

(2012) 11 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 8271 of 2011

Mrs. Sunita Sanjay Bhor and Another

APPELLANT

Vs

Mrs. Kalyani Abhijit Bobade and Others

RESPONDENT

Date of Decision : 26-11-2012

Acts Referred:

Citation : (2013) 3 ALLMR 199

Hon'ble Judges : S.J. Vazifdar, J;R.Y. Ganoo, J

Bench : Division Bench

Advocate : P.K. Dhakephalkar, with Mr. Ritesh Ratnani instructed by Mr. Ganesh Gole and Prabha Badadare, for the Appellant; Prasad Dani with Mr. Umesh Mankapure for the Respondent No. 1 and Mr. Minoo Siodia with Ms. Jenita Lale instructed by Rustamji and Ginwala for the Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Vazifdar, J.—The petitioners are partners. Respondent Nos. 2, 3 and 4 are the Hindustan Petroleum Corporation Limited (HPCL) and its Director of Marketing and Senior Regional Manager respectively. The petitioners have sought an order to set aside the decision of HPCL to scrap a merit list dated 20th January, 2010, and to hold a fresh interview. The petitioners have also sought an order to set aside the statement of award of marks dated 7th December, 2010, by the selection committee of HPCL. HPCL, by an advertisement dated 17th August, 2009, invited applications for the allotment of retail outlet dealership in the Satara District. Six applicants, including the petitioners and respondent No. 1, filed applications for the same. The petitioners were invited for an interview.

2. The selection committee declared a provisional mark list on 20th January, 2010. As per the said mark list, the petitioners were selected as they received the maximum marks of 251.40 out of 300, Respondent No. 1 raised various grievances regarding the allocation of marks. The grievances were raised as per the grievance redressal system. The same were, however, rejected. Being

aggrieved by the same, respondent No. 1 filed Writ Petition No. 5415 of 2010 to challenge the award of marks. The Writ Petition was opposed by HPCL. The Writ Petition was disposed of by the Division Bench by an order 5th October, 2010, which reads as under:-

1. This petition was heard at length and the learned Counsel for the petitioner pointed out some material errors in the totaling/submission of the marks allotted to the respondent No. 1. The officers of the oil company clarified and agreed that the merit list suffer from arithmetical mistakes. It was under these circumstances that Shri D.S. Karkera, one of the officers of the Oil Company who is present before us has filed an affidavit stating that the Oil Company has decided to scrap the merit list which is the subject matter of challenge in this petition and hold a fresh interview of all the eligible candidates. It has been further clarified that after the de novo interviews fresh merit list will be published.

2. In the light of this affidavit filed by Shri D.S. Karkera, Mr. Mankapure, the learned Counsel for the petitioner seeks leave to withdraw the petition. Leave granted and the petition is disposed as withdrawn.

3. We hope that after the de novo interviews, the entire process upto issuance of the L.O.I. will be completed before 31st December, 2010.

3. Mr. Dhakephalkar, the learned senior counsel appearing on behalf of the petitioners contended that there were no arithmetical mistakes in the first list and, therefore, the entire process which was undertaken de novo is liable to be quashed and set aside.

4. The first respondent had obtained under the RTI Act, the relevant documents in respect of the first exercise which was challenged by her in the said Writ Petition No. 5415 of 2010. She filed an affidavit in reply to the present Writ Petition in which she annexed, inter-alia, the TEC report which contained the evaluation by the site selection committee. Marks were allocated in respect of about 14 criteria. The aggregate marks were computed by the selection committee at 88 out of 100 in respect of the petitioners. This is an obvious arithmetical mistake for the aggregate mark obtained by the petitioners was 86 out of 100. As a result thereof, there was a further arithmetical error in the weighted marks. One of the components involved in computing the weighted mark was the marks awarded by the site selection committee. As a result of the arithmetical error in that component viz. 88 marks instead of 86, the calculation of the weighted marks also suffered from an arithmetical mistake.

5. Faced with this, Mr. Dhakephalkar submitted that the TEC report containing the evaluation by the site selection committee was not reliable as it admittedly contains erasures and over-writing.

6. We are afraid it is not possible for us in this Writ Petition, to determine whether the said report is fabricated or even unreliable. This is a question of fact in respect of which it is impossible to express any conclusive finding. The

difficulty is enhanced by the fact that a photo copy of this report was annexed to the affidavit in reply by respondent No. 1. The petitioners did not file an affidavit in rejoinder. They never alleged that the same was fabricated.

The original file was perused by us. The photo copy is obviously taken from the original for the original contains the same erasures and over-writing. The photo copy is, therefore, of the original which was produced in Court.

7. Mr. Dhakephalkar then submitted that the members of the selection committee themselves had not filed any affidavit confirming that it is they who had made the erasures. He submitted, therefore, that the possibility of the report having been tampered with by other officers subsequently, to favour the first respondent, cannot be ruled out.

8. The petitioners not having challenged the report despite the fact that the same was annexed to the first respondent's affidavit in reply, cannot be permitted to raise these allegations. In view thereof, it was not necessary for HPCL to have filed an affidavit of the members of the selection committee. In any event, the same would constitute a seriously disputed question of fact.

9. In these circumstances, it is not possible to entertain the Writ Petition on the above allegations. The petitioners must be relegated to a regular suit for damages. The Writ Petition is, therefore, dismissed.