
(2014) 05 MP CK 0159
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5139/2011

Badrilal Patidar

APPELLANT

Vs

Indian Oil Corporation Ltd. and Another

RESPONDENT

Date of Decision : 02-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 2 JLJ 385 : (2014) 5 MPHT 286 : (2014) 3 MPLJ 524

Hon'ble Judges : Prakash Shrivastava, J

Bench : Single Bench

Advocate : A.K. Sethi, Sr. Counsel and Shri Pushyamitra Bhargava, counsel,
Advocate for the Appellant; Yogesh Mithal, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Prakash Shrivastava, J.—This Writ Petition under Article 226 of the Constitution is directed against the Order dated 20th June, 2011 passed by the respondents cancelling the empanelment of the petitioner for allotment of retail outlet dealership.

2. In brief, the respondents had issued the advertisement dated 16/10/2009 inviting applications for allotment of retail outlet at "Tanodia" (on right hand side on Ujjain Kota Road), District Shajapur in open category. The petitioner had filed an application in pursuance to the advertisement on 10/12/2009 along with the relevant documents. The petitioner was called for the interview on 13/6/2010 and thereafter the results were declared and the petitioner was placed and empanelled at Sl. No. 1 in the list of selected applicants. Thereafter the petitioner had received the impugned communication dated 20/6/2011 cancelling the empanelment, therefore, the petitioner after making a representation to the respondents has approached this Court by way of the present writ petition.

3. The respondents have filed their reply stating that the petitioner along with other eligible candidates was interviewed by level two selection committee and

was placed at Sl. No. 1. It has further been stated that prior to issuance of the letter of intend, a field verification report was obtained to verify the information submitted by the petitioner in the application form and the field verification report was received on 10/8/2010 in which it was disclosed that the petitioner had submitted incorrect information in respect of his deposits in the current account in which instead of Rs. 82,388/- disclosed in the application, a balance of Rs. 77,153.61 was found on the date of submission of application. Accordingly, in terms of the Clause 10(h) and the declaration of the petitioner, the empanelment was cancelled.

4. Learned counsel for petitioner submits that the discrepancy in the current account to the extent of Rs. 5235/- was not in fact a misrepresentation, but it was a mistake and that even considering the said deficiency in the account the petitioner fulfills the eligibility requirement in terms of the advertisement, therefore, the petitioner's empanelment could not have been cancelled on that ground. He has further submitted that the petitioner's representation against the cancellation of empanelment has not been decided.

5. As Against this, learned counsel for respondents submits that it is a case of furnishing the incorrect information which affects the credibility of the petitioner and the empanelment has rightly been cancelled in view of Clause 10(h) of the advertisement as well as the undertaking which has been given by the petitioner. He has further placed reliance upon the various judgments of this Court as well as the Supreme Court in this case.

6. I have heard the learned counsel for parties and perused the record.

7. It is undisputed that in the panel which was prepared by the respondents on 13/7/2010, the petitioner was placed at Sl. No. 1 in the order of merit. It is also undisputed before this Court that the petitioner had submitted the application for empanelment in pursuance to the advertisement on 9/12/2009 disclosing that in his current account No. 00362000012025 the balance of Rs. 82,388/- was available. It is also undisputed that in terms of the requirement of the advertisement the petitioner was required to disclose the deposits in the account as on the date of the application. In the field investigation report, it was found that on the date of the application the balance amount in the said account was Rs. 77,153.61 instead of Rs. 82,388.61 as disclosed through the application. Therefore, there was a discrepancy of Rs. 5235/- in that account. This field investigation report has not been disputed by the petitioner but a plea has been raised that the mistake was unintentional and it was not misrepresentation.

8. Clause 10(h) of the advertisement dated 16th October, 2009 reads as under:-

9. The petitioner had submitted the application form (Annexure P/3) which contains the following undertaking by the petitioner:-

10. The similar issue had come up before the Supreme Court in the matter of Shiv Kant Yadav Vs. Indian Oil Corporation and others reported in (2007) 4 SCC

410 wherein the plea was raised that in the preliminary enquiry report the income of the petitioner was found as Rs. 1,64,000/- per annum vis-a-vis Rs. 84,000/- disclosed in the application form whereas the criteria was the income should not be above rupees two lakh in the financial year. Therefore, even after the discrepancy, the eligibility criteria was satisfied. The Supreme Court considering the said plea in the matter of Shiv Kant Yadav (supra) and taking note of the declaration and undertaking has held as under:-

7. The decision not to allot the dealership to the appellant was on account of the fact that he did not correctly disclose the income and thus violated his own declaration in his undertaking incorporated in the application.

8. With reference to the application form and the undertaking the High Court held that it was obviously clear that the income was not fully disclosed. The plea that the income was less than rupees two lakhs, did not materially affect the eligibility of the appellant, was not accepted and accordingly, the writ petition was dismissed.

9. In support of the appeal, it is submitted that there was no mens rea and mere mistake and unintended omission cannot be a ground for cancellation. The income of S.K. Fertilizers was not necessary to be disclosed. In the affidavit before the Selection Board it was clearly stated that S.K. Constructions may have come into existence in 2002-2003.

10. Learned counsel for the respondents on the other hand supported the order saying that once there is suppression in view of the undertaking the allotment was to be cancelled.

11. The fact of making a wrong statement in the application form and the effect of the undertaking though rendered in different context in *Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav*, ; *The State of Andhra Pradesh and Another Vs. T. Suryachandra Rao*, and *Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others*, need to be noted.

14. There was a requirement to disclose the true and correct fact which does not appear to have been done.

15. The undertaking reads as follows:

That I am fully aware that Indian Oil Corporation (name of the Oil Company) under its policy will not appoint me as their dealer/distributor, if I am employed. I shall have to resign from the service and produce proof of acceptance of my resignation by my employer to Indian Oil Corporation Ltd. (Name of the Oil Company) before issuance of Letter of Appointment for the dealership/distributorship.

That if any information/declaration given by me in my application or in any document submitted by me in support of my application for the award of SKO/LDO dealership/distributorship or in this undertaking shall be found to be untrue

or incorrect or false Indian Oil Corporation (name of the Oil Company) would be within its rights to withdraw the letter of intent/terminate the dealership/distributorship (if already appointed) and that, I would have no claim, whatsoever, against Indian Oil Corporation (name of the Oil Company) for such withdrawal/termination.

16. In view of the undertaking that if any factual misstatement or declaration is made that permits cancellation of the allotment. The order of the High Court does not suffer from any infirmity to warrant interference. The appeal is dismissed with no order as to costs.

Thus, in the above judgment, the similar plea raised before the Supreme Court in respect of the unintentional omission has been rejected.

11. Similar issue had come up before this Court in the matter of Rakesh Dora Vs. Union of India and others in WP No. 342/2014 and this Court vide order dated 3/2/2014 has held as under:-

8. In the field verification report dated 14/10/2013 (Annexure R/5), it was found that on 30.12.2011 i.e. the date of submitting the application for grant of distributorship, the petitioner did not have a sum of Rs. 11,25,987/- in his Bank account but had only Rs. 59,450/- in his Bank account. The details of the Bank account of the petitioner are on record. It is not disputed by the counsel for the petitioner that as on 30.12.2011 the petitioner did not have the balance of Rs. 11,25,987/- in his account, but had the balance of only Rs. 59,450/- in his account. The contention of the counsel for the petitioner that the application for distributorship was not submitted by the petitioner on 30.12.2011 but on a prior date when he was having the sufficient amount in his account, can not be accepted in view of the petitioner's own case in paragraph 5.2 of the Writ Petition, wherein he has admitted that the application was submitted by the petitioner on 30.12.2011. Even otherwise, the communication dated 23.1.2012 (Annexure P/3) sent by the respondent to the petitioner as also the petitioner's own representation dated 19.9.2013 and filed verification report (Annexure R/5), reveal that the application was submitted by the petitioner on 30.12.2011.

9. The above analysis clearly indicates that the petitioner had furnished incorrect information in the Column 11 of the application dated 30.12.2011 that he had balance of Rs. 11,25,987/- in his Saving Bank account.

10. The Supreme Court in the matter of Shiv Kant Yadav Vs. Indian Oil Corporation and Others, has approved the judgment of the High Court, wherein the High Court had refused to interfere in the cancellation of allotment when true and correct facts were not disclosed inspite of the undertaking that all particulars supplied were true and correct. It has been held by the Supreme Court that in view of the undertaking and on account of the factual misstatement or declaration, the cancellation of allotment is valid.

12. This Court in the said judgment has noted the earlier judgments in the

matter of Pankaj Mantri Vs. Indian Oil Corporation and Another and Smt. Anju Khandelwal Vs. Indian Oil Corporation Ltd. as under:-

11. The similar issue had come up before this Court in the matter of Pankaj Mantri Vs. Indian Oil Corporation and Another in W.P. No. 2657/2012 decided by order dated 2.4.2013, wherein the Single Bench of this Court placing reliance upon the judgment in the matter of Shiv Kand Yadav (supra) has held as under:-

13. In the aforesaid case, the eligibility criteria reflected that a candidate should not have income of Rs. two lacs in the last financial year. The person selected was having income of Rs. 84,000/- against a sum of Rs. 1,64,000. Meaning thereby, misstatement of fact was not affecting the eligibility criteria. Even in those circumstances, the Apex court has held that cancellation based upon the misstatement of fact to be justified.

14. Resultantly, keeping in view the judgment delivered by the apex court, once there is a misstatement of facts on the part of the petitioner, the question of selection of the petitioner in the peculiar facts and circumstances of the case does not arise.

16. This court in the case of Smt. Anju Khandelwal Vs. Indian Oil Corporation Ltd., Writ Petition No. 999/2004 decided on 07-03-2005 in paragraphs 12, 13 and 14 has held as under:-

12. In my humble opinion the declaration given is to say the least makes no sense. It is absurd and hence liable to be rejected. This only shows how causally and in mechanical way the petitioner has signed it little realizing as to what she has to sign. The object of making declaration is solemn one. It has a definite purpose behind it. It is the duty of every applicant to give proper and correct disclosure of his/her status and details which concerns him/her. The applicant must realise the consequence of wrong disclosure if discovered at a later stage. It is really unfortunate that even the respondent did not take note of this vital defect in the declaration submitted by the petitioner.

13. In view of the aforesaid discussion or I may say fatal infirmities in the application submitted by the petitioner the respondent was justified in not entraining it and further justified in rejecting the application. No arbitrariness can be noticed in the action of the respondent while dealing with the case of petition so as to empower this court to interfere in writ jurisdiction.

14. As a consequence the petition fails and is hereby dismissed with no order as to costs.

15. In the aforesaid case, on the basis of misstatement of facts, the candidature of Smt. Anju Khandelwal was cancelled and the same was upheld by this court. Resultantly, keeping in view the judgment delivered by this court also the question of interference does not arise.

In the matter of Rakesh Dora (supra) finally it has been held by this Court as

under:-

13. Even otherwise, it is the settled position in law that the judicial review of the administrative action, is limited to decision making process. The impugned order dated 6.1.2014 has been passed by the respondents after giving an opportunity of hearing to the petitioner. The facts on record also indicate that the respondents had considered the petitioner's candidature after the earlier selected candidate was found to be lacking in the eligibility conditions. There is no material to show any bias or malafides against the concerned authority of the respondent-Corporation. It is a simple case where the facts disclosed by the petitioner in respect of the eligibility conditions in the application, have been found to be incorrect and false and the candidature has been rejected in terms of the conditions of the guidelines and the declaration given by the petitioner himself.

13. The Division Bench in WA No. 117/2014 in the matter of Rakesh Dora (supra) by order dated 6/3/2014 while rejecting the writ appeal has held as under:-

10. In the aforesaid circumstances, even if the application of the appellant was not misrepresentation, it certainly contains incorrect information.

14. In view of the above judgment, even if the misrepresentation or furnishing of incorrect information does not affect the eligibility condition, then also it was open to the respondents to reject the candidature in view of the discrepancy found in the material information disclosed in the application and in the Field Information Report in view of the undertaking which is furnished and in view of the Clause 10(h) of the advertisement, and no error can be found in the impugned decision of the respondents in this regard.

15. Though the petitioner has filed the clarificatory circular dated 21st December, 2012 but it has not been disputed before this Court that by the subsequent circular this clarificatory circular has been made applicable with prospective effect and since the petitioner's application was rejected prior to the issuance of the circular, therefore, it has no effect on the petitioner's case.

16. In view of the above analysis, I am of the opinion that the impugned order passed by the respondents does not require any interference by this Court. The writ petition is devoid of any merit which is accordingly dismissed.