
(2013) 04 MP CK 0073
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2657 of 2012

Pankaj Mantri

APPELLANT

Vs

Indian Oil Corporation and Another

RESPONDENT

Date of Decision : 02-04-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 294, 323, 34, 341

Citation : (2013) 3 MPHT 428 : (2013) 3 MPLJ 466

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Amit Agrawal, for the Appellant; B.L. Pavecha and Mr. Yogesh Mittal, for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed this present petition being aggrieved by the order dated 17-2-2012 passed by the Chief Divisional Retail Sales Manager, Indian Oil Corporation Ltd. (IOC), by which the petitioner's selection as a retail outlet dealer has been cancelled. The contention of the petitioner is that an advertisement was issued on 21-9-2011 inviting applications for appointment of dealers in respect of retail outlets of IOC and the petitioner did submit an application on 31-10-2011. Petitioner has further stated that as per the advertisement, certain mandatory conditions were mentioned and in the column No. 5, the total approximate capital investment was fixed as Rs. 25 lacs and as per column No. 6 the necessary working capital required was Rs. 16 lacs. It has been further stated that as per Clause 8 read with Clause 8 (b), a sum of Rs. 2 lacs was required to be deposited as security deposit after the incumbent is selected as a dealer. Petitioner has further stated that he has submitted all minute details in respect of financial capability along with the application form and after holding the process of selection, the petitioner was placed in the merit list. In fact, it was the petitioner, who was placed at Serial No. 1 of the select list prepared by the IOC. Petitioner's grievance is that later on a field investigation

was carried out by the Oil Company and as per the field investigation report, the selection of the petitioner has been cancelled on the ground that in the application form submitted by the petitioner on 31-10-2011 there is a mis-statement of facts as the petitioner has stated in his application form that a sum of Rs. 3 lacs was available in the account number 910010100020599, whereas, as per investigation report a sum of Rs. 9,675/- was available in the Bank account of the petitioner on the date the application was submitted by the petitioner. Similarly, in respect of another account, field investigation report reveals that a sum of Rs. 14,867/- was available on 31-10-2011, whereas a sum of Rs. 4,867/- was available in the bank account of the petitioner.

2. Learned Counsel appearing on behalf of the petitioner has vehemently argued before this Court that even if the discrepancy was in existence, it has nothing to do with the process of selection. It has been further stated that as per the requirement of the advertisement a candidate was required to have a necessary working capital, determined as 16 lacs and he was also required to invest a sum of Rs. 25 lacs. It has been stated that the discrepancy, if any, will not affect the eligibility criteria at all and, therefore, as there was no intention on the part of the petitioner to misrepresent the facts, the cancellation of his candidature is bad in law. It is also been argued that the impugned order passed by the respondents is in violation of principle of natural justice as it ensues civil consequences upon the petitioner because the petitioner has made a huge investment and has created infrastructure required for setting up the dealership.

3. Petitioner has filed an additional affidavit and his contention is that the alleged mis-statement in the application form has got no nexus with the eligibility criteria and the verification of financial capability in the field investigation report has resulted in cancellation of the petitioner's selection as a dealer. Learned Counsel has placed heavy reliance upon the judgment delivered by the Division Bench of Punjab and Haryana High Court in the case of Indian Oil Corporation Ltd. Vs. Kalu Ram, in LPA No. 1083/2011 (O & M), decided on 7-7-2011. His contention is that in the aforesaid case also the selected candidate has declared that a sum of Rs. 6,400/- was lying in his bank account as on 26-3-2009, i.e., on the cut-off date, whereas the field investigation report reflected that a sum of Rs. 1,320/- was available in his bank account. His contention is that the Division Bench in spite of the aforesaid mis-statement has upheld the selection of the candidate against whom it was alleged that he misrepresented the facts in the application form. Learned Counsel has prayed for quashing of the order dated 17-2-2012 and for issuance of an appropriate writ, order or direction directing the Indian Oil Corporation to issue LOI.

4. On the other hand, learned Sr. Counsel, Shri Pavecha alongwith Shri Yogesh Mittal has argued before this Court that the petitioner has misrepresented the facts in the application form, which was submitted on 31-10-2011, and it is also evident from the field investigation report carried out by the Oil Company. It has been stated that marks were awarded on the basis of details furnished by the

petitioner and as there was a discrepancy/mis-statement of fact in the application form, keeping in view the undertaking submitted by the petitioner, the selection of the petitioner has been cancelled. It is also been stated that the application form includes the verification/undertaking and it is categorically written in the application form that the amounts reflected in the fixed deposits, bank accounts and other financial documents as proof for financial capacity should be valid as on the date of application. It has been stated that the amount mentioned in the application form was not available in the bank account of the petitioner on 31-10-2011 and, therefore, keeping in view the conditions reflected in the application form his candidature has been cancelled. Learned Sr. Counsel has placed heavy reliance upon the judgment passed by the Appellate Court in the case of Shiv Kant Yadav Vs. Indian Oil Corporation and Others, , and his contention is that in similar circumstances, the Apex Court as there was a factual mis-statement in the application form has upheld the cancellation done by the Indian Oil Corporation Ltd.

5. Heard learned Counsel for the parties and perused the record. The matter is being disposed of at the admission stage itself with the consent of the parties.

6. In the present case, issuance of advertisement, holding of an interview is not a disputed fact. It is also an admitted fact that the petitioner was selected for allotment of dealership in respect of location Susner, District Shajapur. The petitioner while submitting his application form has furnished the details annexed as Annexure P-2.

7. The respondent-Indian Oil Corporation after the petitioner was placed in the select list has carried out a field investigation and as per the field investigation report, against the amount of Rs. 3 lacs only Rs. 9,675/- was found to be available on 31-10-2011. Similarly, against an amount of Rs. 14,867/-, a sum of Rs. 4,867/- was available in the account of the petitioner. It is pertinent to note that in the advertisement itself in Clause 10(h) it has been categorically stated that in case there is any mis-representation of facts, the Oil Company shall be free to cancel candidature of the candidates. Clause 10(h) of the Advertisement reads as under:--

8. Not only this, the petitioner while submitting his application form has submitted an undertaking and the same reads as under:--

I hereby verify that what has been stated above is true to the best of my knowledge and belief and nothing material has been concealed there from. If any information/declaration given by me in my application or in any document submitted by me in support of application for the award of the dealership or in this affidavit shall be found to be untrue or incorrect or false, Indian Oil Corporation Ltd. would be within its rights to withdraw the letter of intent/terminate the dealership (if already appointed) and that I would have no claim, whatsoever, against Indian Oil Corporation Limited for such withdrawal/termination. Solemnly affirmed and declared before me.

9. This Court has carefully gone through the statement of various accounts submitted by the petitioner and also the field investigation report. The following mis-statement of fact was done by the petitioner in respect of two bank accounts:--

Keeping in view the aforesaid clause mentioned in the application form and in advertisement, the Indian Oil Corporation has taken a decision to cancel the candidature of the petitioner.

10. The Apex Court in the case of Shivkant Yadav (supra), was dealing with cancellation done by the Oil Company in almost similar situation. Paragraphs 5, 6, 7, 12, 14, 15 and 16 of the aforesaid judgment reads as under:--

5. Appellant in the writ petition took the stand that as per the enquiry report, the total income of the appellant had been fixed at Rs. 1,64,000/- per annum vis-?-vis Rs. 84,000/- as disclosed in his application form. The discrepancy has no bearing as the eligibility criteria was that the income should not be above rupees two lakhs in the last financial year. The complaint made by Hari Om Singh against Smt. Usha was pending and no LOI could be issued without holding an enquiry.

6. The Corporation took the stand that the Executive Summary Report discloses that incorrect information had been given and it has been specifically made clear that any concealment of facts/mis-information would result in rejection of the application.

7. The decision not to allot the dealership to the appellant was on account of the fact that he did not correctly disclose the income and thus violated his own declaration in his undertaking incorporated in the application.

8. With reference to the application form and the undertaking the High Court held that it was obviously clear that the income was not fully disclosed. The plea that the income was less than rupees two lakhs, did not materially affect the eligibility of the appellant was not accepted and accordingly, the writ petition was dismissed.

9. In support of the appeal, it is submitted that there was no mens rea and mere mistake and unintended omission cannot be a ground for cancellation. The income of S.K. Fertilisers was not necessary to be disclosed. In the affidavit before the Selection Board it was clearly stated that S.K. Constructions may have come into existence in 2002-2003.

10. Learned Counsel for the respondents on the other hand supported the order saying that once there is suppression in view of the undertaking the allotment was to be cancelled.

11. The fact of making a wrong statement in the application form and the effect of the undertaking though rendered in different context in Kendriya Vidyalaya Sangathan and Others Vs. Ram Ratan Yadav, The State of Andhra Pradesh and

Another Vs. T. Suryachandra Rao, and Bhaurao Dagdu Paralkar Vs. State of Maharashtra and Others, need to be noted.

12. In Kendriya Vidyalaya's case (supra), it was noted as follows:--

11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-Bread with Section 34, IPC was pending on the date when the respondent filled the attestation form. Hence, the information given by the respondent as against columns 12 and 13 as "No" is plainly suppression of material information and it is also a false statement. Admittedly, the respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand columns 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of columns 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken the help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of the respondent was Hindi, he could not understand the contents of columns 12 and 13. It is not the case that columns 12 and 13 are left blank. The respondent could not have said "No" as against columns 12 and 13 without understanding the contents. Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling columns 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.

12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in Para 9 of the offer of appointment. The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not. The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved,

were also not of serious nature. In the present case, the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal. The High Court was again not right in taking note of the withdrawal of the case by the State Government and that the case was not of a serious nature to set aside the order of the Tribunal on that ground as well. The respondent accepted the offer of appointment subject to the terms and conditions mentioned therein with his eyes wide open. Para 9 of the said memorandum extracted above in clear terms kept the respondent informed that the suppression of any information may lead to dismissal from service. In the attestation form, the respondent has certified that the information given by him is correct and complete to the best of his knowledge and belief; if he could not understand the contents of columns 12 and 13, he could not certify so. Having certified that the information given by him is correct and complete, his version cannot be accepted. The order of termination of services clearly shows that there has been due consideration of various aspects. In this view, the argument of the learned Counsel for the respondent that as per Para 9 of the memorandum, the termination of service was not automatic, cannot be accepted".

14. There was a requirement to disclose the true and correct fact which does not appear to have been done.

15. The undertaking reads as follows:--

That I am fully aware that Indian Oil Corporation (name of the Oil Company) under its policy will not appoint me as their dealer/distributor, if I am employed. I shall have to resign from the service and produce proof of acceptance of my resignation by my employer to Indian Oil Corporation Ltd. (Name of the Oil Company) before issuance of Letter of Appointment for the dealership/distributorship.

That if any information/declaration given by me in my application or in any document submitted by me in support of my application for the award of SKO/LDO dealership/distributorship or in this undertaking shall be found to be untrue or incorrect or false Indian Oil Corporation (name of the Oil Company) would be within its rights to withdraw the letter of intent/terminate the dealership/distributorship (if already appointed) and that, I would have no claim, whatsoever, against Indian Oil Corporation (name of the Oil Company) for such withdrawal/termination".

16. In view of the undertaking that if any factual mis-statement or declaration is made that permits cancellation of the allotment. The order of the High Court does not suffer from any infirmity to warrant interference. The appeal is

dismissed with no order as to costs.

11. In the aforesaid case, the eligibility criteria reflected that a candidate should not have income of Rupees Two lacs in the last financial year. The person selected was having income of Rs. 84,000/- against a sum of Rs. 1,64,000. Meaning thereby, mis-statement of fact was not affecting the eligibility criteria. Even in those circumstances, the Apex Court has held that cancellation based upon the misstatement of fact to be justified.

12. Resultantly, keeping in view the judgment delivered by the Apex Court, once there is a mis-statement of facts on the part of the petitioner, the question of selection of the petitioner in the peculiar facts and circumstances of the case does not arise.

13. This Court in the case of Smt. Anju Khandelwal Vs. Indian Oil Corporation Ltd., Writ Petition No. 999/2004, decided on 7-3-2005, in Paragraphs 12,13 and 14 has held as under:--

12. In my humble opinion the declaration given is to say the least makes no sense. It is absurd and hence liable to be rejected. This only shows how causally and in mechanical way the petitioner has signed it little realising as to what she has to sign. The object of making declaration is solemn one. It has a definite purpose behind it. It is the duty of every applicant to give proper and correct disclosure of his/her status and details which concerns him/her. The applicant must realise the consequence of wrong disclosure if discovered at a later stage. It is really unfortunate that even the respondent did not take note of this vital defect in the declaration submitted by the petitioner.

13. In view of the aforesaid discussion or I may say fatal infirmities in the application submitted by the petitioner the respondent was justified in not entraining it and further justified in rejecting the application. No arbitrariness can be noticed in the action of the respondent while dealing with the case of petition so as to empower this Court to interfere in writ jurisdiction.

14. As a consequence the petition fails and is hereby dismissed with no order as to costs.

14. In the aforesaid case, on the basis of mis-statement of facts, the candidature of Smt. Anju Khandelwal was cancelled and the same was upheld by this Court. Resultantly, keeping in view the judgment delivered by this Court also the question of interference does not arise.

15. Learned Counsel for the petitioner has placed heavy reliance upon the judgment delivered by the Division Bench of Punjab and Haryana High Court in the case of Indian Oil Corporation Ltd. and others Vs. Kalu Ram and others (supra). In the aforesaid case, the candidate has declared that a sum of Rs. 6,400/- was lying in his bank account on 26-3-2009, whereas, as per investigation report a sum of Rs. 1,320/- was available in his bank account. Division Bench after comparing the marks allotted to the petitioner and to other

candidates, arrived at the conclusion that the discrepancy will not affect the process of selection, as there was a huge difference of eight marks in respect of two candidates. The judgment relied upon by the learned Counsel is distinguishable on facts and in the present case no such comparison can be done as the petitioner is the only person placed in the select list, hence, the judgment relied upon by the learned Counsel for the petitioner is of no help to the petitioner, in the peculiar facts and circumstances of the case, specially in light of the judgment passed by the Apex Court in the case of Shiv Kant Yadav (supra). Resultantly, this Court does not find any reason to interfere with the action and the consequential orders passed by the Chief Divisional Retail Sales Manager, Indian Oil Corporation Ltd., dated 17-2-2012.

The writ petition is accordingly dismissed.

No order as to costs. C.C.