

(2011) 12 JH CK 0037
In the Jharkhand High Court
Case No : Writ Petition (S) No. 5659 of 2011

Meena Kumari

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Bihar Consumer Protection Rules, 1987 — Rule 3(5)
Consumer Protection Act, 1986 — Section 10(1)(A)

Citation : (2012) 1 JLJR 70

Hon'ble Judges : Prashant Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prashant Kumar, J.

I.A. No. 3653 of 2011 [in W.P.(S) No. 5730 of 2011]

1. This interlocutory application has been filed for recalling the order dated 2.12.2011. In the I.A. Application, petitioner gave explanation for delay in filing counter affidavit. Accordingly, respondent no. 2 prayed that order dated 2.12.2011 be recalled.

2. No rejoinder filed to aforesaid interlocutory application. 3. In view of the reasons given in interlocutory application, order dated 2.12.2011 is hereby recalled so far it relates to awarding of cost.

4. Accordingly, I.A. No. 3653 of 2011 [in W.P. (S) No. 5730 of 2011] is disposed of.

W.P.(S) No. 5659 of 2011 with W.P. (S) No. 5730 of 2011

5. In these writ applications, petitioners challenged the orders passed by the State of Jharkhand [Annexure-1 in W.P.(S) No. 5659 of 2011 and Annexure-6 of W.P.(S) No. 5730 of 2011], whereby appointments of petitioners cancelled from the post of Female Member and Male Member of Consumer Protection Forum,

Dhanbad.

6. It is submitted that petitioners were appointed by the State Government on the recommendation of a Selection Committee as per the provision contained in Section 10(1)(A) of the Consumer Protection Act, 1986. It is further submitted that petitioners' appointments cancelled taking into account Rule 3(5)(e) of Bihar Consumer Protection Rules, 1987, which was adapted by the State of Jharkhand. It is then submitted that according to proviso of Rule 3(5), it is mandatory for State Government to hold enquiry, if State Government decides to remove members of Consumer Protection Forum according to Rule 3(5)(e). It is submitted that in the instant case, State Government did not conduct any enquiry as provided in the aforesaid Rule. Therefore, impugned orders cannot be sustained.

7. On the other hand, Sri Rajiv Ranjan, learned Additional Advocate General, appearing for the State Government submits that in the instant case certain allegations against petitioner Zubair Ahmad received by the Chairman, State Consumer Commission and who issued notice to him for explanation. He further submits that after receiving said notice, petitioner, Zubair Ahmad filed his reply and after considering said reply Chairman, State Consumer Commission recommended for cancellation of appointments of both petitioners.

8. However, in the counter affidavit, it is not stated that the State Government conducted any enquiry for judging the correctness of allegation made against petitioners. Thus, it appears that State Government has not followed the Rule prescribed in Bihar Consumer Protection Rules, 1987.

9. The contention of learned Additional Advocate General that State Government has acted upon the recommendation of the Chairman of State Consumer Commission, appears to be misconceived, because Chairman, State Consumer Commission has no power either in the Act or in the Rules to conduct any enquiry regarding allegations made against the member of a District Forum.

10. In view of the aforesaid legal position, aforesaid recommendation made by Chairman of State Consumer Commission is wholly without jurisdiction. In this respect, Rule 3(5)(e) is clear, which says that the appointment of a member can be cancelled by the State Government if he abuses his position as a member and his continuance in the office prejudicial to the public interest, but said power can be exercised only after making an enquiry by the State Government.

11. In the instant case, admittedly no enquiry conducted by the State Government. Thus, cancellation of appointment of petitioners is violative of the principle of natural justice. Therefore, impugned orders are non est in the eyes of law.

12. Accordingly, I allow both writ applications and quash impugned orders as contained in Annexure-1 [in W.P.(S) No. 5659 of 2011] and Annexure-6 [in W.P.(S) No. 5730 of 2011]. Petitioners are directed to be reinstated with all

consequential benefits.

13. However, I make it clear that if State Government so desires, may enquire into the allegations levelled against petitioners and pass order in accordance with law.