
(1995) 02 PAT CK 0034

In the Patna High Court

Case No : Civil Writ Jurn. Case No. 5492 of 1994

Mustaque Ahmad

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-02-1995

Acts Referred:

Citation : (1995) 02 PAT CK 0034

Final Decision : Partly Allowed

Judgement

Asok Kumar Ganguly, J.—Heard learned counsel for the parties and on consideration of the materials on record; this Court feels that this writ petition should be disposed of at the admission stage itself.

2. This writ petition has been filed, inter alia, for quashing the order dt. 8th June, 1994 issued under the signature of the Deputy General Manager (Sales), Eastern Region, Indian Oil Corporation Limited (hereinafter referred to as the said Corporation) purporting to withdraw the letter of intent No. Agency/751/ROS/Ander dt. 13th September, 1993 which was issued to the petitioner for the proposed SKO/LDO dealership at Ander in the district of Siwan.

3. The facts of the case may be summarised as hereunder:

Pursuant to an advertisement published for appointment of IOC dealer for SKO/LDO dealership at Ander in the district of Siwan in the daily issue "Times of India" dt. 15th March, 1988, the petitioner applied. Pursuant to the said application the petitioner received a letter of interview dt. 30th July, 1990 and the petitioner was directed to appear in the interview on 24th August, 1990 at 9.00 a.m. in Hotel Maurya. The petitioner was also directed to bring with him all original certificates/documents which were disclosed in the application form. The petitioner appeared in the interview and thereafter again in the month of September/October, 1990 the petitioner was asked to appear for the purpose of verification of the documents. The petitioner was again asked to appear before the Oil Selection Board (Bihar) on 20th August, 1993 at Hotel Patliputra Ashok,

Patna and the petitioner appeared on that date also. Thereafter the petitioner was asked to call on the Divisional Officer of the said Corporation. When the petitioner went to the said office, the petitioner was handed over a copy of letter of intent dt. 13th September, 1993, as contained in Annexure-6 to the writ petition. The letter of intent of course contains the following clauses:--

"This letter is merely a letter of intent and is not to be construed as a firm offer of dealership to you. The dealership to you will on your complying with the conditions spelt out hereinabove be confirmed/formalised by an appointment letter followed by the signing of our standard dealership agreement.""

4. The petitioner's case in paragraph 15 of the writ petition is that pursuant to the direction given in the letter of intent he purchased a plot of land and informed the Chief Divisional Manager of the said Corporation of the same along with a copy of the sale deed. The petitioner also got a lay out plan drawn by M/s. MAPCON ENGG., Patna-20 for the purpose of making construction in connection with the said dealership at Ander. It is also the case of the petitioner that the District Magistrate gave "No Objection Certificate" in favour of the petitioner for the purpose of the said dealership. The petitioner's further case is that the said law out plan has also been fully approved by the Deputy Chief Controller of Explosive, Eastern Circle, Department of Explosive, Government of India, Calcutta. The petitioner also applied for grant of explosive licence and according to the petitioner's averment in paragraph 19 of the writ petition such licence was granted to the petitioner by the Deputy Chief Controller, Explosive.

5. The petitioner's further case is that while he was legitimately expecting the grant of dealership by the I.O.C. for supply of Kerosene Oil, he received a letter dt. 16th December, 1993 on 26th Dec., 1993 issued by the Chief Divisional Manager of the said Corporation whereby the petitioner was asked not to proceed further with the progress of dealership until the petitioner hears from the authority of the said Corporation. A copy of the said letter dt. 16th Dec., 1993 is annexed as Annexure-11 to the writ petition. Thereafter the petitioner made a detailed representation to the authorities of the said Corporation on 11th Jan., 1994, as contained in Annexure-12 to the writ petition. Thereafter again the petitioner made another representation on 27th Jan. 1994 to the Chief Divisional Manager of the said Corporation with a prayer to allow the commissioning of the dealership at Ander in the district of Siwan but the petitioner did not receive any detailed answer from the respondents save and except a communication dt. 2nd Feb. 1994 whereby the petitioner was informed that the stand of the said Corporation will be guided by the previous communication dt. 16th Dec. 1993. Thereafter the petitioner made a series of representations and in answer to the same the authorities of the said Corporation made two communications to the petitioner, one dt. 14th Feb. 1994 and another dt. 9th Mar. 1994 (wrongly stated as 9-9-1994) reiterating the aforesaid decision that the stand of the Corporation will be guided by the previous letter dt. 16th Dec. 1993 and in the said letter dt. 9th Mar. 1994 a request was made to the petitioner to bear with them till final

decision from appropriate authority is taken. Thereafter the impugned order dt. 8th June, 1994, as contained in Annexure-1 to the writ petition, was issued. By the said impugned order dt. 8th June, 1994, the petitioner was informed that the letter of intent dt. 13th Sept. 1993 issued to the petitioner stands withdrawn and cancelled in view of the fact that the petitioner has made a "false statement" about his being a resident of Siwan district. It was further stated that the residence certificate issued to the petitioner by the Block Development Officer is not correct and, therefore, the petitioner did not meet the eligibility criteria and is not eligible for the dealership in question. In the impugned communication dt. 8th June, 1994 there is also a reference to an enquiry being made in the matter.

6. Learned counsel for the writ petitioner has assailed the said impugned order on various grounds but mainly on the ground of promissory estoppel and also on the ground that the action of the said Corporation is unfair as the same is violative of principles of natural justice inasmuch as the impugned order dt. 8th June, 1994 has been made without giving any opportunity of hearing to the petitioner in the enquiry on which the impugned order is admittedly based.

7. Learned counsel appearing on behalf of the Corporation and also the learned counsel appearing on behalf of respondent No. 5, in whose favour the subsequent letter of intent has been issued, have also appeared in this case and made detailed submissions which are noted below :--

8. In the counter-affidavit filed by respondents Nos. 2, 3 and 4, who are the authorities of the said Corporation, they have produced a copy of the enquiry report as they were directed to do so by an order of a Division Bench of this Court dt. 8th Nov., 1994. It appears from the said counter-affidavit that the Deputy Collector, Land Reforms, Siwan was deputed to hold an enquiry to ascertain whether the petitioner is a resident of village Mahaul in the district of Siwan and it also appears from the said counter-affidavit that on 6th Dec., 1993 the said Deputy Collector, Land Reforms submitted a report in which he stated that the petitioner is not the original resident of the said village Mahaul in the district of Siwan. It further appears from the said counter-affidavit that on 14th Dec., 1993 the District Magistrate, Siwan wrote a letter to the Ministry of Petroleum, Government of India enclosing a copy of the enquiry report submitted by the Deputy Collector, Land Reforms, Siwan. In the said letter the District Magistrate, Siwan stated that he is satisfied with the said enquiry report. Save and except stating the aforesaid facts, the authorities of the said Corporation have not stated any thing in respect of the factual controversy raised in this writ petition at the instance of the writ petitioner and the intervenor respondent No. 5 about the correctness or otherwise of the petitioner's claim that he was a resident of Siwan at the relevant point of time.

9. From the said enquiry report of which reference has been made in the counter-affidavit of the said Corporation it appears that in the enquiry report given by the Deputy Collector, Land Reforms, Siwan dt. 6th Dec., 1993 to the Collector, Siwan it has been stated that after enquiry it was found that the petitioner was not the

original resident of village Mahaul, Anchal Hussainganj, District Siwan and it has been stated that he resides in his maternal uncle's house which is in village Mahaul in the District of Siwan.

10. It is common ground that the said enquiry was not made in the presence of the petitioner nor was the petitioner in any way allowed to participate in the said enquiry. It is also common ground that the impugned order dt. 8th June, .1994 has been passed on the basis of the said enquiry report. In my view, the said enquiry report is rather tentative and does not conclusively determine the question whether the petitioner was a resident of Siwan District or not. In this connection learned counsel for respondent No. 5 has drawn the attention of the Court to various documents, namely, ration card, voter list, statement of the writ petitioner on oath before a Court of law, his own declaration. Certificate granted by the Bihar Bar Council and so on and so forth in order to contend that the petitioner is not a resident of Siwan. The petitioner is also relying on various documents for the purpose of contending that he is a resident of Siwan.

11. It is difficult for this Court, sitting in writ jurisdiction, to come to any definite finding on the aforesaid facts by making a detailed investigation.

12. This Court feels that ends of justice in this case will be sufficiently met if an enquiry is held by the Officers of the said Corporation to decide the said question. In this connection of course various decisions have been cited by the learned counsel appearing for the different parties but a decision which has been cited by the learned counsel for respondent No. 5 in the case of Ravi S. Naik and Sanjay Bandekar Vs. Union of India and others, is relevant. In paragraphs 20 to 22 of the said judgment the questions relating to application of the principles of natural justice have been discussed. In the said judgment in paragraph 20 it has been observed "an order of an authority exercising judicial or quasi-judicial functions passed in violation of the principles of natural justice is procedurally ultra vires and, therefore, suffers from a jurisdictional error". But of course in the said judgment it has been stated that whether the requirements of natural justice has been complied or not has to be decided in the context of the facts and circumstances of a particular case. In paragraph 22 it has been stated that while exercising the jurisdiction under Article 226 of the Constitution the High Court has the power to refuse the writs if it was satisfied that there has been no failure of justice. In paragraph 21 of the said judgment the observations of Clive Lewis in his famous treatise on Judicial Remedies in Public Law (1992) p. 290 have been quoted. This Court also sets out the said observations hereinabove:--

"The fact that the applicant has suffered no prejudice as a result of the error complained of may be a reason for refusing him relief. It is necessary to keep in mind the purpose of the public law principle that has technically been violated, and ask whether that underlying purpose has in any event been achieved in the circumstances of the case. If so, the courts may decide that the breach has caused no injustice or prejudice and there is no need to grant relief.

The courts may, for example, refuse relief if there has been a breach of natural justice but where the breach has in fact not prevented the individual from having a fair hearing."

13. In this case the prejudice to the petitioner by reason of issuance of the impugned order is patent and obvious. It is also an admitted position that the procedure which has been followed prior to the passing of the impugned order, namely, to arrive at a finding that the petitioner has given "a false certificate" on the basis of an enquiry in which the petitioner was not allowed to participate is clearly an unfair one. Furthermore the enquiry report is also tentative instead of being clinching and conclusive. In that view of the matter, this Court finds that there is a defect in the procedure and also in the decision making process. This Court feels that in the facts and circumstances of the instant case, the petitioner was entitled to have a hearing before the authorities have come to the conclusion that the certificate obtained by him is false.

14. In that view of the matter, the impugned order communicated by memo dt. 8th June, 1994 cannot be given effect to and is, therefore, set aside. The respondents authorities are hereby directed to give a personal hearing to the petitioner within a period of four weeks from the date of communication of this order. The date of hearing is fixed on 14th Mar., 1995. It is further made clear that no other notice would be given to the petitioner or the respondent No. 5 for the said hearing. In the said hearing the petitioner is entitled to produce documents in support of the fact that he is resident of Siwan and satisfy the eligibility criteria for obtaining the said dealership. The respondents authorities will also hear respondent No. 5, who is entitled to urge his contention on the basis of the documents to the effect that the petitioner is not a resident of Siwan district. Upon hearing both the respective parties, the authorities of the respondent Corporation should pass a speaking order and thereafter may proceed to take any decision as to the cancellation or otherwise of the letter of intent issued to the petitioner. It is further made clear that the entire exercise, stated above, must be completed by the authorities concerned within a period of eight weeks from today since it is in the public interest that grant of dealership by the said Corporation should not be held up for an indefinitely long time.

15. I further make it clear that I have not gone into the merits of the claim of the petitioner and the counter claim made by respondent No. 5 about their respective cases.

16. The writ petitioner is allowed to the extent indicated above. There will be no order as to cost.