
(2010) 06 AP CK 0048

In the Andhra Pradesh High Court

Case No : Writ Petition No. 15208 of 2001

A. Rajender Naidu

APPELLANT

Vs

The Bharat Petroleum Corporation Ltd. and Others

RESPONDENT

Date of Decision : 17-06-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 4 ALD 633 : (2010) 5 ALT 417

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : P. Venugopal, for the Appellant; O. Manohar Reddy, for Respondent Nos. 1 to 3, Jagadish Chandra Prasad and K.R. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

Noushad Ali, J.—This Writ Petition is filed assailing the action of the 2nd respondent i.e. Dealer Selection Board in recommending and placing the respondent Nos. 4 and 5 above the petitioner in selection panel for eventual appointment of the 4th respondent as L.P.G. Distributor in the open category for Chittoor town, as illegal and arbitrary.

2. Bharat Petroleum Corporation Limited (for brevity, "Corporation") issued a public notification in Eenadu daily newspaper dated 16-08-2000 inviting applications for appointing L.P.G. Distributors at Chittoor from the qualified persons. The qualifications as per the notification are : an applicant should be a citizen of India; he should not be less than 21 years or more than 60 years old as on the date of application; the applicant should have completed matriculation or its equivalent and should be a local candidate and where applicants are from more than one District, preference would be given to the applicants belonging to the same revenue districts where distributorship was proposed to be given; family income should not be more than two lakhs per annum for the year 1999-2000 and the applicant or his nearest relatives should not be holding dealership/distributorship.

3. Apart from the above mentioned qualifications, the notification required that an applicant should submit particulars of land to locate the godown and further provided for preference to those applicants who would agree to part with in favour of the Corporation, ownership/transfer of land on long lease. The petitioner, respondents 4 and 5 and others responded to the notification. The petitioner claims that he satisfied all the requirements of eligibility and in addition to the same, he submitted details of the land owned by him measuring an extent of 13300 square feet situated in S. No. 577/A/1/E which is said to be located in a commercial area in Chittoor town. He also submitted documentary proof in support of his claim. He further claims that he agreed to part with the ownership of the land either by sale or by way of long lease in favour of the Corporation and therefore eligible for selection in preference to respondents 4 and 5.

4. The grievance of the petitioner, however, is that despite his qualifications which include his preferential claim, respondents 4 and 5, who have no superior claims, were wrongly empanelled above him at rank Nos. 1 and 2 as against rank No. 3 assigned to him. The petitioner claims that the empanelment of respondents 4 and 5 above him was on account of extraneous considerations and actuated by the biased attitude of the third respondent, who was the Chairman of the Selection Committee, in favour of respondents 4 and 5.

5. The first respondent corporation filed a counter affidavit through its Territory Manager (LPG) at Hyderabad. It is stated therein that the Dealer Selection Boards are constituted by the Government of India for interviewing and selecting suitable candidates for appointment as dealers/distributors. The Selection Boards consisted of a retired High Court Judge/District Judge as Chairman and an Officer not below the rank of Chief Manager of the concerned oil company and another officer not below the rank of Chief Manager of another oil company as Members. It is stated that the second respondent conducted interview on 29-06-2001 and based on the relative merits of the candidates, the fourth respondent was placed first and fifth respondent in the second place in the panel and the petitioner figured as third in the merit list. It is further stated that as per the notification, the eligibility criteria did not require the applicants should possess suitable land for a godown and therefore the claim of the petitioner that all the applicants should possess suitable land for go down and furnish particulars thereof at the time of application is not well founded. It is further stated that if an applicant does not have suitable land, he would be given time if selected as indicated under Clause 16(i) of the application.

6. A separate counter is filed by the respondents 2 and 3 through the third respondent, who was the Chairman of the Selection Board, denying various allegations made with reference to the empanelment of respondents 4 and 5. It is denied that there was any irregularity or biased attitude in favour of the respondents 4 and 5. The respondents 2 and 3, however, admitted that the petitioner furnished particulars of the land possessed by him in Chittoor town to

locate the go down. It is however stated that the same is not a pre-requisite, and hence not a mandatory requirement to furnish details of the land. It is further stated that fourth respondent is a Post Graduate holding M.S. Degree in Business Administration and the fifth respondent is a Post Graduate holding degree in M.A. and also a Degree in LLB and the petitioner is only a graduate. The suitability of the candidate was judged based on the personality, business ability and salesmanship, financial capability, educational qualifications and general level of intelligence, capability to provide infrastructure and facilities i.e., land, godown, showroom etc., and general assessment and the fourth and fifth respondents were found more suitable. With reference to the provision of godown it is admitted that the respondents 4 and 5 had no such facility indicated in their applications. These respondents, therefore, stated that the respondents 4 and 5 and the petitioner were rightly empanelled at serial numbers 1, 2 and 3, respectively.

7. Heard Sri P. Venu Gopal, learned Counsel on behalf of the petitioner and Sri O. Manohar Reddy, learned Counsel on behalf of the respondents 1, 2 and 3 and Sri Jagadish Chandra Prasad, learned Counsel on behalf of the 4th respondent.

8. The substantial contention of the learned Counsel for the petitioner is that the petitioner is more meritorious than the respondents 4 and 5. He has all the requisite qualifications and as mandated the petitioner furnished details of the land to locate go down and also submitted his willingness to part with the ownership of the lands either by sale or by a long lease in favour of the Corporation which would entitle him for preferential treatment and the award of dealership. The learned Counsel submitted that the second respondent (Selection Board) did not evaluate the relative merits of the applicants and follow a fair procedure. It violated the requirements stipulated in the notification and thus the decision empanelling the respondents 4 and 5 above the petitioner is vitiated. He further submitted that the 3rd respondent acted in a biased manner in favour of the respondents 4 and 5.

9. Per contra, the learned Counsel Sri O. Manohar Reddy submitted that the petitioner has not substantiated his allegation as to the alleged biased attitude of the third respondent. He further submitted that the Selection Board followed the process and ascertained the eligibility by conducting the interview and no fault can be found with the process of selection and hence the empanelment of respondents 4 and 5 is not vitiated.

10. Sri Jagadish Chandra Prasad, on behalf of the respondent No. 4, submitted that the 4th respondent is young being 20 years old, whereas the petitioner is aged 58 years. The petitioner is only M.A. Graduate, whereas the 4th respondent is a Post Graduate. He further submitted that possession of land is not mandatory, Thus, the 4th respondent being superior in education and age, it is contended that the 4th respondent was rightly recommended.

11. Around the same time, during the year 2000, a controversy over the

appointment of Distributors/Dealers arose throughout the country. Serious allegations of political patronage were leveled against Members of Parliament, Assembly, and various others. Taking note of the serious situation, the Government of India issued orders dated 09-08-2002 pursuant to which all the allotments made since 01-01-2000 were cancelled en masse. Aggrieved parties approached various courts including the Apex Court. The controversy came to be considered by the Apex Court in Onkar Lal Bajaj Vs. Union of India (UOI) and Another etc. etc., The Apex Court while holding that in State action public interest has to be the prime guiding consideration, observed thus:

(35) The expressions "public interest" or "probity in governance" cannot be put in a State jacket, "public Interest" takes into its fold several factors. There cannot be any hard and fast rule to determine what is public interest". The circumstances in each case would determine whether Government action was taken is in public interest or was taken to uphold probity in governance.

(36) The roll model for governance and decision taken thereof should manifest equity, fair play and justice. The cardinal principle of governance in a civilized society based on rule of law not only has to base on transparency but must create an impression that the decision making was motivated on the consideration of probity. The Government has to rise above the nexus of vested interests and nepotism and eschew window dressing. The act of governance has to withstand the test of judiciousness and impartiality and avoid arbitrary or capricious actions. Therefore, the principle of governance has to be tested on the touchstone of justice, equity and fair play and if the decision is not based on justice, equity and fair play and has taken into consideration other matters, though on the face of it, the decision may look legitimate but as a matter of fact, the reasons are not based on values but to achieve popular accolade, that decision cannot be allowed to operate.

12. The Apex Court in Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, held that award of a contract whether it is by a private party or by a public body or the State, is essentially a commercial transaction. In arriving at a commercial decision considerations which are paramount are commercial considerations. The State can choose its own method to arrive at a decision. It can fix its own terms of invitation to tender and that is not open to judicial scrutiny. While holding so, the Apex Court also held that the State, its Corporations, instrumentalities and agencies are bound to adhere to the norms, standards and procedures laid down by them and cannot depart from them arbitrarily. Though that decision is not amenable to judicial review, the Court can examine the decision-making process and interfere if it is found vitiated by mala fides, unreasonableness and arbitrariness. The State, its corporations, instrumentalities and agencies have the public duty to be fair to all concerned. Even when some defect is found in the decision-making process the court must exercise its discretionary power under Article 226 with great caution and should exercise it only in furtherance of public interest and not merely on the making out of a legal point.

13. In State of U.P. and Another Vs. Johri Mal, the Apex Court held that while exercising power of judicial review, the Court is more concerned with the decision making process than the merits of the decision itself. However, while examining and putting the decision making process to scrutiny, sometimes it may be inevitable to also appreciate the facts in a given case in order to test the decision of grounds of illegality or arbitrariness or irrationality or other procedural impropriety. In such circumstances, the Court may review the evaluation of the facts by the decision maker.

14. Having regard to the observations of the Apex Court in the judgments cited above, in order to appreciate the rival contentions, I called for the record. The learned Counsel for the respondents 1 to 3 produced the record, fairly admitting that no other record is available. The only material which is admittedly relevant for the purpose of the present dispute is the recommendation letter of the 3rd respondent dated 29-06-2001 in reference No. DSB-II/MP/061. It is useful to reproduce the letter which reads as follows:

Dealer Selection board, Vijayawada

HPCL-Tadepalli Installation, On GNT road towards Guntur Via Krishna Barrage
Guntur District., Andhra Pradesh, Pin-522 501. Phone : 08645 - 72048

STRICTLY CONFIDENTIAL (To be opened by addressee only)

Ref: DSB-II/MP/061 Dt.29-06-2001

To General Manager (Retail) South, Bharat Petroleum Corporation Ltd., No. 1,
Ranganathan Gardens, Off 11th Main Road, PB NO. 1212 & 1213, Anna Nagar,
Chennai - 600 040.

Sub: Final recommendation for Retail Outlet/2-3 Wheeler Retail Outlet/SKO-LDO
Dealership/LPG Distributorship at Location: CHITTOOR, Rev. Dist. Chittoor, State:
AP, Category: Open, Marketing Plan:1994-96.

Dealer Selection Board held interview on 29-06-2001 at Dealer Selection Board-
Vijayawada-II. a) No. of Candidates called for interview: 37. b) No. of candidates
appeared for interview: 18.

Dear Sir,

We wish to advise you the final recommendation in the following order of merit in
respect of the above mentioned Location:

Candidate has Whether shown willingness to preference Given transfer Land to
Oil while awarding Appl. No. & Name Address Co. Marks for (d). SI. No. (Yes/No)
(Yes/No) (a) (b) (c) (d) (e) 1. 315962, 19-4-313, NO NO R. Kumara Swamy
S.T.V. Nagar, Tirupathi-517501 2. 315960, Yerravaripalem YES YES T. Bala
village, Subramanyam Bakrapet, Chittor. 3. 317947, D. No. 10-3, YES YES A.
Rajindra Naidu Gandhi Road Extn. Chittor - 517001

You are requested to arrange for carrying out Field Investigation Report in

respect of the No. 1 candidate and if he/she is found suitable, necessary action may be taken for issuance of LOI to him/her.

If the candidate in merit panel at No (1) position is not found suitable for any specific reason, matter may be forwarded to the undersigned with full details.

Candidate (s) at SI. Nos. 2 and 3 have shown willingness to transfer the land on ownership/long lease to the Oil company, and have been given preference while awarding the marks by the DSB. If the candidate is unable to provide Land/facilities indicated by him/her within a period of 2 months from date of LOI, the same may be withdrawn and LOI may be issued to the next empanelled candidate after conducting necessary FIR. Under intimation to us. (Delete, if not applicable).

Yours faithfully, For & on behalf of Dealer Selection Board, VJA-II Sd/- xxx
Chairman

15. From the said letter, it is not clear on what basis the respondents 4 and 5 were empanelled at serial Nos. 1 and 2. It is not disclosed what weighed with the Selection Board and on which material it was satisfied to reach the conclusion. As noted earlier, the record does not contain any material which could show the exercise, if any, undertaken by the Selection Board in recommending the panel. It may be noted that where there are several applicants, an objective assessment of each of the applicants is imperative to select the best among them and an exercise in that regard should be undertaken by the decision making body. Such exercise may include award of marks, assignment of grades or ranks based on the merits of the candidates and preparation of comparative tables and the like. Such an exercise is all the more imperative in cases where candidates are to be selected on the basis of certain prescribed qualifications in order to evaluate inter se merits. In the instant case even according to the respondents 2 and 3, the applicants were to be adjudged inter se suitability on the basis of the criteria relating to personality, business ability and salesmanship; financial and educational qualifications capability or to arrange finances; and general level of intelligence; capability to provide infrastructure and facilities (land, godown, show room etc.,) and general assessment. The Selection Board purportedly consisted of three members which included the Chairman and two other officers of the rank of Chief Manager, nominated by the oil companies. As the composition of the Selection Board would suggest which purportedly participated in the selection process, the record should disclose the exercise undertaken by such constituent members and such exercise should be apparent from the record. No such material exists in the instant case. Mere recommendation without there being any material relating to the selection process and in the absence of the material, which formed the basis of the decision, the impugned recommendation letter cannot be comprehended.

16. That apart, the recommendation letter is full of ambiguity. In respect of the 4th respondent, in the columns (d) and (e), it is indicated that he did not express

his willingness to transfer land to the oil company. Column (e) which refers to preferential qualifications also refers awarding of marks with reference to qualification in column (d). In both the columns (d) and (e), the Selection Board noted against the 4th respondent as "No". On the contrary in relation to the petitioner and the 5th respondent, the Board answered the columns in the positive as "yes". It further indicated that in the event of the candidate No. 1 was not found suitable for any specific reason the matter should be forwarded to the Board with full details. Despite such negative noting against the 4th respondent, how the Selection Board could recommend him at serial No. I, cannot commend to this Court.

17. However, the respondents sought to justify the panel on the ground that the respondents 4 and 5 are educationally more qualified. It may be noted that the required qualification as per the notification is only Matriculation or its equivalent. Higher education qualification cannot be sole criteria to overlook the other qualifications. As noted above and as stated by the respondents 2 and 3 in the counter affidavit, there were other essential requisites which related to the business ability, salesmanship and financial capability, ability to provide infrastructure etc. The cumulative requisites of all said factors should be the basis for selection and not merely higher educational qualification.

18. The notification specifically required that along with the application, a candidate should enclose the details of the land to be provided and that a candidate who indicates his willingness to transfer the land either by sale or by long lease would be given preference. The respondents 4 and 5 admittedly did not indicate such details in their applications. The respondents 2 and 3 in their counter have specifically admitted this fact. In that, they have stated that the 4th respondent in his application merely stated that he would secure a suitable site for construction of godown and show room within the prescribed time and the 5th respondent in his application stated that one of his friends owned lands in close vicinity of the business area. In the absence of furnishing details of the land in the applications, it has to be held that there is no sufficient compliance with the conditions stipulated in the notification which the Selection Board could not have overlooked.

19. The allegation of bias against the 3rd respondent although cannot be accepted as not supported by sufficient material, it is however apparent that the selection process which culminated in the empanelment recommending the 4th respondent is not in conformity with the notification and the Eligibility Criteria, based on any objective evaluation of the relative merits, the impugned empanelment therefore cannot stand judicial scrutiny.

20. The learned Counsel for the petitioner contends that since the petitioner has shown to possess requisite qualifications, which are superior to the respondents 4 and 5, a direction be given for his eventual appointment. It may be noted that no such positive direction can be granted in a writ petition by this Court since only the selection process has been faulted and it is for the Corporation to

undertake such an exercise and appoint a suitable distributor.

21. In the above analysis, the writ petition is allowed on the following terms:

1. The impugned panel vide letter dated 29-06-2001 of the 2nd respondent is set aside;
2. The matter is remanded with a direction to the 1st respondent to consider the claims of the petitioner and the respondents 4 and 5 afresh in accordance with the Eligibility Criteria that was in force as on the date of public notification i.e. in the newspapers dated 16-08-2000 and eventually award the distributorship based on the relative merits;
3. The 1st respondent shall complete the exercise within four months from the date of receipt of a copy of this order; and
4. There shall be no order as to costs.