
(2001) 09 AHC CK 0056
In the Allahabad High Court
Case No : C.M.W.P. No. 24489 of 2001

Kalpana Jha

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-09-2001

Acts Referred:

Uttar Pradesh Consumer Protection Rules, 1987 — Rule 3(1), 3(5)(e), 6(5), 9, 9(1)

Citation : (2001) 4 AWC 2922 : (2001) 3 UPLBEC 2503

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Advocate : Satish Chaturvedi, for the Appellant;

Final Decision : Allowed

Judgement

S.R. Singh and D.R. Chaudhary, JJ.—The petitioner was appointed full time woman member of the District Consumer Protection Forum, Kanpur Nagar on 27.3.1997. It appears that in the matter of U. P. State Consumer Disputes Redressal Commission, Lucknow v. State of Uttar Pradesh, listed before the Hon"ble Supreme Court on 8.1.2001, the petitioner brought certain facts to the notice of the Apex Court through a letter Annexure-1 addressed to the Registrar General, Supreme Court of India. New Delhi, therein pointing out the laxity on the part of the State Government in the matter of appointment of Chairman, District Consumer Forum, Kanpur Nagar. This was taken by the Government as an act of indiscipline and by means of letter dated 28.2.2001, she was called upon to submit her comments in respect of eight points mentioned therein. A copy of the letter dated 28.2.2001 has been annexed as Annexure-4 to the writ petition. The petitioner submitted her reply to the charge-sheet. A copy of the reply dated 15.3.2001 has been annexed as Annexure-5 to the writ petition. Sri Tikam Singh Pawar, the Under Secretary, who held the enquiry submitted an enquiry report which was never served on the petitioner. However, by means of letter dated 14.5.2001 being Annexure-6, the petitioner was called upon to submit her explanation within a week failing which it would be deemed that she

had nothing to say and accordingly, appropriate decision would be taken on merits in accordance with law. Along with the said letter, a summary of Government's own conclusions drawn from the report of the enquiry officer was also furnished to the petitioner. On receipt of the said show cause notice, the petitioner submitted her explanation dated 21.5.2001, a copy of which has been annexed as Annexure-7 and also demanded a copy of the enquiry report vide Fax dated 24.5.2001 so that she could file proper reply. But the report was not furnished to the petitioner. The State Government passed the impugned order dated 29.6.2001 thereby cancelling the appointment of the petitioner as member of the District Consumer Forum, Kanpur Nagar, on the finding that she was guilty of misbehaviour comprehended by Clauses (e) and (f) of Sub-rule (5) of Rule 3 of the Uttar Pradesh Consumer Protection (Fifth Amendment) Rules, 1999.

2. We have heard the petitioner who appears in person and perused the writ petition and the counter-affidavit filed on behalf of the State by Sri Tikam Singh Pawar, Undersecretary, Department of Food and Civil Supplies, Government of U.P. Petitioner was appointed as a Woman Member through the Notification No. C.P. 536/29.8.97 dated 14th March, 1997. It appears that certain complaints against petitioner were received by the Government. The substance of the complaints was sent to the petitioner vide letter dated 28.2.2001 (Annexure-4) whereby she was called upon to submit her report/comments to the enquiry officer. The letter dated 28.2.2001 reads as under:

Qkbyksa ls lEcU/r f"kdK;rksa dh tk?p ek- jkT; vk;ksx ls djK;k tk, A D;ksafd ;g ^^tqfMdy eSVj** gS A

vU; f"kdK;rksa dk tokc 15 fnu esa nkf[ky dj nwWxh A

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1- ftyk miHkksDrk Qksje ds rRdkyhu v/;{k us fuEu fyf[kr oknksa dks {ks=kf/kdkj fcUnq ij fujLr dj fn;k Fkk&

?1? 547 o"kZ 1999] eatw dukSfM;k cuke lksy QkekZL;qfVdy

?2? 548 o"kZ 1999] l`f"V dukSfM;k cuke lksy QkekZL;qfVdy

?3? 549 o"kZ 1999] vkj- ,l- dukSfM;k cuke lksy QkekZL;qfVdy

?4? 550 o"kZ 1999] Le`fr dukSfM;k cuke lksy QkekZL;qfVdy

?5? 551 o"kZ 1999] vuwi dqekj dukSfM;k cuke lksy QkekZL;qfVdy

ijUrq vkids ?ij vkjksi fd mi;qZDr oknksa dks ifjofrZr djkdj okn la[;k ?e"K% 732 o"kZ 1999] 730 o"kZ 1999] 733 o"kZ 1999] ,oa 731 o"kZ 1999 uEcjksa ij ntZ dj lquokbZ izkjEHk dh x;h A

2- okn la[;k&&338 o"kZ 1998 jkts"K dqekj cuke c`T esfMdy lsUVj] iudh fnukad 22-5-1998 dks vdsys gh Qksje esa ,MfeV fd;k x;k tcfd rRle; Qksje dk dksje iw.kZ Fkk A okn dk ewY;kadu 7]20]000 Fkk tcfd Qksje dks : ikap yk[k rd dk okn vf/kdkj gS A mDr lanfHkZr okn dks iqu% fnukad 29-2-2000 dks vkus vdsys ,MfeV fd;k vkSj lacaf/kr i{k ls okn dk ewU;kadu :- 7]20]000 ls ?kVkdj : 4]20]000 dj fy;k tks okn la[;k 139 o"kZ 2000 ntZ gS A

3- Iqij Vsujh }kjk ftyk Qksje dkuij uxj esa nk;j fd;s x;s 9 oknksa esa ls 2 oknksa ?e"K% 227 o"kZ 1998 ,oa 281 o"kZ 1998

loksZPp izkFkfedrk ds vk/kkj ij tYnh&tYnh frfFk;ksa nsdj fu.khZr dj;k;h xbZ A

4- ,d gh vf/koDrk Jh ds- ,u- esgjks=k ds dbZ o"kZ iwoZ [kkfjt 16 oknksa ? f"kdK;rh i= esa fooj.k fn;k gqvk gS? dks ek= vf/koDrk ds vkosnu ij fLVksj fd;k x;k A blh izdkj okn la[;k&1175 o"kZ 1995] jes"K pUnz cuke U;w bf.M;k ba";ksjsUl da- tks fnukad 15-5-1999 dks [kkfjt gks x;k okn ls "kiFk i= ysdj fnukad 19-11-1999 dks fLVksj fd;k A blh izdkj okn la[;k 277 o"kZ 1995 esa Hkh dk;Zokgh dh x;h A ?mi;qZDr f"kdK;rh fcUnqvksa ls lacaf/kr f"kdK;rh i= layXu?

5- vkids fo:) vkjksi gS fd vkus fnukad 25-7-2000 dks ,dy lnL;k ds :i esa dk;Z fd;k A

6-vki eghus esa lHkh dk;Z fnol ij ugha vkrh gS ijUrq ekuns; iwjs eghus dk ysrh gSsa A

7- dsUnzh; lgk;rk dh /kujkf"K ls tks leku ?; fd;k x;k gS] mlesa Hkkjh deh"ku fy;k x;k gS A ;g Hkh vkjksi gS fd ftyk Qksje] dkuij uxj ds mi;ksxkFkZ tks dEI;wVj ?; fd;k x;k gS mlds ekfyd dk eqdnek ftyk Qksje esa ntZ gS rFkk tks dEI;wVj ?; fd;k x;k gS] og fMQsfDVo rFkk iqjkuk gS A

8- vkids }kjk jkT; ljdkj ds fo:) ek- mPpre U;k;ky;; esa f"kdK;r dh x;h gS] ftldh izfr layXu gS A

?i;k mi;qZDr f"kdK;rksa ds ifjiz{; esa viuh vk[;k@fVIi.kh v/kksgLrk{kjh dks

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vuq lfpo@tkWp vf/kdkjh A**

3. In reply to the letter dated 28.2.2001, the petitioner denied the charges but without holding any enquiry in consonance with the principles of natural justice, the enquiry officer submitted his report. A summary of the conclusions drawn by the Government was sent to the petitioner vide letter dated 14.5.2001 (Annexure-6). The Special Secretary, Food and Civil Supplies, Government of U.P., in his office memo dated 14.5.2001 addressed to the petitioner came to the conclusion that the enquiry officer had found the petitioner guilty of misconduct referred to in Sub-clauses (e), (f) and (g) of Sub-rule (5) of Rule 3 of the Uttar Pradesh Consumer Protection Rules, 1987, in short the "Rules" as it stands amended by Uttar Pradesh Consumer Protection (Fifth Amendment) Rules, 1999. Petitioner submitted her reply to the said office memo. She has been removed by impugned order dated 29.6.2001 on the premises that she was guilty of misconduct referred to in Clauses (e) and (f) of Sub-rule (5) of Rule 3 of the Rules aforestated.

4. In order to appreciate the controversy, it would be worthwhile to quote Sub-rule (5) of Rule 3 as it stands amended by Uttar Pradesh Consumer Protection (Fifth Amendment) Rules, 1999 :

"(5) In addition to provisions of Section 10 (2), the State Government may remove from the office the President and Member of a District Forum who :

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which in the opinion of the State Government involves moral turpitude, or

(c) has become physically or mentally incapable of acting as such member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member, or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest, or

(f) does not pass judgment or order possible under the Act, and in conformity with the earlier judgment and the Act and does not display absolute integrity, good conduct and dutifulness, or

(g) is guilty of an explained absence upto 7 days without permission :

Provided that the President or Member shall not be removed from his office on the ground specified in Clauses (d) and (e) of this Sub-rules except on an inquiry held by State Government in accordance with such procedure as it may specify in this behalf and the member is found to be guilty of such ground."

5. Rule 9 of the Rules as inserted by the Uttar Pradesh Consumer Protection (Fifth Amendment) Rules, 1999, provides the procedure for holding enquiry. The Rule reads as under :

"(9) (1) (a) On complaint received against the full-time President. Member of

Districts Forum and the State Commission. an enquiry shall be held by Principal Secretary or Secretary as the case may be to Government of Uttar Pradesh, Food and Civil Supplies Department or by an officer of Government nominated by him.

(b) ****

(c) *****

(2) On being found guilty on the basis of the findings of the aforesaid inquiry, the State Government may remove the President or Member of the District Forum and the State Commission from their office on grounds specified in Sub-rule (5) of Rule 3 and Sub-rule (5) of Rule 6, as the case may be, of the said Rules."

6. It is evident from the Rule 9 of the Rules that on a complaint received against a full-time member of District Forum "an enquiry shall be held by Principal Secretary or Secretary, as the case may be, to Government of Uttar Pradesh Food and Civil Supplies Department or by an officer of Government nominated by him" and on the member being found guilty on the basis of the findings of the enquiry, order of his/her removal may be passed by the Government on the grounds specified in Sub-rule (5) of Rule 3. We are of the considered view that enquiry comprehended by Rules means an enquiry in consonance with principles of natural justice. Removal on the ground specified in the Clause (e) of Sub-rule (5) of Rule 3 cannot be ordered except on an enquiry held in tune with the principles of natural justice and on a categorical finding that the member has so abused his/her position as to render his/her continuance prejudicial to the public interest. An enquiry held sans service of a charge-sheet indicating therein the precise ground or grounds mentioned in Sub-rule (5) of Rule 3 is no enquiry in the eye of law. We are also of the view that removal without service of the enquiry report will be violative of the rules of natural justice. The letter dated 28.2.2001 even if be treated as a charge-sheet is not in terms of Sub-rule (5) of Rule 3 read with Rule 9 (1) of the Rules and the order of removal has been passed without service of the enquiry report despite demand.

7. In the instant case, since the order of removal purports to have been passed on grounds (e) and (f), we have, therefore, to examine whether such grounds were made out on the finding recorded by the enquiry officer and whether enquiry officer conducted the enquiry in tune with the principles of natural justice. Clause (e) of Sub-rule (5) of Rule 3 provides for removal of the President or a Member of the District Consumer Forum on the ground that "he has abused his position as to render his continuance in office prejudicial to the public interest" and Clause (f) provides for removal on the ground that the President or the Member, as the case may be. "does not pass judgment or order possible under the Act, and in conformity with the earlier judgment and the Act and does not display absolute integrity, good conduct and dutifulness". The so-called charge-sheet does not speak of any such ground or grounds and a perusal of the summary of the enquiry report prepared by the Government would show that the enquiry officer did not advert to the explanation submitted by the petitioner nor

did he record a categorical finding on any of the grounds on which removal of the petitioner is based. The Special Secretary, Food and Civil Supplies, Government of U.P. had, in his letter dated 14.5.2001. had stated that the petitioner was held guilty of misfeasance under Clauses (e), (f) and (g) of Sub-rule (5) of Rule 3 of the Rules but the order of removal purports to have been passed only on the grounds (e) and (f) of Sub-rule (5) of Rule 3 even though no categorical finding has been recorded by the enquiry officer in terms of requirement of Clauses (e) and (f) of Sub-rule (5) of Rule 3. It would appear from the so-called charge memo that the petitioner admitted certain cases which were earlier rejected on the ground of want of jurisdiction. There is no material on record to show that the admission of cases by the petitioner and the then member Sri Azaiz Ali was motivated or inspired by extraneous consideration or that they were aware of the earlier rejection order. The finding of misfeasance/misbehaviour is based on no evidence on record. Mere fact that the cases which were admitted would not by itself make out a case of misbehaviour/misconduct in the absence of any material showing that the admission of these cases was inspired by extraneous consideration. Similarly admission of Case No. 338 of 1998 which was earlier rejected on the ground of valuation does not involve any misconduct inasmuch as the aggrieved party could lawfully reduce the valuation so as to bring the case within the jurisdiction of the District Consumer Forum. In our opinion, no misconduct was involved merely because the case was admitted on the valuation being reduced from Rs. 7,20,000 to Rs. 4,20,000. In respect of the third point mentioned in the enquiry report, suffice it to say that no evidence has been considered and referred to by the enquiry officer in support of the finding that restoration was based on any extraneous consideration. Mere restoration of a case earlier rejected by itself is not a misconduct nor does it reflect on bona fide and reputation for honesty and integrity on the part of the petitioner. Similarly the charge that the petitioner had taken honorarium for the whole month even though she was not present for the entire month was misconceived inasmuch as the petitioner was a whole time Member and on that basis, she was entitled to receive a consolidated honorarium of Rs. 2,000 per month unlike a member appointed on part time basis who gets honorarium at the rate pre-scribed per sitting, as provided in Rule 3 (1) of the Consumer Protection Rules, 1987. The petitioner in her reply had clearly given details of the cases decided by her but that has not been considered by the enquiry officer or the Government. We are also of the considered view that mere fact that the petitioner had submitted information to the Supreme Court regarding non-appointment of the Chairman showing laxity on the part of the State Government in filling up of the vacancy of the President of the District Consumer Forum. Kanpur Nagar, which was lying vacant since February, 1999, despite recommendation made by the selection committee, by itself was not an act of indiscipline nor a ground for removal under Sub-rule (5) of Rule 3. Removal of the petitioner by the order impugned herein is totally illegal and suffers from vice of arbitrariness and mala fide besides being violative of rules of natural justice. The orders passed by the petitioner were judicial and at least quasi-judicial in character and, therefore, as held by the

Supreme Court in Union of India and Others Vs. K.K. Dhawan, relied on in P.C. Joshi Vs. State of U.P. and Others, a disciplinary action could be initiated in respect of a judicial or a quasi-judicial action only in the following circumstances which were not made out in the present case :

"(i) where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

(ii) that there is prima facie material to show recklessness or misconduct in the discharge of his duty:

(iii) that if he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers :

(iv) that if he had acted in order to unduly favour a party ;

(v) that if he had been actuated by corrupt motive."

8. In the circumstances, therefore, the petition succeeds and is allowed. The impugned order dated 29.6.2001 is quashed and the petitioner is entitled to all consequential benefits.