(2017) 03 AHC CK 0083

In the Allahabad High Court

Case No : Writ C. No. 14464 of 2015

Aurangjeb Khan APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 06-03-2017

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 3 AllLJ 270

Hon'ble Judges : V.K. Shukla and Ashok Kumar, JJ.

Bench : Division Bench

Advocate : H.P. Sahi, D.K. Singh and V.K. Singh, Advocates, for the Petitioner; A.S.G.I, Ishan Shishu, Sushil Kumar Rao, Upendra Upuadhya and Vikas Budhwar, Advocates, for the Respondents

Final Decision : Allowed

Judgement

1. Aurangjeb Khan is before this Court assailing the validity of the order dated 26.2.2015 passed by the Chief Regional Manager respondent no. 3 wherein petitioner has been informed that his candidature in question has been rejected on account of wrong declaration of fact.

2. Brief facts giving rise to the present controversy are that an advertisement was published on 8th September, 2013 in newspaper "Dainik Jagran" for allotment of L.P.G. Distributorship under Rajiv Ghandhi Rural L.P.G. Distribution Scheme. Petitioner applied in response to the aforesaid advertisement for grant of L.P.G. Distributorship. As per clause-12 of the advertisement petitioner had to furnish a detail in respect of the fact that as to whether he has been convicted by a criminal court in the cases involving moral turpitude or any charge has been framed by the Court against him. If answer is yes, then he should be treated to be disqualified for the purpose of grant of L.P.G. Distributorship. Petitioner was also required to file an affidavit mentioning therein as to whether he has been convicted in a criminal case involving moral turpitude or economic offence and the charge has been framed against him involving moral turpitude or economic

offence. In the application form, petitioner has mentioned "No" against the requirement to be furnished by him. The requirement was that if at all, the candidate has been convicted in a criminal case by the court in respect of moral turpitude, or the charge of economic offence has been framed by the Court. After verifying the application form, the Chief Regional Manager has rejected the claim of the petitioner by order dated 26.2.2015 by saying that the charge-sheet under Section 3, 4, 6, 7 of the Prevention of Immoral Traffic Act, 1956 has been taken cognizance of by the court and therefore, petitioner has furnished false information and hence his claim is treated to be rejected and the security deposit made by the petitioner is also forfeited accordingly.

3. Petitioner at this stage came to this Court wherein response in question has been filed on behalf of the Hindustan Petroleum Corporation. Counter affidavit has also been filed on behalf of Akhilesh Kumar Singh in whose favour subsequent allotment in question has been made. Rejoinder has been filed and thereafter the present matter is being taken up for final hearing and disposal.

4. Sri V.K. Singh, counsel for the petitioner submitted that the order dated 26.2.2015 passed by the Chief Regional Manager is based on wrong premises and the fact of the matter is that, at no point of time, any incorrect declaration has been made by the petitioner and, accordingly, the said order deserves to be quashed with the direction to consider the candidature of the petitioner on merits.

5. Sri Vikas Budhwar, Advocate, contended that rightful decision has been taken in the matter and no interference should be made by this Court.

6. Sri O.P. Singh, Senior Advocate assisted by Sri Upendra Upadhyaya, Advocate, on the other hand contended that newly impleaded respondents has already opened his agency and in view of this, no interference be made by this Court in this behalf.

7. Factual situation on which there is no dispute, that the petitioner had applied for consideration of his candidature for grant of L.P.G. Distributorship and as per clause 12 of the advertisement, the petitioner was obligated to furnish details to the fact as to whether he has been convicted by a criminal court in the case of involving moral turpitude or any charge has been framed by the court against him. The petitioner filed an affidavit mentioning "No" against the requirement to be furnished by him. This much is also reflected that the petitioner was selected but thereafter in verification proceeding, that has been so undertaken, it was reflected that against petitioner, a charge sheet bearing no. 453/13 dated 3.8.2013 under Section 3,4, 6 &7 of Prevention of Immoral Traffic Act, 1956 has been pending and in view of this, his candidature has been cancelled.

8. Candidature in question has been cancelled on the premises that petitioner has proceeded to make a wrong declaration whereas the fact of the matter has been that criminal case has been pending against him.

9. Clause 12 of the advertisement obligated the petitioner to disclose as to

whether he has been convicted by a criminal court in the cases involving moral turpitude or any charge has been framed by the court against him. This is accepted position that on the date when the petitioner has proceeded to fill up the form in question neither he had been convicted by criminal court in the case of involving moral turpitude nor any charge has been framed by the court against him. In such a situation, once the petitioner has proceeded to make declaration specifically as per clause 12 of the advertisement then merely because a case has been found to be pending against him, cant it be treated as a case of wrongful disclosure warranting cancellation of candidature.

10. The Apex Court in the case of Atar Singh v. Union of India & others, Special Leave Petition (C) No. 20525 of 2011 in reference of suppression of material information, has summarized the conclusions as follows :-

"30. We have noticed various decisions and tried to explain and reconcile them as far as possible. In view of aforesaid discussion, we summarize our conclusion thus:

(1) Information given to the employer by a candidate as to conviction, acquittal or arrest, or pendency of a criminal case, whether before or after entering into service must be true and there should be no suppression or false mention of required information.

(2) While passing order of termination of services or cancellation of candidature for giving false information, the employer may take notice of special circumstances of the case, if any, while giving such information.

(3) The employer shall take into consideration the Government orders/ instructions/rules, applicable to the employee, at the time of taking the decision.

(4) In case there is suppression or false information of involvement in a criminal case where conviction or acquittal had already been recorded before filling of the application/verification form and such fact later comes to knowledge of employer, any of the following recourse appropriate to the case may be adopted : -

(a) In a case trivial in nature in which conviction had been recorded, such as shouting slogans at young age or for a petty offence which if disclosed would not have rendered an incumbent unfit for post in question, the employer may, in its discretion, ignore such suppression of fact or false information by condoning the lapse.

(b) Where conviction has been recorded in case which is not trivial in nature, employer may cancel candidature or terminate services of the employee.

(c) If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature, on technical ground and it is not a case of clean acquittal, or benefit of reasonable doubt has been given, the employer may consider all relevant facts available as to antecedents, and may take appropriate decision as to the continuance of the employee.

(5) In a case where the employee has made declaration truthfully of a concluded criminal case, the employer still has the right to consider antecedents, and cannot be compelled to appoint the candidate.

(6) In case when fact has been truthfully declared in character verification form regarding pendency of a criminal case of trivial nature, employer, in facts and circumstances of the case, in its discretion may appoint the candidate subject to decision of such case.

(7) In a case of deliberate suppression of fact with respect to multiple pending cases such false information by itself will assume significance and an employer may pass appropriate order cancelling candidature or terminating services as appointment of a person against whom multiple criminal cases were pending may not be proper.

(8) If criminal case was pending but not known to the candidate at the time of filling the form, still it may have adverse impact and the appointing authority would take decision after considering the seriousness of the crime.

(9) In case the employee is confirmed in service, holding Departmental enquiry would be necessary before passing order of termination/removal or dismissal on the ground of suppression or submitting false information in verification form.

(10) For determining suppression or false information attestation/verification form has to be specific, not vague. Only such information which was required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to knowledge of the employer the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information as to a fact which was not even asked for.

(11) Before a person is held guilty of suppressio veri or suggestio falsi, knowledge of the fact must be attributable to him."

11. The Judgement of the Apex Court clearly reflects that for determining suppression or false information attestation verification form has to be specific, not vague. Only such information which required to be specifically mentioned has to be disclosed. If information not asked for but is relevant comes to the knowledge of the employer. the same can be considered in an objective manner while addressing the question of fitness. However, in such cases action cannot be taken on basis of suppression or submitting false information a to a fact which has not been even asked for. The case in hand also falls under this category inasmuch as the fact of the matter is that a charge sheet has been filed against the petitioner but equally true fact of the matter is that neither he has been convicted nor charges have been framed, thus, in such a situation, the petitioner cannot be held guilty for suppression or submitting false information as the petitioner was not at all obligated to disclose as to whether there is any criminal case pending against him or is under investigation.

12. Consequently, in the present case, once declaration had been made by the petitioner in the affidavit as per the requirement then based on the same, it could not have been said that the petitioner has suppressed and submitted false information as the said fact has not been asked for as to whether he is involved in a criminal case and case is pending. The petitioner has wrongly been held guilty of suppression of information and the said charge cannot be attributed to him.

13. In view of the above, the impugned order dated 26.2.2015 is quashed and set aside. But, we make it clear that it is always open to the Hindustan Petroleum Corporation to form opinion on the basis of subsequent information on the issue of suitability even if had not been asked for while addressing the question of grant of dealership.

14. In view of the above, the present petition stands allowed.