

(2013) 07 MP CK 0327

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3652 of 2012

Gajendra Singh

APPELLANT

Vs

Manager Indian Oil Corporation Ltd. and Others

RESPONDENT

Date of Decision : 17-07-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 323, 34, 341

Citation : (2013) 07 MP CK 0327

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : M.L. Pathak, for the Appellant; Yogesh Mittal, Learned Counsel for the Respondent Nos. 1 to 3 and Shri Siddharth Jain, Learned Counsel for the Respondent No. 4, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed this present petition being aggrieved by the order dated 20th March, 2012 (Annexure-P/1), by which the application of the petitioner for allotment of Retail Outlet Kisan Seva Kendra has been cancelled. The contention of the petitioner is that an advertisement was issued in Dainik Bhaskar on 23.9.11 for allotment of Retail Outlet and the petitioner was called for interview, which took place on 19.1.12. The petitioner has further stated that subsequently his candidature has been cancelled vide impugned order dated 20.3.2012 on the ground that while conducting field verification certain discrepancies were noticed by the Oil Company in respect of bank accounts. The petitioner's contention is that the statement given by him in the application form was based upon the statement furnished by the bank and therefore, the mistake took place inadvertently, hence the cancellation is bad in law.

2. On the other hand, learned counsel appearing for the Oil Company has vehemently argued before this Court that almost in an identical matter i.e. W.P. No. 2657/12 (Pankaj Mantri Vs. Indian Oil Corporation and one another) this

Court has upheld the cancellation of the candidature in similar circumstances, where a candidate mentioned incorrect amount in respect of financial capability in the application form. It is an admitted fact that following discrepancies were noticed in the Field Verification Report:-

3. Not only this, marks have been allotted on the basis of amount claimed in the notification. This Court in the case of Pankaj Mantri (Supra) in paragraphs 8 to 17 has held as under:-

8. The respondent Indian Oil Corporation after the petitioner was placed in the select list has carried out a field investigation and as per the field investigation report, against the amount of Rs. 3 lacs only Rs. 9,675/- was found to be available on 31-10-2011. Similarly, against an amount of Rs. 14,867/-, a sum of Rs. 4,867/- was available in the account of the petitioner. It is pertinent to note that in the advertisement itself in Clause-10 (h) it has been categorically stated that in case there is any misrepresentation of facts, the Oil Company shall be free to cancel candidature of the candidates. Clause-10(h) of the Advertisement reads as under:-

9. Not only this, the petitioner while submitting his application form has submitted an undertaking and the same reads as under:-

I hereby verify that what has been stated above is true to the best of my knowledge and belief and nothing material has been concealed there from. If any information/declaration given by me in my application or in any document submitted by me in support of application for the award of the dealership or in this affidavit shall be found to be untrue or incorrect or false, Indian Oil Corporation Ltd. would be within its rights to withdraw the letter of intent/terminate the dealership (if already appointed) and that I would have no claim, whatsoever, against Indian Oil Corporation Limited for such withdrawal/termination. Solemnly affirmed and declared before me.

10. This court has carefully gone through the statement of various accounts submitted by the petitioner and also the field investigation report. The following mis-statement of fact was done by the petitioner in respect of two bank accounts:-

Keeping in view the aforesaid clause mentioned in the application form and in advertisement, the Indian Oil Corporation has taken a decision to cancel the candidature of the petitioner.

11. The apex court in the case of Shiv Kant Yadav Vs. Indian Oil Corporation and Others, was dealing with cancellation done by the Oil Company in almost similar situation. Paragraphs -5, 6, 7, 12, 14, 15 and 16 of the aforesaid judgment reads as under:-

5. Appellant in the Writ Petition took the stand that as per the enquiry report the total income of the appellant had been fixed at Rs. 1,64,000/- per annum vis-a-vis Rs. 84,000/- as disclosed in his application form. The discrepancy has no

bearing as the eligibility criteria was that the income should not be above rupees two lakhs in the last financial year. The complaint made by Hari Om Singh against Smt. Usha was pending and no LOI could be issued without holding an enquiry.

6. The Corporation took the stand that the Executive Summary Report discloses that incorrect information had been given and it has been specifically made clear that any concealment of facts/mis-information would result in rejection of the application.

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.

12. In *Kendriya Vidyalaya's* case (supra) it was noted as follows:-

11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34, IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and

13. Even otherwise if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him

is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned counsel for the respondent that as per para 9 of the memorandum, the termination of service was not automatic, cannot be accepted.

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 mis-statement 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.

12. 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, mis-statement of fact was not affecting the eligibility criteria. Even in those circumstances, the Apex court has held that cancellation based upon the mis-statement of fact to be justified.

13. 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.

14. This court in the case of Smt. Anju Khanelwal 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 mis-statement 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.

16. Learned counsel for the petitioner has placed heavy reliance upon the judgment delivered by the Division Bench of Punjab and Haryana High Court in the case of Indian Oil Corporation Ltd., and others Vs. Kalu Ram and others in LPA No. 1083 of 2011 (O & M). In the aforesaid case, the candidate has declared that a sum of Rs. 6,400/- was lying in his bank account on 26-03-2009, whereas, as per investigation report a sum of Rs. 1,320/- was available in his bank account. Division Bench after comparing the marks allotted to the petitioner and to other candidates, arrived at the conclusion that the discrepancy will not affect the process of selection, as there was a huge difference of eight marks in respect of two candidates. The judgment relied upon by the learned counsel is distinguishable on facts and in the present case no such comparison can be done as the petitioner is the only person placed in the select list, hence, the judgment relied upon by the learned counsel for the petitioner is of no help to the petitioner, in the peculiar facts and circumstances of the case, specially in light of the judgment passed by the apex court in the case of Shiv Kant Yadav (supra).

17. Resultantly, this court does not find any reason to interfere with the action and the consequential orders passed by the Chief Divisional Retail Sales Manager, Indian Oil Corporation Ltd., dated 17-02-2012.

The writ petition is accordingly dismissed.

No order as to costs.

4. Resultantly, in light of the judgment delivered by the Apex Court in the case of Shiv Kant Yadav Vs. Indian Oil Corporation and Others, as well as in light of the

judgment delivered almost in an identical case Pankaj Mantri (Supra) as there was a discrepancy in respect of the amount mentioned in the application form has reflected in the earlier paragraph, this Court is of the considered opinion that the Oil Company was justified in cancelling the candidature of the petitioner as well as interview to the extent the petitioner is concerned. This Court does not find any reason to interfere in the matter. Resultantly, the writ petition is dismissed. No order as to costs.