
(2011) 11 UK CK 0163

In the Uttarakhand High Court

Case No : Writ Petition No. 1520 of 2010 (M/S)

Vivek Tagra

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Consumer Protection Act, 1986 — Section 10, 9

Citation : (2013) 1 UC 422

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Judgement

Tarun Agarwala, J.—Heard Mr. Lalit Sharma, the learned counsel for the petitioner and Mr. Subhash Upadhayay, the learned Brief Holder for the State. A Consumer Dispute Redressal Forum is required to be established in each district of the State by means of a notification as per Section 9 of the Consumer Protection Act, 1986 (hereinafter referred to as the Act). The composition of this District Forum is provided u/s 10 of the Act. For facility, the said provision is extracted hereunder:-

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 persons 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.

(1A) 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, incharge 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 maybe prescribed by the State Government.

2. It transpires that applications were invited to fill up the vacancies of the members in the District Consumer Disputes Redressal Forum, Udham Singh Nagar. In response to that, the petitioner applied and the selection committee constituted for such purpose recommended the name of the petitioner on 31st July, 2007. This recommendation was reviewed and the selection committee again recommended the name of the petitioner for appointment as a member of the district forum on 10th December, 2007. However, the said recommendation was not acted upon and a fresh advertisement was issued in the year 2008 inviting applications from the public. In response to the said advertisement, the petitioner as well as the respondent No. 5 applied. It transpires that the selection committee, at this stage, recommended the name of respondent No. 5, pursuant to which, the State Government issued a notification dated 26th February, 2010 appointing respondent No. 5 as member of the district forum for a period of five years.

3. The petitioner, being aggrieved by the appointment of the respondent No. 5 as a member of the consumer forum has filed the writ petition for the quashing of the notification by which respondent No. 5 was appointed as a member of the District Consumer Disputes Redressal Forum, Udham Singh Nagar.

4. The learned counsel for the petitioner has made three submissions, namely, (i) that the petitioner's name was considered twice and his name was recommended by the selection committee, but, for reasons best known to the respondents, respondent No. 5 has now been appointed, which is wholly arbitrary, (ii) as per clause 4 of the guidelines dated 31st May 2003, character verification of an applicant is required to be done before any appointment could be issued, and (iii) the respondent No. 5 is not a permanent resident of the District, Udham Singh Nagar but is a permanent resident of District Nainital and, therefore, the respondent No. 5 could not have been appointed as the member of

the district forum, Udham Singh Nagar.

5. Having heard the learned counsel for the petitioner at some length, the court finds that mere fact that the petitioner's name was recommended does not give him an indefeasible right for being appointed as a member as has been held by the Supreme Court in a catena of judgments, which this court need not burden itself and is sufficient to cite the judgment of the Constitutional Bench of the Supreme Court, namely, Shankarsan Dash Vs. Union of India, , wherein the Supreme Court held that even a selected candidate does not have an indefeasible right for appointment even against an existing vacancy. The same principle will squarely apply in the present case.

6. From a perusal of Section 10 of the Act quoted above, there is no provision that a character verification of an applicant is required to be done nor there any provision that an applicant of the same district can only be appointed. No further disqualification or qualification has been prescribed u/s 10 and, in the absence of any provision that the verification has not been made or the fact that the respondent No. 5 is not a permanent resident of Udham Singh Nagar does not make his appointment illegal or nor it can be held that the appointment so made was dehors the provisions of the Act. In the light of the aforesaid, the court is of the opinion that there is no merit in the writ petition and is dismissed.

7. Before parting, the court however observes that a district forum, which has been created u/s 9 of the Act, is for the redressal of the grievances of the consumers of that district. The intention of the Act is to provide redressals and to protect the interest of the consumer and, for that purpose, the district forum have been established for settlement of consumer disputes. The members appointed in a particular district forum as far as possible should be members of the same district alone and a person, who is permanent resident of another district, should not be appointed. This anomaly should be taken care of by the State Government as and when appointment of members of the district forum is made in future or till such time an appropriate amendment is not made in the Act. Registry is directed to send a certified copy of this order to the Chief Secretary, State of Uttarakhand for information and necessary action within two weeks from today.