

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4974 OF 2018

Mukund S/o Bhagwan Saste
Age : 50 years, Occu: Service
R/o : Yedshi Tq. & Dist. Osmanabad ...Petitioner

Versus

1. The State of Maharashtra,
Through its Secretary,
Food, Civil Supply & Consumer Affairs,
Mantralaya, Mumbai-32
2. The Secretary
Law & Judicial Department,
Mantralaya, Mumbai-32
3. State Consumer Dispute Redressal
Commission, Mumbai
Through its Registrar
4. District Consumer Dispute
Redressal Forum, Osmanabad,
Through its Registrar. ...Respondents

Mr. S.T. Veer, Advocate for Petitioner
Mr. S.G. Karlekar, Assistant Government Pleader for
Respondent Nos. 1 to 4

**CORAM : S. V. GANGAPURWALA &
A. M. DHAVAL, JJ.**

DATE : 18th FEBRUARY, 2019

ORAL JUDGMENT : (Per : S.V. Gangapurwala, J.)

1. Rule. Rule made forthwith. With the consent of the parties,
the matter is taken up for final hearing at admission stage.
2. The petitioner was appointed as a Non Judicial Member of
the District Consumer Redressal Forum, Osmanabad on or about

17.06.2013 for a period of five years. The petitioner sought re-appointment. The petitioner is not selected. Aggrieved thereby, the present writ petition.

3. Mr. Veer, the learned Counsel for the petitioner submits that the petitioner was seeking re-appointment as a Non Judicial Member of the District Consumer Redressal Forum, Osmanabad and not as fresh candidate. The respondents adopted the procedure under Rule 24 of the Maharashtra Whole-time President and Members of District Consumer Redressal Forum, Group-A under the Food, Civil Supplies and Consumer Protection Department of the Government (Recruitment) Rules 2011 (hereinafter referred to as "Rules 2011" for the sake of brevity).

4. For re-appointment, the procedure as laid down under Rule 34 of the Rules 2011 has to be adhered to and followed. On account of non-adherence to the Rules, the impugned order of not selecting the petitioner requires to be set aside. The learned Counsel relies on the Judgment of the Apex Court in the case of ***Rajkumar and others Vs. Shakti Raj and others reported in AIR 1977 SC 2110***. He also relies on the Judgment of the Division Bench of this Court at the Principal Seat in Writ Petition No. 11716/2012 with connected writ petitions dated 8th June, 2015.

5. Mr. Karlekar, the learned Assistant Government Pleader

submits that the petitioner had participated in the selection process and after participating in the selection process, he is not entitled now to agitate in respect of the selection made. The learned Assistant Government Pleader relies on the order of Division Bench of this Court at Nagpur in Writ Petition No. 2453/2018 dated April 24, 2018. According to the learned Assistant Government Pleader, the petitioner could secure only 17 marks out of 50 in the vivo-voce and as such, was not considered for selection. Other relevant aspects were also considered by the Selection Committee.

6. It is a matter of fact that the petitioner was seeking re-appointment as a Non Judicial Member at District Consumer Redressal Forum, Osmanabad after having completed his tenure. Rule 34 deals with the procedure to be followed in case of re-appointment of Presidents and Members of the District Forum. Rule 34 reads thus :-

34. In case of re-appointment of the Presidents and Members of District Forum, as at the time of appointing the Presidents and Members, the concerned candidate have undergone the selection process as stated in the rules, it shall not be necessary for the said candidates to undergo the same process of selection. However, the re-appointment of the Presidents and Members shall be done, if he satisfies the qualification, on a recommendation of the Selection Committee. The Selection Committee while making recommendation shall take into consideration the Confidential Reports, the

disposal of cases, the performance during the time of first appointment, a general reputation of a candidate and the complaints, if any, pending against the candidate.

7. We had asked the learned Assistant Government Pleader to place on record the procedure that was adopted while considering the petitioner for reappointment. It was submitted that vivo-voce was adopted and other relevant aspects were considered. The respondents placed on record the minutes of meeting of the Selection Committee. Upon perusal of the same, it does not transpire that the Selection Committee considered the confidential reports of the petitioner, the disposal of cases, the performance during the time of first appointment.

8. The Selection Committee has observed thus -

We had considered the performance of candidates including assessment of their Judgments, complaints, if any, general reputation and their performance during the tenure of first appointment for the sake of taking decision for re-appointment for the 2nd tenure. We found that candidates at Sr. No. 1, 2, 5, 7, 10, 12 to 16, 18 to 29 and 31 are sitting members. Out of them Sr. No. 15 Shri. Ashokrao Narayanrao Somwanshi, Sr. No. 21 Shri. Shesharao Kisan Pacharne Sr. No. 22 Mukund Bhagwan Saste and Sr. No. 26 Shri. Kailas Kisan Wankhade failed to pass vivo-voce Test as 40 % is the minimum passing requirement in view of Rule 24 of Consumer Protection Department of the Government

(Recruitment) Rules 2011. They failed to obtain minimum 40 % Marks in vivo-voce exam while candidate at the Sr. No. 4 Shri. Santosh Ganpat Jadhav remained absent and did not appear for vivo-voce test. It is found that candidate at Sr. No. 18 Smt. Ashlesha Dighade has already completed two terms on the post of Member of District Forum, hence she is ineligible for reappointment.

9. As per Rule 10 of the Consumer Protection Act, 1986, every Member of the District Forum shall hold office for term of five years or upto the age of sixty five years whichever is earlier. The proviso to sub section 2 of Section 10 provides that the Member shall be eligible for re-appointment for another term of five years or upto the age of 65 years whichever is earlier subject to the condition that he fulfills qualification and other conditions for appointment mentioned in clause (b) of sub section 1 and such appointment is also made on the basis of the recommendation of the Selection Committee.

10. While making recommendation by the Selection Committee for re-appointment of a Member, the Selection Committee has to consider that the candidate who is seeking re-appointment has already undergone the selection process and it is not necessary for the said candidate to undergo the same process of selection. The Selection Committee is certainly required to consider the confidential reports, the disposal of cases, the performance

during the time of the first appointment, general reputation of the candidate and the complaints, if any, pending against the candidate. It is not required to consider the marks obtained by the petitioner in vivo-voce at the time of selection while considering reappointment. Of course, the Selection Committee can consider the performance during the time of the first appointment, general reputation of the candidate and the complaints, so also the confidential reports and the disposal of cases.

11. We have reproduced supra the minutes of the meeting of the Selection Committee while considering the candidature of the petitioner. The claim of the petitioner, it appears, is basically negated on the ground that the petitioner has secured less than 40 % marks in the vivo-voce. The same was not a consideration for re-appointment though in the first two lines, the Selection Committee states that they have considered the performance of the candidate including assessment of their Judgments, complaints, if any, general reputation and their performance during the tenure of first appointment. However, while rejecting the candidature of the petitioner, it is only observed that petitioner failed to secure minimum 40 % marks in the vivo-voce as per the requirement of Rule 24 of Rules 2011. In fact, the petitioner was not required to undergo the selection process as is contemplated for fresh candidate under Rule 24 of Rules 2011. The stipulations contained in Rule 34 were only

required to be considered while considering the petitioner for re-appointment.

12. The Selection Committee has not in its order/ recommendation clarified about the assessment of the Judgments of the petitioner, complaints, if any, the confidential reports, the general reputation of the petitioner. In fact, these were the criterias, which were required to be considered by the Selection Committee.

13. In light of the above, the impugned order not recommending the petitioner for re-appointment to the post as Non Judicial Member of the District Consumer Redressal Forum, Osmanabad is set aside. The respondent shall reconsider the case of the petitioner for re-appointment in tune with the criteria as provided in Rule 34 of Rules 2011. The same shall be done expeditiously, preferably within a period of three months.

14. We have considered the case of the petitioner only to the extent of his non recommendation for re-appointment.

15. If the petitioner is so advised, the petitioner may file separate proceedings in respect of the other prayers.

16. Rule is made absolute in above terms.

[A. M. DHAVAL]
JUDGE

[S. V. GANGAPURWALA]
JUDGE