

(2004) 09 DEL CK 0071
In the Delhi High Court
Case No : CW 1179 of 1990
Om Prakash Yadav

Date of Decision : 30-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 186, 332, 342, 353

Citation : (2004) 09 DEL CK 0071

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : R.K. Kapoor and Mukesh Kumar Verma, for the Appellant; S.R. Yadav, for the Respondent

Judgement

Badar Durrez Ahmed, J

1. This petition pertains to the allotment of a retail outlet at Mahendergarh, Narnaul Road, Haryana by the respondents in Indian Oil Corporation in favor of the respondent No.3. The petitioner had sought allotment in his favor.

2.On 6.1.1987 an advertisement appeared whereby Indian Oil Corporation invited applications for a dealership of high speed diesel at, inter alia, Mahendergarh, Narnaul Road, Haryana. On 6.2.1987 the petitioner submitted an application for the same. A long with others, the petitioner was called for an interview before the Oil Selection Board on 14.6.1989. In such interview, three persons were empanelled. The petitioner was one of them. In the meanwhile, on 27.6.1987 an FIR had been registered, against certain persons under Sections 186, 332, 342,353 of IPC for certain alleged offenses. Though the petitioner was not named in the FIR, when charges were framed, he was also included in the list of accused.

3.The earlier Oil Selection Board was re-constituted. By a letter dated 12.3.1990 the petitioner was informed that the re-constituted Board desired that before the case of allotment was finally decided the petitioner ought to appear before them again for interview. The interview was held before the Board on 30.3.1990 at Hotel Sartaj, A-3, Green Park, New Delhi. In the course of the interview the

petitioner was told that a criminal charge had been framed against him. The petitioner informed the Oil Selection Board that false and frivolous cases had been registered under FIR No. 135 at P.S. Mahendargarh on 27.6.1987 in connection with rivalries in the then recently held 1987 Haryana Assembly Election by some politically motivated persons. He submitted that his name did not appear in the FIR but was later on included on account of alleged political influence. He further indicated that the prosecution had closed the evidence and that he was hopeful of acquittal of the charges and that, in any event the offenses for which the charges had been framed were not such which involved moral turpitude. The learned counsel for the petitioner submitted that the petitioner had requested for one day's time to place a list of cases which fell under the category of moral turpitude as recognised in Haryana. The Oil Selection Board did not grant him that time and, accordingly, on 30.3.1990 itself the Oil Selection Board found the petitioner to be ineligible on account of the invocation of Rule 4 of the policy pertaining to award of dealerships which reads as under:-

"Candidate convicted/being tried for any criminal offense involving moral turpitude/economic offenses and against whom charge has been framed by the Court, would not be eligible for dealership/distributorship."

4. The petitioner on the very next day (31.3.1990) sent a letter to the Chairman, Oil Selection Board, enclosing therewith a complete list of cases which were said to involve moral turpitude on the basis of the Circular dated 2.2.1973 issued by the Joint Secretary to Government of Haryana. That circular and list which has been annexed to the petition at pages 26 to 31 does not show any of the offenses for which the petitioner was charged as involving moral turpitude. Accordingly, it is the petitioner's case that he was wrongly found to be ineligible by the Oil Selection Board on 30.3.1990. In any event, the petitioner states that on 21.5.1990 he was acquitted by the Court of all the charges against him.

5. However, as the petitioner had been found to be ineligible the Oil Selection Board considered the other two empanelled candidates and ultimately selected the respondent No.3 for the dealership of the said retail outlet. A letter of intent was issued to respondent No.3 on 11.4.1990 and ultimately the respondent No.3 carried out investments. A formal contract of dealership was executed by and between the Indian Oil Corporation and respondent No.3 and the respondent No.,3 has been running the dealership since 1990 at Mahendargarh.

6. The case of the petitioner is that he was wrongly excluded by the Oil Selection Board. The case of the respondent Indian Oil Corporation is three-fold. In the first instance, Mr. C.M. Oberoi, learned counsel for the respondent Indian Oil Corporation submitted that the petitioner was even otherwise ineligible as the petitioner was an advocate and Rule 47 of the Bar Council of India Rules clearly stipulated that an advocate shall not personally engage in any business. Accordingly, the petitioner, according to him, would in any event not be eligible for the dealership. Secondly, Mr. Oberoi submitted that, rightly or wrongly, the

Oil Selection Board came to a decision that the charges against the petitioner involved moral turpitude. According to Mr. Oberoi, following the decision reported in *Prithwi Raj Bali Raizada Ganda Mal Bali Vs. The State of Delhi and Another*, the term "moral turpitude" is rather vague and may have different meanings in different contexts but it has generally been taken to mean a conduct contrary to justice, honesty, modesty or good morals. Guided by these principles the offenses for which the petitioner was charged with constituted offenses involving moral turpitude. At least, this is what the Oil Selection Board thought. Mr. Oberoi submitted that the head of the Oil Selection Board was a retired judge of a High Court and the decision qua involvement of moral turpitude may be a wrong in law but it cannot be said to be arbitrary, mala fide or one lacking in jurisdiction. Accordingly, it was his submission that the petition under Article 226 did not lie against such a decision. Mr. Oberoi lastly submitted that respondent No.3 who got the dealership in 1990 has been operating the same since 1990 without any problems.

7. Learned counsel for respondent No.3, apart from taking up the question of territorial jurisdiction and the question of concealment of facts on the part of the petitioner at the time of filing of the petition, issued a pointed question - what was respondent No.3's fault? He was an unemployed graduate. He was eligible. He applied for the said retail outlet and he obtained the same. Thereafter, he has made investments. He has developed the business and has been running the retail outlet from 1990 to all date.

8. In view of the submissions and counter submissions the following questions need to be answered.

1. Whether this Court has territorial jurisdiction to entertain the present writ petition?
2. Whether, the very fact that the petitioner was an advocate, would disentitle him for the allotment of the dealership?
3. Whether the petitioner was wrongly excluded and/or found ineligible by the Oil Selection Board in its meeting on 30.3.1990?
4. Whether, in the event the petitioner is found to have been excluded wrongly, the petitioner would be entitled to any relief? And, if so, what relief?

Question No.1:

9. The learned counsel for respondent No.3 urged that the Oil Selection Board was constituted for Haryana. The site of the retail outlet is in Haryana. The petitioner as well as the respondent No.3 are both residents of Haryana. In fact, it is an eligibility condition that the persons seeking such a retail outlet would be residents of that place. The letter of intent which was issued to respondent No.3 was also issued from Chandigarh to the respondent No.3 in Mahendergarh, Haryana. Thus, according to the respondent No.3 this Court would not have any territorial jurisdiction to entertain the present writ petition. It is, however, to be

noted that the petitioner's main grievance is with regard to his exclusion on the purported ground of his being negligible. The exclusion was done by the Oil Selection Board which held its meeting in Delhi. Therefore, it cannot be said that no part of cause of action arose in Delhi. Accordingly, it would have to be held that this Court does have the territorial jurisdiction to entertain the present writ petition.

Question No.2.

10. The submission of Mr. Oberoi that the petitioner, being an advocate, was, in any event, ineligible, is not tenable. There is no such prohibition in the eligibility criteria. An advocate could apply and his application should not be rejected merely because he was an Advocate. The bar on an Advocate from doing business with reflect on his profession and not on his business. If an advocate carries on a business he may become liable for removal from the roll of Advocates and for misconduct. It would not impinge on their right to do business. In any event, this question itself would arise only if the dealership was allotted to him. At that point of time the petitioner would have to make a choice - to take the dealership or continue to practice as an Advocate. That stage has not arrived. At the stage of application, the petitioner cannot be shut out merely because he was an Advocate.

Question NO.3.

11.1 The petitioner had already been empanelled pursuant to the interviews held by the previous Oil Selection Board. The charges framed against the petitioner did not fall within the Sections which were said to involve moral turpitude in terms of the Haryana Government Circular. The Oil Selection Board which met on 30th March, 1990 ought to have permitted the petitioner to place the list of offenses which constituted offenses involving moral turpitude and then taken a decision in the matter. In any event, the retail outlet was for Haryana and accordingly, the Haryana Government Circular would appropriately apply. The petitioner had on the very next day sent a letter to the Oil Selection Board enclosing the list of such offenses which involved moral turpitude. The charges framed against the petitioner did not fall under any of the Sections listed as involving moral turpitude. Thus, Rule 4 of the Policy was wrongly invoked by the Oil Selection Board in excluding the petitioner and finding him ineligible for the retail outlet. It is not so much that the Oil Selection Board made an error in law or in facts, it is the fact that the Oil Selection Board did not permit the petitioner to place the list and Therefore defend the case against him that is material. The petitioner was denied an opportunity of addressing the misgivings of the Oil Selection Board against him. His exclusion was thus illegal and opposed to principles of natural justice and fair play.

11.2. The question here is whether the decision of the Oil Selection Board is arbitrary, mala fide or suffers from some error in the decision making process or some jurisdictional error. It is a trite proposition of law that when serious

consequences are to attach to a decision the person affected ought to be given an opportunity to present his case. The serious consequences in the present case was that the petitioner was excluded from the zone of consideration and thereby was not considered eligible for the grant of the retail outlet. The reason for his exclusion was that charges had been framed against him in cases involving moral turpitude. The petitioner pleaded with the Oil Selection Board for one day's time to submit the list of offences which, in fact, were recognised as offences of moral turpitude. The Oil Selection Board did not grant him this time. The petitioner on the very next day, i.e. on 31.3.1990 sent a letter to the Chairman, Oil Selection Board and enclosed the said list. This list was also not taken into consideration. This list clearly indicated that the offences for which the petitioner had been charged with were not those which were included in the list of offences involving moral turpitude. As such, it can be inferred that the petitioner was not granted a proper opportunity of representing against his exclusion on the ground of ineligibility. This is not one of those cases where a discretion has been vested in an authority and that discretion has been exercised without any arbitrariness, mala fides, or error in the decision making process. In this case, there is a clear error in the decision making process and rules of natural justice have been violated. Therefore, the said decision of the Oil Selection Board excluding the petitioner would be amenable to interference under Article 226 of the Constitution.

Question No.4:

12. Before I consider the question of relief I must deal with the objection of the learned counsel for Respondent No.3 regarding concealment on the part of the petitioner. It is alleged by the respondent No.3 that the letter of intent had been issued on 11.4.1990. This petition was filed on 17.4.1990. Yet, the petitioner did not disclose this. In fact, the petition has been styled in such a manner as if no letter of intent had been issued. It is to be noted that on 20.4.1990, Rule was issued and ex parte ad interim stay was granted in terms of prayer (e) of CM 1822/1990. After notice, the miscellaneous application was heard and by an order dated 7.11.1990 the interim order earlier passed on 20.4.1990 was vacated. One of the reasons why it was vacated was that the final selection had been made in favor of respondent No.3 and the letter of intent had also been issued in his favor. This Court felt that the balance of convenience was in favor of respondent No.3 and against the petitioner and found that there was no reason why respondent No.3 should not be allowed to run the petrol pump. Therefore, had the petitioner indicated clearly in the petition that the Letter of Intent itself had been issued, perhaps no interim order would have been granted to the petitioner at the ex- parte ad-interim stage. The question, Therefore, is what would be the effect of the petitioner not disclosing in the petition that respondent No.3 had already been granted the Letter of Intent. Article 226 provides for relief on equitable principles. Equity demands that he who seeks equity must do equity. The petitioner in approaching this Court did not clearly state that the Letter of Intent had been issued. The question is whether this

would amount to such a material and willful concealment of facts as would disentitle him to any relief whatsoever. To my mind, this has already disentitled him to any interim relief and he ought not to be punished twice over for the same impropriety. Therefore, what is the relief that the petitioner is entitled to needs to be considered. The respondent No.3 has already been allotted the said retail outlet which he has been running since 1990. He was otherwise eligible and, Therefore, his allotment cannot be faulted. Therefore, there is no question of disturbing the allotment to respondent No.3. Insofar as the petitioner is concerned, what has happened is that he had been excluded from consideration by the Oil Selection Board. It does not, at the same time, mean that had he been included he would have definitely been allotted the retail outlet. The third candidate who was the empanelled also did not get the retail outlet although he was included in the zone of consideration. Thus, although, the petitioner could be said to have been wrongly excluded by the Oil Selection Board, it does not ipso facto mean that the petitioner would definitely have got the retail outlet. Though, he did deserve consideration for allotment. But, thirteen years after all these action have taken place, it would be difficult to turn the clock back, to cancel the allotment in favor of respondent No.3 and to ask a newly constituted Oil Selection Board to once again consider the case of all the three candidates. All that can be done is to direct the Respondent Indian Oil Corporation to consider the case of the petitioner for an alternative allotment of retail outlet after relaxing the age limit.

13. With these directions, the writ petition is disposed of. The petitioner is entitled to costs from Respondent No.1 which are quantified at Rs. 25,000/-.