
(2013) 08 CHH CK 0015
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 182 of 2013

Mohammad Farukh

APPELLANT

Vs

Indian Oil Corporation Limited and Another

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Citation : (2013) 08 CHH CK 0015

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Prakash Tiwari, for the Appellant; Anand Shukla, Advocate for Respondent No. 1 and Shri Raja Sharma, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—By this petition, the petitioner seeks quashing of the order dated 02.01.2013 (Annexure P-1) passed by the respondent No. 1 and further, a direction to the respondent authorities to consider his case for allotment of the retail outlet i.e. Petrol Pump. The facts, in brief, as projected by the petitioner are that the respondent No. 1/Corporation issued an advertisement on 16.10.2011 inviting applications for allotment of retail outlet/dealership for various places including the village Gandai, District Rajnandgaon. The petitioner, alongwith five other candidates including the private respondent, made application for the said purpose. After considering the applications, the respondent No. 1, on 28.05.2012 issued a letter pursuant to the advertisement dated 16.10.2011 informing the petitioner that the officers of the respondent/ Corporation would visit the site, thus, the petitioner should remain present on the scheduled date and time alongwith all the documents relating to the site/plot where the retail outlet was to be established. Thereafter, the petitioner was directed to remain present before the Dealer Selection Committee for his interview at Raipur on 30.06.2012 alongwith all the requisite documents. The petitioner appeared on the scheduled date and time alongwith his testimonials. After holding of the interview, a merit list was prepared wherein the petitioner

secured the first position with 83.9% marks. Thereafter, the Vigilance Cell of the respondent/Corporation enquired about the validity of the experience certificate issued to the petitioner which was confirmed by letter dated 28.09.2012 by the respondent No. 3. However, by order dated 02.01.2013 (Annexure P/1), the petitioner was informed that his selection was cancelled on the ground that the experience certificate submitted with the respondent/Corporation was false.

2. Shri Tiwari, learned counsel appearing for the petitioner would submit that, without giving any opportunity of hearing and without issuing any show cause notice, the respondent/Corporation has cancelled his selection for allotment of the retail outlet. The petitioner had secured the highest marks amongst all the candidates. The experience certificate was also confirmed by the respondent No. 3 which is evident from communication dated 28.09.2012 (Annexure P/7). If there was any doubt with regard to genuineness of the experience certificate, proper opportunity ought to have been granted to the petitioner to rebut the allegations which has not been done in the present case and a stern action of cancellation of the selection for retail outlet, has been taken by the respondent/Corporation. Thus the act and conduct of the respondent authority i.e. respondent No. 1 is arbitrary, illegal and in contravention of principle of natural justice.

3. On the other hand, Shri Shukla, learned counsel appearing for the respondent/Corporation submits that on a complaint received from one Nilesh Jain, an investigation was done by the respondent/Corporation wherein it was found that the experience certificate submitted by the petitioner was a false document. He would further submit that as per clause 21.0(h) of the General Terms and Conditions as provided in the Brochure in respect of Selection of Petrol/Diesel Retail Outlet Dealers, of the respondent/Corporation, if any statement made in the application or in the document enclosed herewith or subsequently submitted in pursuance of the application by the candidate, at any stage is found to be incorrect or false, the application would be rejected without assigning any reason, and if the candidate is appointed as dealer, his dealership would be terminated. Further, there shall be no claim whatsoever against the respondent/Corporation.

4. Shri Raja Sharma, learned counsel appearing for the respondent No. 3 would submit that the letter of intent has already been issued in favour of the respondent No. 3. Thus, if the impugned order dated 02.01.2013 (Annexure P/1) is quashed, the respondent No. 3 will be prejudiced.

5. Heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. It is in disputed that the petitioner had submitted an experience certificate in support of his candidature with the respondent/Corporation. On a complaint with regard to the genuineness of the said certificate, an enquiry was conducted by the respondent/Corporation upon which, as per the respondent/Corporation, it

was found to be false document. However, it is clear that no show cause notice or opportunity of hearing was afforded to the petitioner to put forward his case with regard to the genuineness of the experience certificate, submitted by the petitioner. The respondent/Corporation ought to have afforded an opportunity of hearing which is the basic principles of natural justice, as the respondent/Corporation has taken a stern action of cancellation of his empanelment even after securing the highest marks in the merit list.

7. On perusal, it is manifest that the guidelines for selection of retail outlet dealer (Brochure) (Annexure R-1/2) does not provide for experience as an essential qualification, however, if the applicant is having an experience of working in other retail outlet, some weightage is given by awarding marks for experience in the selection process.

8. In the case on hand, indisputably, even if the marks awarded against experience is removed, the petitioner still stands at No. 1. It is not a case where the petitioner has obtained a forged certificate. On enquiry, it was admitted by the dealer i.e. Tamrakar Fuels, Rajnandgaon, that the signature was genuine, but the same was given in other circumstances (Annexure P/7). Thus, the certificate may be false, but it is not forged by the applicant i.e. the petitioner.

9. In view of the above, before taking recourse to clause 21.0(h) of the guidelines (Brochure), the petitioner ought to have been afforded an opportunity of hearing to explain how a false certificate was produced, as aforesaid. Even without experience certificate, the petitioner is eligible for consideration for allotment of retail outlet.

10. In *Krishan Lal Vs. State of Haryana and Others*, , the argument was that the certificates were issued by the industries, which were not existing as no provident fund was deposited by them. The Supreme Court, observed as under:

10. In any event, non-deposit of the provident fund in terms of Employees Provident Funds & Miscellaneous Provisions Act, 1952 by itself does not lead to the conclusion that the establishments are non-existing. Provident fund need to be deposited provided the said Act applies. It may be even otherwise a violation of the provisions of the said Act, but only by reason thereof, the certificates granted by them would not be treated to be nullities.

11. This Court, in *Sonam Gandhi v. Hindustan Petroleum Corporation Limited & Others* 1, wherein identical issue was involved, quashed the order impugned therein, however, liberty was granted to the respondent/Corporation therein, to reconsider the case of the petitioner for allotment of the retail outlet, a fresh.

12. In the case on hand, it appears that no opportunity fo hearing was afforded to the petitioner to establish the fact as to how he had submitted the experience certificate, and secondly, whether the certificate was genuine or not. Even otherwise, while assessing the suitability of a candidate, the marks are awarded for different purposes. The respondent/Corporation should have examined the

case from that angle also as to whether after deducting the marks obtained for experience, what would be the position of the petitioner. It appears that pursuant to cancellation of empanelment of the petitioner, no allotment has been made pursuant to the interim order dated 23.07.2013. After issuance of notice to the respondents in this case, if letter of intent was issued to the respondent No. 3, it cannot be held that the respondent No. 3 has acquired any right. However, while reconsidering the case of the petitioner, the respondent No. 3 will also be afforded an opportunity of hearing to put forward his case.

13. In view of the foregoing, the impugned order dated 02.01.2013 (Annexure P/1) is quashed. However, the respondent/Corporation is directed to reconsider the case of the petitioner in the light of the aforestated observation and pass a fresh order, in accordance with law and on its own merits.

14. As a result, the writ petition is allowed to the above extent. No order as to costs.

1 W.P. (C) No. 35/2011, decided on 05.09.2011