

(2017) 02 AHC CK 0046

In the Allahabad High Court

Case No : Civil Misc. Writ Petition (M/B) No. 2431 of 2016

Awadh Kumar Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 5 ADJ 119

Hon'ble Judges : Amreshwar Pratap Sahi and Sanjay Harkauli, JJ.

Bench : Division Bench

Advocate : Amar Pal Singh, Advocate, for the Petitioner; A.S.G., Manish Jauhari and R.K. Maurya, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

1. Heard Sri A.P. Singh, learned counsel for the petitioner and Sri Manish Jauhari for the Indian Oil Corporation.

2. This writ petition has been filed contending that the petitioner was at Serial No. 2 in the Panel that was prepared for the award of dealership for a Petrol Pump at Kurebhar, District Sultanpur. The candidate who was there at Serial No. 1 was subjected to scrutiny on account of large scale allegations of irregularities committed and in the instant case, it was alleged that the Chairman of the Selection Board had awarded marks in favour of the candidate at Serial No. 1 so as to obtain the dealership for his own son. The matter travelled up to the Supreme Court, the details whereof are not disputed between the parties and the Supreme Court after considering the report of the Committees ultimately held that the Four Public Sector Oil Companies shall take appropriate consequential action in the matter.

3. Sri A.P. Singh submits that the aforesaid direction of the Supreme Court did not allow the Indian Oil Corporation to scrap the entire panel inasmuch as there were no allegations against the petitioner who was at Serial No. 2. The allegation

of extraneous consideration was only against the candidate who was at Serial No. 1 and in the absence of any such cancellation of the entire empanelment, the respondents cannot refuse to award dealership to the petitioner who has a right of being considered and selected being placed at Serial No. 2. The impugned order dated 08.12.2015, therefore, has been questioned by the petitioner on the aforesaid grounds.

4. Sri Singh has also relied upon the document filed by the respondents particularly annexure-2 to the counter affidavit where there is an indication of a legal opinion to the effect that since there is no observation with regard to cancellation of the entire selection panel and the order is only in respect of cancellation of the allotment made in favour of the candidate at Serial No. 1, it is open to the Corporation to take appropriate consequential action, which according to Sri Singh, learned counsel for the petitioner would be to award the dealership to the person at Serial No. 2 in the panel.

5. The petitioner had earlier filed a writ petition No. 1890 of 2002 (MB) after all this had happened and the aforesaid facts were brought to the notice of this Court. The said writ petition was disposed of on 05.08.2015 by the following order:

"Heard learned counsel for the petitioner and Sri Manish Jauhari, as well as Sri Prashant Singh "Atal" learned counsel for the respondents.

By means of present writ petition, the petitioner has challenged the selection/allotment of respondent no.4 for the retail outlet dealership.

Learned counsel for the parties inform that in view of the decision rendered by the Supreme Court, the selection of respondent no.4 has been cancelled and therefore, the cause of the writ petition ceases.

Learned counsel for the petitioner submitted that the case of the petitioner may be considered.

Learned counsel for the respondents submits that since the entire selection has been cancelled, therefore, there is no question of consideration of the claim of the petitioner.

In view of the aforesaid facts and circumstances, we are of the view that cause of the petitioner challenging the selection of respondent no.4 has ceased. So far as the claim of the petitioner for his consideration for the dealership is concerned in case if right of the petitioner still survives, it is open to the petitioner to raise his claim before the appropriate authority and the same may be considered expeditiously in accordance to the law.

With the aforesaid direction, the writ petition stands disposed of."

6. Sri Singh taking the help of the aforesaid direction issued by this Court and the document filed as Annexure-2 to the counter affidavit contends that the entire panel has not been cancelled that is established and secondly, there is no

specific direction to cancel the entire empanelment, hence, it is open to the Corporation to consider the candidature of the petitioner.

7. Sri Manish Jauhari, on the other hand, for the Indian Oil Corporation contends that this matter of irregularity was also a matter of consideration by the Apex Court in the case of M/s. Bharat Petroleum Corporation Ltd. and Another v. Ramesh Chand Trivedi, in Special Leave to Appeal (Civil) No. 16474 of 2010, decided on 4th of October, 2010. The same judgment has also been relied upon by the learned counsel for the petitioner which has been annexed as Annexure-5 to the writ petition.

8. Sri Jauhari also submits that following the said ratio, the entire panel should be treated to have been cancelled and it is not open to the Corporation to award the dealership to the person who is at Serial No. 2.

9. Relying on the same judgment, Sri Singh submits that, that was a case where there was a specific policy decision taken and a decision was also taken to re-advertise the locations. It is in that context, the Apex Court came to the conclusion that the matter should be subjected to a fresh advertisement treating the entire panel to have been cancelled.

10. We have considered the aforesaid submissions and we are of the opinion that the decision of the Apex Court in the case of M/s. Bharat Petroleum Corporation Ltd. and Another v. Ramesh Chand Trivedi (Supra), the Apex Court has ruled as under :

"If a comparative assessment made by a Selection Board is vitiated, and the appellants decided to scrap the entire panel and readvertise the distributorship, the decision is not open to question. It cannot be contended that when the allotment in favour of the first person in the panel is set aside, the distributorship should automatically be allotted the eligible applicant who is shown as second in the panel. Where the allotment was cancelled on account of irregularity in selection and preparation of panel, the decision to have a fresh selection instead of using the panel which was found to be vitiated, does not call for interference by courts."

11. A perusal of the aforesaid ratio would leave no room for doubt that the Apex Court had considered the issue of a comparative assessment and had held that in such a selection where the irregularity is for extraneous consideration, it is not necessary to award the dealership to the person who is second in the panel for the reason that where the allotment is cancelled on account of irregularity in selection and preparation of the panel, the decision to have a fresh selection instead of using a panel which was found to be vitiated, deserves to be upheld.

12. We are of the opinion that the aforesaid ratio squarely applies on in the facts of the present case and therefore, we are unable to accept the contention that the petitioner should be awarded the dealership.

13. The writ petition, therefore, fails and accordingly dismissed.

14. However, at the same time, we direct the Indian Oil Corporation that in case the Corporation is still willing, it may proceed to re-advertise the site/location expeditiously and in that event, the petitioner's candidature will not be considered as ineligible on account of the cancellation of the empanellment in question.