
(2011) 08 MP CK 0025
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 406 of 2008

Jinendra Kumar Jain

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 10-08-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 MPHT 423

Hon'ble Judges : S.N. Aggarwal, J;Brij Kishore Dube, J

Bench : Division Bench

Advocate : R.D. Jain and Mr. D.P.S. Bhadoriya, for the Appellant; N.K. Jain and Mr. Anil Kumar Jain, Advocate for the Respondent Nos. 2 and 3 and Mr. Prateep Visoriya, Advocate for the Respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—This intra-Court appeal filed by appellant Jinendra Kumar Jain is directed against the order of the learned Single Judge, dated 3rd July, 2008 in Writ Petition No. 1375/05 setting aside his selection for LPG Distributorship for block Narwar, District Shivpuri. The selection of the appellant by Indian Oil Corporation Limited for allotting LPG Distributorship has been set aside by the learned Single Judge on the ground that he was not eligible for such allotment on the date of application as he did not have the title of the land, particulars of which were given in the application submitted for allotment. Briefly stated, the facts of the case giving rise to this appeal are that the Indian Oil Corporation Limited (IOCL) (respondent Nos. 2 and 3 herein) had issued an advertisement in Nav Bharat Times dated 13-10-2001 inviting applications from eligible persons for allotment of LPG Distributorship for blocks Narwar and Pohri, District Shivpuri. Clause (1) contained in the advertisement is relevant for the purpose of decision of the present appeal and the same is extracted below:-

2. The appellant alongwith respondent No. 4 and other persons had made an application for allotment of LPG Distributorship pursuant to the above

advertisement. The IOCL after completing preliminaries had called 28 persons for interview which was held by three member committee on 1-10-2003. The interview was attended only by 16 persons, 11 did not report for interview and one was found ineligible. This we are saying on the basis of minutes of the selection committee produced before us by the Counsel for IOCL.

3. The selection committee of IOCL which held interview of eligible candidates on 1-10-2003 in terms of the policy of IOCL had evaluated the performance of candidates by allotting marks under five different sub-heads as under:-

- (i) Personality, business ability and salesmanship : 20 marks
- (ii) Capability to arrange finance-financially sound : 15 marks
- (iii) Educational qualification and general level of intelligence : 20 marks
- (iv) Capability to provide infrastructure : 35 marks
- (v) General assessment-value system : 10 marks

4. The three member committee made their independent assessment of all the eligible candidates who appeared for interview on 1-10-2003 and found the appellant to be the best suitable person for allotting LPG Distributorship to him for block Narwar, District Shivpuri. A Letter of Intent (LOI) was thus issued by the IOCL in favour of the appellant on 12-8-2004. However, before the LOI was issued by the IOCL in favour of the appellant, respondent No. 4 who was third in the merit list had filed a writ petition being W.P. No. 1375/05 and challenged the selection of the appellant mainly on the ground that he was not eligible for consideration for allotment of LPG Distributorship on the date of application as he did not have the title of the land mentioned by him in his allotment application. It was stated by respondent No. 4 in his writ petition that in terms of the advertisement pursuant to which applications were made by the candidates for allotment of LPG Distributorship, it was mandatory for the candidate to have land for the purpose of godown and show room, particulars of which were required to be given in the application form. The case of respondent No. 4 in the writ petition was that since the appellant had already sold the land, particulars of which were given by him in his application in the year 1999 to one Sharda Devi and, therefore, the particular given in the application were regarding a non-existent land, and therefore, he was not entitled for allotment of LPG Distributorship and prayed for its cancellation in the writ petition.

5. Challenge to the selection of the appellant for awarding him LPG Distributorship for block Narwar, District Shivpuri made by respondent No. 4 in the writ petition was accepted by the learned Single Judge vide impugned order under challenge made to the selection of the appellant mainly on the ground that he did not have the title of the land, particulars of which were given by him in the application and, therefore, in the opinion of the learned Single Judge he was not eligible for his consideration for allotment of LPG Distributorship on the date of application.

6. The appellant being the best suitable person found at No. 1 in the merit list by the three member selection committee of the IOCL, feeling himself aggrieved by the impugned order of the learned Single Judge has filed this intra-Court appeal and has prayed for setting aside the impugned order.

7. We have heard Shri R.D. Jain, learned Senior Counsel appearing on behalf of the appellant, Shri N.K. Jain, learned Senior Counsel appearing on behalf of respondent Nos. 2 and 3-IOCL and Shri Prateep Visoriya, learned Counsel appearing on behalf of respondent No. 4. We have also perused the impugned order and the relevant documents including the record of selection committee produced before us by the learned Senior Counsel for IOCL.

8. Shri R.D. Jain, learned Senior Counsel appearing on behalf of the appellant has assailed the impugned order mainly on the following grounds:-

(i) The learned Single Judge while allowing the writ petition of respondent No. 4 has over looked the law laid down by Hon''ble the Apex Court in the case of K. Vinod Kumar Vs. S. Palanisamy and Others, , wherein it has been held that the ownership of the land at the time of application or at the time of issuance of LOI was not the mandatory condition. The contention of the learned Senior Counsel is that the learned Single Judge went wrong in taking a view that the appellant must hold the title of the land on the date of the application made by him pursuant to the advertisement of IOCL, dated 13-10-2001.

(ii) The scope of judicial review in writ petition filed under Article 226 of the Constitution of India is very limited. The learned Senior Counsel submits that while exercising the powers of judicial review, the Court can only examine the decision making process and not the merits of the decision. According to the learned Senior Counsel, merits of the decision are outside the scope of judicial review and in support of the said contention, he has placed reliance on a recent Division Bench judgment of this Court in the case of Suresh Chaturvedi Vs. Indian Oil Corporation Ltd., 2011 (1) MPLJ 203.

(iii) It is not within the domain of the High Court exercising jurisdiction under Article 226 of the Constitution of India to interfere with the marks given to the candidates by the selection board of three member committee of the IOCL in the interview held on 1-10-2003. In support of his said proposition, he has placed reliance on a judgment of Hon''ble Supreme Court in K. Vinod Kumar's case (supra).

(iv) In view of the judgment of the Hon''ble Supreme Court in K. Vinod Kumar's case (supra), requirement of land ownership was directory in nature and merely on the basis of this, the selection of the appellant could not have been upset by the learned Single Judge in the writ petition filed by respondent No. 4 against selection of the appellant.

(v) As there was delay of more than eight months on the part of respondent No. 4 in filing the writ petition seeking to challenge the selection of the appellant, the

writ petition of respondent No. 4 was liable to be dismissed on the ground of delay and laches. In support of his said contention, the learned Counsel has placed reliance on a judgment of Hon"ble Supreme Court in the case of Virender Chaudhary Vs. Bharat Petroleum Corporation and Others,

(vi) The appellant has made huge investment in infrastructure for constructing a godown, show room etc. after issuance of LOI to him by the IOCL on 12-8-2004 and is successfully running the LPG Distributorship allotted to him for more than seven years and, therefore, according to the learned Senior Counsel the allotment of LPG Distributorship made by IOCL to the appellant should not have been disturbed by the learned Single Judge in exercise of discretionary jurisdiction of the Writ Court under Article 226 of the Constitution.

9. Shri N.K. Jain, learned Senior Counsel appearing on behalf of IOCL (respondent Nos. 2 and 3 herein) has argued in support of the contentions urged on behalf of the appellant and he has not made any additional plea except to reiterate the pleas already advanced before us by the learned Senior Counsel appearing on behalf of the appellant as recorded herein above.

10. Per contra, Shri Prateep Visoriya learned Counsel appearing on behalf of respondent No. 4 has argued in support of the reasonings given by the learned Single Judge in the impugned order. Shri Visoriya has vehemently argued that the appellant was not eligible on the date of application for his consideration for allotment of LPG Distributorship, as he did not have the title of the land of which particulars were given in the application on that day. Shri Visoriya has further argued that in terms of clause (1) of the advertisement dated 13-10-2001, it was mandatory for the appellant to have made the land available within two months of issuance of LOI of which particulars were given by him in the application. Shri Visoriya has submitted that since the appellant was allowed to change the land after he was found successful in the interview, this by itself vitiates his selection being contrary to the terms of advertisement. Learned Counsel appearing on behalf of respondent No. 4 further contends that the scope of the Appellate Court in intra-Court appeal is very limited and according to him this Court should not interfere in the impugned order which contains a finding of fact that the appellant was not having the title of the land of which particulars were given by him in his application, which in terms of clause (1) of the advertisement was a mandatory requirement. Shri Visoriya has vociferously argued before us by laying emphasis on 23 marks given by the three member selection board to the appellant under the head "capability to provide infrastructure". The submission of Shri Visoriya is that as the land of which particular were given by the appellant in his application was non-existent, the selection board was totally unjustified in awarding 23 marks to the appellant under the head "capability to provide infrastructure". It is submitted that the learned Single Judge was absolutely right in excluding 23 marks given by the selection committee to the appellant under the head "capability to provide infrastructure" as he did not have the title of the land on the date of the application.

11. We have given our anxious consideration to the above rival arguments advanced by the learned Counsels for the parties and we are sorry that we could not persuade ourselves to agree with any of the submissions made by the learned Counsel appearing on behalf of respondent No. 4. We have carefully gone through the judgment of the Hon''ble Supreme Court in the case of K. Vinod Kumar (supra), and also the recent Division Bench judgment of this Court in Suresh Chaturvedi's case (supra), and on going through the same we find it extremely difficult to sustain the view taken by the learned Single Judge in the impugned order. We would like to mention that the facts of both these cases are by and large similar to the facts of the present case. The Hon''ble Supreme Court in K. Vinod Kumar's case (supra), had an occasion to consider the similar situation that was brought to the notice of the Court by respondent No. 4 in the writ petition and upon consideration of the issue in hand, it was held by the Hon''ble Supreme Court as under:-

7. The proceedings of the Dealer Selection Board must satisfy the requirements of a bonafide administrative decision arrived at in a fair manner. There are no malafides alleged against the Dealer Selection Board or the President or any member thereof. There is no specific plea raised impugning the manner of making. It appears that all the three members of the Board including the President conducted the proceedings, and each one of them gave marks expressing his own assessment of the merits of the applicants. The marks given by the three were then totalled and arranged in the order of merit. The appellant herein topped the list. In the absence of a particular procedure for formula having been prescribed for the Board to follow, no fault can be found with the matter in which the proceedings were conducted by the Board. The Board is entrusted with the task of finding out the best-suitable candidate and, so long as the power is exercised bonafide, the Board is free to devise and adopt its own procedure subject to satisfying the test of reasonableness and fairness. There is no averment that the procedure adopted by the Board was arbitrary, unfair or unreasonable.

8. So far as the requirement Instruction (g) as stated above is concerned, it does not appear to be mandatory. The purpose of furnishing particulars of land in the application is to enable a determination as to whether the specified place would accommodate the godown facilities and distributorship arrangement from a commercial angle. This requirement is mandatory but satisfying the requirement at the stage of making the application is only directory. The particulars of such land can be made available even subsequent to the filing of the application, and may even be subsequent to the selection. The consequence of failure to make the suitable land available within a period of two months from the date of selection is that the selection of such candidate would be liable to be cancelled.

12. In the case of Suresh Chaturvedi (supra), decided recently by Division Bench of this Court the Selection Board of three members constituted by the IOCL had given 20 marks to the successful candidate under the head "capability to provide

infrastructure" and that was challenged in that case by the unsuccessful candidate which was not accepted by the Writ Court and the appeal filed against the said judgment was dismissed by the Division Bench. It was specifically held by the Division Bench of this Court in Suresh Chaturvedi's case (supra), that it is not for the Court to interfere with the marking process of the selection committee, unless the selection is challenged on the ground of malafides. It was held that the Court while deciding writ petition has not to review the merits of the decision, but only the decision making process. Reliance for the same was placed on a judgment of the Hon'ble Supreme Court in Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, .

13. Considering the ratio decidendi of K. Vinod Kumar's case and Suresh Chaturvedi's case (supra), we are of the view that the learned Single Judge was not justified in setting aside the selection of the appellant on the ground that he did not have the title of the land mentioned by him in his application. Respondent No. 4 had not challenged the selection of the appellant on the ground of any malafide against any member of the Selection Board constituted by the IOCL. We ourselves have perused the minutes of the Selection Board produced before us by the learned Senior Counsel for the IOCL and on perusal of the same, we find that the merits of all the candidates who appeared for interview before it on 1-10-2003 was independently assessed by all the three members under five difference heads already mentioned by us herein above. We find the assessment to be totally fair and transparent and, in our opinion, it was not within the domain of the Writ Court to have reviewed the assessment process and excluded 23 marks given by the selection committee to the appellant under the head "capability to provide infrastructure". A perusal of the minutes of the selection committee reveals that the appellant got 23 marks under the head "capability to provide infrastructure" whereas respondent No. 4 got 28 marks under the said head which are more than the marks of the appellant. However, since the appellant got more marks than respondent No. 4 under other heads, he was declared to be the best suitable person by the selection committee for allotment of LPG Distributorship for block Narwar, District Shivpuri and accordingly, LOI was issued by IOCL in his favour on 12-8-2004.

14. We are informed that after issuance of LOI by IOCL in favour of the appellant on 12-8-2004 the appellant has made huge investment in infrastructure and has constructed godown, show room etc. and is successfully running the LPG distribution for more than seven years by now.

15. We find that the view taken by the learned Single Judge that the appellant was not eligible for allotment of LPG Distributorship as he did not have the title of the land on the date of his application is totally incorrect in view of direct judgment of the Supreme Court in the case of K. Vinod Kumar (supra), on the point in issue. We hardly find any substance in the argument of Shri Prateep Visoriya, learned Counsel appearing on behalf of respondent No. 4 that the appellant was required to make the same land available which he had mentioned

in his application within two months of issuance of LOI to him, A reading of clause (1) of the advertisement extracted above would show that the person applying for LPG Distributorship was required to submit detailed information of the land which he would make available for distributorship. It was provided that if the person applying for dealership would offer such land for sale or lease to the IOCL on a price agreed by it, then he shall be given preference in the matter of awarding of LPG Distributorship. It was also mentioned in clause (1) of the advertisement that in case the person applying for LPG Distributorship would fail to make the land available within two months of issuance of LOI, then its consequence shall be that his dealership shall stand cancelled.

16. In the present case, the appellant had given particulars of his land of survey numbers 1023 and 3151 admeasuring 0.12 hectares situated at Narwar in his application given for allotment of LPG Distributorship pursuant to advertisement of IOCL dated 13-10-2001. The contention of the learned Counsel for respondent No. 4 that the appellant did not have the title over the land of which particulars were given by him in the application is without any consequence. The case of the appellant is that he had repurchased and land of survey numbers 1023 and 3151 admeasuring 0.12 hectares situated at Narwar from one Sharda Devi on 12-12-2001 by way of agreement to sale after payment of entire sale consideration thereof. The need arose for the appellant to change the said land as he could not get No Objection Certificate from the concerned authorities for construction of a godown required for the distributorship. We are of the view that the finding of the learned Single Judge in the impugned order that allotment of LPG Distributorship to the appellant was illegal as he did not have the title of the land of which particulars were given in the application is inconsequential to the decision of the issue in hand. Since the appellant had paid the entire sale consideration at the time of agreement to sale of land in question dated 12-12-2001, he undisputedly acquired an enforceable right in respect of the said land and, therefore, it cannot be said that he was ineligible for his consideration for allotment of LPG Distributorship in terms of clause (1) of the advertisement. In view of the judgment of the Hon'ble Supreme Court in K. Vinod Kumar (supra), and the judgment of Division Bench of this Court in the case of Suresh Chaturvedi (supra), the law permits the appellant to make the land available that may suit the requirement of Indian Oil Corporation for distributorship within two months of issuance of LOI to him. In the present case, the appellant had made the land available which was accepted also by the Indian Oil Corporation before issuance of LOI to him. Therefore, no fault could be found in issuance of LOI to the appellant.

17. We also do not find any merit in the contention of the learned Counsel for respondent No. 4 that the appellant was not entitled to 23 marks under sub-head "capability to provide infrastructure", as the particulars of the land given by him in the application were in regard to a non-existent land. As per minutes of the Selection Board, the appellant was given 23 marks under sub-head "capability to provide infrastructure" not on the basis of particulars of the land given by him in

the application, but the members of the Selection Board have independently assessed the performance of the candidates by giving marks to the candidates who appeared for interview under different sub-heads and their assessment of the candidates cannot be called in question, as it is not the case of respondent No. 4 who had filed the writ petition that there was any malafide against any of the members of the Selection Board. In our view, the learned Single Judge was not justified in directing exclusion of 23 marks given by the Selection Board to the appellant under sub-head "capability to provide infrastructure", as awarding of marks under various sub-heads was exclusively within the domain of the Selection Board. The said exclusion of marks under the orders of the Court is outside the scope of judicial review. We do not find any fault with the decision making process of respondent Nos. 2 and 3 in which the appellant was found the most suitable person for awarding of LPG Distributorship. We are also of the view that the learned Single Judge should not have exercised his discretion in interfering with the selection process in view of the fact that the appellant had already made huge investment in the infrastructure after issuance of LOI to him and is successfully running the LPG Distributorship for over seven years.

18. We do not consider it necessary to go into the plea of limitation raised on behalf of the appellant as we are otherwise satisfied that the view taken by the learned Single Judge in the impugned order is not sustainable in view of what we have already discussed herein above. For the foregoing reasons, this appeal is allowed. The impugned order of the learned Single Judge is set aside. The appellant is permitted to continue with his LPG Distributorship on the basis of LOI issued to him by IOCL on 12th August, 2004 as per the rules of IOCL. Parties are left to bear their own costs.