
(2002) 09 SC CK 0101

In the Supreme Court Of India

Case No : Civil Appeal No. 5635 of 2002 (Arising out of S.L.P. (C) No. 14483/2001)

Meenu Paliwal

APPELLANT

Vs

Indian Oil Corporation and Others

RESPONDENT

Date of Decision : 06-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 ALT 2 : (2002) 8 JT 162 : (2003) 1 UPLBEC 119

Hon'ble Judges : S. S. M. Quadri, J;Arijit Pasayat, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties.
2. Leave is granted.
3. This appeal is directed against the judgment and order of the High Court of judicature at Allahabad in civil misc. writ petition No. 28028/2001, dated July 31, 2001.
4. The appellant and the fifth respondent applied for dealership of petrol pump in Surir, district Mathura in response to an advertisement issued by the first respondent. Eligibility conditions of the intending applicants were prescribed in the brochure issued by the first respondent. The eligible candidates were required to apply in the prescribed application form. Para 17 of the application form required the applicant to state the approximate investment excluding the value of land for the construction of various items noted therein. Para 18 thereof required the applicant to give details of source of funds. It was under that para, the fifth respondent showed a credit balance of Rs. 2,86,100/- in Allahabad Bank (branch at Zevar), in SB A/c No. 11004. At the end of the application form, the fifth respondent certified as follows:

" I Neeraj Agarwal, S/o Daya Ram Agarwal hereby certify that the information

given above is true to the best of my knowledge and belief. Any wrong information/ suppression of facts will disqualify me from being considered for the dealership/ distributorship."

5. It may also be noted here that in part-11 of the brochure, para (1) reads as follows..

" If any statement made in application or in the documents enclosed therewith or subsequently submitted in pursuance of the application by the candidate at any stage is found to be incorrect or false, his/her application is liable to be rejected without assigning any reason and in case, he/she has been appointed as a dealer/ distributor, his/her dealership/distributorship is liable to be terminated. In such cases, the candidate/ dealer/distributor shall have no claim whatsoever against the oil company,"

6. Insofar as the eligibility criteria is concerned, there are two requirements to be fulfilled - (1) the applicant should be a resident in the concerned district, as stated in the advertisement, and (2) the applicant should not have gross income of more than two lakhs for the last financial year, as specified in the advertisement. In the light of these two factors, the applications of the applicants for the dealership ought to be considered. It appears, on consideration of the applications by the dealer selection board, the fifth respondent was placed at No. 1 and the appellant was ranked as No. 2 for grant of dealership.

7. Having come to know of the misstatements in the application form of the fifth respondent, the appellant filed a representation before the first respondent requesting that the dealership proposed to be given to the fifth respondent be cancelled and she be given the dealership. While the representation was pending consideration with the chairman of the said board, both the appellant and the fifth respondent filed separate writ petitions before the High Court of Allahabad. The appellant sought a writ of mandamus for consideration of her representation. The fifth respondent sought a writ of mandamus that in view of the decision of the selection board, he should be granted the dealership. By common order dated July 23, 2001, the High Court dismissed the writ petition filed by the appellant as infructuous on the ground that the representation of the appellant had already been rejected by the selection board. Insofar as the writ petition of the fifth respondent is concerned, the High Court issued a mandamus to award dealership to the fifth respondent within one month subject to the completion of formalities which may be required by the respondent - corporation. However, the appellant filed a fresh writ petition, being W.P.28028/ 2001, before the High Court challenging the decision of the chairman of the selection board, which was dismissed by the High Court on July 31,2001. It is against that order that the appellant is before us in this appeal.

8. Mr. R.F Nariman, the learned senior counsel, appearing for the appellant, brought to our notice that a credit balances of Rs. 2,86,100/- was shown by the fifth respondent as on the date of the application, indeed, there was no account

in existence as on that date and, as such, there was misstatement in the application form which should have resulted in rejection of application of the fifth respondent instead he was selected. Mr. O.P. Sharma, the learned senior counsel, appearing for the fifth respondent, on the other hand, invited our attention to the order passed by the High Court on July 23, 2001 granting writ of mandamus in favour of the fifth respondent to award dealership and read out the explanation given by the fifth respondent in regard to the credit balance shown in column 18 which had been accepted by the chairman of the selection board and prayed that this appeal be dismissed. Mr. Puri, learned counsel appearing for the first respondent-corporation, submitted that in granting the dealership, the first respondent merely obeyed the mandamus issued to it by the High Court.

9. Having considered the rival contentions of the parties and perused the records, we are of the view that the specific caveat notified by the first respondent that any mis-statement of fact would result in rejection of the application and in view of the declaration given by the fifth respondent himself in the application form, referred to above, the misstatement in column 18, if untrue, would make the fifth respondent ineligible for consideration of dealership was not adverted to by the board. In this connection, we may also refer to the report of the field investigating officer who stated that the said account number was opened in the Allahabad Bank, Zavar branch, district Bulandshahr, on June 24, 1998 and was closed on September 22, 2000. This is yet another aspect which needs to be considered by the board. These facts, which require closer examination, are ignored by the board. The High Court also did not bestow any attention on those aspects.

10. In view of this position, we consider it just and proper to set aside the order of the High Court and that of the chairman of the selection board and remit the case to selection board for consideration of the applications of the appellant as well as the fifth respondent afresh after giving due opportunity to both the parties for making selection of an eligible and suitable candidate for granting dealership, in accordance with law.

11. The appeal is, accordingly, allowed. No costs.