

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4640 of 2015

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Raj Mangal Prasad Gupta, S/o Ram Briksh Sah, resident of Village-
Paharpur, P.O.- Jahangipur, P.S.- Shyampur Bhatahan, Distt.- Sheohar
..... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Deptt. of Food & Consumer Protection, Govt. of Bihar, Patna.
3. The Additional Secretary, Deptt. of Food & Consumer Protection, Govt. of Bihar, Patna.
4. The Director, Consumer Protection, Bihar, Patna.
5. The Chairman/ Chair Person, District Screening Committee, Sheohar.
6. The District Magistrate, Sheohar.
7. Shri Ashok Kumar, S/o Ram Babu Prasad, resident of Village + P.O.- Parrahi, P.S.- Sheohar, Distt.- Sheohar at present officiating as the Member, District Consumer Forum, Sheohar.

..... Respondents

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with

Civil Writ Jurisdiction Case No.5088 of 2015

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Smt. Lalsa Kumari, wife of Dr. Surendra Kumar Singh, R/o of Sri Harihar Market, Ward No. 17, Naya Bazar, Pachna Road P.O., P.S. & District Lakhisarai.

..... Petitioner

Versus

1. The State of Bihar through the Secretary, Consumer Protection Deptt. Bihar, Government, Patna.
2. The Director of Consumer Protection, Bihar Patna.
3. The Collector, Lakhisarai
4. The President , District consumer Forum, Lakhisarai
5. Smt. Madhumita Kumari, W/o of Sri Murari Prasad Singh at Partner House, Punjabi Mohalla, P.O. P.S. & Distt Lakhisarai.

..... Respondents

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with

Civil Writ Jurisdiction Case No.5614 of 2015

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Binay Kumar, S/o Sri Baleshwar Sharma R/o:- At Paschimi Karyanand Nagar, Gyan Bharti, Wrd No.- 9, Purani Bazar, P.S + District- Lakhisarai, Bihar

..... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Bihar, Patna.
2. The Secretary, Food and Consumer Protection Department, Bihar, Patna.
3. The Secretary-cum-Legal Remembrancer, Law Department, Bihar, Patna.
4. The Chairman State Consumer Forum, Bihar, Patna.
5. The District & Sessions Judge-cum- Chairman, Screening Committee, Lakhisarai.
6. The District Magistrate-cum- Member, Screening Committee, District-

Lakhisarai.

7. The President District Consumer Forum-cum-Member, Screening Committee, Lakhisarai.

8. Md. Taslim, S/o Late Md. Khalil R/o:- At Buland Akhtar Manzil, Tatarpur, P.O.+P.S.- Tatarpur, District-Lakhisarai.

.... Respondents

with

Civil Writ Jurisdiction Case No.1929 of 2015

Usha Prasad Wife of Dr. Atmanad Prasad Resident of Mohalla - Manglanagar, Ram chandra Pur, P.S- Laheri, Bihar Sharif, District - Nalanda.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food Supply and Consumer Protection Department, Secretariat, Patna.

2. The Director, Consumer Protection Directorate, Bihar, Patna.

3. The Law Secretary, Bihar, Patna.

4. The Chairman, Screening Committee, District - Consumer Forum, Nalanda.

5. The District Magistrate, Nalanda.

.... Respondents

Appearance :

(In CWJC No.4640 of 2015)

For the Petitioner/s : Mr. Sunil Kumar Verma, Adv.
Mr. Suman Kumar Verma, Adv.

For the Respondent/s : Mr. Rajesh Kumar- GP19

(In CWJC No.5088 of 2015)

For the Petitioner/s : Mr. Manish Kumar, Adv.

For the Respondent State: Mr. Sanjay Kumar Singh, Adv.

For the respondent no.4 : Mr. Sanjay Kumar Thakur, Adv,

For respondent no.5 : Mr. Navin Prasad Singh, Adv.

Mr. Narayan Singh, Adv.

(In CWJC No.5614 of 2015)

For the Petitioner/s : Mr. Awadhesh Kumar, Adv.

For Respondent No.4 : Mr. Sanjay Kumar Thakur, Adv,

For respondent No.8 : Mr. Prakash Kumar, Adv.

(In CWJC No.1929 of 2015)

For the Petitioner/s : Mr. Rajendra Kumar Jain, Adv.

For the Respondent/s : Mr. Anjani Parashar, AC to GP4

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA

ORAL ORDER

9 15-10-2015

Heard learned counsel for the parties.

2. Though the names of the petitioners may be different



but their grievances in all these four writ applications are one and the same, namely, that they claim to have been edged out in course of selection and appointment on the post of Member in the District Consumer forum and persons including private respondents named in their respective writ applications even though not fulfilling the eligibility condition and/or being inferior in merit have been selected and appointed in a wholly arbitrary and illegal manner.

3. It has to be kept in mind that initially when these writ applications came to be heard there was a lot of argument on behalf of different learned counsels representing the respective petitioners about the so called comparative evaluation of merit of the candidates applying for the post of Member in District Consumer Forum. It has to be however kept in mind that even though the provisions made under the Consumer Protection Act (hereinafter referred to as 'the Act') and the Rules made thereunder as of now do not envisage selection of Members of the District Consumer Forum on evaluation of comparative merit much less after holding of interview but then this unique procedure was followed in the district of Lakhisarai where the District Screening Committee consisting of the District Judge, Lakhisarai, Collector of Lakhisarai and the President of the District Consumer Forum had on their own evolved a mechanism



of subjecting all the candidates filing application for the post of Member of the District Consumer Forum to face an interview and also to award them marks for placing them in the merit list. As a matter of fact the grievance of the two petitioners relating to the appointment on the post of District Forum in the district of Lakhisarai in C.W.J.C.No. 5088/2015 and C.W.J.C.No. 5614/2015 to that extent is one and the same that though they were ranked as No.1 in the respective merit list of female and male category of Members of the District Consumer Forum, Lakhisarai by the District Screening Committee, their names were conspicuously changed/omitted at the level of Selection Committee leading to illegality in the appointment of the concerned respondents being the persons who were placed below the petitioners in the aforesaid merit list prepared by the District Screening Committee.

4. Closely followed by the aforesaid illustrative two cases of Lakhisarai District Consumer Forum is the case of Nalanda District Consumer Forum where the grievance of the petitioner is that the persons, who were recommended by the Screening Committee, did not actually fulfil the eligibility condition. In this regard the case of the petitioner in C.W.J.C.No. 1929/2015 is plain and simple that though her name was not screened by the District Screening Committee but then the two persons, namely, Manju



Sinha and Preeti Sinha----- whose name were screened in a panel of three candidates did not fulfill the prescribed eligibility conditions laid down for the post of Member because while one of them was backed with experience certificate of a fake NGO, the other person screened was not even having the requisite ten years experience and had also filed her application after expiry of last date prescribed in the advertisement.

5. Finally comes the case of Sheohar District where the plain and simple case of the petitioner is that the private respondent who got eventually got appointed by the State Government as a Member of the District Forum, Sheohar in view of the screening made by the District Screening Committee and recommendation made by the State Selection Committee did not even fulfil the requisite criteria of experience and to that extent learned counsel for the petitioner was quite emphatic by placing reliance on the application filed by the private respondent herself in the prescribed format leaving the column of her experience completely vacant.

6. This Court in fact had the occasion to consider the issues involved in all these four writ petitions at some length on the previous dates but the main concern of this Court was only to find out the manner in which either the District Screening



Committee or the State Selection Committee or the State Government had taken its decision in the matter of appointment on the post of Member in the different District Consumer Forums. Whatever has ultimately come on record by way of counter affidavits filed by the State Government or the District Screening Committee or even the State Selection Committee as well as whatever this Court has found from perusal of the connected official records and files produced by them definitely does not auger well for the transparency which has to be essentially maintained in the appointment of Member of the District Consumer Forum.

7. In this regard, it has to be essentially kept in mind that the District Consumer Forum is not only the adjudicatory forum but also seeks to achieve the pious object of securing and providing better protection of the interest of the consumers. It is with this pious aim and object that the Parliament had enacted the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act'). The experience of the last three decades may not be as encouraging as or as rosy but then there would be also no reason for this Court to write off the institution of Consumer Forum only because there has been an increase in the number of complaints in the matter of appointment on the post of Member in the District



Consumer Forum. The awareness of the common people now being on increase, thanks to the rise in literacy level and strict enforcement of the Right to Information Act have definitely been reflecting on the approach of the candidates vying for appointment on the post of Member in District Forum. A line of caution therefore has to be adopted by the Court in judging such claims in course of adjudicating frequent challenge to the appointment on the post of President and Members of the District Forum.

8. In the present set of four cases when there is a scramble for holding the post of Member in the District Consumer Forum and that the petitioners and the private respondents are not shy in maligning the image of each other, this much becomes essential to be held by this Court that the exercise of power of appointment on the post of Member in the Consumer Forums and particularly in the District Consumer Forum being the lowest of the pyramid of the Consumer Forums has to be made in a fair and objective manner and of course strictly in accordance with the statutory provisions incorporated in the Act and the Rules framed thereunder. Thus, in order to ensure such appointment to be fair and objective the transparency in the process of selection has to be the them and the same has to be gathered from the connected records..



9. Let it be however kept in mind that the Legislature has made no specific provision under section 10 of the Act on the manner of selection and appointment on the post of Members of the District Consumer Forum. As a matter of fact, the State Government is the appointing authority on the post of the Members of the District Consumer Forum of course subject to recommendation of Selection Committee and/or President of the State Commission. In this regard, though the State Government under proviso to Section 10(3) of the Act has also been empowered for making Rules in terms Section 30(2) of the Act for laying down the factors including the work load of the District Forum to be taken into consideration for appointment on the post of a Member of District Forum on full time basis but it is an admitted position that the State Government of Bihar has not made such provisions till now. In this regard, it would be, therefore, necessary to firstly reproduce the entire provision of Section 10 of the Act which reads as follows:-

“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, 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 recognised 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:*

Provided that a person shall be disqualified for appointment as a member if he—

(a) *has been convicted and sentenced to imprisonment for an offence which, in the opinion of the state Government involves moral turpitude; or*

(b) *is an undischarged insolvent; or*

(c) *is of unsound mind and stands so declared by a competent court; or*

(d) *has been removed or dismissed from the service of the Government or a body corporate owned or controlled by the Government; or*

(e) *has, in the opinion of the state Government, such financial or other interest as is likely to affect prejudicially the discharge by him of his functions as a member; or*

(f) *has such other disqualifications as may be prescribed by the State Government;*

(1-A) *Every appointment under sub-section (I) 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.*

Provided that where the President of the State Commission

is, by reason of absence or otherwise, unable to act as Chairman of the Selection Committee, the State Government may refer the matter to the Chief Justice of the High Court for nominating a sitting Judge of that High Court to act as Chairman.

- (2) *Every member of the District Forum shall hold office for a term of five years or up to the age of sixty-five years, whichever is earlier:*

Provided that a member shall be eligible for re-appointment for another term of five years or up to the age of sixty-five years, whichever is earlier, subject to the condition that he fulfills the qualifications and other conditions for appointment mentioned in clause (b) of sub-section (1) and such re-appointment is also made on the basis of the recommendation of the Selection Committee:

Provided further 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 appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who is required to be appointed under the provisions of sub-section (1A) in place of the person who has resigned:

Provided also that a person appointed as the President or as a member, before the commencement of the Consumer Protection (Amendment) Act, 2002, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

- (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 may be prescribed by the State Government.*

Provided that the appointment of a member on whole-time basis shall be made by the State Government on the recommendation of the President of the State Commission taking into consideration such factors as may be prescribed including the work load of the District Forum.”

(underlining for emphasis)

10. It must be also kept in mind that the proviso to Section 10(3) of the Act, laying down obligation on the part of the State Government to frame rules for the purpose of prescribing the factors including work load of the District Forum in the appointment of the Members of the District Forum to be taken into consideration in the appointment of the Members of the District Form, was brought by an amendment in the 1986 Act only by Section 6 of the amending Act 62 of 2002 which came into force on 15.3.2003. The State Government after 15.3.2003 has admittedly not made rule in terms of the aforesaid underlined proviso of Section 10(3) of the Act, inasmuch as, the only rules framed by the State Government in exercise of its power under Section 30(2) was exercised by way of making Bihar Consumer Protection Rule, 1987 vide G.S.R. No. 32 published in the Bihar Gazette No. 493 dated 28.9.1987 which came into force with effect from 2.11.1987 vide Notification No. 50/1040 dated 18.11.1987.



11. Under the Bihar Consumer Protection Rules, 1987, while the salary and other allowances and the terms and conditions of the President and Members of the District Forum has been prescribed, nothing was provided therein as with regard to factors to be taken into consideration for appointment on the post of Member of the District Consumer Forum. Rule 3 of the Bihar Rules in this regard being relevant is also quoted herein below:-

“3. Salaries and other allowances and terms and conditions of the President and Members of the District Forum.

(1) The Chairman of the District Forum, if appointed on a full time basis will received the salary of a District Judge and if the appointment is on the part time basis, they will received an honorarium on the rate fixed by the State Government from time to time. The other Members, if appointed on a full time basis, will be entitled to an honorarium on the rate fixed by the state government from time to time alongwith the conveyance allowance and if appointed on a part time basis, they will be entitled to an honorarium fixed by the State Government from time to time for every sitting.

(1A) The Chairman and the Members of every District Forum will be appointed by the State Government on the basis of recommendation of the Selection Committee mentioned in section 10(1A) of the Consumer Protection Act. The Selection Committee will recommend a panel of candidates for the appointment as member after evaluation on merit/demerit basis for consideration to the State Government.

(2) The President and the members of the District Forum shall be entitled for such traveling allowance and daily allowance on official tour as are admissible to Class I officers of the State Government.

(3) *The salary, honorarium and other allowances shall be defrayed out of the Consolidated Fund of the State Government.*

(4) *Before appointment, the President and member of the District Forum shall have to give an undertaking that he does not and will not have any such financial or other interests as is likely to affect prejudicially his functions as a member.*

(5) *In addition to provisions of section 10(2), 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 a member, or*
- (e) *has so abused his position as to render his continuance in office prejudicial to the public interest :*
- (f) *The Chairman/Members of the District Forum during his/her tenure will not contest any election unless his/her, resignation has been accepted for the post held by them and not be entitled for re-appointment. Their appointment to the posts held by them will suo motu be terminated in case they contest election without having permission to do so.*

Provided that the President or member shall not be removed from his office on the ground specified in clauses (d) and (e) of sub-rule (5) except on an enquiry held by the State Government in accordance with such procedure as it may specify in this behalf and finds the member guilty of such ground.

(6) *The terms and conditions of the service of the President*

and the members of the District Forum shall not be varied to their disadvantage during their tenure of office.

(7) Where any vacancy occurs in the office of the President of the District Forum, the senior most (in order of appointment) member of District Forum, holding office for the time being, shall discharge the functions of the President until a person appointed to fill such a vacancy assumes the office of the President of the District Forum.

(8) When the President of the District Forum is unable to discharge the functions owing to absence, illness or any other cause, the senior most (in order of appointment) member of the District Forum shall discharge the functions of the President until the day on which the President resumes the charge of his functions.

(9) The President or any member ceasing to hold office as such shall not hold any appointment in or be connected with the management or administration of an organization which has been the subject of any proceeding under the Act during his tenure for a period of 5 years from the date on which he ceases to hold such office.”

12. From perusal of the Rules and specially Rule 3(5) of the Bihar Rules, 1987, it would become clear that only clause of disqualification for appointment on the post of President and Member of the District Forum was laid down by the State Government in addition to the clause of disqualification provided under proviso to Section 10(1)(iii) of the Act.

13. What is however more significant to be also noted herein is that the Central Government in exercise of its power of

Section 30(1) of the Act under its rule making power has made a clear provision under Rule 12(A) laying down provisions for selection of Members of National Commission, which reads as follows:-

“12-A. Procedure for selection of members. - (1) Save as otherwise provided in sub-rule (2), the process of appointment of a member shall be initiated at least three months before the vacancy arises.

(2) If a post falls vacant due to resignation or death of a member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.

(3) An advertisement of a vacancy inviting applications from eligible candidates may be published in leading newspapers in India or by vacancy circulars or both, as may be decided by the Central Government.

(4) After scrutiny of the applications received till the last date specified for receipt of applications, a list of eligible candidates alongwith their applications shall be placed before the Selection Committee constituted under the third proviso to sub-section (1) of section 20.

(5) The Selection Committee shall consider all the applications of eligible applicants referred to it.

(6) The Selection Committee shall, subject to the provisions of sub-rule (6A), assess the suitability of the candidates for the post of Member.

Provided that the Selection Committee may, if it considers necessary, depending on the number of

candidates, short list them on the basis of comparative merit and experience of such candidates for selection.

(6A) The Selection Committee shall assess the suitability of the candidates and where short listing is done, from among the short-listed candidates, for the post of Member in the Following manner, namely:-

(a) in the case of candidates having judicial background, by assessing them on the basis of the judgments and other judicial orders passed by such candidates;

(b) in the case of candidates having experience of working under the Central Government or any State Government or an undertaking under the Central Government or a State Government, by assessing such candidates on the basis of their Annual Confidential Reports and their experience relevant to the post applied for;

(c) in other cases, the suitability of the short listed candidates shall be assessed by the Selection Committee on the basis of personal interview conducted by it:

Provided that notwithstanding anything contained in this sub-rule, the Selection Committee may, for assessing the suitability of a class or category of candidates, if it considers necessary, call such class or category of candidates for interview for assessing their suitability for the post of Member.

(7) The Selection Committee may, on the basis of its assessment made by it, recommend a panel of names of candidates for appointment as members

from amongst the applicants referred to in sub-rule (5) in order of merit for the consideration of the Central Government.

(8) The Central Government shall, before seeking approval of the Appointments Committee of the Cabinet, verify or cause to be verified the credentials and antecedents of the candidates selected by the Central Government from the panel recommended by the Selection Committee and satisfy the suitability of such candidates for appointment as members.

(9) Every appointment of a member shall be subject to his medical fitness.”

14. A bare reading of the aforesaid Rule 12A which came into force vide G.S.R. No. 175(E) dated 5.3.2004 with effect from the same date will go to show that for making appointment on the post of Member in the National Commission, not only the post of Member has to be advertised in newspaper but scrutiny of applications received has to be made and a list of eligible candidates has to be prepared on the basis of prescribed qualification which has to be considered by the Selection Committee under Section 20 of the Act. The Selection Committee again is under obligation to consider all the applications of the eligible applicants placed before it. Such Rule 12A also lays down the manner of consideration by the Selection Committee, inasmuch as, for appointment of Members, the Selection



Committee is not only entitled to short-list the applicants on the basis of evaluation of comparative merit and experience of such candidates under zone of consideration for selection but even manner of assessment of suitability of the candidates has been laid down.

15. Thus, it may be found that while considering the cases of candidates having judicial background, their assessment has to be made on the basis of their earlier judgments and other judicial orders passed by them while working as a judicial officer. Similarly, in the case of appointment from candidates having experience of working under the Central Government or State Government or undertaking under the Central Government or State Government, their assessment has to be made on the basis of their annual confidential report and their experience relating to the post held earlier by them.

16. It is quite significant to note here that in respect of judging the suitability of the short-listed candidates and others for the post of Member excluding the person having judicial or administrative background and experience, the Selection Committee has been empowered to judge the suitability of such candidates on the basis of personal interview conducted by the Selection Committee itself. A Selection Committee again is under



obligation to recommend a panel of name of all the candidates for appointment as Members of National Tribunal from amongst the eligible applicants strictly in order of merit for the consideration by the Central Government and the Central Government has been empowered to verify the credential and antecedent of the candidates recommended by the Selection Committee and satisfy itself to the suitability of such candidates for appointment as a Members of the National Commission. As a matter of fact, Rule 12A of the Rules also prescribes appointment of Members to be subject to his medical fitness.

17. Admittedly, no such exercise in terms of the amended provision of the proviso 10(3) of the Act has been made by the State Government of Bihar in respect of laying down the factors including work load of the District Forum to be taken into consideration for appointment on the post of Member of the District Forum, inasmuch as, such amendment, by way of inserting proviso under Section 10(3) of the Act, has come into force with effect from 15.3.2003 whereas the only rules framed by the State of Bihar was in the year 1987 which came into effect from 2.11.1987.

18. Thus, under the existing provision under the Act or Bihar Rules, there would be lesser discretion in the selection of



the President of the District Consumer Forum because of the qualification laid down of him being either to have been the District Judge or has a qualification to be a District Judge. The field, however, in the matter of Member of the District Consumer Forum is not so restrictive and in fact rightly so the President having already selected and appointed from the person of a judicial acumen, what Section 10 of the Act contemplates to achieve is to have also association of two more members out of whom one shall be woman for ensuring the wider participation of the people at large particularly participation of females who significantly contribute to at least 50% of the definition of the 'Consumer' under the Act inasmuch as on one hand she has to manage the resources by becoming a consumer and at the same time to also provide services which in turn makes her a better qualified person for being the representative as a Member in the District Forum.

19. The other requirement of ability, integrity and standing and/or knowledge and experience of at least ten years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration as prescribed under Section 10(1) of the Act are reflective of widest possible choice that the State Selection Committee can

have depending on the availability of the persons keeping in view that one of them has to be a lady member in the District Forum.

20. Thus, if this be the existing criteria of selection and appointment on the post of Member of the District Consumer Forum in the State of Bihar, this Court can not make out as to what qualification could be made the true measure of having a person adequate knowledge and experience in the field of economics, law, commerce, accountancy, industry, public affairs or administration in course of making recommendation by the Selection Committee and appointment by the State Government.

21. Nonetheless, it is here that this Court would find the utmost necessity for the State Government laying down clear and transparent procedure for appointment of Members of District Consumer Forum in accordance with the proviso to Section 10(3) of the Act by way of making Rules in exercise of its power under Section 30(2) of the Act including by way of amendment in the existing Bihar Consumer Protection Rules, 1987 by prescribing the factors including the work load of the District Forum for its being taken into consideration for appointment on the post of Member of the District Consumer Forum in keeping with the provisions made by the Central Government by way of inserting Rule 12A for selection and appointment on the post of Member of the National



Forum. Such recourse of making Rules has to be in fact compulsorily undertaken by the State Government as early as possible to give effect to the provisions of Section 10(3) of the Act, which in turn to a larger extent would automatically rule out the frequent complaints as also found from the facts of these four writ petitions which are being made before this Court in the matter of selection and appointment on the post of Members of the District Forum.

22. Reverting back to the facts of the present cases, this Court for the time being will have to necessarily make the judicial review in terms of the existing provision under the Act and the Bihar Rules, 1987. As has been noted above, neither the Act nor the Bihar Rules envisage the role of Screening Committee at the district level and that seems to be a mode and/or practice brought into existence by some executive orders by the State Government in which the applications for the post of Member of the District Forum are invited at the district level and a Three Men Screening Committee at the district level consisting of the District Judge, President of the District Consumer Forum and the Collector of the district have been entrusted the task of screening applications of the candidates and short-listing three names for each of the post of Member of the District Forum. Though it may be possible for the



State Government to development its own such manner of screening but then the District Screening Committee in view of the provisions made under Section 10(1) of the Act can never either shortlist or disqualify any candidate, inasmuch as, such power is vested only to the Selection Committee at the state level consisting of the President of the State Consumer Commission, the Secretary to the Law Department and the Secretary to the Food and Consumer Protection Department.

23. As a matter of fact, the District Screening Committee can also not hold an interview for judging the suitability of the candidates and in fact it at best having received the applications can only send such applications of all the eligible candidates who fulfil the qualification for the post of Members. The rest of the job of evaluation and assessment of all such eligible candidates in terms of Section 10(3) of the Act has to be done by the Selection Committee at the state level while making its recommendation to the State Government. Thus, what was done in the district of Lakhisarai wherein the District Screening Committee had conducted an interview and sending its short-listed names of three best adjudged candidates on the basis of interview conducted by it cannot be approved by this Court.

24. Nonetheless, since there is no challenge to the



appointment of the Members in the Lakhisarai Consumer Forum at the instance of any eligible candidate who, being a candidate, was not short-listed by the District Screening Committee, this Court, having regard to the present procedure being followed in the matter of appointment of Members in District Forum of all over Bihar, is not inclined to interfere only because the Selection Committee ultimately after receipt of the screening report containing the names of three short listed candidates for each of the two post of Members of District Forum, Lakhisarai had recommended the names of the private respondents in the two cases arising out of Lakhisarai district while rejecting the cases of the petitioners in CWJC No. 5088/2015 and CWJC No. 5614/2015 whose names were screened by the District Screening Committee on the basis of interview along with the name of private respondents.

25. This Court, therefore, would not like to say anything more in this regard but, then, it would fail in its duty if it does not record here that this Court in exercise of power of judicial review of executive decision is concerned with legality of the procedure and not merit of the decision. Who should or should not be the member of District Forum is the prime concern of the State Government which as per requirement of Section 10(3) of the Act

has to take such a decision based only on the recommendation of the Selection Committee.

26. A question, however, will arise that if a person does not fulfil the requirement under section 10 of the Act like in the present case of Sheohar District in CWJC No. 4640 of 2015 where the person selected and appointed even when had not claimed experience of a single day in his application, yet not only the District Screening Committee had screened him and sent his name to the Selection Committee but even the Selection Committee had recommended his name and to top it all the State Government also while taking a decision did not notice that the private respondent did not have the necessary experience.

27. At this stage this Court must look into the pleadings in C.W.J.C.No. 4640/2015, inasmuch as not only the petitioner in paragraph no.8 of the writ application has made a categorical averments of respondent no.7 having no experience but has also supported such statement with a document which can be no better than own application of respondent no.7 in which respondent no.7 while giving his biodata by way of name, father's name, date of birth, qualification and address had left the column of experience not only vacant as on the date of filing of the application i.e. 30.9.2013. It is in fact really both shocking and surprising for this



Court to find that such an application which was fit to be rejected at the threshold in terms of section 10 of the Act requiring ten years minimum experience, went only unnoticed by the District Screening Committee which surprisingly had screened the name of respondent no.7 and sent it to the Selection Committee. Let it be kept in mind that the Screening Committee was headed by the District Judge and even if the District Judge did not know the provision under section 10 of the Act or did not care to look into the provision of the Act, there was at least no excuse for the Selection Committee headed by a retired High Court Judge in capacity of President of the State Consumer Commission to ignore this mandatory requirement.

28. Learned counsel for the respondent State Government and the State Commission, however, have fairly conceded that it was more of an omission or negligence that ineligibility and disability of respondent no.7 in CWJC No. 4640 of 2015 went unnoticed at all stages and led to an erroneous decision in the selection and appointment of respondent no.7 as a member of the District Consumer Forum, Sheohar.

29. In fairness to the learned counsel for the Respondent No.7 in CWJC No. 4640 of 2015 this Court, however, must record the Herculean efforts made by him to justify appointment on the



ground that though he had actually such experience but in fact he inadvertently had not mentioned the same in his application but that did not mean that he had no experience of ten years. Such desperate submission, however, has to be only noted for its being rejected because if the application required a person to declare his Biodata including his experience and if he did not do so he cannot come out to support at a later date by claiming some experience on the basis of an experience certificate produce before this Court. Here in the present case, as noted above, it has been virtually admitted and conceded that respondent no.7 also did not submit the experience certificate and neither the District Screening Committee nor the Selection Committee had the occasion to look into the certificate which has been now produced by respondent no.7 in the Court in his counter affidavit.

30. Thus, this Court will have no difficulty in setting aside the appointment of respondent no.7 in C.W.J.C.No. 4640/2015 and to that extent this writ application succeeds and is allowed.

31. It however goes without saying that now as and when the post of Member of the District Consumer Forum earlier held by respondent no.7 would be filled up the cases of all eligible persons including the petitioner and Respondent No.7, if being an

applicant and found eligible, will be considered in accordance with law.

32. In C.W.J.C.No. 1929/2015 the petitioner has assailed the panel dated 21.9.2014 for the post of Female Member of the district Consumer Forum, Nalanda on the ground that the recommendation made by the District Screening Committee of Manju Sinha, Preeti Sinha and Dr. Indu Kumari and recommendation of Selection Committee in favour of Manju Sinha leading her to her appointment on the post of Member in Nalanda District Consumer Forum is bad on the ground that Manju Sinha had submitted the experience certificate of a fake NGO and that Preeti Sinha had submitted application after expiry of the last date.

33. Learned counsel for the petitioner, however, has not been able to substantiate the allegation against Manju Sinha, inasmuch as nothing has been brought on record to show that her experience as claimed by her in her application dated 8.8.2014 of being associated with Bhatiya Jan Uthan Parishad, a society registered under the Society Registration Act bearing registration No. 240/1986-87, is fake. A mere bald statement of describing any NGO to be fake will not be good enough keeping in view that the respondents have also explained in their counter affidavit that on

an enquiry the said Bhartiya Jan Uthan Parishad was found to be an existing NGO. In that view of the matter, the Screening Committee's recommendation to the Selection Committee in respect of Manju Sinha cannot be held to be bad.

34. As with regard to entertaining of the application of Preeti Sinha this Court on perusal of the official records would find that she had sent her application as prescribed in the advertisement on 28.8.2014 and the same was seen by the authority on 1.9.2014. Let it be kept in mind that the last date under the advertisement dated 2nd August, 2014 was 31st of August, 2014 and 31st August, 2014 being Sunday if the application was seen by the competent authority on 1.9.2014 that could not have led to disqualifying Preeti Sinha.

35. In any event the Selection Committee on the basis of its own comparative analysis of the three rescreened names by the District Screening Committee has only recommended the name of Manju Sinha and this Court does not find any error in such recommendation. Moreover, when the post of Female Member of the District Consumer Forum, Nalanda has not been filled up as yet despite recommendation of the Selection Committee, there would be hardly any occasion for this Court to interfere in the matter.

36. In the result, this application, C.W.J.C.No. 1929/2015, fails and is, accordingly, dismissed.

37. Reverting back to two writ petitions, namely, CWJC No. 5088 of 2015 and CWJC No. 5614 of 2015 wherein the challenge is to the selection and appointment on both the posts of Members including the Female Member in Lakhisarai District Consumer Forum, this Court on careful perusal of the records as also in the stand taken by the respondents in the counter affidavit has found that certain complaints were received against the petitioners which on being considered by the Selection Committee led to a decision against them in course of making recommendation of private respondents against whom there was no such complaint.

38. The only submission that such complaint against the petitioners could not have been either entertained or looked into by the Selection Committee after the District Screening Committee had screened them is neither here nor there. The District Screening Committee in fact has no legal sanctity or statutory back up under any of the provisions of the Act including its Section 10 thereof or even under Bihar Rules, 1987. Such Committee functioning only under some executive decisions at the district level is only for the assistance of the statutory Selection



Committee and the Selection Committee alone has to take its own decision for making recommendation to the State Government on the basis of materials on record. Thus, whether those allegations in the complaint made against the petitioners which were taken into consideration by the Selection Committee were correct or otherwise cannot be gone into by way of their evaluation of comparative merit by this Court in exercise of its power under Article 226 of the Constitution of India At the end of the day the Selection Committee has recommended for appointment of only such persons on the post of Members of District Forum, Lakhisarai who were not only eligible but also against whom there was no such complaint.

39. The over-emphasized submission of the learned counsel for the petitioners that the petitioners had ranked No.1 in the Screening made by the District Screening Committee on the basis of merit evaluated on the basis of interview of all the candidates also does not appeal to this Court for a simple reason that neither the Act nor the Rules nor the Government instructions envisage marking of the candidates after holding comparative evaluation of merit in an interview to be conducted by the District Screening Committee as was sought to be done in Lakhisarai district. Thus only because the petitioners' name were screened by



the District Screening Committee and sent to Selection Committee but later on it was discovered by the Selection Committee that there were certain complaints against them, which resulted into recommendation of another eligible candidate having no complaints cannot vitiate the selection and appointment of private respondents in these two cases of Nalanda district.

40. Let it be also kept in mind that it is not a case of the petitioners in CWJC No 5088/2015 and CWJC No. 5614/2015 that there was no such complaint against them and something was done by the Selection Committee on its own. The receipt of such complaint against the petitioners in fact also stands corroborated from the Government files and records because some of the complaints against them were also sent initially to the Government and the Government had sent those complaints to the Selection Committee.

41. Thus, for the reasons indicated above, this Court will not interfere with the recommendation made by the Selection Committee in favour of the private respondents in CWJC No. 5088/2015 and CWJC No. 5614/2015 and their consequential appointment made by the State Government on the post of Member in Lakhisarai District Consumer Forum.

42. In the result, these two writ applications, C.W.J.C.



No. 5088/2015 and C.W.J.C. No. 5614/2015, also fail and are, accordingly, dismissed and as a consequence of dismissal of the aforesaid writ applications involving selection and appointment of the Members of Lakhisarai District Consumer Forum, the earlier interim order passed by this Court restraining their functioning is also hereby vacated.

I.A.No. 6407/2015 in C.W.J.C.No. 5614/2015

43. Filing of this application seeking intervention as with regard to selection on the post of Member in Jamui District Consumer Forum has to be only noted for its being rejected, inasmuch as this Court has not considered with regard to norms of selection undergone in Jamui District. Thus, if the intervener has any separate cause of action, the same can be always agitated by him in accordance with law.

44. Before parting with, this Court, however in view of the material brought on record as also on perusal of the official records of the District Screening Committee of Nalanda, Lakhisarai and Sheohar as also the records of the Selection Committee headed by the President of State Commission and the records of the State Government, would find necessity to make certain observation and also issue consequential direction in order to maintain fairness and transparency in the selection of Members

of the District Consumer Forum all over this State.

45. First of all, this Court, in view of the mandate and requirement under the proviso to Section 10(3) of the Act and in the light of discussions made in the earlier paragraph of this judgment would direct the State Government to frame rules laying down the factors including the work load of the District Forum for its being taken into consideration by the Selection Committee for making recommendation to the State Government for appointment on the post of Member in the District Consumer Forum by making an exactly similar provision as made by the Central Government under Rule 12A of the Consumer Protection Rules, 1987 for appointment of Member National Commission. This in turn would automatically eliminate the repeated challenges being made with regard to recommendation, selection and appointment on the post of Members of the District Consumer Forum.

46. Secondly, it would also direct that henceforth the District Screening Committee if at all created under any executive instruction has to still function for assisting the statutory Selection Commission, its role can be confined only in screening the application received by it as the terms and conditions of the eligibility clause prescribed under the Act and the Bihar Rules, 1987. The District Screening Committee in no view of the matter



can eliminate any eligible candidate at the threshold in the process of short-listing the names of the candidates. The District Screening Committee even if it is given a statutory status in terms of Rules directed above to be framed by the State Government can at best only submit all the applications of the eligible candidates to the Selection Committee without indulging into any sort of short-listing by eliminating the case of any eligible candidate fulfilling the qualification as prescribed under the Act and Bihar Rules.

47. The Selection Committee, however, must publish the names of all the eligible candidates on the website of the State Commission, State Government and/or newspaper and give a month's time for filing of any complaint/objection enabling the Selection Committee to take into consideration those complaints/objections to the selection of any candidate applying for the post of Member in the District Forum before entering into exercise of making recommendation in terms of the Rules to be framed as directed above by this Court for the purpose of appointment on the post of Members in the District Consumer Forum.

48. The records containing the proceedings in the process of making recommendation by the Selection Committee must not only be maintained but should also contain the detailed procedure



adopted by it reflecting the consideration of the individual names of each of the eligible candidates so as to enable the State Government to take its decision in the appointment of Member in the District Forum as also enable any court making judicial review to examine the legality of such recommendation made by the Selection Committee.

49. Similarly, any decision of the State Government in the process of appointment of Members of the District Consumer Forum must be backed by the reasons specially when it chooses to disregard and/or alter the recommendation made by the Selection Committee.

50. Let it be also kept in mind that this Court has noticed a noting at page 56/N in the file no. ३० A01-64/2012 where the then Chief Minister Mr. Jeetan Ram Manjhi had sought to interfere in the appointment of Member of District Consumer Forum by directing the Departmental Secretary to examine the recommendation made by the Selection Committee by introducing the concept of reservation. This Court is of the view that the task for appointment on the post of Member of District Consumer Forum has been entrusted under the Act to the Selection Committee and the State Government can either accept or reject the recommendation of the Selection Committee by recording

reasons in support of its decision but cannot interfere by changing the recommendation of the Selection Committee in the process of appointment of Member of the Member of the District Consumer Forum.

51. In other words, whatever is recommended by the Selection Committee has to be normally acted upon by the State Government specially when it is also being represented by its two senior officials in the Selection Committee, namely, the Departmental Secretary and the Law Secretary. The State Government also must keep in mind that under the amended law by inserting proviso to Section 10(3) of the Act, the power of recommendation for appointment of a Member of District Consumer Forum has been entrusted only to the President of the State Consumer Commission who under proviso to Section 10(3) in person alone has been empowered in person to make recommendation to the State Government for appointment on the post of Full Time Member of the District Consumer Forum.

52. Thus, the recommendation of the Selection Committee and particularly its Chairman being President of the State Commission a retired High Court Judge, should be given a due primacy by the State Government instead of sitting over and/or altering/interfering with the recommendation of the Selection Committee.

53. Having regard to the aforesaid observations and direction, this Court would also direct that the exercise of framing rules for appointment on the post of Members in the District Forum in terms of proviso to Rule 10(3) of the Act alike one under Rule 12A of the Consumer Protection Rules, 1987 as also the consequential changes in the existing system of appointment of Members of District Consumer Forum must be made within a period of six months from the date of receipt of this judgment. It is also made clear that no appointment shall be made on the post of any of the Members of the District Consumer Forum after expiry of the aforesaid period of six months unless the directions given herein above is complied in letter and spirit or leave is obtained from this Court by the State Government for making any fresh appointment on the post of member in District Consumer Forum.

54. With the aforementioned observations and directions, all these writ applications are disposed of.

55. Let the records made available to the Court with a copy of this judgment be handed-over to both the learned counsel representing the President of the State Consumer Commission as also the Secretary of the Food and Consumer Protection Department, Bihar, Patna for its compliance in letter and spirit.

(Mihir Kumar Jha, J)

Patna High Court,
Dated 15th of October, 2015
AFR/Surendra

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