CASE NO.:
Appeal (civil) 8248 of 2004

PETITIONER:
Shri Ashok Tanwar & Anr.

RESPONDENT:
State of H.P. & Ors.

DATE OF JUDGMENT: 17/12/2004

BENCH:
CJI, Shivaraj V. Patil, K.G. Balakrishnan, B.N. Srikrishna & G.P. Mathur.

JUDGMENT:
J U D G M E N T

(Arising out of Special Leave Petition (C) No.15706 of 2001)

Shivaraj V. Patil J.

Leave granted.

A Bench of three learned Judges of this Court made the following order of reference on 7th March, 2002: -

"In the present case, under Section 16 of the Consumer Protection Act, the President of the State Consumer Disputes Redressal Commission has to be appointed in consultation with the Chief Justice of the State. The question which arises is whether consultation with an Acting Chief Justice is sufficient compliance or not. This question involves interpretation of Articles 217 and 223 of the Constitution and as there is no decision of this Court which can be applied in the present case, then by virtue of Article 145(3) of the Constitution this case involving the said question of law involving interpretation of the Constitution should be heard by a Bench of not less than five learned Judges.

Let the papers be placed before the Hon'ble the Chief Justice of India for appropriate orders for hearing of the case as expeditiously as possible and within a period of four months."

Articles 217 to the extent relevant and 223 of the Constitution of India read: -

"217. Appointment and conditions of the office of a Judge of a High Court. \026 (1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, the Governor of the State, and, in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High

court, and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years:

"223. Appointment of acting Chief Justice. \026 When the office of Chief Justice of a High Court is vacant or when any such Chief Justice is by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such one of the other Judges of the court as the President may appoint for the purposes."

On 3rd March, 2000 The Financial Commissioner-cum-Secretary (F&S), Government of Himachal Pradesh, addressed a letter to Registrar General, Himachal Pradesh High Court stating that Justice P.N. Nag (retired Judge of the High Court) shall cease to hold the post of President of H.P. State Consumer Disputes Redressal Commission, Shimla (for short 'the State Commission) on 4.3.2000, after attaining the age of 67 years. In accordance with the provisions contained in The Consumer Protection Act, 1986 (for short 'the Act'), a person who is or has been a Judge of High Court can be appointed as President of the State Commission, after consultation with the Chief Justice of the High Court. After consideration the State Government decided to take the services of Justice Surinder Swaroop, a sitting Judge of the High Court of Himachal Pradesh for appointment as President of the State Commission. Therefore, he requested that the proposal of the State Government may kindly be placed before the Hon'ble Chief Justice, High Court for consideration and recommending the name of Justice Surinder Swaroop for appointment as President of the State Commission on part-time basis.

On the same day the High Court addressed a letter to the State Government indicating that there was defect in the process adopted by the State Government and that the reference made by the State Government was not in conformity with the provisions of law as the executive is expected to approach the Hon'ble Chief Justice when the appointment was to be made, to initiate the proposal as per the procedure to be followed for appointment of High Court Judge.

The State Government wrote the second letter to the Registrar General of the High Court requesting the Hon'ble Chief Justice to initiate the process for filling up the vacancy to the post of President of the State Commission in accordance with the provisions of the Act and the law laid down by this Court in Ashish Handa, Advocate vs. Hon'ble the Chief Justice of High Court of Punjab & Haryana and others .

On 7th March 2000 the Registrar General of the High Court addressed a letter to the Financial Commissioner-cum-Secretary (F&S) of the State Government conveying recommendation of the Chief Justice for appointment of Mr. Justice Surinder Swaroop, a sitting Judge of the High Court, as President of the State Commission holding additional charge of the post. In the said letter it was also stated that the steps may be taken for appointment of Mr. Justice Surinder Swaroop (respondent No. 3 herein) as President of the State Commission in accordance with law and rules. Thereafter, a notification dated 13th March, 2000 was issued

by the Governor, Himachal Pradesh, appointing Justice Surinder Swaroop as President of the State Commission.

Appellant No. 1, a permanent resident of Namol and a practicing advocate at Solan and appellant No. 2, a retired Research Officer resident of Shimla, filed Civil Writ Petition No. 647 of 2000 in the High Court claiming to espouse public interest stating that they were interested in proper functioning of the State Commission. According to them the appointment of respondent No. 3 \026 Justice Surinder Swaroop \026 as President of the State Commission was not in accordance with law and was contrary to the decisions of this Court. They sought for writ of quo warranto to the respondent No. 1 to quash the appointment of respondent No. 3 mainly contending that there was a defect in the initiation process for appointment to the post of President of the State Commission on the ground that the process was initiated by the State Government instead of Chief Justice and that the Acting Chief Justice did not consult the two senior most Judges of the High Court before recommending the name of respondent No. 3 for appointment as the President of the State Commission. In support of these contentions they placed reliance on the decisions of this Court in Ashish Handa, Advocate vs. Hon'ble the Chief Justice of High Court of Punjab & Haryana and others (supra) and Supreme Court Advocates-on-Record Association and others vs. Union of India .

Respondent Nos. 1 and 3 resisted the writ petition and respondent No. 2, the High Court, made the position clear having regard to the records.

The High Court, after consideration of the respective contentions advanced on behalf of the parties and in the light of the decisions of this Court, held that the case of Ashish Handa (supra) related to the initiation of 'process', which was required to be followed in making appointment of President of the State Commission, and that such process should not have been initiated by the Government but it ought to have been initiated by the Chief Justice. On facts the High Court found that although initially the process was started by the Government proposing the name of respondent No. 3, respondent No. 2, however, was aware of the legal position and it immediately drew the attention of respondent No. 1 that the procedure adopted by respondent No. 1 was not in accordance with law. Therefore, second letter was addressed by respondent No. 1 to respondent No. 2. Respondent No. 2 on receipt of the second letter made the recommendation to appoint respondent No. 3 as President of the State Commission. On that issue the High Court held that the action taken either by respondent No. 1 or by respondent No. 2 could not be said to be contrary to law or the directions issued by this Court in the case of Ashish Handa (supra). Consequently the writ petition was dismissed. Hence, this appeal.

The High Court, in the impugned judgment, dealing with initiation of the process and consultation for appointment of respondent No. 3 as President of the State Commission, has observed, thus: -

"The counsel for the petitioners contended that appointment of a person as President to the State Commission, as ruled by the Supreme Court in Ashish Handa, has to be made in accordance with the provisions of Article 217 of the Constitution. In other words, before an appointment of a sitting or retired Judge of a High Court is made as the President of the State Commission,

there should be consultation at three levels; firstly, consultation with the Chief Justice of India, secondly, consultation with the Governor of the State and thirdly, consultation with the Chief Justice of the High Court concerned.

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Hence, if the submission of the learned counsel is upheld, the result would be as under:

Before the appointment of respondent No. 3 by respondent No. 1 as the President of the State Commission, respondent No. 1 ought to have consulted the Governor of the State (the State Government), (which is the appointing authority in the instant case), the Chief Justice of India (not the Chief Justice of India in his individual capacity but collectively, along with the collegium), the Chief Justice of this Court (not the Chief Justice in his individual capacity, but with the collegium, that is, his two senior most colleagues) and also a Judge or Judges, who is/are in the Supreme Court who is/are likely to be conversant with the affairs of this High Court. Unless the above procedure is strictly adhered to, the appointment of respondent No. 3 as the President of the State Commission cannot be held legal and lawful."

In relation to the law laid down by this Court in Ashish Handa the High Court noted that it was not the case before the High Court that the Chief Justice had consulted his two senior most colleagues before approving the name of Justice Agnihotri and yet the appointment was not interfered with. The High Court also expressed that in Ashish Handa this Court has laid down that under Section 16 of the Act process for appointment of a sitting or retired Judge as President of the State Commission should be initiated by the Chief Justice as is done in the case of appointment of a Judge to a High Court under Article 217 of the Constitution and that such process should not be initiated by the Government.

Before us, learned counsel for the appellants urged that: -

1. since the recommendation to appoint respondent No. 3 was made by the Acting Chief Justice without consulting two senior most Judges as required in the light of decisions of this Court in Supreme Court Advocates-on-Record Association (supra) and Ashish Handa (supra), the High Court ought to have allowed the writ petition and quashed the appointment of respondent No. 3.
2. The Acting Chief Justice could not initiate the process for appointment of respondent No. 3 under Section 16 of the Act as it is only the Chief Justice, who is to be consulted; the Acting Chief Justice is not appointed to the Office of Chief Justice, he is only to discharge the duties of the Chief Justice. Reliance was placed on the decision of High Court of Allahabad in Bishal Chand Jain vs. Chattur Sen and others .

In opposition learned counsel for the respondents in their arguments reiterated the submissions that were made

before the High Court and supported the impugned judgment for the very reasons stated therein.

The learned counsel for the Union of India and for Attorney General submitted that consultation should be as stated in two decisions of this Court in Ashish Handa and Supreme Advocates-on-Record Association (supra), i.e., the Chief Justice of a High Court has to consult two senior most Judges in the case of appointment of a sitting or retired Judge of the High Court as President of the State Commission. As regards the discharge of duties of the Chief Justice by the Acting Chief Justice, the submission was that the Acting Chief Justice could perform all the functions of the Chief Justice by virtue of Article 223 of the Constitution, otherwise there will be practical difficulty leading to anomalous situation in cases where the Chief Justices are not appointed for some reasons and Acting Chief Justices continue for longer period.

Section 16 of the Act, to the extent relevant, reads: -

"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."

In the case of Ashish Handa the question that came up for consideration was as to initiation of process in the matter of appointment. A person, who is or has been a Judge of a High Court, shall be appointed by the State Government as President of the State Commission after consultation with the Chief Justice of the High Court as per Section 16 of the Act. This Court held that the executive is expected to approach the Chief Justice when the appointment is to be made for taking the steps to initiate the proposal. Para 3 of the judgment reads: -
"3. The Consumer Protection Act, 1986 is an Act to provide for better protection of the interests of consumers "and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith". The National Commission, the State Commission and the District Forum are established as the agencies for the redressal of consumer disputes by Section 9 of the Act. Section l0 of the Act provides for composition of the District Forum, Section 16 for the State Commission and Section 20 for the National Commission. The scheme is that these three agencies constituted for redressal of consumer disputes at different levels have as its President a person who is, or has been a Judge at the corresponding level. This is so because the function of these agencies is primarily the adjudication of consumer disputes and,

therefore, a 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 to 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 Advocates-on-Record Assn. v. Union of India [(1993) 4 SCC 441]. 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 [(1993) 4 SCC 441]. This is necessary to maintain independence of the judiciary and to avoid any possibility 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 v. Union of India [(1995) 4 SCC 546 : 1995 SCC (L&S) 546 : (1995) 30 ATC 585], 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."
(emphasis supplied)

The aforementioned decision of this Court is to be read and understood on the facts and in the context in relation to initiation of the process for the appointment of a sitting or retired Judge as the President of the State Commission. The High Court in the impugned judgment also states that the judgment of this Court in Ashish Handa should not be understood or construed as insisting upon to follow the same procedure, which has to be followed for appointment of a Judge of a High Court under Article 217 of the Constitution. If the judgment in Ashish Handa is to be read in the way the appellants projected, it will lead to anomalous situation and further it does not stand to reason.

The process of consultation envisaged under Section 16 of the Act can neither be equated to the constitutional requirement of consultation under Article 217 of the Constitution of India in relation to appointment of a Judge of a High Court nor can it be placed on the same pedestal. Consultation by the Chief Justice of the High Court with two senior most Judges in selecting a suitable candidate for appointment as a Judge is for the purpose of selecting the best person to the high office of a Judge of the High Court as a constitutional functionary. Consultation with the Chief Justice of the High Court in terms of Section 16 of the Act is a statutory requirement. This apart, the interpretation of a provision of the Constitution having regard to various aspects serving the purpose and mandate of the Constitution by this Court stands on a separate footing. A constitution unlike other statutes is meant to be a durable instrument to serve through longer number of years, i.e., ages without frequent revision. It is intended to serve the needs of the day when it was enacted and also to meet needs of the changing conditions of the future. This Court in R.C. Poudyal vs. Union of India and others , in paragraph 124, observed thus: -

"124. In judicial review of the vires of the exercise of a constitutional power such as the one under Article 2, the significance and importance of the political components of the decision deemed fit by Parliament cannot be put out of consideration as long as the conditions do not violate the constitutional fundamentals. In the interpretation of a constitutional document, "words are but the framework of concepts and concepts may change more than words themselves". The significance of the change of the concepts themselves is vital and the constitutional issues are not solved by a mere appeal to the meaning of the words without an acceptance of the line of

their growth. It is aptly said that "the intention of a Constitution is rather to outline principles than to engrave details"."

In the first B.N. Rau Memorial Lecture on 'Judicial Methods' M. Hidayatullah, J. observed, "More freedom exists in the interpretation of the Constitution than in the interpretation of ordinary laws. This is due to the fact that the ordinary law is more often before courts, that there are always dicta of judges readily available while in the domain of constitutional law there is again and again novelty of situation and approach. Chief Justice Marshall while deciding the celeberated Mc. Culloch v. Maryland (4 Wheaton 316, 407) made the pregnant remark \026 "We must never forget that it is the constitution we are expounding" \026 meaning thereby that it is a question of new meaning in new circumstances. Cardozo in his lectures also said: "The great generalities of the Constitution have a content and a significance that vary from age to age." Chief Justice Marshall in Mc. Culloch vs. Maryland declared that the constitution was 'intended to endure for ages to come, and consequently to be adapted to the various crises of human affairs....' In this regard it is worthwhile to see the observations made in paragraphs 324 to 326 in Supreme Court Advocates-on-Record Association: -

"324. The case before us must be considered in the light of our entire experience and not merely in that of what was said by the Framers of the Constitution. While deciding the questions posed before us we must consider what is the judiciary today and not what it was fifty years back. The Constitution has not only to be read in the light of contemporary circumstances and values, it has to be read in such a way that the circumstances and values of the present generation are given expression in its provisions. An eminent jurist observed that "constitutional interpretation is as much a process of creation as one of discovery."

325. It would be useful to quote hereunder a paragraph from the judgment of Supreme Court of Canada in Hunter v. Southam Inc. [(1984) 2 SCR 145, 156 (Can)] :

"It is clear that the meaning of 'unreasonable' cannot be determined by recourse to a dictionary, nor for that matter, by reference to the rules of statutory construction. The task of expounding a constitution is crucially different from that of construing a statute. A statute defines present rights and obligations. It is easily enacted and as easily repealed. A Constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power and, when joined by a Bill or a Charter of

Rights, for the unremitting protection of individual rights and liberties. Once enacted, its provisions cannot easily be repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framers. The judiciary is the guardian of the Constitution and must, in interpreting its provisions, bear these considerations in mind. Professor Paul Freund expressed this idea aptly when he admonished the American Courts 'not to read the provisions of the Constitution like a last will and testament lest it become one'."

326. The constitutional provisions cannot be cut down by technical construction rather it has to be given liberal and meaningful interpretation. The ordinary rules and presumptions, brought in aid to interpret the statutes, cannot be made applicable while interpreting the provisions of the Constitution. In Minister of Home Affairs v. Fisher [(1979) 3 All ER 21 : (1980) AC 319] dealing with Bermudian Constitution, Lord Wilberforce reiterated that a Constitution is a document "sui generis, calling for principles of interpretation of its own, suitable to its character". "
(emphasis supplied)

This Court in Ms. Aruna Roy and others vs. Union of India and others recalled the famous words of the Chief Justice Holmes that "spirit of law is not logic but it has been experience" and observed that these words apply with greater force to constitutional law. In the same judgment this Court expressed that Constitution is a permanent document framed by the people and has been accepted by the people to govern them for all times to come and that the words and expressions used in the Constitution, in that sense, have no fixed meaning and must receive interpretation based on the experience of the people in the course of working of the Constitution. The same thing cannot be said in relation to interpreting the words and expressions in a statute.

Verma, J. (as he then was) speaking for the majority in the case of Supreme Court Advocates-on-Records Association, in paragraph 433, has stated, thus: -

"433. It is with this perception that the nature of primacy, if any, of the Chief Justice of India, in the present context, has to be examined in the constitutional scheme. The hue of the word 'consultation', when the consultation is with the Chief Justice of India as the head of the Indian Judiciary, for the purpose of composition of higher judiciary, has to be distinguished from the colour and the same word 'consultation' may take in the context

of the executive associated in that process to assist in the selection of the best available material."

(emphasis supplied)

Pandian,J. in his concurring opinion in Supreme Court Advocates-on-Records Association aforementioned, with regard to meaning of the word 'consultation' has observed that the derivative meaning of the word in the context depended not merely on its ordinary lexicon definition but greatly upon its contents according to the circumstances and the time in which the word or expression is used; therefore, in order to ascertain its colour and content one must examine the context in which that word is used. In this regard in paragraph 163 it is stated that: -

"The word 'consultation' is used in the context of appointment of Judges to the Supreme Court under Article 124(2) and to the High Courts under Article 217(1). Though such a consultation is not constitutionally required in the case of appointment of other constitutional appointees, which we have indicated and itemized in the proceeding part of this judgment."
(emphasis supplied)

Further, in paragraph 196 it is observed that in the background of the factual and legal position, meaning of the word 'consultation' cannot be confined to its ordinary lexicon definition; its contents greatly vary according to the circumstances and the context in which the word is used as in our Constitution. In paragraph 195 it is stated that the consultation with the Chief Justice of India by the President is relatable to the judiciary and not to any other service; in the process of various constitutional appointments, 'consultation' is required only to the judicial office in contrast to the other high ranking constitutional offices.

It is thus clear that the expression 'consultation' used in Article 217 of the Constitution of India in relation to appointment of High Court Judges cannot be read in the same way into 'consultation' as contemplated under Section 16 of the Act in the light of what is stated above in the Supreme Court Advocates-on-Record Association. The meaning of the word 'consultation' must be given in the context of an enactment. If the argument that the consultation process in regard to appointment of a Judge or retired Judge of High Court to the State Commission under Section 16 must be in the same manner as required under Article 217 of the Constitution, it will lead to anomalous situation. Under Article 217(1) of the Constitution, consultation contemplated with constitutional functionaries mentioned therein is for the purpose of appointment of a Judge of a High Court and not for appointment of a person as the President of the State Commission under Section 16 of the Act. If the consultation to be made for appointment of a person as President of the State Commission, as required under Section 16 of the Act, is to be similar as under Article 217 of the Constitution, then, even in case of appointment of a retired Judge as President of the State Commission, such consultation has to be made with all constitutional functionaries, which does not stand to reason. Hence, obviously for appointment of a person as President

of the State Commission consultation as required under Article 217 of the Constitution as against the requirement stated in Section 16 of the Act is not necessary. If that be so not only opinion of two senior most Judges of the High Court should be obtained but also the consultation should be made with other constitutional functionaries as contemplated under Article 217 of the Constitution including the Chief Justice of India. Hence insistence on 'consultation' by the Chief Justice of a High Court with his two senior most colleagues in the High Court for the purpose of Section 16 of the Act, in our view, is unwarranted.

While dealing with the question of primacy of the opinion of the Chief Justice of India in that context this Court held that such opinion of Chief Justice is to be formed collectively after taking into account the views of his senior colleagues, who are required to be consulted by him for the formation of his opinion. As is evident from paragraph 450 of the same judgment consultation with the Chief Justice of India was introduced because of the realization that the Chief Justice is best equipped to know and assess the worth of the candidate and his suitability for appointment as a superior judge; and it was also necessary to eliminate political influence even at the stage of the initial appointment of a judge. In order to select the best candidate and to give primacy to the opinion of the Chief Justice this Court held that consultation with two senior most Judges of the High Court was needed in the matter of recommending a candidate for appointment as Judge of the High Court. Under Section 16 of the Act only a person, who is or has been a Judge of a High Court, is eligible to be appointed as President of the State Commission.

In the matter of appointment of Judges of the High Court, in paragraph 478 of the same judgment, it is stated, thus: -

"In matters relating to appointments in the High Courts, the Chief Justice of India is expected to take into account the views of his colleagues in the Supreme Court who are likely to be conversant with the affairs of the concerned High Court. The Chief Justice of India may also ascertain the views of one or more senior Judges of that High Court whose opinion, according to the Chief Justice of India, is likely to be significant in the formation of his opinion. The opinion of the Chief Justice of the High Court would be entitled to the greatest weight, and the opinion of the other functionaries involved must be given due weight, in the formation of the opinion of the Chief Justice of India. The opinion of the Chief Justice of the High Court must be formed after ascertaining the views of at least the two seniormost Judges of the High Court."

In regard to initiation of the process for appointment, in paragraph 478(10) it is stated: -

"(10) To achieve this purpose, and to give legitimacy and greater credibility to the process of appointment, the process must be initiated by the Chief Justice of India in the case of the Supreme Court, and the Chief Justice of the High Court in

the case of the High Courts. This is the general practice prevailing, by convention, followed over the years, and continues to be the general rule even now, after S.P. Gupta vs. Union of India [1981 Supp. SCC 87]. The executive itself has so understood the correct procedure, notwithstanding S.P. Gupta and there is no reason to depart from it when it is in consonance with the concept of the independence of the judiciary."

In Ashish Handa this Court, having regard to what is stated above, held that it is the Chief Justice of the High Court, who should initiate the process in the matter of appointment of a Judge, sitting or retired, as President of the State Commission.
In that case, as already noticed above, this Court was dealing with initiation of the process for appointment of a sitting or retired Judge as President of the State Commission. It is in that context this Court held that the process must be initiated by the Chief Justice of the High Court and not by the executive of the State. The reading of the judgment gives an impression that the consultation process must be the same in respect of appointment of a sitting or retired Judge to State Commission as is required for appointment of a High Court Judge in terms of Article 217 of the Constitution. Firstly, the said judgment should be read and understood in the context of that case, the question that arose for consideration and what was really decided, i.e., initiation of process by the Chief Justice of the High Court. To remove doubt, if any, we make it clear that the consultation for the purpose of Section 16 of the Act in relation to the appointment of a Judge or a retired Judge of a High Court as President of the State Commission cannot be taken or equated to consultation process as required under Article 217 of the Constitution, which, in our view, is the correct position. Certain statements made by this Court in Ashish Handa, in para 3, give an impression that Chief Justice of a High Court has to consult his two senior most colleagues before recommending a sitting or retired Judge for appointment as President of a State Commission as per Section 16 of the Act. In our view that is not the correct position and we do not approve the same. To put it positively, we state that for the purpose of Section 16 of the Act a Chief Justice of a High Court need not consult his two senior most colleagues in the High Court for recommending a sitting or retired Judge of a High Court for appointment as President of a State Commission.

We must also keep in mind one more aspect. Under Article 217 of the Constitution for the purpose of appointment of a Judge to a High Court in view of decision in Supreme Court Advocates-on-Records Association and that too interpreting the constitutional provisions to maintain the independence of judiciary and to select the best of the persons as judges such a procedure is adopted. A person to be appointed as President of the State Commission has to be necessarily a sitting or a retired Judge of a High Court and not that any person can be appointed as President of the State Commission. This being the position, it does not stand to the reason as to why again in respect of a sitting or retired Judge of a High Court the whole process contemplated under Article 217 of the Constitution must be resorted to. To put in clear terms so as to remove any doubt we state that in the matter of

appointment of a sitting or retired Judge of a High Court as President of the State Commission process must be initiated by the Chief Justice under Section 16 of the Act and 'consultation' contemplated in the said Section is 'consultation' only with the Chief Justice of the High Court and not with the collegium.

Argument that the 'consultation' under Section 16 of the Act should be with the Chief Justice of the High Court and not with the Acting Chief Justice is not acceptable and this argument does not pose any serious problem having regard to the clear constitutional provision. The decision in Bishal Chand Jain vs. Chattur Sen and others (supra), cited on behalf of the appellants does not help them for the reasons more than one. That decision was on the facts of that case and the question that has arisen for consideration in the present case did not arise there even remotely. In that case plaintiff filed first appeal against the judgment and decree of Civil Judge made in the original suit. In the first appeal a preliminary objection was raised on behalf of the appellant himself to the effect that the High Court was not properly constituted and that appeal could not be heard on the ground that the office of the Chief Justice of the High Court fell vacant as a result of the elevation of Mr. Justice V. Bhargava, Chief Justice of that High Court to the Bench of this Court; Nasirullah Beg, J., a senior most Judge of the Court was appointed as Acting Chief Justice of the High Court, but as oath of office had not been taken by him, the High Court could not be deemed to be properly constituted. Alternatively, there was no Chief Justice at that time and thus the Court was not properly constituted. It was in that context the Division Bench of the Allahabad High Court, in paragraph 7, has stated thus: -

"(7) We are, however, of the view that Article 223 of the Constitution does not contemplate the appointment of a Chief Justice of a High Court or an appointment to the office of Chief Justice of a High Court. In spite of such appointment being made under Article 223, the office of the Chief Justice remains vacant till a fresh appointment is made to that office. It is on account of the existence of a vacancy in the office of Chief Justice that one or the other Judges of the High Court is appointed by the President for the purpose of performing the duties of the office of Chief Justice. If such appointment is to be held to put an end to the vacancy, then the exigency of such an appointment ceases to exist. It, therefore, follows that exercise of powers under Article 223 of the Constitution by the President does not result in an appointment to the office of Chief Justice and in spite of such appointment, the office of the Chief Justice remains vacant. All that happens is that during the continuance of that vacancy, the duties of that office are to be performed by one or the other Judges of the High Court as the President may appoint for the purpose. The word "temporarily" used in Article 224 clause (2) governs the words "to act". The language of clause (2) of Article 224, therefore, does not mean that an appointment of a Judge of a High Court

to perform the duties of the office of the Chief Justice under Article 223, is the appointment of a temporary Chief Justice.

It is true that both in its marginal note and Article 223 the words "appoint" or "appointment" has been used. But from this it does not necessarily follow that the appointment is an appointment to the office of the Chief Justice. In the marginal note, it is clear that the appointment is not of a 'Chief Justice' but of 'an acting Chief Justice'. In the Article itself the word "appoint" relates to the appointment of such of the other Judges of that Court as the President may choose for the purpose of performance of the duties of the office of Chief Justice. It is only when the appointment is not an appointment to the office of Chief Justice, that it could be said to be an appointment of one or the other Judges of that Court for the purpose of performing the duties of the office of Chief Justice. We have, therefore, no hesitation in coming to the conclusion that an appointment of one or the other Judges of the High Court to perform the duties of the office of Chief Justice when that office is vacant, is not the appointment of a Chief Justice to that office. It really results in an arrangement for the performance of the duties of the vacant office of the Chief Justice pending a fresh appointment to the office of Chief Justice."

A careful reading of the paragraph extracted above shows that an appointment of one or the other Judges of the High Court to perform the duties of the office of Chief Justice really results in an arrangement for the performance of the duties of the vacant office of the Chief Justice pending fresh appointment to the office of the Chief Justice. In that case the view was that even if an acting Chief Justice is appointed under Article 223 of the Constitution for performance of the duties of the Chief Justice, the office of Chief Justice still remains vacant. This also shows that one or the other Judges of the High Court can perform the duties of the Chief Justice.

In the case on hand we have to consider whether acting Chief Justice could be consulted under Section 16 of the Act or the process initiated and opinion given by the acting Chief Justice could be valid to satisfy the requirement of the said Section.

In the very terms of Article 223 of the Constitution, when the office of Chief Justice of a High Court is vacant or when any such Chief Justice is by reason of absence or otherwise, unable to perform the duties of the office of the Chief Justice, duties of the office of Chief Justice shall be performed by such one or the other Judges of the Court as the President may appoint for the purposes. Plain reading of this Article shows that one or the other Judges of the High Court appointed in the vacancy of Chief Justice of a High Court for the time being can perform the duties of the office of Chief Justice. No restriction or limitation in performance of duties by acting Chief Justice can be read into the said Article. The Article also does not indicate as to which of the duties of the Chief Justice can be performed or which of the duties cannot be performed by the acting Chief

Justice. Appointment of one or the other Judges of a High Court as acting Chief Justice is meant to carry on the work of the High Court and the judiciary in the State. May be sometimes appointment of Chief Justice to a High Court may take some time for various reasons and consequently acting Chief Justice continues to work for longer period, but that itself does not take away the powers conferred by the Constitution on a Judge to act as Chief Justice to perform the duties of the Chief Justice. Normally the senior most puisne Judge is appointed as acting Chief Justice. Such puisne Judge is expected to act appropriately in discharging the duties of the office of Chief Justice. It is rule of prudence that the acting Chief Justice may not take major decisions which otherwise could have been taken by the Chief Justice or which decisions could wait for a Chief Justice. Assuming that some decisions taken by an acting Chief Justice are required to be modified or corrected, that can be done either on administrative side or on the judicial side by the High Court or by this Court including the Chief Justice of India, as the case may be. In some cases if appointment of Chief Justice of a High Court takes longer time and the acting Chief Justices cannot discharge the duties of the office of the Chief Justice the work of the High Court or the State judiciary or for the matter wherever the opinion of Chief Justice is required like the one under Section 16 of the Act, it will result in anomalous position leading to paralyzing the working or may be sometimes creating a deadlock. When Article 223 of the Constitution in specific terms confers powers on acting Chief Justice to discharge the functions of the office of Chief Justice without any limitation or rider, it cannot be accepted that an acting Chief Justice cannot perform the duties expected to be performed by him under Section 16 of the Act.

Consultation with acting Chief Justice under Section 16 of the Act is to be taken as consultation with the Chief Justice of a High Court. Powers conferred under Article 223 of the Constitution on an acting Chief Justice to perform the duties of the Chief Justice is available for the purpose of Section 16 of the Act. We may hasten to add that it is not the case of the petitioner in High Court that the Chief Justice of the High Court was going to be appointed shortly or the matter of appointment of President of the State Commission was such, which on the facts and in the circumstances of the case, did not call for an immediate decision by Acting Chief Justice and could have waited for the appointment of the Chief Justice of the High Court. In other words, no statutory provision can stand in the way of constitutional provision in case of conflict between them.

Thus, having examined all aspects and in the light of what is stated above we are of the view that the High Court was right in dismissing the writ petition. We do not find any good ground or valid reason to disturb the judgment under challenge. Consequently the appeal is dismissed leaving the parties to bear their own costs.