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(2016) 06 OHC CK 0025

In the Orissa High Court

Case No : W.A. No. 18 of 2016 (From Orders dated 12.8.2010 passed by the division bench in W.P.(C) No. 14367 of 2009 and order dated 14.12.2015 passed by the learned single judge in W.P.(C) No. 18768 of 2011)

Anindita Mohanty — APPELLANT

Vs

The Senior Regional Manager — RESPONDENT

Date of Decision : 22-06-2016

Acts Referred:

Citation : (2016) 165 AIC 280

Hon'ble Judges : Mr. Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : Mr. Ramakanta Mohanty, Senior Advocate and Sangeeta Mohanty, Advocate, for the Appellant; M/s. G. Mukherji, Srinivas Patnaik and T.P. Paul, Advocates, for the Respondent Nos. 1 and 2; Mr. S.K. Dalei, Advocate, for the Respondent No. 3

Final Decision : Allowed

Judgement

Mr. Vineet Saran, C.J.—The appellant-Smt. Anindita Mohanty was one of the five applicants for grant of Retail Outlet Dealership of Hindustan Petroleum Corporation Ltd at Harichandanpur of Naranpur Brahmani Road in the district of Keonjhar. On the selection having been made in favour of Respondent No. 3-Smt. Babita Prusty, the appellant challenged the same in Writ Petition No. 14367 of 2009, which was disposed of by order dated 12.8.2010. Paragraphs 6 and 7 of the said judgment, which gives reasons for the petitioner succeeding, are extracted below:-

"6. The petitioner must succeed in this case for the following reasons:-

6.1. It is undisputed fact that the petitioner offered the site for the purpose of location for establishing the Retail Outlet Dealership for petrol pump, for which aspect marks are not awarded as could be seen at Annexure-5 against the name of the petitioner. The justification sought for by the learned counsel for opposite

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parties 1 and 2 in not awarding marks in this aspect is on the basis of Clause 4.6 and 4.6.1 of the Guidelines which was framed in the year 2009 by the Indian Road Congress (IRC). The said guidelines are not incorporated to the Guidelines framed by opposite party nos. 1 and 2 to the brochure prepared by the opposite parties. It is also not notified in the advertisement indicating that the requirements of Guidelines framed by the IRC will be applied to the site selection.

7. In view of the above, in absence of not incorporating the Guidelines of IRC to the Guidelines framed by the opposite parties and in not awarding the marks in respect of the site as required in the guidelines framed by opposite party no. 2 is wholly arbitrary and unsustainable in law. Hence, the decision by the Selection Committee-opposite party no. 2 in selecting the opposite party no. 3 is illegal. Therefore, the impugned order under Annexure-5 is liable to be quashed and this Court orders accordingly. The Selection Committee is directed to reconsider the claim of the petitioner as well as the other claimants and award the marks in conformity with the Guidelines produced at Annexure-1 and take a decision in this matter within a period of three weeks from the date of receipt of certified copy of this order."

(emphasis supplied)

2. By the aforesaid judgment, a specific direction was given to the Selection Committee to reconsider the claim of the petitioner, as well as the other claimants, and award marks in conformity with the Guidelines of the Hindustan Petroleum Corporation Ltd (HPCL). This direction was given, specifically taking note of the fact that the Guidelines framed by the Indian Road Congress (IRC) were not to be applied to the site selection, but had been applied by the Respondent-Corporation for selection of the candidate for awarding the dealership. It may be reiterated that by the aforesaid order, the Division Bench of this Court had categorically directed the Selection Committee to consider the Guidelines of the Corporation alone and not the Guidelines of the IRC in respect of awarding of marks to all the candidates.

3. As per the Guidelines of the Corporation, marks are to be awarded to the candidates under the following heads, namely: (i) Capacity to provide infrastructure and facility; (ii) Capacity to arrange finance; (iii) Educational qualification, (iv) Capability to Generate Business; (v) Age; (vi) Experience; (vii) Business acumen; and (viii) personality. The dispute in the present petition appears to be only with regard to the marks awarded to candidates under the first head, i.e., ?Capacity to provide infrastructure and facility?. For this, the direction passed in the earlier writ petition was to consider the cases of all the claimants afresh with regard to award of marks under the aforesaid heading, as per the Guidelines of the Corporation alone, and not the IRC. It is not disputed that the Selection Committee of the Corporation had earlier applied the norms of the IRC Guidelines also and awarded the marks.

After the order dated 12.8.2010 was passed in the earlier writ petition, the case

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of the petitioner was reconsidered by the Selection Committee of the Corporation and was rejected, as it was found that as per the Corporation Guidelines (after ignoring the IRC Guidelines), the marks to be awarded to the petitioner on site inspection would be 92 out of 100 instead of ?0? awarded earlier. However, the marks awarded by the Interview Committee were reduced from 35 to 25 and thus it was found that the petitioner, under the heading ?Capacity to provide infrastructure and facility?, would now get 23 marks, instead of ?0? which was awarded earlier. By order dated 24.5.2011 passed by the Respondent-Corporation, it has been held that after the increase of 23 marks, the petitioner would still be placed at Sl. No. 3, as there was no change in the empanelment of the First and Second empanelled candidate. Accordingly, it was found that the petitioner would not be entitled to the dealership which was awarded to the first empanelled candidate i.e. respondent no. 3.

4. Challenging the said order, the petitioner filed W.P. (C) No. 18768 of 2011, which has been dismissed by the Writ court by judgment and order dated 14.12.2015, wherein also it has been held that even if the additional 23 marks are awarded in favour of the appellant-petitioner, she would be well below the empanelled first and second candidates. Aggrieved by the said order, this appeal has been filed.

5. The submission of the learned counsel for the appellant is that a clear direction had been given in the order dated 12.8.2010 for reconsidering the cases of all the candidates as per the Guidelines of the Corporation, and by ignoring the Guidelines of the IRC, as there was no indication in the advertisement inviting applications that such Guidelines of IRC would also be considered. It is further submitted that instead of evaluation of marks with regard to the capacity of the candidate to provide infrastructure and facility, the case of the appellant-petitioner alone was considered, whereas the direction was to consider the cases of all the candidates under the Guidelines of the Corporation alone. It is also submitted that the appellant-petitioner was awarded 35 marks by the Interview Committee at the initial stage and subsequently, although the marks awarded by the onsite Inspection Committee were increased from ?0? to ?92? as per the Guidelines of the Corporation, but without inviting the appellant-petitioner for a fresh interview, the marks already awarded by the Interview Committee were reduced from 35 to 25. It is thus prayed by the learned counsel for the appellant that the order dated 24.5.2011 impugned before the writ court was arbitrary and not in consonance with the direction issued by the earlier Division Bench on 12.8.2010 in Writ Petition No. 14367 of 2009, and thus liable to be quashed.

6. Per Contra, Mr. Mukherji, learned Counsel for the Corporation has submitted that the case of the appellant-petitioner was earlier wrongly considered under the IRC Guidelines and after correcting the same, by applying the norms of the Corporation Guidelines alone, fresh marks have been awarded. It was initially contended by Mr. Mukherji that the cases of the other candidates were

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considered under the Corporation Guidelines alone and thus, they do not require any revaluation. However, on being confronted as to why different standards were initially adopted by the Selection Committee in the cases of different candidates by considering the cases of four other candidates as per the Corporation Guidelines alone, and by applying the IRC Guidelines in the case of the petitioner, learned counsel conceded that the IRC Guidelines were adopted in the case of all the candidates at the initial stage. Learned counsel made an attempt, but could not justify, that as per direction of this Court in the earlier writ petition vide order dated 12.8.2010 the cases of all the candidates were reevaluated. Though Mr. Mukherji relied on the last sentence of the impugned letter dated 24.5.2011 which states that there was no change in the empanelment of the first and second empanelled candidates, but the same does not disclose that the cases of all other candidates were also re-evaluated in terms of the order dated 12.8.2010.

There being a specific direction for re-evaluation of marks awarded to all the candidates, particularly under the heading of ?Capacity to provide infrastructure and facility?, the same apparently having not being done and only the case of the appellant having been reconsidered, we are of the opinion that the direction issued by order dated 12.8.2010 was not fully complied with. As the stand of the Corporation is that the norms of the IRC Guidelines were applied in the case of all the candidates at the initial stage, then there should have been fresh evaluation of marks of all the candidates by the Selection Committee, in accordance with the Guidelines of the Corporation alone, which has not been done. If the other submission of Mr. Mukherji is taken to be correct that at the initial assessment the Corporation Guidelines alone were adopted in the case of other four candidates and the IRC Guidelines adopted in the case of the appellant, then the entire selection process would be vitiated on account of different standards having been adopted for different candidates. However, we do not accept the later contention of Mr. Mukherji and go by the submission that at the initial stage, the IRC Guidelines were adopted for evaluation of marks in the case of all the candidates. That being so, fresh evaluation had to be carried out in respect of all five candidates, as per the Corporation Guidelines alone, and fresh merit list ought to have been prepared, which has clearly not been done. The case of the appellant petitioner alone has been reconsidered and admittedly discrepancies in awarding of marks to the appellant-petitioner have been found. The further submission of learned counsel for the appellant petitioner also has force that there could not have been reduction of marks awarded by the Interview Committee from 35 to 25, without the appellant-petitioner having been given an opportunity.

7. On account of aforesaid shortcomings and discrepancies having been found in the order/letter issued by the Corporation on 24.5.2011, and also keeping in view that the direction given by this Court in the earlier writ petition by order dated 12.8.2010 having not been complied with in letter and spirit, we are of the opinion that the selection list prepared, as well as the order subsequently passed

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on 24.5.2011, deserve to be quashed.

8. At this juncture, it is apt to mention the basic principles of law laid down by the apex Court in Raunaq International Ltd. v. IVR Construction Ltd., AIR 1999 SC 393:

"Where the decision-making process has been structured and the tender conditions set out the requirements, the court is entitled to examine whether these requirements have been considered. However, if any relaxation is granted for bona fide reasons, the tender conditions permit such relaxation and the decision is arrived at for legitimate reasons after a fair consideration of all offers, the court should hesitate to intervene."

The above decision clearly shows that the State or its instrumentalities have to deal with its power with regard to the award of contract in accordance with the principle enshrined in Article 14 of the Constitution of India.

It is well settled principle of law laid down by the apex Court time and again that the power of judicial review can be exercised in the matter of decision making process and not in the decision itself. If the decision is taken without there being any material on record or on the basis of irrelevant or extraneous consideration, it attracts the wrath of Article 14 of the Constitution of India and this Court is empowered to nullify such a decision.

Therefore, the principle of judicial review would apply to the exercise of contractual powers in order to prevent arbitrariness and favouritism. The scope of the judicial review is limited to see whether the selection is arbitrary or whether the selection has been made with mala fide intention. The Court is also entitled to dissect the process of decision making to satisfy itself whether any arbitrariness or discrimination has crept in the above process.

9. For the foregoing reasons, this Writ Appeal, as well as the Writ Petition, are both allowed. The order/letter dated 24.5.2011 as well as the earlier selection/ merit list for award of dealership for the location in question are quashed. The Respondent-Corporation is directed to prepare a fresh merit list in accordance with the directions issued in the order dated 12.8.2010 passed in W.P.(C) No. 14367 of 2009, as well as directions/observations made here in above, and evaluate the marks of all the candidates afresh under the heading of ?Capacity to provide infrastructure and facility? and prepare a fresh merit list in accordance with the Guidelines of the Corporation, as expeditiously as possible, preferably within a period of three months from today, and only thereafter award the Retail Outlet Dealership in question.

10. No order as to cost.

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