(2011) 03 P&H CK 0448

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 1761 of 2010

Kalu Ram APPELLANT

Vs

Indian Oil Corporation Ltd. and Others RESPONDENT

Date of Decision : 23-03-2011

Acts Referred:

Citation : (2011) 03 P&H CK 0448

Hon'ble Judges : Ranjit Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ranjit Singh, J.—Petitioner Kalu Ram has approached this Court seeking writ of mandamus not only for allotment of Kisan Sewa Kender (for short ''KSK'') Retail Outlet, Village Kabri on Naphta Cracker Plant Road (Sidhana-Singhpura), District Panipat he being No. 1 in merit but he has sought quashing of the issuance of LOI in the name of Respondent No. 4.

2. An advertisement was issued in the newspaper dated 24.4.2009 for allotment of KSK Retail Outlet Dealership throughout the State of Haryana. One of the places so advertised was village Kabri, District Panipat. The Petitioner applied for allotment of retail outlet at village Kabri, District Panipat. The Petitioner attached all the relevant documents as per the requirement. Respondent No. 4 was the other candidate who had made the similar application for allotment of Retail Outlet Dealership at the said place. The scrutiny of the applications was done on 21.7.2009. Both the applications were found in order. The Petitioner and Respondent No. 4 were called for interview on 21.7.2009. On the basis of the parameters as laid down, the Interview Committee assessed both the candidates and awarded 89.14 marks to the Petitioner. He was placed at merit list No. 1 as Respondent No. 4 could manage only 81.02. He was placed at No. 2 on the merit.

3. The Petitioner thereafter paid a number of visits to the Respondent-Corporation for issuance of LOI. Every time, the Petitioner was assured that LOI

will be issued shortly. Still, the Petitioner did not receive the requisite letter of intent. The Petitioner made written request through letter dated 19.11.2009, copy of which is annexed as Annexure P3. Various reminders thereafter were sent by the Petitioner on 25.11.2009, 14.12.2009, 7.1.2010 & 18.1.2010 but these did not receive any response from the office of the Respondent-Corporation.

4. On 3.12.2009, the Petitioner moved an application for seeking information under RTI Act. He had sought information regarding the property and financial status of Respondent No. 4 besides asking for result sheet and field inspection report. His grievance is that only part of information was supplied by the Respondent-Corporation.

5. The copies of the field inspection report of Respondent No. 4 and the Petitioner are placed on record as Annexures P6 and P7 respectively. When the Petitioner learnt that LOI has been issued in favour of Respondent No. 4 ignoring the merit of the Petitioner, he has filed the present writ petition seeking writ of mandamus as noted above.

6. Respondents No. 1 and 2 have filed reply. By way of preliminary objections, it is pointed out that the Petitioner has not approached the Court with clean hands and has suppressed material facts. Respondents have not disputed that the Petitioner was ranked first in the merit panel. It is, however, stated that as per policy before issuing LOI to the impaneled candidate, an field inspection report (FIR) is conducted regarding the contents as disclosed in the application form. As per the Respondent-Corporation, during inspection, it was found that there was variation in the amount lying as mentioned in the accounts of the Petitioner in the Oriental Bank of Commerce, Panipat. On physical verification, it was found that although Petitioner had claimed a sum of Rs. 6,400/- lying in his account as on 26.3.2009 i.e. the cut-off date, but the balance on that date in the accounts was found to be Rs. 1,320/- only. It is, accordingly, stated that the Petitioner had given a wrong information. Reference is made to the undertaking given by the Petitioner in the application form that the information given in the application is true and best to his knowledge and belief and any wrong information/ suppression of fact would disqualify him from being considered for the retail outlet dealership. Respondent-Corporation would then state that as per the conditions of the advertisement, the empanelment of the Petitioner was cancelled and this is in tune with the policy of the Corporation. LOI was, thus, issued in favour of Respondent No. 4 after conducting the field inspection report.

7. Learned Counsel for Respondent No. 4 had adopted the reply filed by the official Respondent-Corporation and would support the stand of the Corporation that the empanelment of the Petitioner was rightly cancelled as he had provided a mis-leading information.

8. Replication is filed by the Petitioner to point out that the Petitioner had shown FDR of Rs. 12 lacs lying in his name in the Central Bank of India to show his financial capabilities. As per the Petitioner, this amount is still lying with the Bank

and taking this into consideration, the Petitioner was given full 25 marks in the criterion of financial capabilities. The counsel submits that the statement of Saving Bank Account of Oriental Bank of Commerce was attached by the Petitioner only to show that he was a retired Headmaster and was withdrawing pension through the said account. It is emphasized that outstanding amount of Rs. 6,400/- as on 18.3.2009 was the correct figure reflected in the pass book. It being a running saving bank account, the balance could have varied on 26.3.2009 which was the cut-off date when entry made. As per the counsel, this cannot mean that he had supplied mis-leading information to invite cancellation of empanelment of the Petitioner.

9. From the facts as noted above, it is to be seen if the Petitioner had supplied any wrong, fake or mis-leading information for which his empanelment could be cancelled. The Petitioner indeed had a sum of Rs. 6,400/- lying in his account on 18.3.2009. It was a saving bank account. There can be variation therein. The change of amount in saving bank account from Rs. 6,400/- to Rs. 1,320/- apparently have no connection with allotment and would hardly be a valid ground to cancel the empanelment of the Petitioner. This action of the Respondent-Corporation would sound unfair and cannot pass a test of being fair or a fair manner of dealing with the cases of allotment of retail outlet.

10. The counsel for the Respondents refers to an undertaking given by the Petitioner that any wrong information supplied by him could lead to cancellation of his application. In support, the counsel has also placed before me a judgment in the case of Shiv Kant Yadav v. Indian Oil Corpn. and Ors., JT 2007(5) SC 257. Appellant Shiv Kant Yadav had shown his income in his application form as Rs. 84,000/-. On enquiry, the same was fixed at Rs. 1,64,000/- per annum. The Corporation in this case had taken a stand that the Executive Summary Report would disclose that he had supplied incorrect information and thus, had made concealment of facts and mis-information which had result in rejection of the application. The decision not to allot the dealership to him was on account of the fact that he did not correctly disclose his income which was the criterion for allotment and thus, he had violated his own declaration in his undertaking incorporated in the application. The facts in the case before the Hon''ble Supreme Court thus were entirely different. There the income was the criterion of allotment which is not so in the present case. The plea of the Corporation is not that the Petitioner never had Rs. 6,400/- lying in his account. If on 18.3.2009, a sum of Rs. 6,400/- was not lying in his account, which had been so disclosed, it may have amounted to providing mis-leading information but this was not material or relevant issue. Merely because on a different date, the amount was little less than what was stated, would not mean that the Petitioner had supplied any wrong or mis-leading information. The supplying of some information which was criteria for allotment and that being found wrong cannot be equated with supply of information which is not wrong, but may be different on a cut-off date. This ground, in my view, certainly would not be fair and valid ground to reject the claim of the Petitioner for issuing of LOI. To me, it is not a

case of supply of mis-leading information or mis-statement of fact, which could lead to disqualification of the Petitioner on the ground that he had violated the undertaking given in the application form. I fail to comprehend the purpose of canceling the empanelment of the Petitioner on this ground. The amount lying in the saving bank account of the Petitioner has no relevance with his financial capacity. A sum of Rs. 12 lacs was shown in the FDR in the account of the Petitioner which is still lying in his FDR. A sum of Rs. 6,400/- lying in his saving bank account had no relevance and had not been taken into consideration for assessing him in regard to his financial capacity or for awarding him marks. One cannot ignore the fact that this information in the form of pass book was supplied by the Petitioner just to show that he was a retired Headmaster and was receiving pension in this account. It was not needed and had not been relied upon for any other purpose by the Petitioner Accordingly, I find the action of the Respondent-Corporation to be totally unfair and illegal.

11. The writ petition is allowed. A direction is hereby issued to the Respondents to issue LOI in the name of the Petitioner within a period of two months from the date of receipt of copy of this order.

12. There shall be no order as to costs.