

(2018) 05 RAJ CK 0087
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3468 of 2004

Omprakash @APPELLANT@Hash Indian Oil Corporation Limited

Date of Decision : 07-05-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 05 RAJ CK 0087

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : D.L.R. Vyas, Sandeep Shah, Mahesh Thanvi

Final Decision : Dismissed

Judgement

By way of this writ petition under Article 226 of the Constitution of India, the petitioner Omprakash has approached this Court for challenging the order dated 29.06.2004 whereunder, the respondent Corporation, allotted the retail outlet dealership at the location Baap to Gangavishan Rathi respondent No.3 herein.

Applications for the dealership were invited under an advertisement (Annexure-2) and was reserved for Persons in Physically Handicapped category.

The applicants were required to be holding a Physical Handicap Certificate with minimum 40% permanent disability as per Clause ([k) of the

advertisement. The petitioner as well as the respondent No.3 filed their applications with the respondents. The respondent No.3, is alleged to have

initially filed the disability certificate (Annexure-R/3/1) whilst the petitioner filed the disability certificate (Annexure-1). When the candidates were

called for interview, it came to light that the disability certificate submitted by the respondent No.3 was silent regarding the percentage of disability and

thus, he submitted another disability certificate (Annexure-R/3/2) dated

28.06.2004 issued by the Medical Board of Doctors of the S.N. Medical College in which, it was clearly mentioned that Shri Gangavishan was suffering from Elephantiasis of both lower limbs and the disability was rated at more than 40%. Relying on the said disability certificate and since Shri Gangavishan Rathi stood higher in merit, the respondent Corporation awarded the dealership in question to him by order (Annexure-R/3/4) dated 14.10.2004. It is an admitted position as emerging from the record that the dealership has been commissioned long back i.e. in the year 2005.

The petitioner has filed the writ petition with a specific limited plea that the certificate of 40% disability provided by the respondent No.3 in the allotment process was â??BOGUSâ?? and thus, he was wrongly selected for the dealership. Shri D.L.R. Vyas, learned counsel representing the petitioner, relies upon Judgments rendered by the Honâ??ble Supreme Court in the cases of Prabhu Dayal Jat vs. IOCL & Anr. reported in 2014 (3) CDR 1709 (Raj.) (DB) and Shiv Kant Yadav vs. IOCL & Ors., reported in (2007)4 SCC 410, and urged that though the pleadings in the writ petition are limited to an allegation regarding the disability certificate (Annexure-R/3/1) being bogus but as a matter of fact, the petitioner intended to convey and raise an objection that the certificate (Annexure-R/3/2) was submitted by the respondent No.3 after the cut off date and thus, could not have been considered. Relying on the ratio of the above Judgments, he contends that since the 40% disability certificate was submitted by Shri Gangavishan after the cut off date i.e. the last date for submission of the application forms, the respondent Corporation was absolutely unjustified in considering the same as a valid document for award of dealership to the private respondent. On these grounds, he implores the Court to exercise its extraordinary writ jurisdiction and quash the impugned letter of allotment of dealership (Annexure-R/3/4) dated 14.10.2004 issued in favour of respondent No.3.

Per contra, Shri Sandeep Shah, learned counsel representing the respondent Corporation and Shri Mahesh Thanvi, learned counsel representing the respondent No.3 urge that the entire substratum of the petitionerâ??s case regarding the disability certificate being bogus is conjectural. The petitioner has not explained/ elaborated as to in what manner, the disability certificate can be classified as a bogus one. They urge that the certificate was issued by a duly constituted Medical Board of three senior doctors at the

S.N. Medical College, Jodhpur. They urge that the basic disability certificate was submitted by the respondent No.3 with his application and the certificate (Annexure-R/3/2) was in the form of an ancillary document which can be always considered by the Interview Committee because the procedure allows for such consideration. Reliance is placed by Shri Shah on the Division Bench Judgment rendered in the case of Amit Kumar Sharma vs. Hindustan Petroleum Corporation Ltd., reported in 2014(3) RLW 2389 (Raj.), wherein, the Division Bench of this Court held that the advertisement prohibits submission of additional documents and not the clarificatory document correlated with the documents already on record. He urges that the Division Bench has categorically laid down that clarificatory documents of respective candidates ought to be considered for the purpose of arriving at just and proper conclusion in the matter. They also urge that the petitioner not having raised any such plea in the writ petition is precluded from contesting that the certificate was filed after the cut-off date and thus, could not have been considered. As per Shri Shah and Shri Thanvi, in the entire framework of the writ petition, the petitioner did not even make a whisper of assertion to the effect that the disability certificate of respondent No.3 was wrongly considered on account of the same having been filed after the cut-off date. They thus crave dismissal of the writ petition on these grounds.

I have given my thoughtful consideration to the arguments advanced at Bar and have gone through the material available on record.

It is an admitted position as manifested from the record that the petitioner has not made any averment whatsoever in the writ petition that the disability certificate (Annexure-R/3/1) provided by the respondent No.3 during the interview process should have been discarded on the ground that it was filed posteriorly. It is a settled principle of law that writ petitions are decided on pleadings and affidavits of the parties because evidence is not recorded in these petitions filed under Article 226 of the Constitution of India. Therefore, for the litigant to be allowed to raise a particular argument, a specific assertion has to be made in the pleadings which can be answered by the respondents when called upon to do so. Without there being a specific plea/assertion or without raising a specific ground in the writ petition, the litigant cannot be allowed to raise such a plea during the course of

arguments. Manifestly, the plea raised by the petitioner at para No.5 of the writ petition is only to the effect that the respondent No.3 has disability of

10% only and managed a bogus disability certificate inflating his disability to 40%. Manifestly, the petitioner has not been able to elaborate as to in

what manner, the certificate of 40% disability submitted by the respondent No.3 can be termed to be a bogus one. If at all, the petitioner having a

grievance that the certificate is forged then he could have taken recourse of the appropriate criminal proceedings to establish/prove such allegation.

Furthermore, the certificate itself was not placed on record by the petitioner alongwith the writ petition and rather has been placed on record by the

private respondent as Annexure R/3/1 with his reply. Ex-facie, on a perusal of the certificate, this Court is duly satisfied that the same was lawfully

issued by a Medical Board of three senior doctors duly constituted of the S.N.Medical College, Jodhpur. The judgments relied upon by Shri Vyas in

the cases of Prabhu Dayal Jat (supra) and Shiv Kant Yadav (supra) do not have any application whatsoever to the case at hand. In both those

judgments, the mandatory condition of eligibility was not satisfied by the candidate in the application form itself and thus, the Honâ??ble Supreme

Court held that the application once submitted could not have been allowed to have been improved upon or modified at a subsequent point of time.

Manifestly, the said ratio has no application to the present situation. Herein, the respondent applied under the physical handicapped category.

Admittedly, he provided the certificate of his physical handicap alongwith his application form though the percentage of disability was not mentioned

therein. Thereafter, in the interview process, additional medical certificate issued by the duly constituted Medical Board was submitted by the

respondent wherein, the percentage of his permanent is clearly certified as more than 40%.

In this background, this Court is of the firm opinion that the judgments cited by Shri Vyas have no application to the controversy at hand and are of no

avail to the petitioner.

On the other hand, the Division Bench of this Court in the case of Amit Kumar Sharma (supra) relied upon by Shri Shah squarely covers the

controversy present in the instant writ petition. The Division Bench categorically laid down that the clarificatory documents of respective candidate

ought to be considered for arriving at a proper conclusion. That is what was precisely done by the IOCL authorities while considering and evaluating the application forms of the petitioner and the respondent No.3.

In view of the discussion made herein above, this Court finds no illegality, infirmity, irregularity or arbitrariness in the impugned decision of the respondent Corporation while awarding the dealership to the respondent No.3. For the sake of repetition, it may be mentioned that the dealership has

been commissioned way back in the year 2005 and as the decision to award the same was perfectly just, there is no reason or justification to upturn

the decision taken by the respondent Corporation.

Accordingly, the writ petition is dismissed as being devoid of merit. Stay application is also dismissed.

No order as to cost.