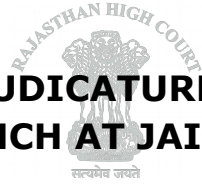




**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Writ Petition No. 7767/2020

At Present Serving As President, District Consumer Forum III,
Jaipur.

----Petitioner

Versus

1. State Of Rajasthan, through Chief Secretary, Government Secretariat, Jaipur.
2. State Govt. Of Rajasthan, through Secretary in charge of Consumer Affairs, Secretariat, Govt of Rajasthan.
3. State Consumer Disputed Redressal Commission, through Registrar, Handloom Haveli, Panch Batti, Jaipur, Rajasthan.

----Respondents

For Petitioner(s) : Mr. Shiv Charan Gupta with
Ms. Neha Goyal
For Respondent(s) : Dr. Ganesh Parihar
Mr. Sameer Sharma

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Reserved on : 02/05/2023
Pronounced on : 17/05/2023

Reportable

Judgment

(1) Grievance of the petitioner is that in spite of recommendations made by the Selection Committee, the State Government has not appointed the petitioner as Judicial Member of Rajasthan State Consumer Disputes Redressal Commission (for short "the State Commission").

(2) Counsel for the petitioner submits that the petitioner as well as one Mr. Atul Kumar Chatterjee were working on the post of



President, District Consumer Disputes Forum at Jaipur and Jodhpur respectively and both participated in the process for selection on the post of Judicial Member of the State Commission along with other candidates and names of both these persons were recommended by the Selection Committee for their appointment but the State appointed Mr. Atul Kumar Chatterjee and no orders were passed for appointment of the petitioner. Counsel submits that both these persons were holding the post of President District Consumer Disputes Forum but discrimination has been caused by the State in depriving the petitioner without any justified reasons. Counsel submits that appropriate directions be issued to the State to consider the case of the petitioner for the post of Judicial Member in State Commission. In support of his contentions he has placed reliance on the following judgments :-

- (i) Chandramohan Nair v. George Joseph
S.L.P. (C) No. 33694/2009 decided by Hon'ble Apex court on 5.10.2010
- (ii) Smt. Mithlesh Sharma v. State of Rajasthan
[S.B. Civil Writ Petition No. 5415/2015 decided by Rajasthan High Court on 11.8.2015]
- (iii) State of Rajasthan v. Smt. Mithlesh Sharma
[D.B. Civil Special Appeal No. 1149/2015 decided by Division Bench of Rajasthan High Court on 3.2.2016]

(3) Per contra, counsel for the respondents opposed the arguments raised by the counsel for the petitioner. Counsel submits that no conclusive evidence has been produced by the petitioner in support of his contentions. Counsel submits that their participation in the process for selection does not confer any right in favour of the petitioner to get appointment. He submits that mere appearance of the name of petitioner in the select list does not give any indefeasible right in his favour. In support of his



contentions he has placed reliance on the following judgments :-

- (i) Ashok Kumar Yadav v. State of Haryana
(1984) 4 SCC 417
- (ii) K.H. Siraj v. High Court of Kerala
(2006) 6 SCC 395
- (iii) Madan Lal v. State of J&K
(1995) 3 SCC 486
- (iv) State of Orissa v. Rajkishore Nanda
(2010) 6 SCC 777
- (v) Shankarsan Dash v. Union of India
(1991) 3 SCC 47
- (vi) Asha Kaur v. State of Jammu & Kashmir
(1993) 2 SCC 573
- (vii) State of Haryana v. Subhash Chander Marwaha
(1974) 3 SCC 220
- (viii) Jatinder Kumar v. State of Punjab
(1985) 1 SCC 122

(4) Heard and considered the submissions made at the Bar and perused the material available on the record.

(5) Section 16(1A) of the Consumer Protection Act 1986 (for short "Act of 1986") deals with the procedure for recommendation of the Selection Committee for appointment on the post of President and Judicial Members of State Commission.

As per Section 16(1A) of the Act of 1986:-

"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) President of the State Commission - Chairman..."

Perusal of the above provision indicates that appointment on the post of President and Judicial Member of the State Commission is done by the State Government after recommendation of the Selection Committee.

(6) On asking by this court, the respondents produced the original record of the recommendations made by the Selection Committee and perusal of the record indicates that the petitioner



as well as Mr. Atul Kumar Chatterjee were working on the post of President in District Consumer Disputes Forum at Jaipur and Jodhpur respectively and names of both of them were recommended by the Selection Committee for their appointment on the post of Judicial Member, but the State picked up the name of Mr. Atul Kumar Chatterjee and did not appoint the petitioner by observing that the petitioner is working on the post of President at District Consumer Disputes Forum Jaipur-III for last two years, thus it would not be appropriate to appoint him on the post of Judicial Member in the interest of State because it would disturb the functioning of the District Consumer Disputes Forum. Same was the situation in the case of Mr. Atul Kumar Chatterjee who was also working on the post of President, District Consumer Disputes Forum at Jodhpur but still he was given appointment on the post of Judicial Member in the mid of his tenure. Such an act of the State amounts to discrimination between two equals. It is well settled proposition of law that two equals should be treated equally and unequals should be treated unequally. Treating the equals as unequals would offend the doctrine of equality enshrined under Article 14 of the Constitution of India.

(7) The principle that two equals cannot be treated unequally is a fundamental principle of justice and fairness that is recognized by legal systems around the world. Many countries have enshrined this principle in their legal frameworks, either through specific laws or through constitutional provisions. For example, the Universal Declaration of Human Rights, which is recognized by the United Nations as a foundational document for



human rights, states in Article 7 that "All are equal before the law and are entitled without any discrimination to equal protection of the law. Similarly, many countries have anti-discrimination laws that prohibit discrimination on the basis of race, gender, religion, or other factors. These laws are designed to ensure that all individuals are treated equally, regardless of their background or personal characteristics.

(8) There is no doubt that the State Government is the Appointing Authority and the discretion lies with it to accept the recommendations of the Selection Committee under Section 16(1A) of the Act of 1986 or not, but such discretionary powers exercised by the government must be exercised in a manner that is not arbitrary, unreasonable, or discriminatory. In many countries, discretionary powers are granted to government officials and agencies to enable them to make decisions that are necessary for the effective administration of government policies and programs. However, the exercise of these powers must be subject to certain legal and constitutional limitations to prevent abuses of power. The principle of non-arbitrariness requires that government officials and agencies must act in good faith and in accordance with the law when exercising discretionary powers. This means that they must have a rational basis for their decisions and must not act in a manner that is capricious, whimsical, or discriminatory. Any exercise of discretionary power must be based on relevant and objective criteria, rather than on personal preferences, biases, or prejudices.

(9) Dealing with the similar issue of exercise of discretion



by the State Government, the Coordinate Bench of this court in the case of Smt. Mithlesh Sharma v. State (supra) has held as under :-

“Section 10(1A) of the Act of 1986 provides for a high powered committee consisting of President of the State Commission as its Chairman (A retired/sitting High Court Judge), the Secretary, Law Department of the State and the Secretary, incharge of the Department dealing with consumer affairs in the State (both senior judicial and administrative class I officers) as its members. The said committee interviews the applicants responding to the advertisement for appointment as President/Member of the District Disputes Redressal Forums and makes its recommendation in regard thereto following due process. It is no doubt true that the State Government is the appointing authority and it lies in its discretion to accept the recommendation of the select committee under Section 10(1A) of the Act of 1986 or not. Yet this Court would hasten to add that no discretion vested in any public authority, government or otherwise is absolute discretion. Discretion of the Government not to appoint those recommended under Section 10(1A) of the Act of 1986 is not the discretion of a despot but has to be exercised on good and valid ground, disclosed to the Court on a challenge being made with regard to its arbitrary exercise in non-appointment of a member despite the recommendation of the select committee. In this context a reference to the reply to the writ petition does not disclose any good and plausible reason for not adhering to the recommendation of the high power select committee constituted under Section 10(1A) of the Act of 1986. General, vague and non-specific grounds for the exercise of power and discretion of the State Government not to appoint the petitioner despite recommendation of the select committee have been set out and have no traction or relevance to the challenge in the present petition. Nothing adverse against the petitioner has been brought on record in the reply to the writ petition and no legally sustainable ground whatsoever has been disclosed as to why the recommendations of the select committee under Section 10 (1A) of the Act of 1986 qua the petitioner were not adhered to. On being required by this Court Mr. Gupta has also produced the record of the petitioner's case for appointment. A perusal thereof indicates that the concerned Minister at the relevant time even though accepting all the other recommendations of the select committee made under Section 10(1A) of the Act of 1986 proceeded peremptorily, without good cause and without any reason whatsoever to direct that





recommendation of the select committee qua the petitioner for appointment as Member (Female) in District Consumer Redressal Forum, Sawaimadhopur were not approved. Sadly thereupon the entire executive become complicit by inaction. Even a whisper of dissent is not evident on the file. No reconsideration on the basis of the correct legal position was recommended. This Court however cannot countenance such arbitrary and invidious exercise of discretion by the State Government. Were it to the very goal of the rule of law would be rendered a chimera. Appointments to public office as a member of a Consumer Redressal Forum under the Act of 1986 are not in the nature of patronage but an outcome of legal process well defined as under the Act of 1986 and bona fide followed.

Consequently, I would allow this writ petition and quash and set aside the impugned order dated 29.01.2015 rejecting the petitioner's representation for appointment to the post of Member (Female) in District Consumer Redressal Forum, Sawaimadhopur despite having been recommended by the select committee under Section 10(1A) of the Act of 1986. I would also direct as an inevitable consequence, the State Government to act upon the recommendation made by the select committee qua the petitioner and pass necessary orders within a period of four weeks from the date of receipt of this order."

(10) The judgment passed by the Coordinate Bench of this court in the case of Smt. Mithlesh Sharma (supra) was assailed by the State before the Division Bench of this court by way of filing DB Special Appeal (Writ) No. 1149/2015 – State of Rajasthan v. Smt. Mithlesh Sharma, and the same was dismissed on 3.2.2016 by observing thus :-

"It is true that the State Government, as the appointing authority, may not be bound to accept the recommendation of the Select Committee under all circumstances. There could be situations where the State Government may while acting in a bonafide manner and for valid reasons refuse to act on the recommendation of the Select Committee. For instance, if there is material before the Government which casts doubt on the personal integrity and character of the applicant which may have escaped the notice of the Select Committee.

However, in the instant case, there are no such reasons which have been put forth by the Government while deciding not to appoint the





respondent inspite of the recommendation by the Select Committee. The Single Bench had called for the file wherein it was evident that although the other candidates who had been selected along with respondent had been appointed by accepting the recommendation of the Select Committee but the respondent was not given appointment without any reason whatsoever. Even in the written statement filed before the Single Bench nothing adverse against the respondent has been brought and the sole ground taken therein is that it is within the discretion of the State Government not to appoint the respondent despite the recommendation of the Select Committee. The Government may have a discretion in the matter while accepting or rejecting the recommendations of the Select Committee but this discretion has to be exercised on sound judicial principles. In a democracy governed by rule of law, discretion has to be exercised by the rule of reasons and justice and not according to private opinion. The exercise of discretion has to be legal and regular and not arbitrary, vague and fanciful.

In view of above, we do not find any infirmity in the order of the Single Bench which would warrant interference in the special appeal. In the result, the appeal is dismissed with no order as to costs."

(11) Perusal of the aforesaid judgments of this court indicates that discretion has to be exercised on sound judicial principles. In a democracy governed by the Rule of Law, discretion has to be exercised by the rule of reasons and justice, not according to private opinion. The exercise of discretion has to be legal and regular and not arbitrary, vague and fanciful.

(12) Similarly, Hon'ble Apex Court in the case of Chandramohan Nair (supra) has dealt with the issue of discretion on the recommendation of the State Government for such appointments in para 16 as under :-

"16. An analysis of these provisions shows that appointment of judicial and other members is required to be made by the State Government on the recommendation of the Selection Committee. If the Chairman and/or the members of the Selection Committee do not agree on the candidature of any particular person, then opinion of the majority would constitute recommendation of the Selection





Committee. Though, the State Government is not bound to accept the recommendations made by the Selection Committee, if it does not want to accept the recommendations, then reasons for doing so have to be recorded. The State Government cannot arbitrarily ignore or reject the recommendations of the Selection Committee. If the appointment made by the State Government is subjected to judicial scrutiny, then it is duty bound to produce the relevant records including recommendation of the Selection Committee before the Court to show that there were valid reasons for not accepting the recommendation."

(13) It is thus seen from the ratio of the above judgment of Supreme Court in Chandramohan Nair (supra) that the State Government is not bound to accept the recommendations made by the Selection Committee, however, in that eventuality, the reasons for doing so are required to be recorded. It has been held in this judgment that the State Government cannot arbitrarily ignore or reject the recommendations made by the Selection Committee.

(14) Here in this case, both Mr. Atul Kumar Chatterjee and the petitioner were sailing in the same boat and both of them were posted as President in different District Consumer Disputes Forums and the Selection Committee recommended names of both the persons for appointment on the post of Judicial Member in the State Commission, but the State accepted the recommendation of the Mr. Atul Kumar Chatterjee and rejected the recommendation of the petitioner in an arbitrary manner. The discretion has been used by the State in a vague and fanciful manner. The judgment cited and relied by the respondents are not applicable in the facts and circumstances of the present case.

(15) In view of the above discussion, this petition stands allowed with direction to the respondents to consider the case of



petitioner for appointment on the post of Judicial Member in the State Commission, if he is otherwise found suitable, within a period of two months from the date of receipt of a certified copy of this judgment.

(16) Stay application and all application(s), pending if any, also stands disposed of.

(17) No order as to costs.

(ANOOP KUMAR DHAND), J.

db/