
(2016) 04 CHH CK 0039
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 963 of 2016.

Renu Sharma

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 13-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) AIR(Chhattisgarh) 91 : (2016) 3 SCT 631

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Atanu Ghosh, Advocate, for the Appellant; Arun Sao, Dy. A.G, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.(CAV) - Invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner herein seeks to challenge appointment of respondent No. 3 as a member of District Consumer Redressal Forum, Rajnandgaon.

2. The aforesaid challenge has been made on the following factual backdrop:-

2.1 The State Government in exercise of powers conferred by sub-section (1A) of Section 10 of the Consumer Protection Act, 1986 (hereinafter referred to as "the Act of 1986") on the recommendation of the Selection Committee appointed the petitioner as a Member of District Consumer Redressal Forum, Rajnandgaon by order dated 29th August, 2008, which she has completed on 2.9.2013. Upon completion of the petitioner's tenure, fresh applications were called for by issuing press-release by the Collector, Rajnandgaon, in which the petitioner, respondent No. 3 as well as 23 other candidates submitted their candidature for a Member of District Consumer Redressal Forum, Rajnandgaon.

2.2 The State Government in exercise of powers conferred under Section 10(1A) of the Act of 1986 appointed respondent No. 3 on the recommendation of the

Selection Committee as a Member (Female) of District Consumer Redressal Forum, Rajnandgaon. Against which, the petitioner has filed the instant writ petition stating inter-alia that she is entitled to be re-appointed on the said post by virtue of first proviso to sub-section (2) of Section 10 of the Act of 1986 and order of the State Government rejecting her claim for reappointment and appointing respondent No.3 on the said post is unsustainable and bad in law.

3. Mr. Atanu Ghosh, learned counsel appearing for the petitioner, would submit that the petitioner has successfully completed her tenure as a Member of District Consumer Redressal Forum from 29.8.2008 to 2.9.2013 and her work was quite satisfactory and therefore, the District Consumer Redressal Forum and Chhattisgarh State Consumer Redressal Forum both have recommended her name for reappointment, but said Selection Committee constituted by the State Government has illegally rejected the name of the petitioner for the said post and appointed respondent No.3, which is unsustainable and bad in law.

4. Mr. Arun Sao, learned Deputy Advocate General for respondent No. 1, on advance copy, would oppose the submissions made by learned counsel appearing for the petitioner.

5. I have heard learned counsel appearing for the parties on question of admission.

6. It is not in dispute that the petitioner has completed her tenure as a Member of District Consumer Redressal Forum, Rajnandgaon for a period of five years commencing from 29.8.2008 till 2.9.2013. It is also not in dispute that her name was recommended for reappointment by the District Consumer Redressal Forum as well as by the Chhattisgarh State Consumer Redressal Forum, but on the recommendation of the Selection Committee constituted under sub-section (1A) of Section 10 of the Act of 1986, the State Government has appointed respondent No. 3 as a Member (Female) of District Consumer Redressal Forum, Rajnandgaon.

7. Section 10 (1) (a) and (b) of the Act of 1986 provides as under:-

"10. Composition of the District Forum.-(1) Each District Forum shall consist of,-

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other Members, one of whom shall be a woman, who shall have the following qualifications, namely:-

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognised university,

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or

administration:

Provided that a person shall be disqualified for appointment as Member, if he-

(a) has been convicted and sentenced to imprisonment for an offence which, in the opinion of the State Government, involves moral turpitude; or

(b) is an undischarged insolvent; or

(c) is of unsound mind and stands so declared by a competent Court; or

(d) has been removed or dismissed from service of the Government or a body corporate owned or controlled by the Government; or

(e) has, in the opinion of the State Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a Member; or

(f) has such other disqualifications as may be prescribed by the State Government.

8. Thus, in the District Consumer Redressal Forum, out of two members, one of whom shall be a woman, as per qualification prescribed by sub-section 1 (b) of Section 10 of the Act of 1986.

9. Sub-section (1A) of Section 10 of the Act of 1986 provides as under:-

"(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a Selection Committee consisting of the following, namely:-

(i) President of the State Commission -Chairman,

(ii) Secretary, Law Department of the State -Member,

(iii) Secretary, incharge of the Department dealing with consumer affairs in the State -Member:

10. Thus, appointment under sub-section (1) of Section 10 of the Act of 1986 shall be made by the State Government on the recommendation of the Selection Committee consisting of the President of the State Commission, Secretary, Law Department of the State and Secretary, incharge of the Department dealing with consumer affairs of the State. Likewise, proviso to sub-section (2) of Section 10 of the Act of 1986 provides for reappointment of a member for another term of five years. First proviso to sub-section (2) of Section 10 of the Act of 1986 provides as under:-

"Provided that a Member shall be eligible for reappointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of recommendation of the Selection Committee."

11. A careful perusal of Section 10 of the Act of 1986 makes it clear that the State Government is the appointing authority for President as well as Member of the District Consumer Redressal Forum, but such power has to be exercised only on the basis of recommendation of the Selection Committee constituted under sub-section (1-A) of Section 10 of the Act of 1986. Thus, it is clear that the power of appointment by the State Government shall be exercised on the recommendation of the Selection Committee constituted under the Act and appointment is subject to compliance with the eligible criteria prescribed under the Act of 1986.

12. Their Lordships of the Supreme Court in the matter of State of Rajasthan v. Anand Prakash Solanki AIR 2003 SC 3849 while considering the question whether the scheme of the Consumer Protection Act, 1986 prohibits the exercise of power to transfer the President or Members from one District Forum to another District Forum within the State, examined the scheme of appointment of President and Members under Section 10 of the Act and observed as under:-

"It cannot be lost sight of that the National Commission, State Commissions and District Fora have all been constituted to exercise jurisdiction over such grievances of the aggrieved persons which were earlier available to be raised before the conventional courts established under the Constitution and/or the laws. Inasmuch as the persons appointed to discharge functions under the Act at whatever level exercise judicial powers and are expected to function judicially consistently with the procedure as laid down by the Act or Rules framed thereunder, the very nature of the functions discharged by them needs them to be insulated from the control of, or interference by the Executive. So far as the District Fora are concerned, the purpose is sought to be achieved by sub-section (1A) of Section 10 as also by Section 24B of the Act. Every appointment under sub-section (1) of section 10, though made by the State Government, is dependent on the recommendation of a selection committee which is headed by the President of the State Government who is, or has been, a Judge of a High Court....."

13. In the light of aforesaid decision of the Supreme Court, it is quite vivid that the State Government has power to make appointment of member of District Consumer Redressal Forum only upon the recommendation of the Selection Committee. First proviso to sub-section (2) of Section 10 of the Act of 1986 merely states that a member shall be eligible for reappointment for another term of five years or up to the age of sixty-five years, whichever is earlier, but same shall be subject to the condition that he fulfils the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment shall be made on the basis of recommendation of the Selection Committee.

14. Thus, re-appointment has also to be made of any sitting member for next five years only on the basis of recommendation of the Selection Committee. The petitioner cannot claim any vested right for reappointment by virtue of proviso to

sub-section (2) of Section 10 of the Act of 1986, who has completed one term and is held to be eligible for reappointment. In terms of the said provision, the candidature of the petitioner has already been considered and she has not been recommended by the Section Committee and thereafter she has not been appointed by the State Government and therefore, she cannot claim for re-appointment on the basis of proviso to sub-section (2) of Section 10 of the Act of 1986.

15. Accordingly, I do not find any merit in the present writ petition. The writ petition is liable to be and is hereby dismissed at the admission stage itself. No order as to cost(s).