
(2003) 08 KAR CK 0077
In the Karnataka High Court
Case No : Writ Petition No. 5665 of 2001

P.E. Kalaiah

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Citation : (2004) ILR (Kar) 3643 : (2003) 4 KCCR 376 SN

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Hegde Associates and T.I. Abdulla, for the Appellant; Madhumitha Bagchi, Addl. Central Govt. Standing Counsel for R1, A.K. Lakshmanan and S. Girija for R2 and R3 and H.R. Renuka, for R4 and R5, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—Petitioner was an applicant for Indane L.P.G. Distributorship at Kutta Rural Location in response to a Newspaper advertisement dated 16.7.2000 issued by the Indian Oil Corporation Ltd., the third respondent herein. Petitioner had applied for award of distributorship claiming to be an outstanding sports person as mentioned and described in this advertisement, a copy of which is produced as Annexure-A to the petition, inasmuch as the Distributorship was exclusively reserved to the category of outstanding sports persons.

2. The advertisement had elicited response from about four persons including the petitioner. It appears that One amongst them did not turn up for the interview and only three candidates remained in the fray. The Dealer Selection Board interviewed the three candidates on 22.1.2001 and listed them in the order of merit. The result of the selection was also announced on the same day. As per this list, the fourth respondent figured as No. 1, the petitioner as No. 2 and the other candidate as No. 3.

3. Petitioner being aggrieved by the selection of the fourth respondent for grant

of distributorship, has approached this Court challenging the selection and contending that the petitioner should have been awarded the distributorship; that the fourth respondent in fact did not even qualify for being considered as a candidate under the "Outstanding Sports Person" category as indicated in the advertisement dated 16.7.2000; that if the fourth respondent is not duly qualified, it is only the petitioner who figures at the top of the available candidates as per the merit list and a suitable writ in this regard is to be issued to the respondents to award the distributorship in his favour.

4. Statement of objections has been filed on behalf of the second respondent Board and the third respondent Oil Corporation. Sri A.K. Lakshmanan appearing for respondents 2 and 3 has also placed before the Court the records relating to the selection process of the second respondent Board.

5. I have heard Sri Abdulla, learned Counsel for the petitioner, Sri Lakshmanan, learned Counsel for Respondents 2 and 3 and Smt. H.R. Renuka, learned Counsel for respondent No. 4.

6. Petitioner had claimed that he was a member of the Indian Hockey team; that he participated in the World Cup event which took place in the year 1975 and which in fact ultimately won the Gold Cup for the first time for the Country; that he thus qualifies as an outstanding sports personality as per the definition indicated in the advertisement under Clause (b) which says Winners of Medals of Olympics/Asian/ Commonwealth Games and Recognised World Champions/World Championship.

7. So far as the fourth respondent is concerned, the records as well as the statement of objections filed on behalf of respondents 2 and 3 indicate that this respondent had produced the certificate dated 27.10.1993 issued by the Indian Hockey Federation mentioning that Sri K.M. Chengappa attended the Indian Hockey Game for Juniors in 1977 in connection with the World Cup qualifying round at Kuala Lumpur and some medals also seems to have been obtained by him. Yet another certificate issued by the Karnataka Hockey Association dated 30.6.1992 produced by the fourth respondent also indicated that he had represented Karnataka State in Senior National Hockey Championship held at Hyderabad, Calcutta, Bangalore and Pune. Several other certificates indicating his participation in many other games both at domestic and international level are also on record. Unfortunately none of the certificates produced by the fourth respondent nor the claim brings the fourth respondent within the eligibility criteria to classify him as an outstanding sports person either as under Clause (a) or Clause (b) or even Clause (c). Clause (a) stipulates "Arjuna Awardees", which is not the claim of the fourth respondent. Clause (b) stipulates "Winners of Medals of Olympics/Asian Commonwealth Games and Recognised World Champions/World Championships. In the case of the fourth respondent, he was not a member of any team which had won a medal at such level. Even under Clause (c) the requirement is that he should have been a member of team winning a National championship. A mere participation at the National level

representing a State does not qualify as an eligibility criteria to be classified as an outstanding Sports Person under Category (c) either.

It is obvious that the fourth respondent does not fit in any of the categories namely Clauses (a) (b) or (c) and as such could not have been considered against the quota earmarked for sports person category.

8. However, Sri Lakshmanan, learned Counsel appearing for respondents 2 and 3 has sought to justify the selection on the premise that during the process of selection and subsequent to the advertisement, the Government had issued revised guidelines as on 9.10.2000 and accordingly the Committee can look into the revised guidelines for the purpose of considering applications earmarked for "Outstanding Sports Person" category and as per the revised guidelines, which reads as under:

"Outstanding Sports Person means a person who has achieved a position in the first eight in an individual event or four in team events championship or have represented the Country in any national event."

the Committee has considered the fourth respondent as the person qualifying as an outstanding sports person as per this revised guideline and has accordingly evaluated the comparative merits of the candidates including the fourth respondent.

9. Sri Abdulla, learned Counsel for the petitioner has countered this argument by pointing out that though the definition might have been changed as per the revised guidelines, in the first instance it was not made known to aspiring candidates and even after the revised guidelines, the eligibility criteria remain the same as per the earlier advertisement restricting it to the three categories namely (a)(b) and (c) as advertised even amongst outstanding sports persons. The submission of the learned Counsel for the petitioner is that even if the fourth respondent is generally termed as an outstanding sports person as per the revised guidelines, nevertheless the fourth respondent does not qualify for being an eligible candidate as against a distributorship earmarked for being awarded to the outstanding sports person of the category which is mentioned in the table. Even if the revised guidelines are not in doubt or disputed, the fourth respondent does not fit into any one of the three categories as mentioned in the table. The argument on behalf of the second and third respondents by its learned Counsel cannot be accepted for another reason that the revised guidelines if were to be given effect to, ought to have been notified by re-advertising it and making it known to all persons. It is not in dispute that subsequent to the revised guidelines, no fresh advertisement had been given and as such the Selection Board could not have deviated from the criteria as had been mentioned earlier as per the advertisement. In any view of the matter, considering the fourth respondent as an eligible candidate against the outstanding sports person category stipulated in the advertisement dated 16.7.2000 cannot be sustained.

10. However, Smt. H.R. Renuka, learned Counsel for the fourth respondent has

vehemently urged that the fourth respondent had won medals and certificates which perhaps he could not place before the Board at that time and given a little time and opportunity that the fourth respondent is even now prepared to place such certificates and medals before this Court. It is not for this Court to look into the certificates for the purpose of selections, What this Court looks into is as to what has transpired before the Selection Board and not to undertake the exercise of selection itself.

11. Another contention urged on behalf of the fourth respondent is that the fourth respondent, pursuant to the award of distributorship, has already started functioning and has invested considerable amount of money and that the fourth respondent has also, subsequent to the award of distributorship, given up his job by resigning his post in the Defence service and any disturbance at this point of time-will be most unjust and inequitable to the fourth respondent.

12. It may be true that the fourth respondent may be put to considerable disadvantage if the existing arrangement is disturbed, but that cannot be a ground for rejecting the petition when the petitioner on the face of it has made home his case and has also demonstrated that the very selection of fourth respondent was quite contrary to the stipulations as per the advertisement. When once it is found that certain action is illegal, the consequence cannot be avoided by a mere plea of equity. Petitioner having approached this Court immediately after the selection process was made known, it cannot be said that the fourth respondent was unaware of the challenge posed to his selection by the present Writ Petition. The attendant consequences were always within [he knowledge and comprehension of the fourth respondent.

13. In the circumstances, the selection of fourth respondent for award of LPG distributorship by the second respondent Board in respect of Kutta Rural Area in Kodagu District, cannot be sustained. The selection is accordingly quashed by issue of a writ of certiorari.

14. The other question is as to what should follow on the quashing of the selection of the fourth respondent. Learned Counsel for the Oil Corporation has indicated that even as per the norms and guidelines when the candidate figuring at Sl. No. 1 is not available, the second person in the merit list will be considered for award of distributorship. Accordingly the third respondent is directed to consider the case of the petitioner for grant of distributorship in accordance with the existing norms and formalities.

15. Petition is allowed. Rule issued and made absolute.