
(2014) 11 KL CK 0236
In the High Court Of Kerala
Case No : W.A. No. 494 of 2014

Susheela

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 27-11-2014

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 10(1), 10(1)(b)(iii), 10(1A)

Citation : (2015) 2 KHC 78 : (2015) 1 KLT 1008

Hon'ble Judges : T.B. Radhakrishnan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : K. Jayakumar, Sr. Advocate and P.G. Jayashankar, Advocates for the Appellant; C.S. Manilal, Sr. Government Pleader, Advocates for the Respondent

Judgement

T.B. Radhakrishnan, J.—This appeal is by the writ petitioner who failed in challenging the appointment of the third respondent as a Member of the Consumer Disputes Redressal Forum (CDRF), Kozhikode. Heard the learned senior counsel for the appellant and the learned Senior Government Pleader. The learned senior counsel appearing for the appellant argued that having regard to the nature of the amendments to S. 10 of the Consumer Protection Act, 1986, hereinafter referred to as the "Act", from time to time, it is apparently clear that the Legislature had done away with the insistence of "social work" as a qualification, and therefore, merely because the third respondent is a social worker, she could not have been selected, having regard to the nature of S. 10(1)(b)(iii) of the Act as it stands now. The second argument is that the files do not disclose any consideration of the comparable abilities to assess the comparative suitability of the selected candidates and hence, judicial review is consciously averted by the Government, by not making available the relevant materials. The argument is that the files should consist the materials on the basis of which the committee had to conclude as regards the selection. The learned counsel for the third respondent supported the judgment of the learned single Judge.

2. While the appellant claimed that she is a senior and experienced lawyer and a

former member of the CDRF, the challenge was focused on the plea that the third respondent, who has been selected and appointed, does not possess the requisite qualification in terms of the provisions contained in S. 10 of the Act.

3. During the course of consideration of this appeal, it was noted that the Government did not file any counter affidavit before the learned single Judge. Hence, the Government was directed to make available the files relating to the selection. We have perused the files which contain the minutes drawn up by the selection committee constituted in terms of S. 10(1A) of the Act.

4. The primary requirement for appointment as a member of a CDRF is that the candidate should be a graduate, meaning thereby one who possesses a Bachelor's degree from a recognised University. S. 10(1)(b)(iii), as it now stands, requires that the person to be appointed, has to be one of ability, integrity and standing, and having adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs and administration. Hence, the evaluation that has to be made by the selection committee has to be made taking into consideration the fairly wide spectrum of the field of choice, going by the statutory prescription contained in S. 10(1)(b)(iii) of the Act. This is the law in the context.

5. The fact of the matter remains that the third respondent as well as the appellant were in the list prepared by the selection committee. Sub-section (1A) of S. 10 of the Act provides that the appointment shall be made by the State Government on the recommendation of a selection committee consisting of the authorities enumerated thereunder. This provision was pointedly dilated upon by the Division Bench of this Court in *State of Kerala Vs. Reghu Varma*, wherein the Bench, reversing the decision of the learned single Judge reported as *Reghu Varma K. Vs. State of Kerala and Others*, , held that the recommendation made under Section 10(1A) is not of any particular list of merit, but a list of candidates recommended and the Government would be within their authority to choose from out of that list. Adverting to the facts of that case, it can be seen that the learned single Judge had held that what was prepared by the selection committee was a priority list on the basis of merit and therefore, the Government could not upset the ranking of merit made by the selection committee. The Division Bench held that this is not the correct approach, having regard to the role of the selection committee which was only to recommend the candidates. We do not see any ground to differ from the ratio of the decision of the Division Bench noted above. Hence, once the appellant/writ petitioner and the third respondent are shown to be in the selection list prepared by the selection committee, there cannot be any further judicial review on the materials relating to the comparative evaluation on the basis of the materials, that could form basis of the comparative evaluation between the two selected candidates. The plea raised by the appealing writ petitioner in this regard, therefore, fails.

6. The amendments to the Act do not, in any manner, exclude a social activist

from the field of choice. What was initially required before the amendments was to have one lady social worker. By the sequence amendments, the members were taken as a homogeneous lot, to prescribe the qualification; and also ensuring that one among the appointed persons is a woman. In that view of the matter, when we examine the different subjects enumerated in S. 10(1)(b)(iii), we have to notice that what is required is experience in dealing with problems which relate to those fields. This is the law.

7. From the judicial seat, we have to dissuade ourselves from stating as to whether a person having a post graduate degree in Sociology and having worked for the physically handicapped persons and in institutions which support the physically challenged would, or not, have experience in dealing with problems of varied nature which are challenges to persons of that sector. That is not in the judicial review domain. Economics, law, commerce, accountancy, public affairs, administration, industry etc., are matters which would fall within the broad spectrum of understanding as to what such a person would have gained by experience in working in a sector, extending support to the physically challenged. Executive wisdom prevails in this regard. We do not see that such visualization is capricious, unethical, perverse, or arbitrary in terms of the wide spectrum of rule of governance in terms of the Constitution of India. This way also, we see no ground to hold that the third respondent was unqualified to be appointed.

8. Dismissing the Writ Petition, it was also held that the selection committee is constituted in such a manner that within the yardstick provided in S. 10(1)(b)(iii), that authority ought to be taken to have considered all the relevant materials because the selection committee in terms of S. 10(1A) of the Act has the Law Secretary and the Secretary in charge of the Department dealing with Consumer Affairs in the State as members. We affirm that view.

9. Having regard to the Constitution of India and the situational sites of the statute under consideration; in the ultimate analysis; the focus has to be on consumerism. Consumerism is nothing but a composition of different ideas which will come through the process of experience in different fields as are enumerated in S. 10(1)(b)(iii). It is the reflection of the edifice of ideals referable to civil societies, human rights and societal commercial balance, as between the provider and consumer. The aforesaid position notwithstanding, the President of the State Commission is the Chairman and if the President is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the Chief Justice would nominate a sitting Judge of the High Court to act as Chairman of the Selection Committee. It cannot but be said that the selection process is to be done by a committee which is a high repository of power. It also reflects the legislative wisdom of assuming that such a committee consisting of a former or sitting Judge of the High Court and two Government Secretaries would necessarily have the acumen to analyse the requisite, from out of, the qualifications possessed by the candidates under consideration, as to whether they are persons to be recommended for consideration for appointment as part

of the District Consumer Forum, having regard to the qualifications prescribed in S. 10(1) of the Act. There is no way to assume that those in the committee had acted contrary to the public need, public interest, and, the relevant constitutional and statutory dictates. The plea to the contrary fails.

In the result, this appeal is dismissed.