
(2014) 04 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : LPA No. 679 of 2014 (O&M)

Satish Kumar Sangwan

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 26-04-2014

Acts Referred:

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

Citation : (2017) 2 RCRCivil 15 : (2017) 2 RSJ 177 : (2017) 1 SCT 660

Hon'ble Judges : Jasbir Singh and Harinder Singh Sidhu, JJ.

Bench : Division Bench

Advocate : Sukhvinder Singh Nara, Advocate, for the Appellant in both appeals

Final Decision : Dismissed

Judgement

Harinder Singh Sidhu, J. - This order shall dispose of two appeals, referred to above. The facts are being taken from LPA No. 679 of 2014.

2. The appellant has challenged the judgment of learned Single Judge dated 19.03.2014, whereby CWP filed by the appellant has been dismissed. The appellant is a practicing advocate at District Courts, Jagadhari at Yamuna Nagar and was enrolled as such in the year 2000. Vide Annexure P-1 dated 20.01.2014 seven posts of President of District Consumer Disputes Redressal Fora in the State of Haryana were advertised. The appellant claims that he fulfils the eligibility conditions as prescribed under Section 10 (1)(a) of the Consumer Protection Act, 1986 (in short "the Act"). His grievance is against clause 9 of the advertisement, which is reproduced as under :-

"9. The Government of Haryana has not prescribed any written test for the posts of Presidents of the District for a 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 v. Navnit Kumar Potdar, reported as (1994) 6 SCC 293, 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 rupees 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 rupees 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 along with their applications failing which their applications will be liable to be rejected out rightly."

3. The appellant is aggrieved of the aforesaid condition incorporated by the Selection Committee that only those candidates shall be considered, who have filed their income tax returns showing their professional income not less than 5.00 lacs per annum and are income tax payees for the last three years. The contention of the appellant was that this condition imposed by the Selection Committee was contrary to the rules which contained no such provision. It was further contended that the Selection Committee had no jurisdiction to prescribe its own criteria for the purpose of short listing candidates and thereby debarring candidates otherwise eligible but not fulfilling the criteria imposed by it from even applying for the said posts. Questioning the relevance of the judgment of Hon"ble Supreme Court in case of Madhya Pradesh Public Service Commission"s case (supra) relied on by the Selection Committee for the imposition of the condition, it was submitted that unlike the Madhya Pradesh case relied upon, the present case is not a case of short listing the candidates after receipt of the applications based on the large number of applications received for the aforesaid posts. Even the merits of the condition imposed was sought to be challenged on the ground that the competence of an advocate for the post of President of District Consumer Forum cannot be judged on the basis of his professional income as an advocate.

4. The respondents sought to justify the imposition of the condition by referring to the fact that past experience showed that invariably a large number of applications were received for the posts necessitating the adoption of a fair and rational criteria for short listing the candidates at the very threshold. It was stated that the President of the District Fora draw a salary of more than Rs. 12.5 lacs per annum, besides having the benefit of rent free accommodation, conveyance allowance, telephone and medical facilities. Hence, in order to attract talented and competent persons, the aforesaid income criteria was prescribed which was duly advertised.

5. Learned Single Judge after noticing the provisions of 1986 Act as also 2004 Rules, where under no written test or other mode of selection has been provided for, held that in such circumstances, it is open to the Selection Committee constituted under Section 10(1-A) of the Act to formulate its own criteria for selection of candidates. It was further held that if the criteria so prescribed is just, equitable and non-discriminatory, then the same cannot be said to be violative of Articles 14 or 16 of the Constitution. It was further held that the power of judicial review in regard to any criteria so formulated, is limited to

examining that the said criteria is not arbitrary or irrational or discriminatory. With regard to the reason and rationale of the criteria fixed, the learned Single Judge observed as under:-

"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 practise of the candidates to be called for interview. Income from profession ensures and gives a clear indication of the volume of practise of an Advocate. Merely being an Advocate for several years without active and adequate practise 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 calibre and capacity of a practicing Advocate, but there can be no doubt that generally it reflects and indicates a reasonable amount of practise as an Advocate. Thus, income from profession is linked to practise and practise is linked to the knowledge and experience, which is a good indicator of the calibre 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."

6. The other objection of the appellant that in terms of the decision of the Supreme Court, referred to above, any short listing could only be subsequent to the receipt of applications, depending on the number thereof, the learned Single Judge held that if the condition of the short listing of the candidates at the later stage can be accepted as being permissible in law, then it cannot be said to be illegal when such a condition is published along with and made a part of advertisement so as to make the candidates aware of the procedure, process and criteria, which is to be followed by the Selection Committee. Learned Single Judge, held that this course would in fact lead to greater transparency and certainty in the selection process and would, in fact, be beneficial to the candidates, who do not fulfil the criteria and would have unnecessarily applied for the post without possessing the said income qualification. Learned Single Judge held that what has actually been done by the Selection committee is to make the candidates aware of their fate at the threshold and accordingly there is nothing wrong in the decision of the Selection Committee which would necessitate interference by the Court.

7. In appeal also the same contention has been raised that as per the judgment of Hon"ble Supreme Court in Madhya Pradesh Public Service Commission's case (supra), decision regarding short listing of the candidates can be made only after receipt of the applications and not before.

8. This question has been squarely addressed by learned Single Judge by holding that if short listing is permissible after receipt of applications there is, in principle, no illegality if the criteria of such short listing, based on past experience of receipt of large number of applications, is specified in the advertisement itself.

9. The judgment of learned Single Judge appears to be fair and in consonance with law. There is no ground to interfere with the said judgment. Accordingly, both appeals are dismissed.