
(2014) 03 P&H CK 0159
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 1505 of 2014

Satish Kumar Sangwan

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14 16

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

Citation : (2014) 175 PLR 229 : (2015) 2 RCR(Civil) 656 : (2015) 2 SCT 481

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Advocate : Sukhvinder Singh Nara and Mr. Paramvir Singh, for the Appellant;
Sunil Nehra, D.A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—By this order, I propose to decide Civil Writ Petition Nos. 1505 of 2014 (Satish Kumar Sangwan Versus State of Haryana and others) and 3346 of 2014 (Virender Kumar Versus State of Haryana and others), which have been preferred by two Advocates, who are aspirants for appointment to the posts of Presidents District Consumer Disputes Redressal Foras advertised on 20.01.2014 by the State Consumer Disputes Redressal Commission, Haryana. Facts are being taken from Civil Writ Petition No. 1505 of 2014, where the pleadings are complete. Petitioner was enrolled as an Advocate with the Bar Council of Punjab & Haryana High Court vide enrolment No. P/1703/2000 and is practicing Advocate in the District Courts, Yamunanagar at Jagadhri. On 20.01.2014, the State District Redressal Commission, Haryana-respondent No. 2 (for short "Commission") advertised seven posts of President in District Consumer Disputes Redressal Fora (for short "District Fora") in the State of Haryana. Petitioner fulfills the eligibility conditions as prescribed u/s 10(1)(a) of the Consumer Protection Act, 1986 (for short "1986 Act") for appointment to the post of President of the Redressal Fora. He is aggrieved of Clause 9 of the advertisement, according to which the Selection Committee constituted u/s 10(1-

A) of the 1986 Act decided that only those candidates shall be considered for appointment, who have filed their income tax returns showing their professional income not less than Rs. 5.00 lacs per annum and are income tax payees for at least three years, failing which their applications would be rejected outrightly.

2. This condition, as has been imposed by the Selection Committee, is assailed by the petitioner on the ground that it did not have the jurisdiction to prescribe the income criteria as eligibility conditions as provisions as provided under the Act are silent on prescribing minimum income as qualification for the post of the President. The Haryana Consumer Protection Rules, 2004 (for short "2004 Rules") also do not prescribe for the income criteria nor does it authorise the Selection Committee to prescribe such a criteria of its own. Had the income criteria been prescribed by the Selection Committee for the purpose of shortlisting of the candidates, there could probably have been no grouse. However, the same cannot be made the eligibility condition, which would at the very outset make ineligible the candidates, who fulfill the eligibility conditions as laid down in the 1986 Act as also the 2004 Rules.

3. The judgment, on the basis of which the said qualifications have been prescribed by the Selection Committee, i.e. Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, , relates to shortlisting of the number of candidates and does not in any manner indicate that even the applications from the eligible candidates, who fulfill the statutory conditions would be barred from even applying for the post. This would amount to violating Articles 14 and 16 of the Constitution of India. Petitioner has asserted that the competency of a person cannot be judged from the income he earns and that cannot be a criteria for declaring a person ineligible for participating in the selection and, thus, would be totally illegal, arbitrary, irrational having no nexus with the object sought to be achieved and is liable to be set-aside.

4. In the reply which has been filed by respondent Nos. 2 and 3, it has been stated that in terms of Section 10(1-A) of the 1986 Act, every appointment to the District Forum shall be made by the State Government on recommendations of the Selection Committee consisting of the President of the State Commission as Chairman, Secretary, Law Department of the State as Member and Secretary, Incharge of the Department dealing with consumer affairs in the State as another Member. The 1986 Act and 2004 Rules framed thereunder do not lay down any written test or other mode of selection. The selection has, therefore, to be made by the Selection Committee by way of interview only. As per the past experience, large number of applications are received. The Selection Committee, therefore, has to adopt certain criteria to attract talented and competent person, who can be appointed as President of the District Consumer Forum. Keeping in view the salary of the President of the District Fora, which is more than Rs. 12.50 lacs per annum, besides facility of rent free accommodation, conveyance allowance, telephone and medical facilities, it was decided that only those candidates shall be considered who have filed their income tax returns showing

their professional income not less than Rs. 5.00 lacs per annum and are income tax payees for at least three years. This was done keeping in view the judgment of the Hon"ble Supreme Court in Navnit Kumar Potdar's case (supra).

5. Reliance has also been placed upon the Division Bench judgment of this Court in Letters Patent Appeal No. 877 of 2013 (Jasbir Singh Versus State of Haryana and others), decided on 03.05.2013 (Annexure R-3), where in an earlier selection for the post of President of the District Fora on receipt of more than 440 applications, Selection Committee has resorted to shortlisting of the candidates by deciding that only such candidates from amongst the Advocates be called for interview, whose income from profession as reflected in the income tax returns was Rs. 3.00 lacs or more. The writ petition was dismissed earlier by the learned Single Judge, which led to filing of the appeal, where Division Bench also upheld the said criteria adopted by the Selection Committee. The Letters Patent Appeal was dismissed vide order dated 03.05.2013 (Annexure R-3) holding that the Selection Committee is fully justified in resorting to fixing the income criteria and the said fixation was neither irrational, arbitrary or having no nexus with the object sought to be achieved.

6. In the present selection process, the Selection Committee thought it appropriate, reasonable and just that the candidates should before hand know as to what the income criteria would be adopted by the Selection Committee which would be the basis for treating the candidates eligible. It is with this intention that the criteria of professional income of Rs. 5.00 lacs per annum has been adopted at the very beginning so that the candidates are not put to unnecessary financial burden of paying the fee and filling up the form etc.

7. Counsel for the petitioner contends that there are no statutory requirement about income criteria for a candidate to be eligible for consideration for appointment. By the process of fixing a minimum professional income of Rs. 5.00 lacs per annum and being an income tax payee for at least three years which is alien to the statutory rules, would amount to adding qualifications extraneous to Statute. The competence of a candidate cannot be assessed merely on the basis of an income criteria, which would go against the very purpose and intent of selecting the best candidates suitable for the post. By importing a condition, which is not provided for under the Statute, would amount to violating Articles 14 and 16 of the Constitution being contrary to the statutory rules. The shortlisting can be resorted to by the Selection Committee, but this process can be put to use when the process of selection has been initiated but prior thereto, no such condition can be imposed in the advertisement itself, which would amount to excluding candidates, who are otherwise eligible as per the qualifications prescribed under the statutory rules. In any case, he contends that the income criteria prescribed being arbitrary, irrational, illegal and having no nexus with the object sought to be achieved deserves to be quashed. Prayer has, thus, been made for directing the respondents to accept the application of the petitioner without insisting upon the income criteria.

8. On the other hand, counsel for the State contends that it has always been asserted by the candidates that the criteria should be known to them prior to the initiation of the selection process to bring transparency. Now when the Selection Committee has, keeping in view the earlier experience, taken a decision to publish the conditions and the criteria in advertisement itself, the petitioner cannot assail the same especially when at a subsequent stage of shortlisting the same condition has been accepted by the Division Bench of this Court in Jasbir Singh's case (supra) as also Navnit Kumar Potdar's case (supra) to be uniform, just, reasonable and does not suffer from arbitrariness or irrationality nor does to offend the constitutional rights of a candidate.

9. I have considered the submissions made by the counsel for the parties and with their assistance have gone through the records of the case.

10. Section 10(1) of the 1986 Act reads as follows:-

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 a 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 the 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 disqualification as may be prescribed by the State Government.

11. Section 10(1-A) of the 1986 Act, provides for the composition of the

Selection Committee as follows:-

(1-A) 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) the 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.

12. Section 10(1) provides for the qualifications for the candidates to be eligible for appointment to the post of President of the District Fora. The qualification for the Advocates, who are interested for appointment to the post, is that he must be having not less than ten years standing at bar and not less than 35 years of age. Under the 1986 Act as also 2004 Rules, no written test or other mode of selection has been provided for and, therefore, it is open to the Selection Committee, which has been constituted u/s 10(1-A) of the Act to formulate its own criteria for selection of the candidates. If the criteria is just equitable, non-discriminatory and does not suffer from any vice of arbitrariness, irrationality and non-discriminatory the same would pass the test of reasonableness and cannot, thus, be said to be violative of Article 14 of the Constitution of India.

13. The power of the court is limited to judicial review only and, thus, it cannot impose its own conditions or express its opinion except for the reasons mentioned above. In the absence of any statutory prohibition, the Selection Committee has a right to devise an appropriate procedure consistent with the constitutional mandate as enshrined in Articles 14 and 16 of the Constitution and other statutory provisions applicable to the post in question. If a condition which may although not be specifically provided for under the statutory provisions, but may fulfill the purpose of adjudging the suitability and merit of the candidates, the same cannot be said to be unrelated to the qualifications prescribed under the Statute.

14. The quantum of professional income in the income tax returns would certainly reflect as regards the standing of the candidate in the profession. Such a criteria cannot be termed as irrational. The reflection of the professional income and the criteria laying down the same would be a reasonable way of assessing the sufficiency or otherwise of the practice of the candidates to be called for interview. Income from profession ensures and gives a clear indication of the volume of practice of an Advocate. Merely being an Advocate for several years without active and adequate practice would indicate the suitability or otherwise of a candidate to be considered for appointment, where judicial functions have to be performed. Legal knowledge and experience as a practitioner of law are absolutely necessary for being selected to the post of President. Although the quantum of income need not necessarily always reflect

the caliber and capacity of a practicing Advocate, but there can be no doubt that generally it reflects and indicates a reasonable amount of practice as an Advocate. Thus, income from profession is linked to practice and practice is linked to the knowledge and experience, which is a good indicator of the caliber and capacity of a practicing Advocate, who aspires to be the President of the District Fora. There is, thus, a clear rationale and reasonable nexus between the criteria of income as prescribed by the Selection Committee with the object sought to be achieved, i.e., the selection of the best candidates.

15. While applying the above basic principles, it cannot be said that the decision of the Selection Committee in fixing a professional income criteria is unreasonable, unjust, arbitrary or ultra vires the statutory rules.

16. There is yet another reason for coming to the above conclusion with regard to the upholding the eligibility condition relating to the professional income imposed by the Selection Committee in the advertisement itself, i.e., if the said condition for shortlisting of the candidates at the later stage can be accepted as permissible in law for the Selection Committee, how can this be illegal when it is published along with and is a part of the advertisement itself which has been done with an intention to make the candidates aware of the procedure, process and criteria, which is being purported to be followed by the Selection Committee. This, in the considered view of the Court, would lead to much more transparency, certainty in the selection process and would be beneficial to the candidates, who would have applied for the post unnecessarily without having the minimum required professional income. The reasoning adopted by the Selection Committee for providing this criteria in the advertisement is that as per the past experience large number of applications are received and thereafter the criteria regarding income has to be imposed for pruning down the number of applicants to a reasonable and manageable limit, which would result in further delay, wastage of man hours, money, material, resources, energy etc. This also justifies the decision of the Selection Committee.

17. A Division Bench of this Court in Jasbir Singh's case(supra), held as follows:-

There is indeed no quarrel that the Competent Authority/Selection Committee is well within its right to short list the candidates in a selection process by laying down a uniform, transparent and just criteria. In the instant case, it has come on record that against 10 posts of President, District Consumer Disputes Redressal Forum, more than 400 Advocates have applied besides the serving or retired Judicial Officers. In such a situation, the decision taken by the Competent Authority/Selection Committee to shortlist the candidates from amongst Members of the Bar appears to be just and fair and it calls for no interference.

Adverting to the criteria of shortlisting, it appears to us that in exercise of its power of judicial review, the writ Court would be well within its right to see that the criteria of shortlisting does not suffer from the vice of arbitrariness or irrationality nor does it offend the constitutional rights of a candidate. It may be

seen that serving Judicial Officers with whom the Members of the Bar are to compete for the subject posts, are drawing monthly salary of about Rs. 90,000 or so while those who are retired are also drawing pension of about Rs. 60,000/- per month. The pay scale of the post of President of District Consumer Disputes Redressal Forum, is Rs. 57700-70290 which means that the monthly salary of the incumbent would be more than Rs. 1,00,000/-. As against this, an Advocate with monthly income of Rs. 25,000/- per month has been made eligible to compete. It thus cannot be said that the Competent Authority/Selection Committee have acted in an arbitrary or whimsical manner.

18. The same criteria has been adopted by the Commission for fixing the professional annual income of the candidate to be taken into consideration for applying for the post. The Selection Committee has kept in view the salary of the President of the District Forum, which is more than Rs. 12.50 lacs per annum as apart from this, the President is also entitled to facility of rent free accommodation, conveyance allowance, telephone and medical facilities. The monthly salary of the President comes to Rs. 1,04,166/- apart from above mentioned perks, whereas as per criteria adopted by the Selection Committee of Rs. 5.00 lacs in a year, income that of an applicant-Advocate would come to Rs. 41,666/- per month, which would be about 2.5 times less than the salary of the President of the District Forum, which cannot be said to be too excessive to be termed as arbitrary, unreasonable and irrational.

19. An advertisement dated 20.01.2014 was issued by the Commission where apart from laying down the requirement of Advocates of having not less than ten years standing at bar and not less than 35 years of age as on 01.01.2014, under Clause 9 of the Advertisement, stated as follows:-

Government of Haryana has not prescribed any written test for the posts of Presidents of the District Fora in the State of Haryana, Selection Committee is adopting the criteria as per the judgment rendered by the Hon'ble Supreme Court in case titled Madhya Pradesh Public Service Commission Vs. Navnit Kumar Potdar and another, wherein it is open to the Selection Committee to fix its own criteria. Keeping in view the salary of the Presidents of the District Fora, which is more than Rs. 12,50,000/- per annum, the Selection Committee has decided that only those candidates shall be considered who have filed their income tax returns showing their professional income not less than Rs. 5.00 lacs per annum and are income tax payee for at least three years. The candidates shall annex the attested/certified copies of income tax returns alongwith their applications failing which their applications will be liable to be rejected outrightly.

20. It may be added here that apart from Rs. 12.50 lacs per annum, which a President of the District Fora gets as salary, facility of rent free accommodation, conveyance allowance, telephone and medical facilities etc. are also provided. What has actually been done by the Selection Committee is to make the candidates aware of what they are likely to face once they applied for the post. By this process, the candidates at the threshold have been made aware as to

where they stand and there is nothing wrong in the said decision of the Selection Committee which would call for interference by this Court. In view of the above, finding no merit in the writ petitions, the same stand dismissed.