
(2005) 05 OHC CK 0038
In the Orissa High Court
Case No : Writ Petition (C) No. 4947 of 2002

Arati Das

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 19-05-2005

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(1), 10(1A), 10(2), 24B
Orissa Consumer Protection Rules, 1987 — Rule 3, 3(5), 3(6), 6, 6(7)
Orissa General Clauses Act, 1937 — Section 17

Citation : AIR 2006 Ori 13 : (2005) 100 CLT 169

Hon'ble Judges : N. Prusty, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : G. Mukherji, P. Mukherji, S. Patnaik, M.K. Mazumdar, A.C. Panda and A. Pradhan, K.N. Jena, D.K. Mohapatra, M. Ganguli, B. Pal and A.K. Sahu, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—By means of this Writ Petition, the petitioner has challenged the impugned notification dated 26.10.2002, issued by Government of Orissa, Food Supplies and Consumer Welfare Department, removing the petitioner from the post of Member, District Consumer Disputes Redressal Forum, Balasore (in short "District Forum"). The said Notification is quoted hereunder:

"Government of Orissa Food, Supplies and Consumer Welfare Department Notification No. CWA 2/2002. 24433/FS & CW, dated the 26.10.2002.

After careful consideration of the explanation received from Smt. Arati Das, Member, Dist. CDR Forum, Balasore the Govt. in exercise of the powers conferred under Rule 3(6)(g) of the Orissa Consumer Protection Rules, 1987 have been pleased to remove Smt. Arati Das, from the post of Member, Dist. CDR Forum, Balasore with immediate effect.

By Order of the Governor H.S. Samantaray Director Consumer Affairs-cum Joint

Secretary to Govt."

2. According to the averments made in the Writ Petition, the petitioner in pursuance of an advertisement published by Opp. Party No. 1 inviting applications for appointment as "member of the District Consumer Disputes Redressal Forum" applied for the same and appeared before the Selection Committee comprising of the President, State Consumer Disputes Redressal Commission, Secretary, Department of Law, and the Secretary, Food Supplies and Consumer Welfare Department, Govt. of Orissa, which called the candidates including the petitioner for an interview on 25.8.2000. The Selection Committee recommended the case of the petitioner for appointment to the post of Member, District Forum, Balasore. Consequently, she was appointed in that post vide notification dated 14.9.2000 issued in the name of Governor by the DCA-cum-Joint Secretary to Govt. the relevant part of the said notification is quoted hereunder :

"Government of Orissa Food, Supplies & Consumer Welfare Department No. 25097, Dt. 14.9.2000 - CW - 46/2000 Notification

In accordance with the provisions of Sub-section (1) of Section 10 of the Consumer Protection Act, 1986, the State Govt. do hereby appoint the following persons as President/Member of the Consumer Disputes Redressal Forums of the Districts noted against each on ad hoc basis with immediate effect, subject to furnishing of the affidavit as required under Sub-rule (5) of Rule 3 of the Orissa Consumer Protection rules, 1987, that the President/Members shall not have (a) membership in any political party or any communal organization and (b) any financial or other interests as are likely to affect prejudicially their function as Member/President of the said forum.

Name of the Name of No. Dist. President the Members				Sl.			
				(1)	(2)	(3)	(4)
1. ***	***	***	2. ***	***	***	3. ***	***
4. Balasore	***	1. Smt. Arati	Das	2. Sri	Bhanu	Baran	Rakhit
***	***	***	***	***	***	***	***

3. A perusal of the above quoted notification would show that the petitioner was appointed along with another person as Member for Balasore District Forum on ad hoc basis subject to furnishing an affidavit as required under Sub-rule (5) of Rule 3 of the Orissa Consumer Protection Rules, 1987 that she would not have membership in any political party or any communal organization, and (b) any financial or other interests as were likely to affect prejudicially her said function as Member of the said Forum. Thereafter, the DCA-cum-Joint Secretary to Govt. of Orissa issued an order in favour of the petitioner separately intimating her that she was appointed as a Member of District Forum, Balasore purely on ad hoc basis with jurisdiction over the Revenue District of Balasore subject to verification of her antecedents. Further, she would furnish an undertaking that she would not practise in any Court of law during the tenure of her appointment and would

work full time in the post she had been appointed i.e., Member, District CDR Forum, Balasore. A request was made to the petitioner to furnish the required documents and also the joining report to the State Commission, Cuttack as well as to Govt. within a month. She submitted her joining report accordingly and started discharge her duties.

4. Before her appointment as a Member, District Forum, the petitioner was working as an Agent of the Life Insurance Corporation of India. On 22.7.2002, the petitioner received a Memo issued by opposite party No. 2 by which she was required to show cause as it was alleged and established that being a lady member of the Dist Forum, she was continuing as an LIC Agent, bearing Code No. 3659/596, and she did LIC Policy of Sri Sunny Walia, S/o. Amar Singh Walia, vide Policy No. 584290888, dated 28.2.2001 for Rs. 50,000/- and, as such, why she should not be removed from the post of Member, Dist. CDR Forum, Balasore under Rule 3(6)(g) of the Orissa Consumer Protection Rules, 1987 for the above mentioned facts. The petitioner submitted a reply to the show cause notice as stated by her on 26.7.2002, a copy of which has been annexed to the Writ Petition as Annexure-4. Thereafter the impugned notification dated 26.10.2002 removing the petitioner as quoted above was issued.

5. We have heard the Learned Counsel for the petitioner Sri G. Mukherjee, Learned Addl. Govt. Advocate for Opposite Parties and Mr. B. Pal for the Intervener. Learned Counsel for the petitioner has submitted that the petitioner had submitted her show cause reply before her removal from the membership of District Forum, Balasore. He has further argued that the petitioner had submitted a proposal for the Life Insurance Policy of one Sunny Walia for Rs. 50,000/-. The policy was not accepted by the LIC due to want of certain information. It was stated by petitioner that she had nothing to do with the proposal submitted by her before her appointment on 14.9.2000. But the proposal submitted by her was ultimately accepted by the L.I.C. on 28.2.2001, i.e., after the petitioner assumed office as Member, District Forum, Balasore. The Govt. without considering this fact and affording any opportunity of hearing to the petitioner proceeded to remove the petitioner from the post of Member, District Forum, Balasore.

6. Learned Counsel for the petitioner has further submitted that Section 24-B of the Consumer Protection Act, 1986 clearly provided that the administrative control of the District Forum vests in the State Commission. The appointment of a Member being on the basis of the recommendation of a Selection Committee, removal of such functionary cannot be contemplated by the State Government alone. In any event the provision in the Orissa Rules enabling the State Government to conduct an enquiry militates against Section 24-B of the Act and it can safely be concluded that such provision in the Rules is ultra vires the Act and hence liable to be struck down. He has further contended that as Member of the District Forum the functionary is required to hear complaints against the State Government day in and out and in such circumstances it is inconceivable

that the State Government will be vested with powers of removal of the President and/or Member of a District Forum. It is humbly submitted that unless the authority is made autonomous fair justice cannot be dispensed with. In such circumstances the impugned Notification is challenged as bad in law, and hence liable to be quashed. Hence, the contention is that the State Government has not conducted any enquiry to ascertain the veracity of the explanation submitted by the petitioner nor did the petitioner admit that she had acquired financial or other interest in the LIC or any other entity, which was likely to affect her functions as a Member, District Forum, Balasore prejudicially. In such circumstances, invocation and application of the provision of Rule 3(6)(g) is redundant. He has further submitted that mere calling for an explanation and mechanically disposing of such explanation without verification of facts by an enquiring officer vitiates the so called enquiry purported to have been conducted by the State Government.

7. In the counter affidavit filed by the Opposite Party Nos. 1 and 2, it has been stated that the petitioner had submitted an affidavit as an applicant for selection as a member, District Forum on 25.8.2000, that she does not or shall not have membership in any financial or other interests which were likely to affect prejudicially her functions as a Member, District Forum in the event of being appointed as such. A copy of the affidavit has also been filed vide Annexure-A/1 to the counter affidavit. The relevant portion of the affidavit is quoted hereunder.

"I, Smt. Arati Das, wife of Sri Sukumar Rana, aged about 35 years, by caste : Hindu, by profession : House-wife and social worker, resident of At : Barabati, Dist. : Balasore, do hereby solemnly depose as under :

1. *** ** 2. That, I do not and shall not have (a) membership in any political party or any communal organization; (b) in any financial or other interests which are , likely to affect prejudicially my functions as member of District Forum in the event of being appointed as such.

That, the facts stated above are true to the best of my knowledge and belief.

Identified by Sd/- Arati Das Advocate ponent".

8. Further, it has been stated in the counter affidavit that on receipt of an allegation from one Susanta Mishra of Balasore and others, a copy of which is annexed herewith as Anenxure-B/1, the President, District Forum, Balasore was requested to furnish a copy of the LIC Policy made through the petitioner as Agent. From the report, vide, letter No. 677, dated 3.6.02 of the President, District Forum, Balasore, it was found that LIC Policy made in the name of Shri Sunny Walia for Rs. 50,000/- was proposed by Shri Amar Singh Walia, President, District CDR Forum Balasore on 28.2.2001 vide LIC Agent Code No. 3659-596. On enquiry it was found that the Agent Code No. 3659596 was of the petitioner Arati Das. Further the Branch Manager, LIC of India, Cuttack Division Branch Office, on clarification being sought from him informed vide letter dated 20.7.2004 as per Annexure-D/1 that petitioner Arati Das, Agency Code No.

3659596, was continuing as an Agent as on 14.9.2000 as per records. She was appointed as an Agent on 27.2.93 and continued her agency up to 28.2.2003. She had not tendered, resignation from her agency till 28.2.2003. Her agency was terminated with effect from 1.3.2003 due to non-fulfillment of minimum business required for an Agent.

Before proceeding further, it is necessary to peruse the relevant provisions of the Consumer Protection Act, 1986 (hereinafter referred to as "Act") as well as the Rules made thereunder.

Section 9(a) of the Act provides that there shall be established a Consumer Disputes Redressal Forum to be known as the "District Forum" in each district of the State Established by the State Government with prior approval of the Central Government in each District of the State by notification. Section 10 of the Act provides composition of the District Forum as follows :

"Composition of the District Forum : (1) Each District Forum shall consist of :

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

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

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

(ii) possess a bachelor's degree from a recognized university,

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

Provided that a 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 or a body corporate owned or controlled by the Government; or

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

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

(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, namely :

- (i) the President of the State Commission-Chairman,
- (ii) Secretary, Law Department of the State-Member,
- (iii) Secretary in-charge 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.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier :

Provided that a member shall be eligible for reappointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in Clause (b) of Sub-section (1) and such reappointment is also made on the basis of the recommendations of the Selection Committee :

Provided further that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by appointment of a person possessing any of the qualifications mentioned in Sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of Sub-section (1-A) in place of the person who has resigned :

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.)

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

9. In the State of Orissa the Rules have been framed under the Act namely "Orissa Consumer Protection rules 1987" (hereinafter referred the "Rules"). It came into force vide notification No. PL.IC 9.87 944, dated 15.3.1988. Rule 3 thereof is relevant which was amended vide notification dated 6th July, 1993, which was published in the Orissa Gazette on 19th July, 1993. Sub-rules (5) and (6) of Rule 3 are relevant and liable to be perused which are reproduced as under :

"(5) *** *** *** Before appointment, the President (if he is not a serving District Judge) and the members of the District Forum shall furnish affidavits that they do not and shall not have :

(a) membership in any political party or any communal organization, and

(b) any financial or other interests as are likely to affect prejudicially their functions as member of the said Forum.

(6) The President or a member of a District Forum shall cease to be the President or member as the case may be, if he :

(a) dies or resigns from office or attains the age specified in Sub-section (2) of Section 10 of the Act; or

(b) is adjudged an insolvent; or

(c) is convicted of an offence involving moral turpitude; or

(d) remains absent in three consecutive sittings of the District Forum; or

(e) joins political party or a communal organisation; or

(f) becomes physically or mentally incapable to discharge his functions efficiently; or

(g) acquires such financial or other interest as is likely to affect his functions prejudicially; or

(h) so abuses his position as to render his continuance in office, prejudicial to the public interest :

Provided that the membership on any of the grounds specified in Clauses (f), (g) and (h) above shall cease either on his own admission or on the basis of a finding by an enquiry caused by the State Government."

The first contention of the Learned Counsel for the petitioner as mentioned above is that since the appointment of a Member of District Forum is made on recommendation of the Selection Committee, removal of such functionary cannot be contemplated by the State Govt. alone. He meant to say that since the appointment of the petitioner as Member of the Dist. Forum was made on the basis of recommendation of the Selection Committee, her removal could not be made by the State Govt., unless it is processed through the Selection Committee. Although this contention is not very much relevant to the question involved in the instant Writ Petition, but it is desirable to observed that the recommendation for appointment on the basis of selection conducted by the Selection Committee is a part of the selection process and as soon as the recommendations are made that part became over. Therefore, recommendation cannot be formed a part of the appointment order inasmuch as the power of appointment is exclusively within the domain of the State Govt. without any role of Selection Committee.

According to Section 17 of the Orissa General Clauses Act, the authority having power to make any appointment shall also have power to suspend or dismiss any person appointed by it in exercise of that power. In the instant case, since it was found that the petitioner had acquired financial or other interests, which was likely to affect her function prejudicially as Member of the Dist. Forum, her appointment as a Member of the District Forum was ceased in accordance with Rule 6 of the Rules.

In Sub-rule (7) of Rule 6, it has been provided that the President of the State Commission shall exercise the powers of supervision, review monitorial and coordination over the functioning of the Members of the State Commission and the Presidents and the Members of the District Forums of various districts.

In this regard the provision of Section 24-B of the Act, is necessary to be reproduced hereunder:

"24-B. Administrative control : (1)The National Commission shall have administrative control over all the State Commissions in the following matters, namely :

(i) Calling for periodical return regarding the institution, disposal, pendency of cases;

(ii) Issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;

(iii) Generally over seeing the functioning of the State Commission or the District Forum to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(3) the State Commission shall have administrative control over all the District Forums within its jurisdiction in all matters referred to in Sub-section (1)."

10. A bare reading of Sub-section (2) of Section 24-B shows that the State Commission shall have administrative control over all the District Forum within its jurisdiction in all matters referred to in Sub-section (1) of Section 24-B, i.e., calling for periodical returns regarding the institutions, disposal, pendency of cases, issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents, and generally overseeing the functioning of the District Forum to ensure that objects and purposes of the Act are best served without in any way of interfering with their quasi-judicial freedom. No other administrative control except what has been said above has been conferred on the State Commission and therefore for the purpose of determination whether the President or a Member of District Forum has to be ceased to be the President or Member, as the case may be, having allegedly

committed acts mentioned in Sub-rule (6) of Rule 3 of the Rules, the provision made in the Rules for conducting an enquiry by the State govt. cannot be said to be ultra vires, the Act as the Act being silent of that provision, the Rules can supplement the same.

11. The petitioner was given an opportunity to show cause. The State Govt. considered the facts brought before them on enquiry, which would reveal that the petitioner after her appointment as Member, District Forum continued to be an Agent of LIC. Her appointment was made vide Notification dated 14.9.2000. She had furnished an affidavit stating therein that she does not and shall not have membership in any financial or other interests, which are likely to affect prejudicially her functions as Member of District Forum in the event of being appointed as such. In spite of that, the LIC policy was proposed through her on 28.2.2001, i.e., much after her appointment as LIC Agent with Code No. 3659-596. On enquiry, it was found that it was her LIC Agent Code number and also that she was continuing as LIC Agent upto 1.3.2003 meaning thereby that the proposal for LIC Policy was sent through her on 28.2.2001. It is also undisputed that the LIC gives service to the Consumer and it is trader within the meaning of the Consumer Protection Act, 1986.

12. It is the subjective satisfaction of the State Govt. about cessation of the Member of District Forum under Rule 6 on the basis of finding by an enquiry caused by them and as such when a person has ceased to be a member of District Forum, he has no authority to continue as such and hence the order of removal is a consequence to the same and ultimate. Therefore, if an opportunity was given to the petitioner to submit her explanation and only thereafter making necessary enquiry, the State Govt. being satisfied that the petitioner had acquired financial interest which was likely to affect her function prejudicially, and as such ceased to be the member of District Forum, passed the order for her removal cannot be said to be illegal. Needless to mention that continuing as an Agent of LIC and getting remuneration or commission after the petitioner was appointed as Member of District Forum would certainly amount to affect her function prejudicially. In case there would be a dispute regarding deficiency of service against LIC of India, it cannot be expected of a Member of the District Forum, who is an Agent of LIC as well as sitting member of a District Forum, to take a decision impartially. Being an Agent of the LIC, the petitioner was certainly a part and parcel of the LIC and was to get commission from the LIC during the tenure as a Member of the District Forum. Therefore, she ceased to be a Member of the District Forum in view of Sub-rule (6) of Rule 3 of the Rules and on that basis her removal by the State Govt. was perfectly legal and justified.

13. Learned Counsel for the petitioner relied upon the decision of the Apex Court in the case of State of Rajasthan and Others Vs. Anand Prakash Solanki, in which the Apex Court has held that the concept of appointment by transfer is not unknown to service jurisprudence. Power to appoint includes power to revoke an appointment, and so also power to make an appointment includes a power to

make an appointment by transfer, subject to satisfying the requirements of Section 10 of the Act.

14. The expression "appointment" means an appointment by direct recruitment, appointment by promotion and appointment by transfer, and as such in a case of transfer of the President or Members from one District Forum to another District Forum within the State can be made by the State Government, but only on the recommendation of a Selection Committee consisting of the President of the State Commission and two Secretaries, i.e., the Committee composed as per Sub-section (1-A) of Section 10.

15. Learned Counsel for the petitioner submits that since transfer cannot be made without recommendation of the Committee, removal cannot also be made without recommendation of such committee.

16. To our mind, the contention of the Learned Counsel for the petitioner is not sustainable in the eye of law. The Apex Court in the case of *State of Rajasthan v. Anand Prakash Solanki* (supra) has categorized the transfer as appointment i.e., appointment by transfer, and as such since in that case, there was appointment on transfer, the Apex Court has held that the same can be made in accordance with the procedure laid down, i.e., on the recommendation of Selection Committee. But, in the instant case where the State Govt. found on enquiry that the petitioner has ceased to be member of District Forum by her conduct resulting her removal, the principle laid down for appointment by transfer in that case by the Apex Court would not be applicable.

17. u/s 17 of the Orissa General Clauses Act, it has been provided that the power to make appointment includes power to order of suspension or dismissal. There is no doubt that since the State Govt., have been conferred with power for appointment of the Member of a Consumer Forum, has a power to order for removal of such member also.

18. In view of above, the contentions raised by the Learned Counsel for the petitioner are not sustainable in the eye of law. The Writ petition is devoid of merit. Hence, the same is dismissed. No order as to costs.

N. Prusty, J.

19. I agree.