
(2010) 07 AHC CK 0309

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 44552 of 2010

Umme Ammara

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 30-07-2010

Acts Referred:

Consumer Protection Act, 1986 — Section 10(3), 30(2)
Consumer Protection Rules, 1987 — Rule 3(5)(e)

Citation : (2010) 07 AHC CK 0309

Hon'ble Judges : Sunil Ambwani, J and Kashi Nath Pandey, J

Final Decision : Dismissed

Judgement

Kashi Nath Pandey, J.

Heard Shri Saurabh Basu, learned counsel for the petitioner. Learned Standing Counsel appears for the respondents.

The petitioner was nominated as Member of the District Consumer Forum. By the impugned order dated 7.9.2009 passed by the Principal Secretary, Government of U.P. with the approval of Hon'ble the Governor, the petitioner has been removed as Member of the District Consumer Forum, Jyotiba Phule Nagar, on the ground that she contested the elections of the Legislative Assembly of the year 2007, as an independent candidate without disclosing in the nomination paper, that she is holding the office.

Shri Saurabh Basu, learned counsel for the petitioner submits that the petitioner requested the Chairman of the State Consumer Forum as Head of the Department as to whether she can contest the elections. She did not receive any reply, on which she filed the nomination papers. The reply was received by her on 07.4.2007 that she cannot take part in the elections, after the date of withdrawal of the nomination. On receiving the letter she informed the District Magistrate/District Election Officer that she does not want to contest the elections, and withdrew from the contest.

A show cause notice was given to the petitioner and that after an enquiry, in which the petitioner was associated and her reply was considered, the State Government decided to dismiss her from the membership (full time) of the Forum. The order was amended by Office memorandum dated 29.4.2010 by substituting the word "removal" in the order dated 7.9.2010, instead of dismissal.

Shri Basu submits that the petitioner did not receive the reply to her queries, prior to the date of nomination, and withdrawal, and as soon as she received the reply, she withdrew her candidature. The enquiry was not conducted in accordance with the procedure provided under the Consumer Protection Act, 1986. It is submitted that the petitioner is not holding any office of profit. She was only getting the honorarium which is not included in the words "office of profits". He has relied upon a judgment of Supreme Court in *Jaya Bachchan vs. Union of India and others* (2006) 6 SCC 266, in which it was held that for deciding the question "as to whether one is holding an office of profit or not", what is relevant is whether the office is capable of yielding a profit or pecuniary gain, and not whether the person actually obtained a monetary gain. As a chairperson of UP Film Development Council, Smt. Jaya Bachchan was receiving monthly honorarium, entertainment expenditure, staff car with driver, telephone at office and residence, free accommodation and medical treatment. Section 3 of the Parliament (Prevention of Disqualification) Act, 1959 did not exempt the said office of profit from disqualification.

The U.P. Consumer Protection Rules, 1989 provides in Rule 3 for salaries and other allowances and terms and conditions of the President and members of the District Forum. The members, if sitting on whole time basis, as in the case of petitioner, are entitled to receive a consolidated honorarium of Rs. 5560/ per month and if sitting on part time basis, a consolidated honorarium of Rs. 150/ per day for the sitting. He/She is also entitled to house rent allowance of Rs. 600/, if no Government accommodation is provided and are also entitled to travelling allowance and daily allowance as are admissible to Grade I Officers of the State Government. The full time members of the District Consumer Forum are thus holding office of profit and are not entitled to contest elections.

In the present case, we are not concerned with the disqualification of the petitioner to contest the elections but her conduct as full time member of the District Consumer Forum to contest the elections, and taking a chance that if she is elected, she will resign from the office of full time member of the District Consumer Forum.

The U.P. Consumer Protection Rules, 1987 made in exercise of powers under sub section (2) of Section 30 of the Consumer Protection Act, 1986 provides in Rule 3 for salaries and other allowances and terms and conditions of the President and members of the District Forum, with reference to Section 10 (3) of the Act. Sub rule (5) of Rule 3, provides for the conditions on which the State Government may remove from the office the President and member of a District Forum, is given as below:

"(5) In addition to provisions of Section 10 (2), the State Government may remove from the office, the President and member of a District Forum 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 become 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 member, or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest, or
- (f) does not pass judgment or order possible under the Act, and in conformity with the earlier judgment and the Act and does not display absolute integrity, good conduct and dutifulness, or
- (g) is guilty of an unexplained absence upto 7 days without permission;

Provided that the President or member shall not be removed from his office on the ground specified in clauses (d) and (e) of this subrule except on an inquiry held by State Government in accordance with such procedure as it may specify in this behalf and the member is found to be guilty of such ground."

The petitioner took a chance to contest the elections. There was no question of seeking guidance or permission for her to contest the elections, holding the office of a member of District Consumer Forum on full time basis, specially when the clear instructions were circulated that no member (full time) of the Consumer Forum can contest the elections. The filing of nomination and taking part in the elections, in which the votes were cast in her favour as a sitting full time member of the District Consumer Forum, amounts to abuse of her position under Rule 3 (5) (e) of the U.P. Consumer Protection Rules, 1987, so as to render her continuance in office prejudicial to public interest.

The conduct of the petitioner to contest the elections, without disclosing that she is member of District Consumer Forum in the nomination, and thereafter writing a letter dated 30.3.2007, that if she is elected, she will resign from District Consumer Forum taking chances to be elected, amounts to abuse of her official position. Her conduct clearly fell within the grounds on which she could be removed from office. The Enquiry Officer gave her full opportunity to defend herself. Several dates were fixed on 12.10.2007, 29.10.2007, and 15.11.2007. She appeared on 15.11.2007 and gave her defence in writing. Her defence that she was not provided with specific guidelines; that her nomination paper ought to have been rejected, and that she had withdrawn from the elections was not found sufficient. She was clearly advised and warned by the State Government by its letter dated 29.3.1997 addressed to Registrar of State Consumer Commission and circulated to all forums that full time members of forums are

not entitled to contest the elections.

We do not find that her defence was justified in any manner.

The writ petition is dismissed.