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(2022) 08 PAT CK 0001

In the Patna High Court

Case No : Letters Patent Appeal No.625 Of 2021 In Civil Writ Jurisdiction Case No. 559 Of 2020

M/S Gauri Shankar Indane Service Kuchaikote — APPELLANT

Vs

Indian Oil Corporation Ltd — RESPONDENT

Date of Decision : 02-08-2022

Acts Referred:

Citation : (2022) 08 PAT CK 0001

Hon'ble Judges : Sanjay Karol, CJ;S. Kumar, J

Bench : Division Bench

Advocate : Y.V. Giri, Ashish Giri, Ranjan Kumar Srivastava, Aishwarya Nand Kumar, Dr. K.N. Singh, Sanat Kumar Mishra, Prakritita Sharma, Amarjeet, Sriram Krishna, Abhijeet Gautam, Anil Kumar Jha, Shailesh Kashyap, Anjani Kumar, Alok Kumar Rahi, Dr. Ranjeet Kumar

Final Decision : Dismissed

Judgement

Heard Mr. Y. V. Giri, learned Sr. advocate, assisted by Mr. Ashish Giri, learned counsel for appellant, Dr. K. N. Singh, learned Sr. Advocate, assisted by Mr. Sanat Kumar Mishra, learned counsel for the IOCL, Mr. Anil Kumar Jha, learned Sr. Advocate appearing for respondent nos.4 & 5 and Mr. Anjani Kumar, learned Sr. Advocate for the Bank.

This LPA has been filed for setting aside the judgment and order dated 22.05.2020 passed in CWJC No.559/2020 passed by a learned Single Judge of this Court dismissing the writ application.

Briefly stated the facts of the case is that advertisement was issued on 17.7.2007 for award of distributorship of LPG under freedom fighter category in which Gauri Shankar Pandey (father of appellant/petitioner) applied and was found to be the most suitable candidate.

Letter of Intent (LOI) was issued to Gauri Shankar Pandey (father of appellant/ petitioner) on 30.10.2008 and one day thereafter, he died on 31.10.2008 and considering no substantial investment was made by the original LOI holder, the legal heir of deceased Shri Ravi Pandey (appellant/petitioner) was asked to submit his application for fresh evaluation in terms of reconstituted guidelines dated 1.12.2008.

For fresh evaluation, petitioner/appellant submitted his application dated 17.2.2009 in which, under Clause 14.2, he mentioned an amount of Rs.20,40,000/- (Twenty lacs forty thousand) as available in his Saving Bank Account No.14111 in Siwan Central Cooperative Bank, Limited, Siwan. As per selection guidelines dated 29.6.2007, the amount mentioned in the application at item Nos.14.2 and 14.3 were to be retained till the date of interview or three months from the date of application whichever was earlier.

Interview of appellant/petitioner was conducted on 26.6.2009. In support of his financial capacity, appellant/petitioner submitted certificates dated 14.2.2009 and 9.3.2009 issued by Siwan Central Co-operative Bank Ltd., Siwan confirming balance of Rs.20,40,000/- (Twenty lacs forty thousand) as on 14.2.2009 in the account No.14111 belonging to appellant / petitioner and a copy of the passbook dated 14.2.2009 was also provided by the appellant / petitioner Selection guidelines issued under Clause 1.2 provided maximum marks 35 for capacity to provide finance and in view of bank documents submitted by appellant/petitioner, according to which, Rs.20,40,000/- (Twenty lacs forty thousand) was available in his saving account, he was awarded 31.70 marks and total marks 83.54 and candidate next to him, got 70.40 marks, as such, he was found to be most suitable candidate and Letter of Intent was issued to appellant / petitioner on 8.4.2009 and letter of appointment on 27.8.2009 and thereafter an agreement was entered between the appellant / petitioner and IOCL on 7.9.2009 with respect to distributorship of LPG.

After commencement of distributorship of LPG, appellant / petitioner lodged an FIR being Kuchaikote P.S. Case No. 6/2011 for theft of bank documents in his office in which, Rajesh Pandey (employee of appellant/petitioner and present complainant) was a witness and after investigation, police submitted charge-sheet No.45/11 dated 31.3.2011.

A complaint dated 23.10.2017 was filed by Rajesh Pandey (ex-employee / complainant) against appellant /petitioner in PMO alleging fabrication of the bank account statement by the appellant / petitioner, which was inquired by the area office of the IOCL and was closed on 9.2.2018 stating therein that the bank details and educational qualification were verified during the field investigation report and IOCL by letter dated 9.2.2018 intimated PMO that no fraud was found against the present appellant / petitioner.

A complaint was also received in vigilance department of IOCL at Kolkatta that appellant/petitioner had procured the LPG distributorship on basis of forged and fabricated bank documents. The complainant provided a copy of bank pass book which showed that in place of Rs.20,40,000/-(Twenty lacs forty thousand), as claimed by appellant / petitioner, only Rs.2,40,000/-(Two Lacs forty thousand) was in his account No.14111 in the Siwan Central Co-operative Bank Ltd. on the date of his application and when appellant / petitioner was asked to produce the original passbook, he stated that same was stolen in the year 2011 for which, he had already instituted an F.I.R.

Vigilance department of IOCL in order to verify the correctness of the complaint, asked the Bank vide letter dated 1.11.2018 to verify and confirm the balance in the aforesaid bank account. Bank, in response, by letter dated 26.11.2018, sent the statement of account and confirmed that in the said account, balance of Rs.2,40,000/- (Two lacs forty thousand) was available from 14.2.2009 to 31.3.2009 and on 7.4.2009, the appellant / petitioner withdrew Rs.2,39,500/- by cheque No.019577. Vigilance department of IOCl by letter dated 11.1.2.2018 asked the Bank to confirm issuance of the copy of the passbook dated 14. 9. 2009 and certificate dated 14.2.2009 and 9.3.2009 produced by appellant / petitioner at the time of selection. In response, the Bank Manager vide his letter dated 29.1.2019 confirmed that the three documents were not issued by the Bank upon which, the vigilance department prima facie found that the appellant / petitioner had secured LPG distributorship on basis of false statement and fabricated documents.

A show cause dated 29.8. 2019 was issued by the competent authority of Indian Oil Corporation Ltd. to the appellant / petitioner enumerating the allegation, verification and finding recorded by vigilance department that appellant / petitioner had secured LPG distributorship on basis of false statement and fabricated documents indicating relevant provisions of selection guidelines and the distributorship agreement which clearly indicated that if at any stage, it is found that LPG distributorship has been obtained on basis of false statement and misrepresentation, same is liable to be terminated at any point of time.

Against notice of termination issued under Clause 27.1 of the Agreement appellant / petitioner filed CWJC No.18839 of 2019 which was disposed of by order dated 16.9. 2019 with a direction to IOCL to provide personal hearing to appellant / petitioner before taking any final decision by the competent authority.

Appellant / petitioner filed his reply dated 19.9.2019, 23.9.2019 and 18.10.2019 denying the allegations and thereafter after considering the reply of the appellant/petitioner, order of termination dated 30.12.2019 was passed by the competent authority which was challenged by the appellant / petitioner by filing CWJC No.559 of 2020 which was dismissed by the order dated 22.05.2020 and review petition filed being Civil Review No.79/2020 was also dismissed by order dated 22.09.2021.

It is submitted by Shri Y. V. Giri, learned Sr. Counsel that appellant / petitioner had an amount of Rs.20,40,000/-(Twenty Lakhs Forty Thousand) kept in the cooperative bank on the day of the advertisement. This statement was verified through a procedure which is known as 'field investigation' whereafter the 'field investigation report' was submitted and after which appellant/petitioner was found to be eligible in all respect and distributorship of LPG was awarded to him, which he successfully carried on for five years.

The licence was renewed for a period of further five years by an agreement dated 25.10.2016 entered between the parties.

Learned Sr. Counsel further submitted that the current statement from the concerned bank about the appellant/petitioner not having sufficient amount of the money at the time of interview during the first agreement has not been supplied to the appellant/petitioner. It has further been argued that only a statement has been given that on enquiry from the bank, the IOCL has been informed that on the relevant date, when the appellant/petitioner had said that he had Rs. 20,40,000/-(Twenty lacs forty thousand) in his account, he had only Rs. 2,40,000/- (Two lacs forty thousand) in said account. It is therefore submitted that without giving any reason by the IOCL for doubting the report of the field investigation carried out earlier and relying on statement from the bank authority which has not been supplied to the appellant/petitioner, his agreement was terminated.

It is further submitted that the allegation of fraud against the appellant is not substantiated, established or proved in this case as there is no evidence which could prove that the appellant had furnished wrong bank statements at the time of the allotment of the said distributorship to him and it is the respondents who have failed to produce the Certified Ledger/ Record relating to the bank statements of the appellant/petitioner which could show that the allegations of fraud are substantiated against the appellant/petitioner. In this regard, the respondent I.O.C.L. had sought information from Siwan Central Co-operative Bank Ltd. on 23.03.2021 with respect to the original ledger / records of appellant's savings Account No.14111. In response to the aforesaid query, the Siwan Central Co-operative Bank Ltd. intimated the concerned official of I.O.C.L. through Letter No.62 dated 29.04.2021 stating that ledger/records relating to the appellant's saving Account No.14111 is not available with them.

It is further submitted that the respondent Corporation has entertained the complaint after about 9 years, contrary to the guidelines by a complainant who was not a candidate, who had applied for the distributorship of the said gas agency, but was an unknown person.

It is further submitted that the gas agency of the appellant/petitioner had been running since 2009 with due diligence, without any financial problems, serving more than 30,000 (approx) consumers and while running the said gas agency, appellant/petitioner made huge investment around rupees one crore also by constructing godown, showroom and purchasing vehicles.

It is further submitted by learned Sr. Counsel that the appellant has successfully carried out his obligation in running the said gas agency for about a decade and his dealership should not be terminated at this juncture.

It is further submitted that under principle of natural Justice, the 'field investigation report' and other relevant document of Shri Aman Kispotta (Area Sales Manager LPG, Under Patna Area Office who conducted the field investigation report in the year 2009) although reference was made to BSO for obtaining the same was not provided and the opinion of officer, who obtained the confirmation from the bank, was also not provided.

Shri Ravi Pandey (Ex-employee/complainant) was not actual applicant in selection of distributorship. The agency was passed on to him after the demise of his father, Late Gauri Shankar Pandey who was granted LOI on 30.10.2008.

On the other hand, Dr. K. N. Singh, learned Sr. counsel, assisted by Sri Sanat Kumar Mishra, learned counsel, has submitted that the present LPA is not maintainable and is fit to be dismissed. The appellant/petitioner has already accepted and acted upon the judgement and order dated 22.05.2020 and taking liberty of the same, he filed a representation on 23.05.2020 before the respondent-Corporation which was rejected by order dated 3.6.2020, as such, he is precluded from challenging the order dated 22.05.2020 passed by the Writ Court.

It is further submitted that against the order of rejection dated 3.6.2020, appellant / petitioner had filed CWJC No.7295 of 2020, which was also dismissed vide order dated 15.01.2021.

Appellant/petitioner has procured the dealership by misrepresentation and suppression of fact as such the appellant/petitioner is not entitled to any relief. It is further submitted that IOCL has taken action against the appellant/petitioner immediately after the fraud played by the appellant/petitioner came in light and action has been taken as per the provision contained in clause 11 of the distributorship selection guidelines dated 29.06.2007 and the clause 27(I) of the distributorship agreement dated 7.9.2009 and 25.10.2016. Clause 11 stipulates that if any information given in the application is found incorrect/false/ misrepresented then the applicant's candidature shall stand cancelled.

Further, clause 27(I) of the distributorship agreement dated 07.09.2009 as well as distributorship agreement dated 25.10.2016 signed between the appellant/ petitioner and the IOCL reads as under:

"Notwithstanding anything to the contrary herein contained, the corporation shall also be at liberty at its entire discretion to terminate this agreement forthwith upon or at any time after the happening of any of the following events namely (I) if any information given by the distributor in his application for appointment as a distributor shall be found to be untrue or incorrect in any material particular."

Hence, the competent authority is within his jurisdiction to terminate the agreement as the action of competent authority is a pure administrative decision and there is no flaw in the decision making process. The appellant/petitioner was granted full opportunity and personal hearing and the decision is as per the rules of the Corporation as well as terms of agreement and after compliance of principle of natural Justice.

In order to find out the truth, this Court called for original records and ledgers with respect to account of appellant/petitioner as maintained in the Bank and pursuant to which, the Branch Manager appeared and produced following documents:-

1. Deposit Voucher (Challan dated 11.02.2009 to 20.02.2009).

2. Ravi Pandey File (Photo Copy of Document).

3. Daily Scroll Register (Dt. 24.12.2008 to 06.03.2009).

4. SBI Cheque issued Register.

5. Customer Signature Spacemen Card (A/c 14101 to 14150).

6. A/c Opening Register.

7.Savings Account Ledger Book No. 88.

All these documents were made available for perusal of not only all the learned counsel but also the petitioner/appellant who was present in Court.

The opening account register reveals that account No.14111 was opened on 11.02.2009 having Ledger Folio 88 / 224 in which Rs.50,000/- was deposited. Daily Scroll Register reveals that in account no.14111, on 11.02.2009 Rs.50,000/- on 12.02.2009, Rs.50,000/- and on 14.02.2009 Rs.50,000/- and Rs.40,000/- were deposited in the said account.

From customer deposit voucher, in account No.14111, on 11.02.2009 Rs.50,000/-, on 12.02.2009 Rs.50,000/-, on 13.02.2009, Rs.50,000/- and on 14.02.2009, Rs. 50,000/- and Rs.40,000/- were deposited.

On 07.04.2009 by Cheque No.019577, Rs.2,39,500/-was withdrawn by appellant/ petitioner and thereafter, there has been no transaction from said account.

In the saving account ledger Book No.88, at page no.224, half of the said page has been covered by pasting a blank ledger page, as such, entry made on such page is not visible and on the next page ,i.e., page no.225, name of appellant/ petitioner and his account no.14111 with details of transaction, as referred above, is entered in which, on 14.02.2009, total balance in the account is Rs.2,40,000/- (Two lacs forty thousand) which indicates connivance of the bank officials facilitating appellant / petitioner in preparing forged and manipulated documents, on basis of which, appellant/petitioner misrepresented the IOCL and was placed at Sr. No.1 of the merit list.

On scrutiny and perusal of original documents and deposits made maintained under the different heads and ledgers, it is conclusively established that appellant/petitioner had deposited Rs.50,000/- as cash on 11.02.2009, 12.02.2009, 13.02.2009, 14.02.2009 and further Rs.40,000/- as cash on same day, i.e., 14.02.2009 and, as such, on 14.02.2009, the balance amount was Rs.2,40,000/- but by playing fraud, a certificate dated 14.02.2009 and certificate dated 09.03.2009 and passbook dated 14.02.2009 were manufactured/ created by the appellant/petitioner in perhaps collusion with the bank officials. Bank officials always made an effort that this forgery is never unearthed and when this Court asked to produce original documents, same was not produced on the pretext that original documents were misplaced , however, when the court asked the Chairman and Managing Director to produce the original documents or face the consequences, same were produced before this Court, which shows that bank officials were fully aware of the forgery committed by the appellant/ petitioner and made every effort to cover said forgery.

After computerization of the banking system, accounts were being maintained in computer and from the computerized sheet provided by the Bank with respect to statement of account of appellant / petitioner, balance transfer on 11.08.2012 is shown as Rs.1351/- and amount available in the account on 13.07.2022 is Rs.1967/-. As per statement of account from 31.03.2009 to 12.07.2022 opening balance is Rs.2,40,700/- and closing balance is Rs.1,351/-.

It is quite intriguing that appellant / petitioner never bothered to inquire about his missing eighteen lacs rupees from his bank account, which only suggests that Rs.2,40,000/- (Two lacs forty thousand) was fraudulently made 20,40,000/- (Twenty lacs forty thousand).

We also notice that petitioner/appellant never placed any material before any authority or Court establishing his financial liquidity. No documents other than the bank statement and the verification report are referred to or relied upon by the petitioner/appellant. No statement of account; bank statement of any other account; income tax returns or any other material was ever produced at any point in time.

Several issues of law and fact were argued on behalf of appellant/petitioner as well as respondents and several judgments were also cited in support of such contentions but there is no need to discuss those issues after this Court has come to conclusion on the basis of original records produced by the Bank that appellant/petitioner had Rs.2,40,000/- (Two Lacs Forty Thousand) on 14.02.2009 and not Rs.20,40,000/- (Twenty Lacs Forty Thousand) in his saving account for which, incorrect certificate and passbook were created/manufactured by the appellant/petitioner in connivance with Bank employees on basis of which, he was placed at Sr. No.1 of the merit list otherwise, he would be below in the merit list and LPG distributorship would not have been allotted to him.

It is a well settle preposition of law that fraud vitiates every solemn act. Fraud and justice cannot dwell together and it cannot be perpetuated or saved by application of any equitable doctrine.

In said view of the matter, this Court does not find any merit in this LPA and is, accordingly, dismissed.

Let the original records be handed over to the learned Sr. counsel appearing for the Siwan Central Co-operative Bank Limited forthwith.

I agree.

