

(2018) 09 J&K CK 0063

In the Jammu And Kashmir High Court

Case No : Letter Patent Appeal (OW) No. 32 Of 2018, Caveat No. 2362 Of 2018

Indian Oil Corporation Ltd & Ors @APPELLANT@Hash Mandeep Singh And Ors

Date of Decision : 25-09-2018

Acts Referred:

Citation : (2018) 09 J&K CK 0063

Hon'ble Judges : Gita Mittal, J;Dhiraj Singh Thakur, J

Bench : Division Bench

Advocate : Ajay Kumar Gandotra, B.S Salathia, Rakesh Sharma

Final Decision : Dismissed

Judgement

Caveat No. 2362/2018:

1. The Caveator is represented and heard. Caveat No. 2362/2018 shall stand discharged.

LPAOW No. 32/2018 (in LPAOW No. 20/1995) & IA No. 1/2018:

1. A two fold challenge is placed before us to the impugned judgment dated 22.02.2018 passed in OWP No.1848/2017 whereby the candidature of the private respondent for grant of rural retail outlet dealership at location Ramgarh, Block and Tehsil Vijaypur District Samba, was rejected.

2. The learned Single Judge has harmoniously interpreted and construed the relevant provisions of Clause V of the Brochure and has concluded that as per Clause V of the Brochure, the candidate was required to possess sufficient funds as on the cut-off date for his candidature to be valid.

3. The factual narration giving rise to filing of the present appeal is within a narrow compass and to the extent necessary, is noted hereafter. An Advertisement Notice dated 28.06.2014 was published by respondent No. 2 in the daily newspaper-Daily Excelsior by which applications stood invited for KSK rural outlet dealership for various locations in the State under various categories. In response thereto, the private respondent herein on 24.07.2014 submitted an

application for grant of dealership in respect of the location situated at Ramgarh, Tehsil Vijaypur, District Samba under the 'Other Backward Category'. The said application was accompanied by an affidavit dated 23.07.2014.

4. It appears that the candidature of the private respondent herein was rejected by a communication dated 20.03.2015 on the ground that the requisite funds were not available in his account. This rejection was challenged by the respondent herein by way of filing OWP No.622/2017. The said writ petition was disposed of by a learned Single Judge of this Court by an Order dated 02.06.2017 with a direction to the competent authority to grant consideration to the application of the respondent and to decide the same after affording opportunity of hearing to the respondent and till such time, status quo was directed to be maintained. In compliance of the order, the respondent was heard on 20.07.2017. However, by an order dated 26.10.2017, the candidature of the respondent was once again rejected. Aggrieved by the rejection, the respondent filed OWP No.1848/2017, which has been allowed by the impugned order dated 20.02.2018, which is assailed before us.

5. We find that so far as the rejection of the candidature of the respondent is concerned and also the ground pressed by the appellants before us to support the rejection, only one submission was pressed before the learned Single Judge. In para 6 of the impugned order, the learned Single Judge has summed up the grounds on which the appellant had defended the cancellation. It was submitted before the learned Single Judge that the requirement of availability of adequate funds have to be ascertained on the date of filing of the affidavit; that before 23.07.2014 (the date of the respondent's affidavit), only an amount of Rs. 82,129/- was lying in the account and that thereafter, the respondent has deposited an amount of Rs. 13,29,129.60 on 23.07.2014, which amount, was reflected in the account of the respondent on 24.07.2014. It was based on this submission alone that the appellant defended its rejection of the respondent's candidature.

No other ground was pressed in opposition to the writ petition.

6. So far as the first submission regarding the date on which the availability of adequate funds by a candidate is concerned, learned Single Judge has extracted Clause V of the Brochure issued by the appellant. For expediency, we extract the relevant provision hereunder,

"All valuation certificates should be for the assets held on any date after the date of advertisement. The valuation certificate is to be obtained either from a Chartered Accountant or Depository Participant, as applicable.

Only 60 % of the certified value (for Shares, Mutual funds and Bonds) will be considered for the purpose of eligibility.

The above details are to be given in the application form by the applicant supported by copies of relevant documents. The eligibility would be determined

based on the declaration given in the application and relevant Clause of the affidavit (Appendix XA/XB as applicable) regarding the same. The funds mentioned in the application form should be available with the applicant as on the date of affidavit.

During fieldverification availability of fund as on cut-off date of submission of application are found to be less than the funds required for eligibility, candidature of the applicant will be cancelled."

(Emphasis by us)

7. The learned Single Judge has noted, and in our view, rightly so, that the affidavit regarding the funds which had to be furnished to the Indian Oil Corporation, has to be submitted along with the application form, which is deposited by a candidate.

8. The above extract of the Brochure clearly stipulates that the verification of availability of the funds would be as "on cut off date of submission of application".

9. The affidavit which is required to be furnished is merely one of the relevant documents which has to be submitted with the application form. Even so far as the requirement of field verification is concerned, it is clearly stipulated that the "cut-off date of the submission of the application", when the availability of funds would be verified.

10. The learned Single Judge has harmoniously read the stipulation in the Brochure and has observed that though the Brochure provides that the funds mentioned in the application form should be available with the application on the date of the affidavit, however, at the same time, it has clearly been provided that whenever the available funds, as closing balance "on the cut off date of submission of the application" are found to be less than the funds required for eligibility, candidature of the applicant will be cancelled.

11. In our view, the findings of the learned Single Judge that the Clauses in the Brochure have been read harmoniously cannot be faulted any legal tenable ground. It cannot be disputed that so far as the cancellation or rejection of an application on the ground of non-availability of funds is concerned, the requirement of the availability of funds has to be tested on the date of the application, which in the instant case was 24.07.2014.

12. Mr. B.S Salathia, learned senior counsel appearing for the private respondent has pointed out that in the instant case, the cut off date for submission of application form as per the Brochure issued by the appellant herein was 28.07.2014.

13. The Indian Oil Corporation has rejected the application of the private respondent on the only ground that the affidavit of the respondent which was submitted on 24.07.2014 with the application, was sworn on 23.07.2014 and on that date, the applicant did not have the requisite funds. We, however, find that

the appellants have themselves admitted before the learned Single Judge as narrated in para 6 of the order that the respondent had "deposited an amount of Rs. 13,29,129.60 on 23.07.2014", which cannot be disputed that this was well within the cutoff date i.e., 28.07.2014.

14. In this background, we see no reason to disagree the view which has been taken by learned Single Judge which is premised on the categorical submission made by the respondents before the Court, as has been noted in para 6 of the impugned judgment dated 20.02.2018.

15. Mr. Ajay Kumar Gandotra, learned counsel appearing for the appellant has contended that the private respondent has filed a bank certificate dated 25.03.2016 fraudulently with the connivance of the Bank Officials. For expediency, we extract the certificate dated 25.03.2016 issued by Manager, Punjab National Bank, Ramgarh Samba, which reads as follows:-

"To whom it may concern

It is certified that Sh. Mandeep Singh S/o Sh.Paramjit Singh has deposited cash of Rs. 797000/-(Seven lacs ninety seven thousand only) on 23rd of July, 2014. With the reason our system was off and the same has been deposited next day on 24th of July 2014 in his a/c no.6792000100001943.

Simultaneously, a cheque of our bank of Rs.450000/- (Four lacs fifty thousand only) was also deposited with us on 23rd of July, 2014 and the same was credited on 24th of July 2014 in his a/c no. 6792000100001943.

Copy of the statement is enclosed herewith.

Sd./

Manager

Punjab National Bank

Ramgarh Samba."

(Emphasis by us)

16. It is to be noted that this certificate is supported by two deposit slips dated 23.07.2014, one for the sum of Rs.7,97,000/- and the other for an amount of Rs. 4,50,000/-.

17. Mr. Gandotra, learned counsel for the appellants has challenged these deposit slips before us. The learned counsel contended that the deposit slips deserved to be discarded for the reason that they bear the logo of the Swachh Bharat Abhiyan of the Government of India. It is the contention of Mr. Gandotra, learned counsel for the appellants that the Swachh Bharat Abhiyan and the logo were launched by the Government of India only on 02.10.2014 and therefore, this logo could not have been depicted on deposit slips on the 23rd of July, 2014.

18. Both the deposit slips bear the endorsement of Punjab National Bank. These documents were not disputed before the learned Single Judge, as noted by us above. On the contrary, it was the submission of appellants that amount has been deposited on 24.07.2014 which was after the date of attestation of the affidavit.

19. In view of the stand and admission of the appellants before the learned Single Judge, we do not deem it necessary to go into this issue. The explanation given by Mr. B.S Salathia, learned senior counsel is also noteworthy. It is contended that the private respondent is a person from the Other Backward Class category and hails from border and remote rural area of Ramgarh, who has to travel more than 25 kilometers to get his affidavit attested from the Court at Samba. It was in this background and as a matter of abundant caution that the respondent's affidavit was got attested on 23.07.2014.

20. In view of the foregoing, we find no merit at all in this appeal. We are also of the view that the respondents have been un-warrantedly burdened with this litigation which is completely unwarranted and deserves to be compensated with adequate costs. Valuable judicial time has been caused to be wastefully expended in this appeal.

21. In view thereof, the present appeal is dismissed with costs of Rs. 25,000/- which shall be deposited by the appellants with the Advocate Welfare Fund of the Bar Association within two weeks. The proof of the deposit shall be placed on record of the present case. In case, the costs is not deposited, the matter shall be listed by the Registry before this Court.