of Karnataka Vs. Vishwabhuthi House Building Co-operative Society [(2003) 2 SCC 412]*** has already upheld the virus of the said Act. It is stated that the Consumer Protection Act, 2019, has been enforced from 20.07.2020 by repelling the Consumer Protection Act, 1986 with the result present challenge to Section 29A of the said Act becomes infructuous.

6. The respondent no. 4 has also filed a reply stating that the Hon'ble Apex Court in the case of ***Gulzari Lal Agrawal Vs. Accounts Officer [(1996) 10 SCC 590]*** has held that Sub-section (2) of Section 14 of the Act is a presumptuous provision where the President of the

State Commission is functional. Still, it would not be correct to say that if the President of the State Commission is non-functional because of one or the other reason, the State Commission would stop its functioning and wait till the President is appointed. It is held that Rules are framed with a view to making the State Commission functional in the absence of the President and not to halt the State Commission or to render it non-functional for want of the President. Therefore, the provisions of the said Act need to be construed harmoniously to promote the object and spirit of the Act.

7. We have heard Shri S. V. Bhutada, Advocate for the petitioners, Shri Nandesh Deshpande, learned ASGI for respondent no. 1, Shri M. K. Pathan, learned AGP for respondent no. 2/State and Shri H. R. Gadhia, learned Advocate for respondent no. 4.

8. Shri Bhutada, learned Advocate for the petitioners, submitted that Section 29A of the said Act permits District Forum to function without President, which is unconstitutional as he is a Judicial Member. He submitted that Section 29A of the said Act is inconsistent with Articles 14 and 21 of the Constitution of India as two unequal are treated as equal. It is submitted that Section 29A of the Act is in conflict with other provisions of the Act. He submitted that the composition of the Forum at the various levels under the Act takes

away the guarantee of a fair trial before the Forum as, in the absence of the President, the majority of the members are legally untrained.

9. *Per contra*, Shri Nandesh Deshpande learned ASGI supported the validity of Section 29A of the Act by submitting that the petitioners have failed to displace the presumption of constitutionality of Section 29A of the Act. He submitted that for the effective administration of consumer disputes in case of unavoidable contingency or in the absence of the President due to leave or other difficulty functioning of District Forum should not be made a standstill. Therefore, Section 29A of the Act protects the delivery of judgment passed by District Forum with such Act.

10. Shri H. R. Gadhia, learned Advocate for respondent no. 4 (original complainant), submitted that the Hon'ble Supreme Court, in the case of ***Gulzari Lal Agrawal (supra)***, had considered the situation when orders passed in the absence of the President holding that provisions of the Act need to be construed harmoniously with a view to promote object and spirit of the Act. It was never the intention of the Legislature to stall or make the Forum non-functional in the absence of the President, either having not been appointed in time or if the President is on leave for a reason beyond his control. He submits that the present petition has been filed only to delay the execution of the Award passed by the District Consumer Forum.

11. Shri M. K. Pathan learned AGP for State, and Shri H. R. Gadhiya, learned Advocate for respondent no. 4, have adopted the argument of respondent no. 1.

12. The petitioners have challenged Section 29A of the Act on the touchstone of Articles 14 and 21 of the Constitution of India on the ground that the absence of the President, who is a Judicial Member, violates Article 21 of the Constitution of India. During the course of the hearing, we called upon Shri Bhutada, learned Advocate, to show pleadings in the petition, which constitute a challenge to the constitutional validity of Section 29A of the Act. Shri Bhutada, learned Advocate invited our attention to ground nos. "B" to "F" in support of his contention that there are sufficient pleadings to constitutional challenge regarding the constitutional validity of Section 29A of the Act.

13. In this context, it would be useful to refer to the judgment of the Hon'ble Apex Court in the case of ***Joint Secretary, Political Department, State of Meghalaya Vs. High Court of Meghalaya [(2016) 11 SCC 245]***. The said judgment laid down the requirements of pleadings insofar as the petition challenging the constitutional validity of Article 14 is concerned. It would be appropriate to refer to

paragraph nos. 17 to 21 of the said judgment, which are reproduced herein under:-

> *"17. In the instant case, as is evident, the High Court has compared the provisions pertaining to appointment of Chairperson and Members under the Act with the provisions of other Acts enacted by different legislatures. The Legislature has passed the legislation in its wisdom. There was no challenge to the constitutional validity of the provisions of the Act. The suo motu petition was registered for giving effect to the Act by bringing the institutions into existence. This may be thought of in very rare circumstances depending on the nature of legislation and the collective benefit but in that arena also the Court cannot raise the issue relating to any particular provision and seek explanation in exercise of jurisdiction under Article 226 of the Constitution. In the case at hand, as is manifest, the Division Bench of the High Court has, with an erroneous understanding of fundamental principle of law, scanned the anatomy of the provision and passed an order in relation to it as if it is obnoxious or falls foul of any constitutional provision. The same is clearly impermissible. A person aggrieved or with expanded concept of locus standi some one could have assailed the provisions. But in that event there are certain requirements and need for certain compliances.*
>
> *18. In State of U. P. v. Kartar Singh [AIR 1964 SC 1135], while dealing with the constitutional validity of Rule 5 of the Food Adulteration Rules, 1955, it has been opined as follows:-*
>
> > *"15.... if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove that the infirmity is too well established to need elaboration."*
>
> *19. In State of A. P. v. K. Jayaraman and others[(1974) SCC 738], it has been ruled thus:-*
>
> > *"3. It is clear that, if there had been an averment, on behalf of the petitioners, that the rule was invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out."*

20. In Union of India v. E.I.D. Parry (India) Ltd.[(2002) 2 SCC 223], a two- Judge Bench of this Court has expressed thus:-

> *"4. . . . There was no pleading that the Rule upon which the reliance was placed by the respondent was ultra vires the Railways Act, 1890. In the absence of the pleading to that effect, the trial Court did not frame any issue on that question. The High Court of its own proceeded to consider the validity of the Rule and ultimately held [E.I.D. Parry (India) Ltd. V. Union of India, 1983 ACJ 617] that it was not in consonance with the relevant provisions of the Railways Act, 1890 and consequently held that it was ultra vires. This view is contrary to the settled law…"*

21. In State of Haryana v. State of Punjab [(2004) 12 SCC 673], the Court emphasizing on the facet of pleading, has opined that:-

> *"82 ….. It is well established that constitutional invalidity (presumably that is what Punjab means when it uses the word "unsustainable") of a statutory provision can be made either on the basis of legislative incompetence or because the statute is otherwise violative of the provisions of the Constitution. Neither the reason for the particular enactment nor the fact that the reason for the legislation has become redundant, would justify the striking down of the legislation or for holding that a statute or statutory provision is ultra vires. Yet these are the grounds pleaded in sub-paragraphs (i), (iv), (v), (vi) and (vii) to declare Section 14 invalid. Furthermore, merely saying that a particular provision is legislatively incompetent [ground (ii)] or discriminatory [ground (iii)] will not do. At least prima facie acceptable grounds in support have to be pleaded to sustain the challenge. In the absence of any such pleading the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected in limine."*

14. In the light of the law laid down by the Hon'ble Supreme Court above, the essential requirements of pleadings in the petition challenging discrimination or unreasonable discriminatory standard is concerned, the material needs to be placed before the Court by way of scientific analysis, and it cannot be done by priory reasoning. It is mandatory for the petitioners to *prima facie* show acceptable grounds

in support of such a challenge. The party has to plead *prima facie* acceptable grounds showing how the impugned provision of a statute is discriminatory offending Article 14 of the Constitution of India. The consequence of the absence of pleading as law laid down is that a challenge to the constitutional validity of a statute or statutory provision is liable to be rejected *in limine*.

15. In light of the aforesaid requirements and the law laid down by the Hon'ble Supreme Court, we have scrutinised the pleadings in the instant case. The reading of grounds “B” to “F” indicates that they are vague. Consequently, they do not contain any *prima facie* acceptable grounds on the basis of which the allegation of discrimination is sought to be brought home. Therefore, the pleadings as contained in the Writ Petition would hardly satisfy the test of law laid down by the Hon’ble Apex Court in ***Joint Secretary*** (supra). Therefore, the petition is liable to be dismissed on the ground of the absence of pleadings.

16. However, though we have arrived at the aforesaid conclusions, we deem it appropriate to consider the challenge of the petitioners on merits. The Supreme Court has repeatedly stated that Constitutional Courts can strike down legislative enactments only on two grounds, namely:-

i) The legislator does not competent to make the law;

ii) that such statute or provision takes away or breaches any of the fundamental rights enumerated in Part-III of the Constitution of India.

17. The scope of a petition challenging constitutional validity has been laid down in the decision in ***Ram Krishna Dalmia v. Justice Tendolkar (A.I.R. 1958 S.C. 538)***, in which the law was elaborately discussed, and certain principles were laid down. The following are relevant in this case:—

> *"(b) that there is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles;*
>
> *(c) that it must be presumed that the Legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds;*
>
> *(d) that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest;*
>
> *(e) that in order to sustain the presumption of constitutionality the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation".*

18. It is well settled that any enactment cannot be struck down on the ground that Court thinks it unjustified. The Court cannot pass any judgment on the wisdom of the Parliament and Legislators consisting of representatives of the people, who are supposed to know and be aware of the needs of the people. It is also settled that

presumption of constitutionality is always in favour of Legislation only if the contrary is shown. The burden of establishing unconstitutionality is always on a person who challenges its vagaries. The Courts should not stall and embark on unnecessary enquiries into the constitutionality of the provision. They should confine their position as far as may be reasonably practical within the narrow limits required on the fact of the case. The Courts cannot examine the constitutional validity if a situation created by impugned legislation is irremediable.

19. The Consumer Protection Act, 1986 has been enacted with avowed objects of the constitution of consumer councils and forums for settlement of disputes of consumer are to protect the rights of the consumer against the marketing of goods and services which are hazardous to life and property; the right to be informed about the quality, quantity, potency, purity, standard and price or goods or services as the case may be so as to protect the consumer against unfair trade practices, the right to be assured wherever possible access to a variety of goods and services at competitive prices; the right to be heard and to be assured that consumers' interest will receive due consideration at appropriate Forums; the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers and the right to consumer education. Under

Section 10(1)of said act, each District Forum shall consist of a person who is, or who has been, or is qualified to be, a District Judge, who shall be its President. Under Clause (b) of Section 10(1), the other two members shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have been shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Regarding the wide scope of the subjects that may have to be dealt with by the Forum, the Legislature has taken care to introduce such a provision. While the President of the Forum is a person who has sufficient knowledge of the judicial procedure, he doesn't need to be versatile or well-versed in other subjects, such as economics, commerce, accountancy etc. Except for the President, who is a legally trained person being an existing or past Judge or Judicial Officer, the others could be anyone who, in the opinion of the Government, possesses the ability, integrity and standing and have adequate knowledge or experience of or have shown capacity in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration and not necessarily obtained any degree or diploma in such fields or attained such academic achievements as qualifications or any training for a particular period. The combination of judicial knowledge and expertise in other subjects proves valuable in deciding disputes in a competent manner.

20. In our opinion, the language of Section 29A of the Act is intended to provide for a situation where a President of State Commission or District Forum is non-functional, either having not been appointed in time or is on leave due to reasons beyond his control. The scheme of appointment and adjudication of consumer disputes is laid down under the Act to make the District Forum or State Commission continuously functional, allowing the Members in the absence of the President to function in a situation beyond the control of the Members of the Forum. Though we expect it is more appropriate and desirable to function with the President of the District Forum or State Commission while adjudicating complaints under the Act, the provisions of the said Act are required to be interpreted as broadly as possible. The mere absence of the President for reasons beyond control alone is not sufficient for striking down Section 29A of the Act as unconstitutional, particularly when such provision has been made to render the District Forum or State Commission functional in the absence of the President. The provisions of the said Act need to be construed harmoniously to promote the object and spirit of the Act.

21. At this stage, it would be useful to place reliance on the judgment of the Hon'ble Supreme Court in the case of ***Gulzari Lal Agrawal (supra),*** wherein it had been held that sub-Section (2) of Section 14 of the Act is a presumptuous provision, where the President

of the State Commission is functional but, it would not be correct to say that the President of the State Commission if non-functional because of one or the other reason, the State Commission would stop its functioning and wait till the President is appointed. It is held that Rules are framed with a view to making the State Commission functional in the absence of the President and not to halt the State Commission and render it non-functional for want of the President. The Hon'ble Supreme Court ultimately held that National Commission committed an error in holding that order passed by two Members of the State Commission without the junction of the President is illegal and void.

22. In the case of ***State of Karnataka v. Vishwabharathi House Building Coop. Society***, on page 427, is held as under:-

> *"40. The District Forum, the State Commission and the National Commission are not manned by lay persons. The President would be a person having judicial background and other members are required to have the expertise in the subjects such as economics, law, commerce, accountancy, industry, public affairs, administration etc. It may be true that by reason of sub-section (2-A) of Section 14 of the Act, in a case of difference of opinion between two members, the matter has to be referred to a third member and, in rare cases, the majority opinion of the members may prevail over the President. But, such eventuality alone is insufficient for striking down the Act as unconstitutional, particularly, when provisions have been made therein for appeal thereagainst to a higher forum."*

23. We, therefore, hold that there is no merit in the challenge to the constitutional validity of Section 29A of the Consumer Protection Act,1986. Therefore, prayer clause (A) of the petition is rejected.

24. Insofar as prayer clause nos. (B) to (D) are concerned, the petitioners have a statutory remedy to challenge it before the National Commission, and therefore, we are not entertaining said challenge. We grant liberty to the petitioners to adopt appropriate proceedings to challenge the impugned order before the appropriate Forum. We clarify that we have not adjudicated the case of the petitioners on merits in respect of prayer clause nos. (B) to (D).

25. All the petitions are **disposed** of accordingly.

(AMIT B. BORKAR, J.) (V. M. DESHPANDE, J.)

RR Jaiswal