
(2009) 03 KL CK 0032

In the High Court Of Kerala

Case No : Writ Petition (C) No. 21715 of 2007

Reghu Varma K.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(1A), 16, 16(1A), 20
Consumer Protection Rules, 1987 — Rule 12A, 12A(4), 12A(5), 12A(6), 12A(7)
Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service)
Rules, 1963 — Rule 4
Kerala Consumer Protection Rules, 2005 — Rule 17, 17(3), 7, 7(2), 7(3)

Citation : AIR 2009 Ker 155 : (2009) 2 ILR (Ker) 406 : (2009) 2 KLJ 119 :
(2009) 2 KLT 241 : (2011) 7 RCR(Civil) 623

Hon'ble Judges : Antony Dominic, J

Bench : Single Bench

Advocate : K.P. Satheesan and K.K. Rajeev, for the Appellant; A.T. Anilkumar, P. Dalbi Emmanuel, K. Jayakumar, K. Sasikumar and M.A. Asif, G.P., for the Respondent

Final Decision : Allowed

Judgement

Antony Dominic, J.—The prayers In this writ petition are to quash Exts. P2 and P3 notifications issued by the 1st respondent appointing respondents 4 and 5 as Presidents of the Consumer Disputes Redressal Forum at Kottayam and Wynad respectively. Petitioner also seeks a declaration that he is eligible to be appointed as the President of Consumer Disputes Redressal Forum based on his ranking in Ext. PI Panel.

2. In December, 2006, in terms of Section 10 of the Consumer Protection Act (hereinafter referred to as "Act") Rule 7(2) of the Kerala Consumer Protection Rules 2005 (hereinafter referred to as the "Rules 2005"), the 2nd respondent invited applications for filling up the posts of President of the Consumer Disputes Redressal Forum (CDRF) at Kottayam and Wynad, In response to the said notification, among others, the petitioner submitted his application. As per

Section 10(1A) of the Act, the candidates were interviewed by a Selection Committee consisting of the President of the State Commission as its Chairman and the two members specified in the Section on 2/4/2007, 10/5/2007 and 11/5/2007. From Exts. P5 and P6, the mark lists maintained by the Chairman and another member of the Selection Committee, obtained by the petitioner invoking the provisions of the Right to Information Act, it would appear that on interview, performance of the candidates was assessed and marks were awarded, In so far as the marks awarded by the Chairman is concerned; Ext. P5 shows that the petitioner, who was interviewed on 2-4-2007 was awarded 35 marks while the respondents 4 and 5, who were interviewed on 10th and 11th of May, 2007 respectively, were awarded 13 and 12 marks each. Similarly, in Ext. P6 marklist, the other member of the Selection Committee awarded 30 marks to the petitioner while respondents 4 and 5 were awarded 25 and 24 marks respectively, In the reply affidavit filed, it is stated that the marks awarded by the second member of the Committee were not disclosed to the petitioner and therefore, is not placed on record,

3. On conclusion of the interview, as provided in Rule 7(3) of the Rules 2005 the Selection Committee submitted Ext. P1, a panel of 10 qualified candidates to the 1st respondent for consideration of appointment, In the said panel of 10, prepared in the order of merit, the petitioner and respondents 4 and 5 are at SL Nos. 1, 9 and 10 respectively, Ext. P4 is the circulation note of the 1st respondent, from which it is seen that the file was circulated to the Minister (Food, Civil Supplies and Animal Husbandry) for nomination of two candidates to the two posts notified, Accordingly the Minister passed order dated 14/6/2007, which reads as under,

The following persons may be posted as Presidents in Consumer Disputes Redressal Forums in the districts noted against them.

1. Shri. SanthoshKesavanadh. P. - Kottayam. 2. Shri. Geevarghese K. - Wayanad

4. Based on the order so passed by the Minister, Exts. P2 and P3 notifications were issued appointing respondents 4 and 5 and it is in these circumstances the writ petition has been filed challenging the aforesaid appointments made by the 1 "respondent.

5. The contention of the petitioner is that he has been ranked No. 1 in the panel prepared by the Selection Committee and therefore is entitled to be appointed in preference to the other candidates in the panel, it is also his case that there is absolutely no reason to have overlooked his superior ranking and that, at any rate, the Government have not given any reason, muchless any satisfactory reason, for preferring respondents 4 and 5 who were at SL Nos.9 and 10 of the panel, In support of the contentions, counsel relied on the provisions contained in Section 10 of the Act and Rule 7 of the Rules, 2005, judgments of the Apex Court in Babita Prasad and Others Vs. State of Bihar and Others, , Dr. Jayanta Kumar Dash and Anr. v. State of Orissa and Ors. and R.S. Mittal Vs. Union of

India (UOI), and of this Court in Chandramohan Nair v. State of Kerala 2007(2) KLT 273 were also relied on.

6. Respondent No. 1 and respondents 4 and 5 have filed their counter affidavits, In the counter affidavit filed by the 1st respondent, it is stated that the 2nd respondent invited applications and on receipt thereof, the Selection Committee, consisting of the President of the State Commission, Secretary, Law Department and the Secretary in charge of the Department dealing with the Consumer Affairs, was constituted. It is stated that the Committee decided to interview the candidates and accordingly, interview was held on 2/4/2007, 10/5/2007 and 11/5/2007 and that based on the interview and general assessment of the qualifications and experience, the Selection Committee furnished a panel of 10 eligible candidates to the Government for consideration of appointment to the post of President of the CDRF at Kottayam and Wynad, It is stated that since all the 10 candidates included in the list furnished by the Selection Committee were eligible for appointment, the Government chose to appoint two candidates from the panel, who are respondents 4 and 5 herein, It is also stated that the Government has the right to appoint any person from the panel of eligible candidates recommended by the Selection Committee and that it is not necessary to assign any reasons in support thereof.

7. In the affidavits filed by respondents 4 and 5 they are also asserting their eligibility and entitlement to be appointed irrespective of their position in Ext. P1 panel. They are also contending that since the power of appointment is vested in the Government, it is open to the Government to appoint anyone of the candidates Included in the panel finalised by the Selection committee.

8. From the rival contentions raised by the counsel for the petitioner and also learned Additional Advocate General appearing for the 1st respondent and the counsel for the party respondents, the question to be examined is whether from the panel submitted by the Selection Committee, the Government can choose anyone of the candidates overlooking the ranking, and if they so choose anyone of them, should they give reasons to justify the same?

9. Section 10 of the Act deals with me composition of the CDRF, which provides that each forum shall consist of a person who is, or has been, or is qualified to be a District judge, who shall be its President, Section 10(1A) provides that every appointment shall be made by the State Government on the recommendation of a Selection committee consisting of the President of the State Commission, the Secretary, Law Department of the State and the Secretary in charge of the Department dealing with Consumer Affairs in the state. Rule 7 of the Rules 2005 deals with the appointment of whole time members of the District Forum. Rule 7(3) provides that once a panel is obtained, after scrutiny and short listing, with all relevant documents and details, the Convener shall place it before the Selection Committee at the appropriate time and the Selection Committee shall finalise a panel of candidates, by adopting such methods as the Committee may deem fit, and the list of qualified candidates so finalised, shall be sent for

consideration of appointment by the Government, A reading of Rule 7(3) of the Rules 2005 shows that the legislature has conferred upon the Selection Committee the power to finalise the panel, by adopting such methods as the Selection committee may deem fit, Therefore, it is entirely within the province of the Selection committee to adopt the method which it deems fit for finalising the panel.

10. In this case, a reading of Ext.PI panel shows that the Selection Committee finalised the panel in the order of merit. The fact that the panel was finalised in the order of merit has also been taken note of by the 1st respondent, and that is evident from Ext. P4 circulation note as well. In the panel so finalised, petitioner was at Rank No. 1 and respondents 4 and 5 were at Rank Nos.9 and 10, the last in the panel. Therefore, when the Minister nominated respondents 4 and 5, the claim of the petitioner and others who were above respondents 4 and 5 have been overlooked.

11. In their attempt to justify this, the contention raised by the learned Additional Advocate General, duly supported by respondents 4 and 5, is that the Selection Committee's power was only to furnish a panel of qualified candidates and not a list in the order of merit, as it has done, it was contended that Ext PI has to be taken only as a panel of qualified candidates, who were all equally eligible to be considered for appointment and therefore, it was open to the Government to appoint any candidate from the panel, it deemed fit In support of this contention, the learned Additional Advocate General referred to various provisions of the Act including Section 16, Section 20 and Rule 12A of the Consumer Protection Rules, 1987 (Central Rules) and the Rules 2005.

12. Section 16 of the Act deals with the composition of State Commissions, Section 16(1A) provides that every appointment shall be made by the State Government on the recommendation of a Selection Committee, Section 20 of the Act provides for the composition of the National Commission and in terms of the proviso every appointment shall be made by the Central Government on the recommendation of a Selection Committee as provided in the said proviso. Sub-rule 4 of Rule 12A of the Central Rules provides that after scrutiny of the applications received, a list of eligible candidates along with their applications shall be placed before the Selection Committee constituted u/s 20. Sub-rule 5 provides that the Selection Committee shall consider the applications of all eligible applicants referred to it Sub-rule 6 provides that the Selection Committee may, if it considers necessary, depending on the number of candidates, short list them on the basis of merit and call such shortlisted candidates for personal interview to consider their suitability for the post of member, Sub-rule 7 provides that Selection Committee may, on the basis of its assessment made by it, recommend a panel of names of candidates for appointment as members from amongst the applicants referred to in Sub-rule 5 in the order of merit for consideration of the Central Government,

13. The argument that was attempted was that when it comes to the

appointment of members of the National Commission, Rule 12A(6) of the Central Rules, provides for short listing on the basis of merit and Sub-rule (7) provides for recommendation of a panel of names for appointment in the order of merit for the consideration of Central Government, According to the respondents, when appointments are made to the National Commission, while the legislature conferred power on the Selection Committee to prepare a panel in the order of merit, the Legislature has consciously avoided finalisation of pane] in the order of merit when provision is made for the appointment of President of the CDRF.

14. I have considered the submissions made by both sides. True, Section 10 of the Act provides only for submission of a panel of qualified candidates to the Government to consider for appointment as President of the CDRF, Rule 7 of the Rules 2005 recognises that it is open to the Selection Committee to adopt such method as the Selection Committee may deem fit for finalising the panel. It was in exercise of the power so conferred, the Selection Committee adopted merit as the method for finalising the panel. This in my view is well within the power of the Selection Committee.

15. Once the Selection Committee has finalised the panel as above, is it open to the Government to make appointments otherwise than in accordance with the ranking in the panel submitted by the Selection Committee, is the question to be answered, Although I am not prepared to hold that the Inclusion of a candidate in the select list or a panel by itself will confer any indefeasible right to him to claim appointment, still, I should concede that such a candidate has the right to be considered when appointments are made. Unlike Rule 17 of the Central Rules, though merit does not find a place in Rule 7 of the 2005 Rules, still when it is open to the Selection Committee to adopt merit as the basis for finalising the panel, in my view, the State Government is bound to made appointments from the panel as recommended, and unless it has valid reasons for overlooking the candidates,, the State Government is bound to make appointment in the order of their ranking.

16. I am not prepared to accept the argument of the respondents that it is within the absolute power of the State Government to appoint any candidate in the panel and that they are not required to even give reasons for choosing a particular person overlooking the ranking. Even according to them, the panel contains a list of candidates who are all equally eligible to be considered for appointment In such a case also, when all are equally eligible and one of them is chosen for appointment there should be a reason to justify such choice, especially when the ranking in the panel is overlooked, Such exercise of power cannot be countenanced by a court of law and such absolute power is alien to rule of law, Therefore, if ranking in the panel is to be overlooked, reasons should be stated and such reasons should have been disclosed to the Court, In this case, counter affidavit does not contain any such reason and therefore, I am not prepared to accept the justification given by the respondents. There is yet another aspect to be noticed. As can be seen from Ext P1 panel and Ext. P4

circulation note, it is clear that Government was fully aware that the panel was prepared based on merit, If as now contended, the Selection Committee, could submit only a panel of candidates, and not a panel in the order of merit, Respondent No. 1, could have refused to act upon such a panel, This they did not do and on the other hand, they chose to make appointment of Rank Nos. 9 and 10 from a panel of 10 candidates, Therefore, having acted upon Ext. P1, it is not now open to the 1st respondent to contend that Ext. PI panel was only a panel of eligible candidates.

17. In *Chandramohan Nair v. State of Kerala* 2007 (2) KLT 273, this Court had occasion to consider the validity of appointment of member in the State Commission, In this context, Rule 17(3) of the Rules 2005, being relevant is extracted below for reference,

(3) In the case of other members of the State Commission, appropriate panel of candidates for consideration of appointment shall be called for by the Department in charge of Consumer Affairs in Government from the concerned District Collectors and the District Collectors may, after due publicity, furnish a short listed panel of candidates, not exceeding three candidates per vacancy, with relevant documents and details to true Government after due verification and scrutiny of the qualification and other eligibility criteria prescribed in the Act and these Rules:

Provided that the Government (Department dealing with the Consumer Affairs) may, if necessary, advertise directly for the purpose:

Provided further that the panel so obtained, after further scrutiny and short listing, shall be placed before the Selection Committee at the appropriate time by the convener of the Selection Committee, The Secretary to Government in charge of the Department dealing with Consumer Affairs in the State shall be the convener of the Selection Committee:

Provided also that the Selection committee shall finalise a panel of candidates, by adopting such methods as the Selection Committee may deem fit, and the list of qualified candidates so finalised, shall be sent for consideration of appointment by the Government.

18. After elaborately making reference to the rules, learned judge held that the legislature has not divested the power of appointment from the Government while making provision for a Selection Committee, that the power to deviate from the recommendation of the Selection Committee should be exercised sparingly and on valid grounds and that such power can be exercised only fairly and reasonably. Proceeding further, it was held that the files did not disclose why the Government did not prefer the petitioner therein. After accepting that the Government can, notwithstanding the recommendation of the Committee, prefer a better candidate, it was held that the proceedings in the files were totally silent on that aspect and that the Government gave no reasons to overlook the note of the Chairman. On the ground that no reasons were forthcoming to ignore the

candidate recommended by the members of the Selection Committee and that the petitioner's claim was not considered at all, this Court held that the order passed by the Government appointing the respondents therein was vitiated for failing to advert to relevant matters and that it was unreasonable in the "Wednesbury sense".

19. Rule 17 of the Rules 2005 is similar in terms to Rule 7, and therefore, this judgment, applies to this case also. I have already held though Rule 7 only provides for finalisation of a panel, having regard to the fact that the Selection Committee has finalised the panel adopting merit as the basis and submitted the same to the 1st respondent, in the absence of any reasons forthcoming either in Ext. P4 circulation note or in the counter affidavit filed by the 1st respondent for overlooking the recommendation made by the Selection Committee, the appointment of respondents 4 and 5 cannot be sustained.

20. Among the judgments relied on by the counsel for the petitioner, the judgment in R.S. Mittal Vs. Union of India (UOI), , dealing with the appointments to the post of judicial Member of Income Tax Appellate Tribunal Is of relevance. Rule 4 of the Income Tax Appellate Tribunal Members (Recruitment and Conditions of Service) Rules, 1963, dealt with the method of recruitment and Sub-rule 3, being relevant reads as follows:

(3) The Selection Board shall recommend persons for appointment as Members from amongst the persons on the list of candidates prepared by the Ministry of Law after inviting applications therefore by advertisement or on the recommendations of the appropriate authorities.

21. A reading of this Sub-rule 3 show that it does not provide that the select panel prepared by the Board shall be on the basis of merit, as In the case of Rule 7 of the Rules, 2005 referred to earlier. Dealing with the claim of the appellant therein to be appointed based on his inclusion in the select panel prepared by the Selection Board, Apex Court held as follows:

It is no doubt correct that a person, on the select panel has no vested right to be appointed to the post for? which he has been selected. He has a right to be considered for appointment But at the same time, the appointing authority cannot ignore the select panel or decline to make the appointment on its whims, When a person has been selected by the Selection Board and there is a vacancy which can be offered to him, keeping in view his merit position, then, ordinarily, there is no justification to ignore him for appointment. There has to be a justifiable reason to decline to appoint a person who is on the select panel, in the present case, there has been a mere inaction on the part of the Government. No reason whatsoever, not to talk of a justifiable reason, was given as to why the appointments were not offered to the candidates expeditiously and in accordance with law. The appointment should have been offered to Mr. Murgad within a reasonable time of availability of the vacancy and thereafter to the next candidate. The Central Government's approach in this case was wholly

unjustified.

(emphasis supplied)

22. What is important to be noticed from the law laid-down in this judgment is that although the Rule did not provide that the Selection Board should finalise the rank list based on merit, the Apex Court held that once a person is included in the panel,, he has a right to be considered for appointment and that the appointing authority cannot ignore the select panel or decline to make appointments: on its whims and that appointments are to be made taking into account merit position in the panel. Further, the court has also taken note of the absence of any reasons for not offering appointment to the candidates and proceeding further, it was ordered that the appointment should have been given to the appellant on the availability of the vacancy and thereafter to the next candidate.

23. In this case, the petitioner is Rank No. 1 in Ext. P1 panel and if the law laid down in this judgment is applied, on the availability of vacancies, ordinarily, he ought to have been given appointment and only thereafter could the Government have appointed anybody else from the panel. Departure was possible only on valid reasons, which are totally absent in this case.

24. Therefore, for the aforesaid reasons, Exts. P2 and P3 will stand quashed and the Government is directed to consider the claim of the petitioner in the light of the findings in this judgment and take a fresh decision in the matter, within two months from the date of receipt of a copy of this judgment. It is further directed that, in the meanwhile, respondents 4 and 5 can continue in office till a fresh decision is taken in the matter as directed above.

Writ petition Is allowed as above without any order as to costs.