
(2011) 04 PAT CK 0298

In the Patna High Court

Case No : Letters Patent Appeal Nos. 634 and 672 of 2010

Hindustan Petroleum Corporation Ltd. and Others

APPELLANT

Vs

Abhishek Kumar and Another

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Citation : (2011) 04 PAT CK 0298

Judgement

Sudhir Kumar Katriar, J.—These two appeals under clause 10 of the Letters Patent of the High Court of Judicature of Patna raise grievances with respect to the judgment dated 25.02.2010, passed by a learned single Judge of this Court on the two writ petitions with respect to allotment of L.P.G. distributorship, whereby the order dated 3.9.2009 of the appellant herein, cancelling the candidature of Abhishek Kumar, has been set aside. The learned single Judge has also set aside the Letter of Intent issued in favour of Maruti Construction Private Limited, and has further directed for issuance of the same in favour of Abhishek Kumar. LPA No. 672 of 2010, arising out of CWJC No. 15113 of 2009.

A brief statement of facts essential for the disposal of the appeal may be indicated. Hindustan Petroleum Corporation Limited (hereinafter referred to as "the Corporation"), issued an advertisement which had appeared in the local dailies on 17.10.2007, inviting applications for grant of LPG distributorship for 13 locations including the one in question, namely, Hajipur. We shall confine ourselves to the selection process with respect to the distributorship for Hajipur. Out of altogether 84 candidates, respondent No. 1 (Abhishek Kumar), respondent No. 2 (Maruti Construction Pvt. Ltd.), and one Rameshwar Prasad Choudhary, (the petitioner in the analogous CWJC No. 11413 of 2009, giving rise to the analogous LPA No. 634 of 2010), were amongst the applicants. After completion of the selection process, final results were published on 29.3.2008. Respondent No. 1 was at Sl. No. 1, respondent No. 2 was at Sl. No. 2, and Rameshwar Prasad Choudhary was at Sl. No. 3, of the merit list. 1.1 Rameshwar Prasad Choudhary filed an application before the Corporation challenging the correctness of evaluation of the different candidates. This led to a deeper

scrutiny of the matter as a result of which the Corporation issued the impugned communication dated 3.9.2009, to respondent No. 1, informing him that in view of re-evaluation, he had lost his position in the merit list. The particulars and the documents furnished by him had been found to be incorrect, and, in gross violation of the terms and conditions of selection and the undertaking given by him in his application form. Consequently, respondent No. 2 gained precedence over him and found place at No. 1 of the merit list.

1.2 Respondent No. 1 challenged the same by preferring the aforesaid CWJC No. 15113 of 2009 (Abhishek Kumar v. Hindustan Petroleum Corporation & Ors.), and Rameshwar Prasad Choudhary preferred the analogous CWJC No. 11413 of 2009 (Rameshwar Prasad Choudhary v. Hindustan Petroleum Corporation & Ors.), both of which were heard together and disposed of by the learned single Judge by a common judgment. The learned single Judge has allowed CWJC No. 15113 of 2009, has set aside the impugned order dated 3.9.2009, and has directed the Corporation to issue the letter of intent in favour of respondent No. 1. CWJC No. 11413 of 2009 has been dismissed. Hence these two appeals at the instance of the Corporation as well as the Company.

2. We have perused the materials on record and considered the submissions of learned counsel for the parties. The basis of the order is that respondent No. 1 had made incorrect declaration about his financial capability. He had furnished security by providing fixed deposit receipts some of which were in the joint names of his mother and unmarried sister. The learned single Judge has held that respondent No. 1 had not made false or incorrect declaration, and the impugned order was a contrivance on the part of the appellant to disqualify respondent No. 1. In order to consider this question, we should first of all notice the definition of "family unit", incorporated in the advertisement, the official English version of which is reproduced hereinbelow:

Family Unit in case of married person/application shall consist of individual concerned, his/her spouse and their unmarried son(s)/daughter(s). In case of unmarried person/applicant, "Family Unit" shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s).

In view of the position that this condition was incorporated in the advertisement, meant that it was to the knowledge of all concerned, and was meant for strict compliance. It was not confined to the brochure or the guidelines of the appellant that an applicant may not have been aware of.

3. Respondent No. 1 had furnished the following 10 fixed deposit receipts of nationalized banks:

(i) Four FDRs. dt. 18.10.96, in the joint names of the mother (Meena Gupta), and the unmarried sister (Neetu Kumari), the total maturity value of which was Rs. 87,376/-.

(ii) One FDR dated 12.8.98, in the name of the mother, maturity value being Rs.

2,09,573/-.

(iii) One FDR dt. 28.12.2011, in the joint names of the mother and the unmarried sister, maturity value of which was Rs. 2,00,000/-.

(iv) Two FDRs dt. 1.12.2003, in the name of the mother, the maturity value of which was Rs. 12,942/-.

(v) Two FDRs dt. 21.7.2005, in the joint names of the mother and the sister, maturity value of which was Rs. 1,34,534/-.

Perhaps respondent No. 1 had also furnished two FDRs of Sahara in the name of Meena Gupta, on which learned counsel for the parties have not placed any emphasis, and is out of our reckoning. It is thus evident that out of the 10 fixed deposit receipts, six were in the joint names of the mother and the unmarried sister. It is further relevant to notice at this stage that the advertisement was published on 17.10.2007, and 14.11.2007 was the last date for submission of the application. It is further relevant to state that the sister got married on 30.7.2005. Photocopies of the fixed deposit receipts are on record, and it appears that the name of Neetu Kumari was expunged from the fixed deposit receipts after the last date for submission of the application. This has to be read with the declaration made by respondent No. 1 in his application, a photocopy of which is on record, that the aforesaid fixed deposit receipts which were really in the joint names of the mother and the unmarried sister, have been declared to be in the exclusive name of the mother. Paragraph 16 of that application is the declaration by respondent No. 1 that any incorrect or false information or misrepresentation shall incur disqualification from consideration. It is thus evident that respondent No. 1 did not measure up to the condition prescribed for consideration, who made false declaration about the financial security, and it was open to the appellant to disqualify respondent No. 1 from consideration. The appellant did not go to the length of disqualifying him outright, but proceeded to reassess allotment of marks as per the prescribed procedure which brought him down to the fifth or sixth position. This was entirely attributable to respondent No. 1, and we do not find scope for any harsh observation against the appellant inasmuch it did not go to the length of disqualifying him outright and at the thresh-hold. We do not find fault with the impugned order. We, therefore, disagree with this part of the order of the learned single Judge.

4. Learned counsel for the appellant has rightly relied on the following observation of the Supreme Court in A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, (Para 8 of AIR)

7. We are unable to accept the contention of the learned counsel for the first respondent. As to purpose for which the information is called for, the employer is the ultimate judge. It is not open to the candidate to sit in a judgment about the relevance of the information called for and decide to supply it or not. There is no doubt that the application called for full employment particulars vide column 11. Similarly, Annexure III contained an express declaration of not working in any

public or private employment. We are also unable to accept the contention that it was inadvertence which led the first respondent to leave the particulars in column 11 blank and make the declaration of non-employment in Annexure III to the application. The application form was filled on 24.7.1909, the examination was held on 24.10.1999, and the interview call was given on 31.1.2000. At no point of time did the first respondent inform the appellant Commission that there was a bona fide mistake by him in filling up the application Form, or that there was inadvertence on his part in doing so. It is only when the appellant Commission discovered by itself that there was suppressio veri and suggestio falsi on the part of the first respondent in the application that the respondent came forward with an excuse that it was due to inadvertence. That there has been suppressio veri and suggestio falsi is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence is unacceptable. In our view, the appellant was justified in relying upon the ratio of Kendriya Vidyalaya Sangathan and contending that a person who indulges in such suppressio veri and suggestio falsi and obtains employment by false pretence does not deserve any public employment. We completely endorse this view.

5. Learned counsel for the appellant has also rightly relied on the following observations of the Supreme Court in B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, (Para 68 of AIR & AIR SCW)

66. We are also not shutting our eyes towards the new principles of judicial review which are being developed; but the law as it stands now having regard to the principles laid down in the aforementioned decisions may be summarized as under:

- (i) if there are essential conditions, the same must be adhered to;
- (ii) if there is no power or general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;
- (iii) if, however, a deviation is made in relation to all the parties in regard to any such conditions, ordinarily again a power of relaxation may be held to be existing;
- (iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;
- (v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;

(vi) the contractors cannot form a cartel. If despite the same, their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority;

(vii) where a decision has been taken purely on public interest, the court ordinarily should exercise judicial restraint.

Applying these principles of law to the facts and circumstances of the case in hand, the Supreme Court has observed that in such commercial matters, the essential conditions must be adhered to. In the absence of any power of general relaxation, there shall be no relaxation of any condition, and the principle of strict compliance will be applied.

6. We should also notice the judgment of the Supreme Court in *M/s. Poddar Steel Corporation Vs. M/s. Ganesh Engineering Works and others*, relied on by learned counsel for respondent No. 1. That was a case of award of Government contract by auction sale. The auction notice prescribed that the earnest money has not been deposited according to the condition laid down in the tender notice, Therefore, the appellant was disqualified. The Supreme Court examined the matter and observed that the earnest money had to be deposited either in cash or by demand draft drawn on State Bank of India. The appellant being the highest bidder instead deposited the; earnest money by certified cheque of Union Bank, another nationalized Bank. The Supreme Court considered it to be a hyper-technical approach in the peculiar facts and circumstances of the case and observed that technical irregularity of little or no significance can be waived in appropriate cases. The appeal was, therefore, allowed. It appears to us that the objection taken by the appellant in the present case is not a hyper-technical approach, but was compliance of widely publicized terms and conditions for selection. The case is really covered by the observations of the Supreme Court in *B.S.N. Joshi & Sons Ltd. (supra)*, that the essential conditions for allotment in such commercial matters must be adhered to.

7. The learned single Judge has also discussed and reached the conclusion that the candidature of respondent No. 2 suffered from serious infirmities, inasmuch as it had furnished security in the shape of immoveable property which were really not in its name. The learned single Judge failed to notice that respondent No. 2 is a private limited company, and R.P. Coal Storage-is one of its units. The latter has no separate existence from the former. This position is borne out by the documentary evidence placed on record by respondent No. 2 herein by means of supplementary affidavit sworn on 23.3.2011, and is placed on record in the analogous LPA No. 634 of 2010. Those are photocopies of registration with the Ministry of Agriculture, Department of Rural Development, Directorate of Marketing and Inspection, Govt. of India, as well as the certificate of incorporation under the Companies Act.

8. Annexure-10 to the analogous LPA No. 634 of 2010 is a photocopy of the registered deed of absolute sale from one Indradeo Choudhary, in favour of

respondent No. 2 with respect to the land it has offered to run the business. Annexure-10/1 is the lease deed from, one Rajendra Rai, in favour of respondent No. 2, for a period of 15 years, which respondent No. 2 has offered to the appellant to run its business.

9. We are satisfied that the land offered by respondent No. 2 to run its business in the event of grant of distributorship was free from any defect to which is added the satisfaction of the appellant. It is the appellant who is doing business with the distributors and, therefore, satisfaction of the appellant in such commercial matter is of high value and importance. We are of the view that, in such commercial matters, no mindful organization shall normally engage itself in acts of favouritism by sacrificing its commercial interest. In other words, the observation of the Supreme Court in A.P. Public Service Commission Vs. Koneti Venkateswarulu and Others, , applies with greater force in the present case. This is not to suggest that this Court shall not examine and nullify cases of favouritism or arbitrariness. But no such case is made out here. We do not think that, in the facts and circumstances of the case, a case of favouritism or arbitrariness against the appellant has been made out.

10. We disagree with the order of the learned single Judge. We uphold the impugned order dated 3.9.2009. LPA No. 672 of 2010 is accordingly allowed, and the connected CWJC No. 15113 of 2009 is dismissed.

11. We now take up LPA No. 634 of 2010, which arises out of CWJC No. 11413 of 2009. Respondent No. 2 of the aforesaid LPA No. 672 of 2010 has preferred this appeal against the same judgment of the learned single Judge. In view of the success of LPA No. 672 of 2010, the present LPA No. 634 of 2010 automatically succeeds, and CWJC No. 11413 of 2009 is dismissed. In the result, LPA No. 672 of 2010, as well as LPA No. 634 of 2010, are allowed. In the facts and circumstances of the case, there shall be no order as to costs.