

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14078 of 2015

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1. Dr. Sunil Kumar Agrawal Son of Late Ramjee Agrawal, resident of Mohalla -
Nayabazar, Post office - Bhagalpur City, District - Bhagalpur 812002

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Food and Consumer Protecting
Department, Government of Bihar, Patna
2. The Secretary, Food and Consumer Protection Department, Govt. of Bihar, Patna
3. The State Commission, Consumer Protection, Bihar, through the Secretary, the
Commission, Consumer Protection, Bihar, Road No. 02, R - Block, Patna
4. The District Judge Bhagalpur cum Chairman, Screening Committee, Bhagalpur
5. Md. Zubair Ahmad Son of Late Md. Ayub Hussain Resident of L - 1, Ali Nagar
Colony, Post Office - Anisabad, District - Patna 800002, at Present working as
Member, District - Consumer Forum, Bhagalpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Masleh-uddin Ashraf
Mr Siya Ram Shahi
For the State : Mr. Sandeep Kumar, GA8
For Respondent 5 : Mr Prakash Kumar

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

ORAL JUDGMENT

Date: 08-10-2015

The writ application has been filed by the petitioner to
quash the Notification No.9683, dated 18.12.2014, issued under the
signature of Secretary, Food and Consumer Protection Department,
Government of Bihar, by virtue of which private respondent no.5 has
been notified as a Male Member of District Consumer Forum,
Bhagalpur. The said notification is Annexure- 3. The name of the
private respondent figures at serial no.5. The alternative prayer is that
the petitioner be appointed on the post because not only did he
perform much better before the Selection Committee but is more

qualified in every respect.

Coming to the first part of the prayer, which is for quashing the appointment of private respondent no.5, the frontal attack of the counsel for the petitioner on such appointment is based on a legal submission that such an appointment has been made in derogation of and complete violation of the statutory provision, which is Section 10 (1) (b) (ii) of the Consumer Protection Act, which is reproduced herein below :

“10. Composition of the District Forum- (l) 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, one of whom shall be a woman, who shall have the following qualifications, namely:-

(i) be not less than thirty-five years of age,

(ii) possess a bachelor's degree from a recognized university

(iii) be persons of ability, integrity and standing, and have adequate knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.”

As per the above noted provision, a person must possess a bachelor's degree of a recognized University as the minimum qualification. Besides, the person must be a person of ability, integrity and standing

etc. etc.

The specific pleading of the petitioner is that the private respondent is not a graduate. He holds a Sahitya Alankar degree issued by Hindi Vidyapeeth, Deoghar, which is not an equivalent degree as a graduate. Counsel submits that there is no argument available on this point because the law stands settled not only by a judgment of this Court but also affirmed by the Division Bench as well as Hon'ble Apex Court.

Attention of this Court has been drawn as to what is the status of Sahitya Alankar degree in the judgment of ***Reeta Srivastava v. State of Bihar, reported in 2012 (3) PLJR 353***. The relevant paragraph relied upon is paragraph 27, which is reproduced herein below :

“27. To sum up therefore, this Court categorically holds that a Sahityalankar degree is not equivalent to graduation and no holder of a degree of Sahityalankar, therefore, can claim the benefit of promotion to the Subordinate Education Service as a matter of right. The recognition if at all given by the State is with a limited object which has been talked about earlier, that is for the purpose of qualifying any Hindi examination and drawing advantage thereof in service and not to beget appointment based on the eligibility laid down for such recruitment or promotion by treating such

degree to have equivalence.”

To demonstrate that the selection of the private respondent has been done in a blatant manner with complete disregard not only to the statutory provision but also to the fact that the petitioner too participated in the process of selection and appeared before the Selection Committee and the Section Committee/ Screening Committee awarded the petitioner 72 marks on the parameters so fixed whereas the private respondent was awarded only 67 marks.

With so many gaping holes coupled with the fact that the private respondent had already held the post twice over earlier and there is some kind of embargo created by the State not to appoint a person third time over, the notification of the private respondent as a Member of the District Forum, Bhagalpur seems to be a case of gross decision taken with the object of obliging the private respondent by blatantly ignoring not only the eligibility laid down in the statute but other surrounding circumstances which debars the private respondent from holding the post for being appointed as a Member.

The State has filed a counter affidavit. Except for generality of submissions explaining how the selection has been done, they do not offer any explanation as to how the private respondent



could be appointed as a Member of the District Forum by overlooking not only the eligibility but the basic qualification which the private respondent has which he shows to be equivalent to a graduate degree. Not only that if the private respondent was not qualified for the post what was the compelling circumstances for the State authorities to notify the private respondent as a Member ignoring the case of the other candidates including the present petitioner. There cannot be a better example of arbitrariness, irrationality and favoritism in matter of appointment on a public post.

The private respondent too has filed a counter affidavit. He does not deny the qualification which he has but his submission is that he has gone through the process and the State authorities have taken a decision by keeping everything into consideration.

The onus, therefore, lies on the State authorities who have taken a decision to appoint a person, who otherwise is not fit to be appointed. It means that the State authorities have no respect for law. The blatant manner in which the case of the private respondent had been pushed to be appointed as a Member at Bhagalpur is a clear indicator that the State authorities have acted as law by themselves.

The Court, therefore, not only quashes the notification in relation to the private respondent contained in Annexure- 3 but also

imposes cost of Rs.50000/- on the State Government for violating the law and the statute and for the reckless kind of selection, which has been made by them under the circumstances stated above. The money will be paid by the Secretary of Food and Consumer Protection, Government of Bihar to the Patna High Court Legal Services Committee within a period of four weeks from today.

Writ application stands allowed.

(Ajay Kumar Tripathi, J)

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