
(2001) 02 RAJ CK 0053
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2440 of 1990

Subhash Purohit	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 23-02-2001

Acts Referred:

Consumer Protection Act, 1986 — Section 16(3)
Rajasthan Consumer Protection Rules, 1987 — Rule 6(5)

Citation : (2002) 2 RLW 872 : (2002) 2 WLN 390

Hon'ble Judges : V.S. Kokje, J

Bench : Single Bench

Advocate : R.C. Joshi, for the Appellant; S.M. Mehta, General and Shailesh Prakash Sharma, for the Respondent

Final Decision : Allowed

Judgement

Kokje, J.—The petitioner was a Member of the Rajasthan State Consumer Disputes Redressal Commission, Jaipur (in short "the Commission"). He was nominated by the State Government as a Member of the Commission by order dated 23.2.1996, in exercise of powers u/s 16(1) of the Consumer Protection Act, 1986 (in short "the Act"). Separate appointment order of the same date was also issued by the State Government. In the notification, it was not specified as to whether he was being appointed on full time or part time basis but in the appointment order, his appointment was stated to be on part time basis. According to the terms and conditions of the appointment stated in the appointment letter, the appointment was for a period of five years or till completion of 67 years of age by the petitioner, whichever was earlier. It was specifically stated in the order that the petitioner could be removed from his post under the Consumer Protection (Rajasthan) Rules, 1987 (hereinafter referred to as "the Rules") framed under the Act. A condition was also imposed that the petitioner shall surrender his licence to practice as an Advocate during his tenure as a Member of the commission and he shall not be entitled to practice during the tenure of his appointment as a Member. It was also specifically stated that

the terms and conditions of his service shall be regulated by the Rules.

2. The petitioner discharged his duties as a Member of the Commission till he was removed vide notification dated 1.5.99 issued by the Food and Civil Supplies Department of the Government of Rajasthan. No reasons were stated in the notification for the removal except the reason that it was not in public interest to allow the petitioner to continue as a Member of the Commission. Aggrieved by his removal vide notification dated 1.5.99, the petitioner has filed this writ petition.

3. The petitioner has alleged in the petition that on appointment as a Member of the Commission, he got his licence to practice as an Advocate suspended and stopped functioning as Panel Lawyer of Government organisations. According to him, he had discharged his duties as a Member of the Commission in accordance with the spirit of the Constitution and the Act in an upright manner. It was contended that he was removed from his post in violation of the provisions of the Act and the Rules and in violation of the principles of natural justice. It was also contended that the petitioner had reason to believe that he had been removed in an arbitrary manner for the sole reason that he was appointed by the earlier government and functionaries of the State were interested in appointing some person of their personal choice as a Member of the Commission.

4. The State Government in its reply took a stand that the petitioner was negligent in the discharge of his duties and did not cooperate with the Chairman of the Commission and also did not attend the meetings, resulting in wastage of time and money. Copies of letters dated 6.6.1998 and 29.6.1998 written by the Chairman of the Commission to the Secretary of the Food Department and to the Chief Minister were produced in support of this contention. It was also contended that under Rule 6(5)(e) of the Rules, the State Government had power to remove a Member from his office if he has abused his position as to render his continuance in office prejudicial to the public interest. It was contended that on the basis of the Chairman's letters, referred to above, the continuance of the petitioner as a Member of the Commission was prejudicial to the public interest. It was also contended that when the Chairman of the Commission was complaining against the petitioner, it was not desirable to issue show cause notice and to hold enquiry against the petitioner. It was further contended that the process of removing the petitioner from the membership of the Commission was initiated by the Chairman of the Commission during the tenure of the Government headed by the Bhartiya Janta Party and therefore, the question of any political motive in removing the petitioner for making room for a person of the choice of the new government was also not there, as alleged by the petitioner. It is also contended that it was not possible for the State Government to get a person of their choice appointed to the post of Member as under the Act, the selection is to be done by a Selection Committee comprising of the Chairman of the Commission, Law Secretary and Commissioner and Secretary to Government, Food Department.

5. Having heard learned counsel and having perused the record, I find that the impugned action of the State Government is patently illegal, arbitrary and totally unsupportable. Section 16(2) of the Act provides that the salary or honorarium and allowances payable to and other terms and conditions of service of the Members of the State Commission shall be such as may be proscribed by the State Government. Sub-section (3) of Section 16 of the Act provides that every Member of the State Commission shall hold office for a term of five years or upto the age of 67 years, whichever is earlier. Rule 6 of the Rules provides for the salary and other allowances and terms and conditions of appointment of the President and Members of the State Commission. Proviso to Sub-rule (4) provides that a Member may by writing under his hand and addressed to the State Government resign his office any time. He may also be removed from his office in accordance with provisions of sub Rule (5). Sub-rule (5) of Rule 6 reads and under:-

(5) The State Government may remove from office, President or a Member of the State Commission who:-

(a) has been adjudged an insolvent, or

(b) has been convicted of an offence which in the opinion of the State Government, involves moral turpitude, or

(c) has been physically or mentally incapable of acting as such member, or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member, or President or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest. Provided that the President or a Member shall not be removed from his office on the ground specified in Clauses (d) and (e) except on an inquiry held by the State Government, in accordance with such procedure as it may specify in this behalf and finds the Member to guilty of such ground."

6. It is clear that the State Government has removed the petitioner on ground (e) of Rule 6(5) of the Rules. The proviso to Sub-rule (5) of Rule 6 itself requires an enquiry to be held by the State Government in accordance with such procedure as it may specify in this behalf before a Member is removed under the rule. Admittedly, no such enquiry was held. The reason for not holding enquiry stated in the reply to the writ petition is that complaint was made by the Chairman of the Commission himself. The rule does not dispense with the requirement of conducting enquiry when the complaint is made by the Chairman of the Commission himself. Actually, the proviso is a safeguard against arbitrary removal of a Member and the Act does not make any difference between the Chairman and the Member, in respect of removal from office. The position of the Chairman is just like the position of the Chief Justice vis-a-vis a Puisne Judge of the High Court. He is only first amongst the equals.

7. Moreover, the complaint of the Chairman in the two letters dated 6.6.98 and

29.6.98 was mostly against the lady Member. In letter dated 6.6.98, what was stated against the petitioner was as under:-

"You will appreciate that at least one member besides the President must be present to make the quorum but unfortunately many times the quorum is not complete for absence of both the members. So far as Mr. Subhash Purohit is concerned, he stays at Jodhpur and per chance if, he is unable to come, he at least informs the Registry about his not coming. Though there may not be format sitting of the Commission, I am at least menially prepared to complete other administrative work or look into the files or write pending judgments."

8. In the letter dated 29.6.98, no specific allegation has been made against the petitioner alone.

9. Thus, it is clear that there was absolutely no material before the State Government to hold that the allegations made by the Chairman were correct and that it was necessary to remove the petitioner from the post of the Member of the Commission, in public interest. Close on the heels of the order removing the petitioner vide notification dated 1.5.99, on 10.5.99, a notification was issued inviting applications for the post of Member of the Commission which gives credence to the allegation made by the petitioner that he was removed for making room for fresh appointment of a person of the choice of the new Government.

10. It was vehemently argued on behalf of the respondents that this petition has virtually become infructuous because the post of Member of the Commission vacated by the petitioner has since been filled in and since the petitioner has not impleaded the new incumbent he cannot be removed from office to make room for the petitioner and for that reason, the relief sought by the petitioner of quashing of the order removing him from the post can not be granted as that would mean removal of the new incumbent from office. The argument looks attractive on its face but when we see the proceedings of this case, we find that the petitioner cannot be blamed for the situation which has been brought about by the orders of this Court. It would be necessary to reproduce proceedings of this Court recorded on certain dates.

11. The petitioner filed this writ petition on 10.5.99 even before the notice inviting fresh applications for the post was published in the "Rajasthan Patrika" on 13.5.99 and sought an interim order suspending operation of the order dated 1.5.1999. On 17.5.1999, when the case was listed for admission, the following order was passed:

"Hon"ble J.C. Verma J.

17.5.1999

Mr. R.C. Joshi, for the petitioner

Mr. R.N. Mathur, Addl, Advocate General

Mr. Shailesh Sharma, for Mr. S.M. Mehta, Advocate General

Issue notice to the respondents.

Notice of stay application be also issued.

Mr. R.N. Mathur, accepts notices. Mr. Mathur states that the learned Advocate General, Rajasthan, shall argue the matter.

Put up on 21.5.1999.

Meanwhile, operation of the order dated 1.5.1999 shall remain stayed.

Mr. Mathur, may file reply by 21.5.1999 and the advance copy of the reply be supply to Mr. Joshi.

Sd. J.C. Verma, J."

On 21.5.99, the following order was passed:

"Hon"ble Mr. B.S. Chauhan J.

21.5.99

Mr. R.C. Joshi, for the petitioner

Mr. R.N. Malhur, Addl. Advocate General

Mr. R.N. Mathur, Addl. Advocate General undertaken that he will file reply by 24th May, 99. Tilt then, interim order passed on 17.5.1999 is extended.

Put up on 24th May, 99.

Sd. Dr. B.S. Chauhan J."

On 24.5.99, following order was passed:

"Hon"ble Mr. A.K. Parihar J.

24.5.99

Mr. R.C. Joshi, for the petitioner

Mr. R.N. Malhur, for Respondent.

Put up on 26.5.99. Till then, interim order dated 17.5.99 is continued.

Sd/-A.K. Parihar J."

On 26.5.99, following order was passed:

"Hon"ble Mr. A.K. Parihar J.

26.5.99

Mr. R.C. Joshi, for the petitioner

Mr. S.P. Sharma, for Respondent

Put up on 27.5.99 as 1st case. Till then interim order dated 17.5.99 is continued.

Sd/-A.K. Parihar J."

On 27.5.1999, after hearing both the parties, the case was admitted but the stay application was rejected and the case was put for hearing in due course. Orders dated 27.5.1999 passed in the main file as well as in the miscellaneous file of stay application are reproduced here-under:

"Hon"ble Sh. A.K. Parihar J.

27.5.99

Mr. R.C. Joshi, for the petitioner

Mr. S.M. Mehta, Sr. Adv. with Mr. Shailesh Prakash and Mr. M. Rafiq for respondent State

Heard. Admit.

Since Advocate General has already put up appearance fresh notice need not be issued.

Put up in due course.

Sd/-A.K. Parihar J."

"Hon"ble Sh. A.K. Parihar J.

27.5.99

Mr. R.C. Joshi, for the petitioner

Mr. S.M. Mehta, Advocate General with

Mr. Shailesh Prakash and

Mr. M. Rafiq for respondent State

After hearing counsel for the parties and having gone through the reply filed on behalf of respondents. In the facts and circumstances of the present case, I find no merit in the stay petition and the same is rejected. The interim order passed is vacated.

Sd/-A.K. Parihar J."

A second stay petition was moved by the petitioner 28.5.99 pointing out that the advertisement for filling in the post had appeared in the Rajasthan Patrika dated 13.5.1999. A photo stat copy of the advertisement was also annexed to the stay petition. The Court rejected the second stay petition also on 31.5.99 by passing the following order:

"S.B. Civil Misc. IInd Stay Application No. 2339/99

in

S.B. Civil Writ Petition No. 2440/1999

31.5.1999

Ashok Parihar

Mr. R.C. Joshi, for the petitioner

Mr. R.N. Mathur, for the respondents

The first stay application was rejected by this Court after hearing counsel for both the parties and perusing the entire material on record vide order dated 27.5.1999. The fact of issuing advertisement by the respondents for appointing the Member of Commission on regular basis was also considered when the first stay application was rejected. After hearing counsel for the parties and perusing the material on record I find no merit in the second stay application and the same is hereby rejected.

Sd/Ashok Parihar J."

On 20.7.1999, the petitioner moved an application under Rule 168 of the Rajasthan High Court Rules for early hearing of the case. This application was dismissed on 6.8.1999 by the following order:

"Hon"ble Mr. Justice Ashok Parihar

6.8.99

Mr. R.C. Joshi, for the petitioner

Mr. Shailesh Prakash, for the respondents

Heard.

No ground for early hearing of the case is made out.

The application for early hearing is dismissed.

Sd/-(Ashok Parihar) J."

On 24.4.2000, case was fixed before the Court when the learned counsel for the petitioner complained that an early hearing application was moved on 1.3.2000 but that was not on the file. Upon this, the Court directed the Registry to put up the case along with early hearing application within a week. This application came up for hearing on 4.5.2000 and following order was passed:

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12. The case was ultimately heard finally in December, 2000.

13. I have recapitulated the factual position which emanates from the record for the purpose of showing that the petitioner was not at all responsible for the delay in disposal of this petition and for the filling in the vacancy during the pendency of the case. He had been trying hard to get the matter listed for hearing earlier or for getting a stay order. All his efforts in this direction were thwarted by the court and this has created complications now in granting of relief. Since the petitioner was appointed on 23.2.1996, he was to have laid down office on 22.2.2001. Since the office was filled in during the pendency of this writ petition and since the person appointed as a Member pursuant to that advertisement had not been impleaded in this case, it would not have been proper to direct the reinstatement of the petitioner. It would have created further complications. I, therefore, preferred to allow the remaining period of tenure of the petitioner to expire and grant him the declaration that the removal of the petitioner was null and void. However, since the petitioner was a practicing Advocate who had taken up appointment as a Member of the Commission after getting his licence to practice as an Advocate suspended, he is entitled to be compensated for the loss caused to him by the illegal action of the State Government in terms of money, status and reputation.

14. In the result, this writ petition is allowed, the impugned order of removal of the petitioner is quashed and the State Government is directed to pay a sum of Rs. 50,000/- (Rupees fifty thousand only) as consolidated compensation for the financial loss and also for the loss of reputation suffered by the petitioner because of the illegal action of terminating his Membership.

15. Before parting with the case, I consider it my duty to sound a stern warning. The State Government should bear in mind that the post of Member of the Commission is and should be allowed to remain a prestigious post from which Members are not sacked in an un-ceremonious manner giving a complete go-bye to the provisions of the Act and the Rules. If such things are allowed to happen, no respectable person would venture giving his consent for such appointment. The post of Member of the Commission is not a service post. It is a statutory appointment which enables a person to work along with a person of the status of a retired High Court Judge. A Member has equal right with the Chairman so far as decision of cases is concerned and two Members together can over-ride the view of the Chairman. They can not be removed at the mere desire of the Chairman as they do not hold office during the pleasure of the Chairman of the State Government. To make this post so cheap as to be subjected to the archaic rule of "Hire and Fire" is not in public interest in the garb of serving which the

petitioner was unceremoniously removed from office by the respondent State. I hope this will be the last instance of its kind.