
(2014) 11 SHI CK 0099
In the High Court Of Himachal Pradesh
Case No : C.W.P. Nos. 3536 and 3945 of 2014

Meena Kumari

APPELLANT

Vs

Indian Oil Corporation

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 SHI CK 0099

Hon'ble Judges : Mansoor Ahmad Mir, C.J.; Dharam Chand Chaudhary, J

Bench : Division Bench

Advocate : Jyotsna Rewal Dua and B.C. Negi, Advocate for the Appellant; K.D. Sood, Senior Advocate, Mukul Sood and Jyotsna Rewal Dua, Advocate for the Respondent

Judgement

Dharam Chand Chaudhary, J.—This judgment shall dispose of the present writ petition and the connected one, i.e., C.W.P. No. 3945 of 2014, involving similar subject matter of dispute and common question of law and facts.

2. Respondent Indian Oil Corporation is carrying on its business activities throughout the country, including the State of Himachal Pradesh. It published a Notice Annexure P-1, in the issue of English Daily "The Tribune", inviting applications for appointment of LPG Distributors at different locations in the State of Himachal Pradesh, including Paonta Sahib in District Sirmaur. The LPG distributorship for location at Paonta Sahib was reserved for the members of scheduled caste community. According to the petitioner herein, she being member of the schedule caste community was eligible for being considered for the allotment of distributorship. She submitted her application duly supported by the documents, as prescribed in the check list and brochure on guidelines for selection, Annexure P-2. On scrutiny of the applications, Meena Kumari, petitioner herein, was found to be the only eligible candidate for being considered qua the award of distributorship for location at Paonta Sahib. She was informed vide letter dated 10.3.2014, Annexure P-8 that she is the only eligible

candidate for the award of distributorship at Paonta Sahib and asked to deposit Rs. 25,000/-, for the purpose of carrying out the field verification of her credentials, disclosed in the application and the documents annexed therewith. She, in turn, submitted the bank draft in the sum of Rs. 25,000/-. On verification of her credentials, the requisite amount of Rs. 2.5 lacs was not found to be deposited in her saving bank account in a scheduled bank and rather in H.P. State Cooperative Bank, not a scheduled bank. Also that the FDRs, as disclosed by her in clause 12 of the application, were in the names of minors in Bhoopur Cooperative Multipurpose Society Limited, again not a scheduled bank. Therefore, she was found to have deviated from the eligibility criteria with respect to the funds available with her and as such her candidature was rejected and she was informed about rejection of her candidature vide impugned order Annexure P-10.

3. If coming to the candidature of Smt. Uma Rani, the petitioner in the connected petition, during the scrutiny of her application, she was found to have remitted the application fee through demand draft prepared on the address of "Sr. Area Manager, Indane Area Office, IOC, Chandigarh" instead of "Chief Area Manager, Indian Oil Corporation Limited, Shimla", as required in terms of Notice Annexure P-1, inviting applications for the appointment of LPG Distributors. She was informed accordingly vide letter dated 19.12.2013, Annexure P-3 and advised to send fresh demand draft prepared from a scheduled bank in the sum of Rs. 500/- in the name of Indian Oil corporation Limited, Shimla, within seven days after the receipt thereof. She, however, could furnish the revised demand draft on 28.4.2014, i.e., much after the time of one week granted to her in this behalf vide Annexure P-3, supra. The demand draft was not entertained and returned to her vide letter dated 29.4.2013, Annexure P-7. She was informed that the demand draft was received from her at such a stage when the selection process for this location was almost over.

4. The grouse of the petitioner in this petition is that the requisite funds of Rs. 2.5 lacs were available in her saving bank account in H.P. State Co-operative Bank, Badripur, Paonta Sahib, District Sirmaur. She has placed reliance qua this aspect of the matter on the extract of her passbook and also the copies of FDRs, Annexure P-3 (colly). According to her, she is a simpleton villager and did not understand the complexity of every word mentioned in the application form. The meaning of words "scheduled bank", in her wisdom was H.P. State Cooperative Bank, as it is a leading bank in the State of H.P. Above all, in the notice, inviting applications, there is no mention that the required funds should be in saving bank account of the applicant in a scheduled bank. It is, therefore, emphasized that the only requirement is the availability of the funds to the tune of Rs. 2.5 lacs. Whether these funds are in bank "A" or "B", should have not led in rejection of her candidature, that too at such a stage when the selection process for LPG distributorship was over and the condition that such funds should be available in saving bank account of the applicant in a scheduled bank was not clearly pointed out in the notice, inviting applications. It has also been pointed out that at the

most availability of the funds in H.P. State Cooperative Bank was merely an irregularity and not illegality; hence rejection of her candidature on flimsy grounds is stated to be illegal.

5. The grouse of Smt. Uma Rani, the petitioner in the connected petition is that letter dated 19.12.2013, Annexure P-3, asking thereby her to prepare fresh demand draft and remit the same within a week, after the receipt of Annexure P-3, could not be delivered to her in time by the postal department. On inquiry she made, it transpired that the postman concerned had delivered the same inadvertently to Smt. Uma Devi daughter of Naresh Kumar in stead of Uma Rani wife of Naresh Kumar, the petitioner. Also that said Uma Devi daughter of Naresh Kumar was a tenant of one Basant Sharma of village Taruwala upto April, 2014. She has placed reliance on Annexures P-4, P-5 and P-6 to the writ petition and also Annexure P-8 to the rejoinder filed to the reply of respondent No. 3.

6. Now, if coming to the reply to the writ petition filed on behalf of the Indian Oil Corporation, its stand in a nutshell is that the selection of the petitioner in this petition was rejected, because the requisite funds i.e., Rs. 2.5 lacs were not in her saving bank account in a scheduled bank and also that the FDRs, she produced alongwith her application, were also in the names of minors. As regards the candidature of the petitioner in the connected petition, it has been submitted that since she failed to remit the application fee through a bank draft in the name of the Area Manager, IOC, Shimla, within the stipulated period and ultimately submitted the same at such a stage when the selection process was already over, the demand draft was rightly returned to her and her candidature rejected.

7. Petitioner herein, respondent No. 3 in the connected petition, in reply thereto has come forward with the version that no lady by the name of Uma Devi daughter of Naresh Kumar was residing at village Taruwala. In support of the stand so taken by her, she has pressed into service the documentary proof i.e. certificates Annexure RW3/B, issued by Pardhan, Gram Panchayat, Badripur, Annexure RW3/C issued by Numberdar, Badripur and Annexure RW3/D (colly) again issued by Pardhan, Gram Panchayat Badripur. As per these documents, the Pardhan and Numberdar, G.P. Baadripur, both have certified that no lady by the name of Uma Devi daughter of Naresh Kumar is resident of village Taruwala.

8. In rejoinder, the certificate Annexure P-8 of Shri Basant Sharma, aforesaid, resident of Taruwala the so called land lord of Uma Devi D/o Naresh Kumar has been produced in counter to the documentary proof produced by the petitioner herein in reply to the connected petition to show that said Ms. Uma Devi to whom the letter delivered was residing in the house of said Shri Basant Ram as tenant, however, the identity of said Uma Devi daughter of Naresh Kumar cannot be ascertained from this document. The same though reveals that Uma Devi daughter of Naresh Kumar lived in the house of Basant Sharma for about 1-1½ year in the capacity of a tenant, however, vacated the premises allegedly with her in April, 2014. In this document Shri Basant Sharma further states that her

whereabouts and address is not known to him.

9. It is in this backdrop, we have considered the grouse brought to this Court by both the petitioners in these writ petitions.

10. It is seen that the candidature of the petitioner herein has been rejected, that too after her selection, merely on the ground that the requisite funds i.e. Rs. 2.5 lacs, a condition precedent to make an application and seeking selection qua allotment of the LPG distributorship, was not in her saving bank account in a scheduled bank and rather in H.P. State Cooperative Bank and so far as the FDRs, the same are also in Bhooppur Cooperative Multipurpose Society Limited, that too in the names of minors. The candidature of the petitioner in the connected petition has been rejected as she failed to remit the application fee through demand draft in the name of Area Manager, payable at Shimla, within the stipulated period.

11. Before adverting to the claims and counter claims, as laid down on both sides, it is deemed appropriate to make reference to the law laid down by the Apex Court in Sanjay Kumar Shukla vs. M/s. Bharat Petroleum corporation Ltd. and others, 2014 AIR SCW 4945. It is seen that in the case before the Apex Court, the facts were more or less similar, as in the case in hand because in that case also the candidature of appellant Sanjay Kumar for allotment of distributorship was rejected on the sole ground that he had failed to produce the NOC with regard to the land required for setting up the distributorship from the District Administration within the stipulated period, irrespective of issuance of NOC qua the land in question subsequently recommended by the Sub Divisional Officer concerned. In the writ petition filed in that case by the unsuccessful candidate, the candidature of the appellant was not held to be valid for want of furnishing the NOC within the stipulated period and the respondent-Oil Company was directed to initiate the selection process afresh. The Apex Court, however, keeping in view the limited scope of interference by the High Court in contractual matters under Article 226 of the Constitution of India, has held as follows:

"14. We have felt it necessary to reiterate the need of caution sounded by this Court in the decisions referred to hereinabove in view of the serious consequences that the entertainment of a writ petition in contractual matters, unless justified by public interest, can entail. Delay in the judicial process that seems to have become inevitable could work in different ways. Deprivation of the benefit of a service or facility to the public; escalating costs burdening the public exchequer and abandonment of half completed works and projects due to the ground realities in a fast changing economic/market scenario are some of the pitfalls that may occur.

15. In the present case, fortunately, the litigation has not been very time consuming. Nothing has been suggested on behalf of the Corporation that the establishment of a retail outlet at Areraj, East Champaran District in the State of Bihar is not required as on date. It can, therefore, be safely understood that in

the instant case the public of the locality have been deprived of the benefit of the service that the outlet could have generated. We have already indicated that the present litigation initiated by Respondent No. 7 does not constitute a very bona fide exercise on the part of the said Respondent and the entire litigation appears to have been driven by desire to deny the fruits of the selection in which the appellant was found to be the most eligible candidate. Whether the outlet is operated by the appellant or the Respondent No. 7 is of no consequence to the ultimate beneficiaries of the service to be offered by the said outlet. The above highlights the need of caution that was imperative on the part of the High Court while entertaining the writ petition and in passing orders therein. Be that as it may, in the totality of the facts of the present case, we are of the view that it would be just and proper to direct the Corporation, if it is of the view that the operation of the retail outlet is still justified by the exigencies, to award the same to the appellant by completing the requisite formalities in accordance with the procedure laid down by the Corporation itself.

12. It is thus emphasized that in contractual matters of this nature, involving larger public interest, the High Court should not interfere with the action taken, in order to avoid hardship to the general public and also loss to the individual concerned. The petition in contractual matters should only be entertained if the Court is satisfied that the element of public interest is involved therein. It has been emphasized by the Apex Court that when the dispute is between two tenderers, the court must be very careful to see if there is element of public interest involved in the litigation.

13. In the given facts and circumstances of the case before the Apex Court, it has been observed that the litigation against the appellant was not initiated by the respondent bona fide and rather to deny the fruits of the selection in which the appellant was found to be the most eligible candidate. Therefore, the law laid down by the Apex Court has bearing in this case for the reason that the petitioner herein is also a selected candidate, however, letter of award has not been issued to her merely on the ground that the requisite funds i.e., Rs. 2.5 lacs are not in her saving bank account in a scheduled bank and rather in H.P. State Cooperative Bank, which admittedly is not a scheduled bank.

14. Now, if coming to the claim of the petitioner herein, she fulfils all the criteria required for being considered for allotment of LPG Distributorship at Paonta Sahib location in District Sirmaour. Admittedly, she has the requisite funds of Rs. 2.5 lacs in her saving bank account in H.P. State Corporation Bank, Paonta Sahib Branch. She even has the FDRs also, of course, in the names of minor sons in Bhooppur Cooperative Multipurpose Society Limited. The FDRs being in the names of her minor sons fulfill the requirement, because as per Condition No. 6.1.vi in the Brochure, the fixed deposit should be in the name of the applicant or family members of the family unit. The term "Family Unit" is defined in item No. 6.1.v of the Brochure, which reads as follows:

""Family Unit" in case of married person/applicant, 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 case of divorcee, "Family Unit" shall consist of individual concerned, unmarried sons(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, "Family Unit" shall consist of individual concerned, unmarried son(s)/unmarried daughter(s)."

15. The minor sons of the petitioner, the holders of the FDRs, are, therefore, the members of the "family unit" of the petitioner for all intents and purposes. They being minor is immaterial as nothing is there in the Brochure containing the guidelines that the FDRs in the names of minors are invalid and cannot be accepted. The petitioner had also the requisite funds in her saving bank account, of course in H.P. State Cooperative Bank, which is not a scheduled bank.

16. In our considered opinion, her candidature should have not been rejected only on the ground that her account was not in a scheduled bank, as the only requirement is the availability of requisite funds in the saving bank account of the applicant. We feel that whether such funds are in a scheduled bank or non-scheduled bank is not so relevant. Above all, what is the nexus between the requirement of such deposit in a scheduled bank and the purpose, sought to be achieved, we failed to elicit anything material from the arguments addressed on behalf of the respondent-Corporation.

17. On the other hand, the petitioner has valid reasons qua she having deposited the requisite funds in her Saving Bank Account in H.P. State Cooperative Bank, as it can reasonably be believed that being member of scheduled caste community and a rustic villager, she cannot be expected to make out any difference between a scheduled and non-scheduled bank, except for its literal meaning that the "bank" means an institution providing banking facilities to the public and that Rs. 2.5 lacs in her account in H.P. State Co-operative Bank serve the purpose. Therefore, the requisite amount is not in her account in a scheduled Bank is not an intentional or serious omission on her warranting rejection of her candidature.

18. It is apt to reproduce the order passed in the writ petition (C.W.P. No. 3536 of 2014) on 22.5.2014, which reads as follows:-

".....in the meantime, the petitioner is directed to withdraw the amount from the bank where it has now been deposited and deposit the same with the scheduled bank".

19. In compliance to the order *ibid*, she has now opened the account in State Bank of Patiala, Paonta Sahib Branch on 2.6.2014. The extract of Pass Book is annexure P-11 to the rejoinder, and the balance in the said account as on the said date was Rs. 2,60,500/-. On this score also we feel that the rejection of the candidature of the petitioner on highly technical ground, that too after her selection is not only harsh and oppressive, but arbitrary also hence, deserves to

be quashed and set aside.

20. Now, if coming to the connected writ petition, the candidature of the petitioner therein has been rejected on the ground of her failure to pay the application fee of Rs. 500/- through a demand draft in favour of the Area Manager of respondent No. 1-Corporation payable at Shimla, within the stipulated period, i.e., 7 days after the receipt of letter dated 19.12.2013, Annexure P-3. we refrain ourselves from making any observations on merits qua the explanation that the letter Annexure P-3 was not delivered to her in time and rather to some other lady namely Uma Devi daughter of Naresh Kumar she now furnished. However, suffice would it to say that who was another lady namely, Uma Devi, her identity and whereabouts do not disclose from the record. Shri Basant Sharma, the so called owner of the house where said Uma Devi was residing as a tenant has expressed his inability to disclose her address and other particulars, as according to him, she had vacated the rented room in April, 2014 and went somewhere. No doubt an effort has been made to show from Annexure P-6, a writing allegedly under the signatures of Subhash Chand Sharma, Postman of the concerned beat that inadvertently he delivered the letter to Uma Devi daughter of Naresh Kumar, however, this writing is not supported by any record qua acknowledgement of the said letter by Smt. Uma Devi daughter of Naresh Kumar.

21. On the other hand, the documents annexures R3/B to R3/D produced by (respondent No. 3), petitioner herein, reveal that as per the version of Pardhan and Numberdar of Gram Panchayat, Badripur, no lady namely Uma Devi daughter of Naresh Kumar ever resided in village Taruwala. Also that Shri Subhash Chand Sharma, Postman and petitioner Uma Rani are residents of village Taruwala and being residing at a distance of about 80 metres are neighbours and well acquainted with each other.

22. Anyhow, the above stated are disputed questions of facts, which cannot be gone into in the exercise of writ jurisdiction. We, however, cannot remain oblivious to the fact that the objection in her case is also not of serious in nature because instead of preparing the draft in the sum of Rs. 500/- towards application fee in favour of Indian Oil Corporation payable at Shimla, she prepared the same in favour of Senior Area Manager, Indane Area Office IOC, Chandigarh. The fact, therefore, remains that the requisite application fee was duly paid by her through a bank draft enclosed to her application well before the time prescribed for submission thereof, however, prepared the draft in favour of an authority other than the prescribed one in the notice inviting applications. We, therefore, find the present a fit case where respondent No. 1-Corporation to conduct an enquiry into her allegations that the letter Annexure P-3, whereby she was called upon to prepare the draft afresh in the name of the prescribed authority and submit the same within seven days of the receipt thereof, could not be delivered by the postal authorities to her but to another Uma Devi daughter of Shri Naresh Kumar. Petitioner Uma Rani, therefore, to make a representation to

respondent No. 1-Corporation highlighting her grievances therein. Respondent No. 1 being uninfluenced by any observations hereinabove shall conduct an enquiry into the matter by associating petitioner Meena Kumari herein also as expeditiously as possible, however, not later than one month from the date the representation, if any, is made by petitioner Uma Rani aforesaid and production of the copy of this judgment because LPG is an essential commodity and it can reasonably be believed that the respondent-Corporation has decided to open the distributorship at location Paonta Sahib taking into consideration the larger public interest. Therefore, such larger public interest cannot be made to suffer any further. In the event any justification is found in the representation made by petitioner Uma Rani and the same is accepted by respondent-Corporation, her merit viz-a-viz Smt. Meena Kumari, the petitioner herein, will be assessed in the light of her performance and also the fulfillment of the other criteria prescribed for consideration of a candidate to the allotment of the distributorship as per guidelines. She will have the claim qua allotment of the dealership only in case the representation, if any, she made find favour with respondent No. 1-Corporation and on the basis of her performance in the merit she rank higher as compared to Meena Kumari, the petitioner herein. On the rejection of her representation or she otherwise is not found suitable on merits the letter qua award of the distributorship shall be issued in favour of Smt. Meena Kumari, the petitioner herein, already selected candidate forthwith. We, therefore, quash the order Annexure P-10 impugned in this writ petition and dispose of the same and also the connected one with the above observations. Pending application(s), if any, shall also stand disposed of.

23. A copy of this judgment duly authenticated be also placed on the record of connected writ petition.