
(2001) 12 OHC CK 0019
In the Orissa High Court
Case No : O.J.C. No. 10167 of 2001

Sk. Abou Sufiyan	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 18-12-2001

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Consumer Protection Act, 1986 — Section 10, 10(1)

Citation : (2002) 93 CLT 337

Hon'ble Judges : B. Panigrahi, J; A.S. Naidu, J

Bench : Division Bench

Advocate : U.C. Patnaik, R.P. Mohapatra, S.D. Misra and K.C. Bal, for the Appellant; Additional Government Advocate, R.K. Mohanty, D.K. Mohanty, P.K. Rath, A.P. Bose, D. Mohapatra, B.K. Mohanty, S.N. Biswal, P.K. Samantray, Manoj Misra, S. Senapati and G.K. Mohanty Advs., for the Respondent

Final Decision : Allowed

Judgement

B. Panigrahi, J.—The writ petitioner has challenged the legality, propriety and validity of the order by which opp. parties 1 and 5 have appointed opp. party No. 7 as the President of the District Consumer Redressal Forum, Bhadrak (In short "District Forum") on the ground, inter alia, that opp. party No. 7 practised fraud and misrepresentation while procuring the order of appointment in his favour.

2. Opp. party No. 3 issued an advertisement calling upon the candidates for the post of President, District Forum which were lying vacant in different districts of Orissa on 5.12.2000. The petitioner vis-a-vis opp. party No. 7 along with other candidates had applied for the post of President in the District forum, Bhadrak. Subsequently opp. party No. 5 issued a letter inviting the petitioner and other candidates to attend the interview. Petitioner as well as other candidates in terms thereof appeared in the interview where it is said that opp. party No. 7 was selected and was appointed as the President of District Forum, Bhadrak vide Notification dated 12th July, 2001. Being aggrieved by such appointment the

petitioner who was a rival Candidate for the said post filed this case. It is stated, inter alia, that the appointment of opp. party No. 7 as President of the District Forum was illegal in as much as he was not practising in the bar from the date of his enrolment and as such he did not have the requisite qualification to submit an application for the said post. It has been further stated that opp. party No. 7 has been engaging himself in business by becoming an agent of Life Insurance Corporation of India and earns profits therefrom. Had these facts been brought to the notice of the appointing authority, they could not have appointed opp. party No. 7 as the President of the District Forum, Bhadrak.

3. Opp. party No. 7 has filed counter affidavit by denying the facts averred in the writ petition. It is, inter alia, stated that he obtained licence in the year 1993 and thereafter he resigned from acting as an agent of the Life Insurance Corporation with effect from 6.3.1993. He, therefore, was eligible to apply for the post of District Judge whereupon he submitted an application for the post of President, Bhadrak District Forum. It has been further stated by opp. party No. 7 that this writ petition has been filed maliciously just to malign his reputation after opp. party No. 7 was appointed as the President. It is further stated that opp. party No. 7 having been validly appointed he assumed the charge of the said office, therefore, he should be allowed to function as such till expiry of his term.

4. Opp. parties 1, 2, 4 and 5 have filed counter wherein it is . stated that the State Govt. issued an advertisement to fill up the posts of District Presidents of different District Forums by inviting applications from the eligible candidates. Pursuant to the said advertisement the petitioner vis-a-vis opp. party No. 7 along with other candidates had submitted their applications for the post of President, District Forum, Bhadrak. Call letter was issued fixing a date of interview. Opp. party No. 7 had also filed an affidavit before the authorities setting therein that he was not involved in any political activities nor it shall prejudicially affect any person after his appointment. In the process of selection the cases of opp. party No. 7, the writ petitioner and other candidates were duly considered and finally opp. party No. 7 was placed in first position whereas one Balaram Nayak had secured second position. It is false to state that opp. party No. 7 had misrepresented the State Govt. and illegally procured an order of appointment as President. District Forum, Bhadrak. Opp. party No. 7 was enroled as an Advocate since 27.11.1993, as such he was eligible for being selected as a District Judge, and therefore, his case was considered vis-a-vis of others in which opp. party No. 7 was selected. After opp. party No. 7 was selected as the President of District Forum, Bhadrak he submitted his joining report on 6.8.2001.

5. In the counter affidavit it has been further indicated that there was no record before the Selection Committee nor the State Govt. regarding the agency of opp. party No. 7 in Life Insurance Corporation of India. Since opp. party No. 7 on merit was found suitable to hold the post of President of District Forum, Bhadrak, therefore, the State Government without any prejudice or bias issued an appointment order in his favour.

6. Upon hearing the rival contentions of the parties as regards the eligibility to act as the president, we find it appropriate to quote Section 10 of the Consumer Protection Act, 1986 in which it is stated as to who will be competent person to be appointed as the President of District Forum. Section 10 of the Consumer Protection Act runs thus :

"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, who shall be person of ability, integrity and standing, and have adequate knowledge or experience of or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

(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, in charge of the Department dealing with Consumer Affairs in the State ... Member (2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier and shall not be eligible for re-appointment :

Provided that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in Sub-section (1) in relation to the category of the member who has resigned.

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government."

In the rules framed under the aforesaid Act also it is indicated that any candidate should not have any financial or other interests as is likely to affect prejudicially his function as the member of the said Forum. The rule further envisages that in case a President or a Member of a District Forum is found to have acquired such financial or other interests as is likely to affect his functions prejudicially, he/she shall cease to be the President or Member of the District Forum.

6. In the above backdrop it is to be noted whether opp.party No. 7 is/was having any financial interest which would have prejudicially affected his function in discharge of his duties. Petitioner has alleged that opp.party No. 7 was a Life Insurance Agent on the date of submission of application and thereafter has also been receiving premium while acting as such. In support of his stand a letter purported to have been issued by the L.I.C., dt. 1.8.2001 has been enclosed to

the writ petition. Number of policy, the premium collected by opp. party No. 7 have been noted in Annexure-4 of the writ petition. A stand has been taken by opp. party No. 7 that he has resigned from his membership before submitting his application for enrolment as an Advocate. In support of his plea reliance has been placed on Annexure-B/2 to the counter. It is true that in the said letter it has been indicated that the petitioner had submitted his resignation with effect from 6.10.1993, but on a closer examination of the letter it seems that there is nothing to establish that the said letter was received by the Branch Manager, L.I.C., Bhadrak. Therefore, we are not in a position to agree with the contention of the learned Advocate appearing for opp. party No. 7 that the said letter was communicated to opp. party No. 8. Had this letter been communicated there was no occasion for opp. party No. 7 to submit the proposals and receive the premium from different persons under Annexure-4.

7. It is to be next considered whether receipt of premium or commission would amount to "prejudicially affect" the interest of others. In case there would be dispute for deficiency of service against the L.I.C. of India, it cannot be expected that the person claiming against the L.I.C. authorities shall get proper justice. Justice not only is to be done, but it must appear to have been properly done. Therefore, in the above context, the purpose for which the District Redressal Forum has been set up shall render otiose if the opp. party No. 7 is allowed to function any further.

8. It is submitted that opp. party No. 7 because of the interim order passed by this Court is not able to function as the President of the District Forum, Bhadrak. From the facts and circumstances of the case, we found that the opp. party No. 7 has submitted his joining report ever since 6.8.2001. Since he has joined in his post with effect from 6.8.2001, he would be entitled to remuneration as admissible under the rules till the judgment. Accordingly the State Government is directed to disburse his salary. The other staffs working in the District Consumer Redressal Forum, Bhadrak have also not obtained their salary in view of the interim order. But we find, there is no justification to withhold their dues from the date of their joining in their respective posts.

9. It is to be noted that the petitioner was not selected for the post of President, District Forum, Bhadrak. From the merit list we found, one Balaram Nayak was selected and placed against Serial No. 2. From the discussions made above, we hereby annul the appointment of opp. party No. 7. Therefore, in all fairness the person who was placed in second position should be given appointment. If he declines to accept the offer, then the State Govt. will take steps to fill up the said post by inviting applications for the said purpose.

10. In the result, the writ petition succeeds. Consequentially the appointment of opp. party No. 7 as the President of District Consumer Redressal Forum, Bhadrak is hereby quashed.

There shall be no order as to costs.