

(1998) 03 AHC CK 0007
In the Allahabad High Court
Case No : C.M.W.P. No. 17060 of 1997

Pramod Kumar Awasthi

APPELLANT

Vs

State of U.P. and another

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(1A), 10(2), 9
Consumer Protection Act, 1986 — Section 10, 10(1A), 10(2), 9
Consumer Protection Act, 1986 — Section 10, 10(1A), 10(2), 9

Citation : (1998) 2 AWC 1508

Hon'ble Judges : M.L. Singhal, J; D.S. Sinha, J

Bench : Division Bench

Advocate : B.K. Mishra and S.S. Shukla, for the Appellant; S.C., C.K. Roy and Sashi Kant Gupta, for the Respondent

Judgement

D.S. Sinha, J.—Heard Sri Shyam Surat Shukla, learned counsel appearing for the petitioner, Sri A. K. Shukla, learned Standing Counsel representing the respondent Nos. 1 and 2, and Sri Shashi Kant Gupta, learned counsel appearing for Sri Yatish Chandra Shukla, who seeks to be impleaded to the petition as respondent No. 3.

2. The petition has not been admitted formally. But, learned counsel appearing for the parties Jointly pray and agree that it may be disposed of finally at the admission stage itself. Accordingly, the Court proceeds to do so.

3. For the District Hamirpur, a Consumer Disputes Redressal Forum known as District Forum has been established by the State Government in exercise of its powers u/s 9 of the Consumer Protection Act, 1986 (hereinafter called the "Act").

4. Section 10 of the Act contemplates that each District Forum shall consists of, besides its President, two members. Appointment of the President as well as two members is to be made by the State Government on the recommendation of the Selection Committee consisting of:

- (i) President of the State Commission.....Chairman ;
- (ii) Secretary of the Law Department of the State.....Member ; and
- (iii) The Secretary in charge of the Department dealing with consumer affairs in the State.....Member.

The tenure of the member is five years or upto the age of 65 years whichever is earlier with a rider that the member shall not be eligible for re-appointment, The tenure of the member may come to an end also by his resignation in writing addressed to the State Government and on such resignation being accepted.

5. Notification dated 14th March, 1997, a copy whereof is Annexure-T to the petition, discloses that on recommendation of the statutory Selection Committee, as aforesaid, the Government appointed the petitioner as member of the Consumer Forum, Hamirpur. Pursuant to this notification, a communication dated 1st April, 1997 from the District Supply Officer/Ex-Officio Assistant Director, Consumer Redressal Forum, Hamirpur was issued to the petitioner annexing therewith a photocopy of the Notification of the Government dated 14th March, 1997 and copies of the two proformas to be filled by the petitioner for further action.

6. The grievance of the petitioner before this Court is that despite the fact that he has been duly appointed as a member of the District Forum, Hamirpur requisite appointment letter is not being issued to him and he is being illegally prevented from functioning as a member.

7. The Court entertained the petition on 16th May, 1997 and issued an ad-interim mandamus requiring the respondents to proceed in accordance with law concerning further actions in pursuance of the Notification dated 14th March, 1997 about the appointment of the petitioner as a member of the Consumer Forum, Hamirpur or show cause by filing counter-affidavit within a month from today. The Court also directed that no other person in place of the petitioner shall be appointed in the meantime. The interim order was to operate till 31st July, 1997 unless vacated or modified earlier. The interim order does not appear to have been extended. However, there is no dispute before the Court that no body has yet been appointed in place of the petitioner.

8. In obedience to the direction of the Court given through the order dated 16th May, 1997, a counter-affidavit has been filed on behalf of the respondents. Counter-affidavit is sworn by Sri S. K. Tripathi, Deputy Secretary, Food and Civil Supplies Department, U. P. Secretariate, Lucknow. In the counter-affidavit, it is not disputed that the petitioner was fully selected by the statutory Selection Committee and his name was recommended to the State Government for appointment as a member of the District Forum, Hamirpur. It is also not disputed that the appointment of the petitioner was duly notified through the notification dated 14th March. 1997 which was published in the Official Gazette of the State. However, it is stated that further steps in pursuance of the appointment of the

petitioner were not taken on account of complaint received from Sri Yatish Chandra Shukla, a district Correspondent of Newspaper "AAJ" that the appointment of the petitioner had been done wrongly. Sri Shukla is the applicant before this Court for being impleaded as respondent to the petition. He has also filed an affidavit.

9. From the perusal of the affidavit of Sri Yatish Chandra Shukla, it appears that Sri Shukla was a contender along with the petitioner for the post of member of the District Forum, Hamirpur. His name was recommended by the District Magistrate, Hamirpur. But he was not selected. On his failure, Sri Shukla lodged a complaint. This complaint clogged the wheel of process of implementation of the appointment of the petitioner. It is asserted that in the meantime, the name of Sri Shukla has been again recommended by the District Magistrate. At this stage, it is apposite to notice that in the process of selection of and recommendation for appointment to the District Forum, the District Magistrate is a stranger and any recommendation by him has no legal force. Selection and recommendation is the prerogative of the Selection Committee constituted u/s 10(1A) of the Act. Thus, the alleged recommendation of the District Magistrate in favour of Sri Yatish Chandra Shukla could not confer upon him any legally cognizable right.

10. There is no material before the Court showing that the appointment of the petitioner has been cancelled by the State Government. In the opinion of the Court, the petitioner having been duly selected by and appointed on the recommendation of the statutory Selection Committee, cannot be prevented from functioning as member of the District Forum, Hamirpur until his term does not come to an end in accordance with the provisions of sub-section (2) of Section 10 of the Act or his appointment is cancelled by the State Government in accordance with law. Admittedly, none of these contingencies exists. Therefore, the petitioner is being illegally deprived of his statutory right to function as a member of the District Forum, Hamirpur.

11. On the facts and for the reasons noticed above, the petition succeeds and is allowed. The respondents are commanded to take requisite steps for permitting the petitioner to function as member of the District Forum, Hamirpur in pursuance of the Notification dated 14th March, 1997 (Annexure-1 to the petition) within a period of one month from the date of production of a certified copy of this order before them.

12. There is no order as to costs.