
(2010) 05 CAL CK 0061
In the Calcutta High Court
Case No : Writ Petition 9264 (W) of 2010

Indranil Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-05-2010

Acts Referred:

Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27

Citation : (2010) 05 CAL CK 0061

Hon'ble Judges : Dipankar Datta, J

Bench : Single Bench

Advocate : Debjit Mukherjee and Tanmoy Mukherjee, for the Appellant; M.S. Yadav, for the Respondent

Judgement

Dipankar Datta, J.—The petitioner offered his candidature for being appointed as LPG Distributor at Bankra, District Howrah in pursuance of an advertisement dated 16.9.2007 issued by the Indian Oil Corporation Ltd. (hereafter the Corporation). Although he was awaiting a call to attend interview in pursuance of his application, he received no intimation. Coming to learn that the selection process had been finalised without considering his candidature and without calling upon him to participate in the selection process, he addressed a representation dated 22.12.2009 to the Senior Manager of the Corporation. According to him, the advertisement itself provided scope for redress of grievance by addressing representation to the Corporation. The representation was not considered; on the contrary, the Corporation was contemplating issuance of letter of intent in favour of the selected candidate. It is at this stage that the petitioner had the occasion to approach this Court with his first writ petition.

2. I had the occasion to consider the same.

3. It was submitted by Mr. Yadav, learned advocate for the Corporation, that call letter addressed to the petitioner was duly dispatched by speed post on 27.9.2009. Since the petitioner did not appear at the interview scheduled on

20.8.2009, the Corporation had no other option but to finalise the process of selection on the basis of the available materials.

4. It was, however, contended by Mr. Mukherjee, learned advocate for the petitioner, on instructions, that he did not receive the call letter.

5. I did not consider it necessary to decide the petition on merits since the representation filed by the petitioner was pending. By an order dated 25.2.2010, I had disposed of the petition with a direction upon the Corporation to decide the petitioner's pending representation upon granting him opportunity of hearing as early as possible. It was further directed that till such time order on the representation of the petitioner is not communicated to him, letter of intent, if issued in favour of the selected candidate, shall not be given any further effect and would abide by the decision to be given in terms of the said order.

6. The Corporation thereafter heard the petitioner. It appears from the minutes of hearing conducted on 24.3.2010 that the postal receipt in support of the Corporation's contention that the envelope containing the call letter was duly dispatched to the petitioner at the address mentioned in the application was duly produced before him for his perusal. The petitioner, however, insisted that proof of service ought to be produced in order to dislodge his claim. The Senior Manager thereafter produced evidence to show that the concerned post office had been approached for ascertaining whether the envelope containing the call letter had, in fact, been served on the petitioner or not but no reply had been received. In such circumstances, the petitioner sought for a week's time to verify from the postal authorities and to revert back to the Senior Manager.

7. It appears from the letter dated 26.2.2010 issued by the Deputy Manager, Sarat Bose Road Post Office of the Department of Posts, India that the complaint lodged by the Corporation was time barred; nevertheless enquiry was being conducted to find out the delivery status of the envelope sent vide receipt dated 29.7.2009 addressed to the petitioner.

8. Mr. Mukherjee by placing documentary evidence before me sought to impress that the petitioner had also written to the Post Master, Dasnagar Post Office as to whether the envelope dispatched by the Corporation, which it was supposed to deal with after having received from the Sarat Bose Road Post Office, was duly delivered to the addressee or not but no reply had been received.

9. However, it is not disputed that such initiative taken by the petitioner was not communicated to the Senior Manager of the Corporation, who proceeded to pass an order dated 26.4.2010 rejecting the representation of the petitioner. This order forms the subject matter of challenge in the present petition.

10. Mr. Yadav contended that the Corporation duly dispatched the envelope by speed post and, therefore, no malice can be attributed to the Corporation for non-production of proof relating to delivery of the call letter on the petitioner. Reliance was placed by him on the decision in *C.C. Alavi Hazi v. Palapetty*

Muhammed and Anr. 2007 (2) CLJ 153 (SC), to contend that the envelope having been duly addressed, duly pre-paid and duly dispatched must be deemed to have been served in the absence of definite proof regarding service. It was further submitted by him that the petitioner's representation was in respect of the allegation that the Corporation had not issued the call letter in his favour. The Corporation having proved that the envelope was duly dispatched, nothing survived on the petitioner's grievance as highlighted in his representation and, therefore, the writ petition did not merit interference.

11. I am unable to accept the contention of Mr. Yadav. If delivery of the envelope to the petitioner could be proved, that would have clinched the issue. Unfortunately, such delivery has not been proved. Having regard to the provisions contained in Section 114 of the Evidence Act as well as Section 27 of the General Clauses Act, properly addressing, pre-paying and posting a letter by registered post may give rise to a presumption of effective service. However, that presumption is open to rebuttal. The petitioner has been categorical in his assertion that he has not received the call letter from the Corporation. Not only that, he has himself written to the Post Master, Dasnagar Post Office for furnishing him proof regarding delivery of the envelope dispatched by the Corporation, addressed to him. The Post Master has not replied to him. The petitioner cannot, therefore, be regarded to be negligent or remiss in initiating steps to have his claim supported by the said Post Master. Over and above this, the Corporation must be faulted for not having disposed of the representation of the petitioner within a reasonable period of receipt thereof resulting in its request made to the Deputy Manager, Sarat Bose Road Post Office of the Department of Posts, India becoming time-barred. If at all the Corporation had been active in dealing with the petitioner's representation immediately after it was received, it would have been in a position to show to the petitioner that the envelope containing the call letter had indeed been served on him. In the absence of concrete proof that the petitioner received the call letter, it has to be held that by not considering his candidature the Corporation has infringed his fundamental right. The decision in *Alavi Hazi* (supra) instead of aiding the case of the Corporation supports the view that I have taken above. Paragraph 14 of the decision is relevant and is quoted below:

Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business.

12. The petitioner has been successful in rebutting the presumption that could be

drawn and, therefore, the burden is on the Corporation to prove service which it has failed to discharge.

13. Consequently, I hold that the petitioner is entitled to relief on this petition. It stands allowed. Selection, if finalised by the Corporation for appointment of LPG Distributor at Bankra, Howrah, shall be kept in abeyance. The Corporation shall proceed to consider the petitioner's candidature in accordance with law by giving him another chance to attend interview. If at all the petitioner is successful in his claim to have letter of intent issued in his favour the merit list shall be recast suitably and follow up steps should be taken, also in accordance with law. However, the petitioner shall be informed of the fate of his application even if he does not secure a position in the merit list or is not placed at the first position thereof.

14. There shall be no order as to costs.

15. Urgent photostat certified copy of this judgment and order, if applied for, shall be given to the applicant as early as possible.