
(2015) 08 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5415 of 2015

Mithlesh Sharma	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 11-08-2015

Acts Referred:

Consumer Protection Act, 1986 — Section 10(1A)

Citation : (2015) 08 RAJ CK 0013

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Indresh Sharma, for the Appellant; S.K. Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Alok Sharma, J—The petitioner is aggrieved of the order dated 29.01.2015 whereby his representation against non-appointment to the post of the Member (Female) in District Consumer Redressal Forum, Sawaimadhopur despite recommendation of the select committee under Section 10(1A) of the Consumer Protection Act, 1986 (hereinafter "the Act of 1986") has been rejected for the reason that it purportedly lay within the sole discretion of the State Government not to appoint a member despite the recommendations of the select committee.

2. The case of the petitioner is that pursuant to the advertisement dated 08.07.2013 inter alia for the post of Member (Female) in District Disputes Redressal Forums Sawaimadhopur, she applied. Having been called for interview on 06.09.2013, the petitioner appeared, was found suitable by the select committee and recommended for appointment. Yet the appointment was not forthcoming despite several months lapsing. An application under the Right To Information Act, 2005 on the issue elicited a reply on 04.03.2014 from the State Government that albeit the statutory select committee had recommended the petitioner for appointment to the post of Member (Female) in District Disputes Redressal Forums Sawaimadhopur, yet she was not appointed as the State

Government had not thought it fit to approve the recommendation. A demand of justice dated 25.03.2014 at the instance of the petitioner through her counsel, in the circumstances followed but remained unaddressed. Aggrieved, the petitioner approached this Court by SBCWP No. 5527/2014. Vide order dated 10.10.2014, this Court allowed the petitioner to represent to the respondents and disposed of the petition with a direction to the respondents to consider and decide the representation within six weeks. A representation dated 04.12.2014 at the instance of the petitioner followed, was farcically considered, it is submitted, and has been dismissed vide order dated 29.01.2015. Hence this petition.

3. Mr. Indresh Sharma, appearing for the petitioner has submitted that in terms of Section 10(1A) of the Act of 1986 appointments of Member/President of District Disputes Redressal Forums are to be made by the State Government on the recommendation of a select committee constituted of the President of the State Commission as its Chairman and the Secretary, Law Department and the Secretary, incharge of the Department dealing with consumer affairs in the State as its other two member. The select committee under Section 10(1A) of the Act of 1986 is thus evidently high powered committee and albeit the State Government has indeed as the appointment authority, discretion in the matter, yet the recommendation of the select committee cannot be negated without any good and plausible reason. Were it to be held to the contrary, it would tantamount to conferment of arbitrary discretion in the State Government and reduce the recommendation of a statutory high powered three members committee to redundancy. This court ought not to countenance such a regime where rule of law falters before naked misuse of discretion. It has been submitted that consequently the impugned order dated 29.01.2015 rejecting the petitioner's representation and upholding the earlier refusal to appoint the petitioner as a Member (Female) in District Disputes Redressal Forums Sawaimadhopur despite the recommendation of the select committee be quashed and set aside and consequential directions be issued that the petitioner be appointed in the circumstances, on the post in issue.

4. Mr. S.K. Gupta, AAG appearing for the respondents has submitted that even though a recommendation can be made by the select committee under Section 10(1A) of the Act of 1986, yet the State Government is not bound to accept the recommendation and mechanically appoint those recommended as President/Member of the District Disputes Redressal Forums as the case may be. The State Government in its discretion, it was submitted, is free to take a decision to appoint or not appoint a person despite the recommendation of the select committee under Section 10(1A) of the Act of 1986 on the basis of the personal reputation of the person recommended, other relevant information available vis a vis him with the State Government, need for institutional improvement and considerations of the impact of appointment of the person recommended by the select committee to the post of President/Member of the District Disputes Redressal Forums. It was further submitted that since the taking of a decision not to appoint the petitioner as a Member (Female) in District Disputes Redressal

Forums Sawaimadhopur on 02.05.2015, a fresh advertisement in relation thereto as also for appointment of other members in different forums in the State of Rajasthan has been issued on 26.05.2015. With the fresh selection process having been commenced, this Court should not interfere therewith and the petition hence be dismissed.

5. Heard. Considered.

6. Section 10(1A) of the Act of 1986 provides for a high powered committee consisting of President of the State Commission as its Chairman (A retired/sitting High Court Judge), the Secretary, Law Department of the State and the Secretary, incharge of the Department dealing with consumer affairs in the State (both senior judicial and administrative class I officers) as its members. The said committee interviews the applicants responding to the advertisement for appointment as President/Member of the District Disputes Redressal Forums and makes its recommendation in regard thereto following due process. It is no doubt true that the State Government is the appointing authority and it lies in its discretion to accept the recommendation of the select committee under Section 10(1A) of the Act of 1986 or not. Yet this Court would hasten to add that no discretion vested in any public authority, government or otherwise is absolute discretion. Discretion of the Government not to appoint those recommended under Section 10(1A) of the Act of 1986 is not the discretion of a despot but has to be exercised on good and valid ground, disclosed to the Court on a challenge being made with regard to its arbitrary exercise in non-appointment of a member despite the recommendation of the select committee. In this context a reference to the reply to the writ petition does not disclose any good and plausible reason for not adhering to the recommendation of the high power select committee constituted under Section 10(1A) of the Act of 1986. General, vague and non-specific grounds for the exercise of power and discretion of the State Government not to appoint the petitioner despite recommendation of the select committee have been set out and have no traction or relevance to the challenge in the present petition. Nothing adverse against the petitioner has been brought on record in the reply to the writ petition and no legally sustainable ground whatsoever has been disclosed as to why the recommendations of the select committee under Section 10(1A) of the Act of 1986 qua the petitioner were not adhered to. On being required by this Court Mr. Gupta has also produced the record of the petitioner's case for appointment. A perusal thereof indicates that the concerned Minister at the relevant time even though accepting all the other recommendations of the select committee made under Section 10(1A) of the Act of 1986 proceeded peremptorily, without good cause and without any reason whatsoever to direct that recommendation of the select committee qua the petitioner for appointment as Member (Female) in District Consumer Redressal Forum, Sawaimadhopur were not approved. Sadly thereupon the entire executive become complicit by inaction. Even a whisper of dissent is not evident on the file. No reconsideration on the basis of the correct legal position was recommended. This Court however cannot countenance such arbitrary and invidious exercise of

discretion by the State Government. Were it to the very goal of the rule of law would be rendered a chimera. Appointments to public office as a member of a Consumer Redressal Forum under the Act of 1986 are not in the nature of patronage but an outcome of legal process well defined as under the Act of 1986 and bona fide followed.

7. Consequently, I would allow this writ petition and quash and set aside the impugned order dated 29.01.2015 rejecting the petitioner's representation for appointment to the post of Member (Female) in District Consumer Redressal Forum, Sawaimadhopur despite having been recommended by the select committee under Section 10(1A) of the Act of 1986. I would also direct as an inevitable consequence, the State Government to act upon the recommendation made by the select committee qua the petitioner and pass necessary orders within a period of four weeks from the date of receipt of this order.

8. The writ petition stands allowed accordingly.