
(2004) 01 PAT CK 0050
In the Patna High Court
Case No : CWJC No. 13859 of 2003

Priyanka Pratap Singh

APPELLANT

Vs

Divisional Manager IBP Co. Ltd. and Others

RESPONDENT

Date of Decision : 23-01-2004

Acts Referred:

Citation : (2004) 01 PAT CK 0050

Final Decision : Allowed

Judgement

Radha Mohan Prasad, J.—In this writ petition, the petitioner is aggrieved by the list of shortlisted candidates in order of merit dated 7.10.2003 (Annexure-8) for retail outlet of respondent IBP Company limited at the location Goh, District Aurangabad. In the said list Hari Narayan Tripathi (respondent No. 3) has been placed at serial No. 1 and the petitioner has been placed at serial No. 3. According to the petitioner, the selection of respondent No. 3 is wholly arbitrary and mala fide inasmuch as, according to her, he is less deserving candidate than her above all he did not fulfil the pre-requisite criteria for the selection.

2. In short, the relevant facts are that the respondent-Company issued notice in "Hindustan" a Hindi daily published on 6.10.2001 (Annexure-1) inviting offer for appointment of retail outlet/SKO-LDO dealership at various places, including the above mentioned place in question. As per clause "Kha" of the said advertisement, preference was to be given to those who were willing to transfer the ownership of the land or executing agreement for long term lease. Besides others, the petitioner and respondent No. 3 filed their applications in response to the said notice. Subsequently, the respondent-Company issued another notice dated 12.7.2002 (Annexure-2) that the company are interested in taking land free from encumbrances on long term lease for opening of the retail outlet at Goh on Daudnagar Gaya Road, N.H. 7 besides other places, which are not covered by the first notice (Annexure-1) and thus invited offer in sealed envelope indicating the area for which land is offered from willing persons. It was made clear that they must attach the following :--

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3. It is stated that the details of mode and manner for assessing the candidates for selection of allotment of petroleum retail outlet are laid down in the letter of the Ministry of Petroleum, a true copy whereof has been annexed as Annexure 4. It is claimed that the petitioner was found to be the best during the selection process and her name was initially selected and announced by the selection committee after the interview was over and a proper notification was to be pasted on the notice Board. But, in the meantime, due to political pressure, decision of selection committee was changed in order to favour the most inferior candidate i.e., respondent No. 3. In between them name of one Krishna Singh figured at serial No. 2. It is alleged that thereafter on deep scrutiny in respect of land, finance, educational qualifications submitted by respondent No. 3, the allottee of petrol pump before the selection committee, it transpired that he is just a Madhyama passed candidate nor he offered land on long term lease to the Company with regard to the advertisement dated 12.7.2001. According to the petitioner, respondent No. 3 has not offered any land details before the selection committee at the time of interview neither made available even after his selection for dealership.

4. It is contended that it will be crystal clear from a bare perusal of comparison of objective profile of petitioner and respondent No. 3 that the petitioner is a better candidate in respect of capability to arrange finance for which 15 marks has been allotted; educational qualifications and general level of intelligence for which 20 marks has been allotted and capability to provide infrastructure for which 35 marks has been allotted. According to her, she marched ahead of respondent No. 3 as far as general assessment of candidate for running a petrol outlet is concerned. She has also given a comparative facts in support of her contention that she is better candidate then respondent No. 3.

5. A counter-affidavit has been filed on behalf of the officers of respondent-Company, namely, respondents No. 1 and 2, and a reply thereto has been filed on behalf of the petitioner. In the counter-affidavit, in substance, their stand is that the petitioner did not mention any detail of land available with her for the proposed dealership in her application form nor she offered any land for the proposed dealership. On the contrary, she in her application form simply stated that if selected she would be able to arrange suitable land within time. With respect to respondent No. 4 (respondent No. 3) it is stated that he had in his application form mentioned the details of the land offered by him for the

proposed dealership. It is stated that the minimum qualification as per the advertisement was Matriculate and the respondent No. 4 (respondent No. 3) had stated his educational qualification to be Matriculate. According to the said respondents, the selection committee on comparative assessment of the case of the petitioner and respondent No. 3 (wrongly typed as respondent No. 4), found respondent No. 3 to be better qualified. The counter- affidavit specifically denies the allegation about any political considerations or pressure influenced the selection of respondent No. 3.

6. In reply, it is reiterated that respondent No. 3 has not given any surety about the financial back-up for running dealership, which has not been controverted by the respondents. According to the petitioner, she was more eligible and as per the marking fixed by the rules, she secured higher marks than respondent No. 3 in the total assessment and that is why the respondents have evaded to disclose the item-wise marking given to the petitioner vis-a-vis other candidates and respondent No. 3. As regards the offer of land, it is stated that the statement that the advertisement dated 12.7.2002 (Annexure-2) was related to or connected to advertisement dated 6.10.2001 (Annexure-1) is misleading as, according to the petitioner, initially the advertisement (Annexure-1) was issued for appointment of dealership, in which Clause 1 (kha) only provided to express willingness for execution of deed with respect to transfer of ownership/long term lease and the petitioner expressed her willingness to give land on Patta, Subsequently, candidates were asked to give the details of the lands. Hence the land-holder Ran Vijay Singh made a written agreement with the petitioner that he would lease out the land to the Company in favour of the petitioner in the event the dealership is allotted to her and the said agreement was submitted before the selection committee at the time of interview. It is stated that these facts were stated before the authority and the Standing Technical Committee made the inspection of the site on 4.2.2003, which would be apparent from the records of the Company that the actual inspection was done and this fact has not been specifically denied by the respondent authorities. It is stated that it was also stipulated that the land detail can also be supplied even at the time of the interview and neither the respondent No. 3 nor any other respondents supplied the details of the land with the application form. So far as giving details of land in the application form by respondent No. 3 is concerned, it is alleged that it does not arise and if it is now entered in the application form, it is a clear manipulation in connivance with the Company after filing of the writ application as respondent No. 3 has made the agreement with somebody at the time of the filing of the writ application i.e., till date the land in question had not been leased to the Company, which shows the false statement made in paragraph 13 of the counter-affidavit.

7. The private respondent No. 3 has not even bothered to file a counter-affidavit.

8. Mr. Prasad, learned senior counsel appearing for the petitioner has contended that the facts of the case clearly demonstrate that respondent No. 3 has been

shown undue favour so much so that despite he being inferior candidate in all respects and non-compliance of the requirement to furnish relevant papers has been selected for retail outlet arbitrarily on the plea that the petitioner did not mention any details of the land available with her for the proposed dealership in her application form nor did she offer any land for the proposed dealership. Learned counsel submitted that in view of the law settled by the Apex Court in the case of K. Vinod Kumar Vs. S. Palanisamy and Others, the requirement contained in sub-paragraph 1 (kha) of the notice, contained in Annexure 1, and even the subsequent notice, contained in Annexure 2, in that regard is not mandatory. According to the Apex Court, furnishing particulars of land in the application is to enable a determination as to whether the specified place would accommodate the godown facilities and distributorship arrangements from a commercial angle and thus this requirement is mandatory, but satisfying the requirement at the stage of making the application is only directory. According to the Apex Court, particulars of such land can be made available even subsequent to the filing of the application and may even be subsequent to the selection. The Apex Court held that the consequence of failure to make the suitable land available within a period of two months from the date of selection is that the selection of such candidate would be liable to be cancelled. He thus contended that there was nothing on record to find the claim of the petitioner to be inferior to respondent No. 3 with respect to selection of candidature and action of respondent authorities in selecting respondent No. 3 in preference to the petitioner even though it is not disputed that she possessed better qualifications to meet the other criteria is wholly arbitrary; more so when at the time of making application there was no such requirement in the advertisement to furnish the particulars of land in the application on which ground alone claim of respondent No. 3 has been found superior than that of the petitioner.

9. Mr. Sinha, learned counsel appearing for the respondent-Company submitted that even according to the decision of the Apex Court, the requirement to furnish the particular of land in the application itself is mandatory and in the absence of the same, the petitioner cannot claim preference over respondent No. 3, who furnished the particulars of land in the application itself. He submitted that there being no illegality in the selection process even alleged, this Court should not interfere with the decision of the selection committee consisting of experts holding high status. He contended that the facts of the case would show that the committee has observed the procedure with all fairness and found respondent No. 3 better than the petitioner. Thus, according to him, in view of the law settled in the case of K. Vinod Kumar v. P. Palanisamy, (*supra*) as well as the decision of this Court in the case of Dibyendu Mohan v. Hindustan Petroleum Corporation Limited and Ors., CWJC No. 6928 of 2003, disposed of on 19.12.2003, the scope of judicial review is confined to the decision making process and does not extend to the merit of the decision taken.

10. Mr. Jha, learned Senior Counsel appearing for respondent No. 3, while reiterating the contention advanced by Mr. Sinha, learned counsel for the

respondent Company submitted that the Supreme Court in the case of National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, , while considering the case of selection for recruitment, held that the procedural fairness is the main requirement in the administrative action. The "fairness" or "fair procedure" in the administrative action ought to be observed and the Selection Committee cannot be an exception to this principle. The Apex Court directed that it must take a decision reasonably without being guided by extraneous or irrelevant consideration but at the same time, the Supreme Court cautioned that it should not be lost sight of that the Selection Committee consisted of Experts in the subject for selection and were men of high status and also of unquestionable impartiality and thus, the Court should be slow to interfere with their opinion. He thus contended that there is nothing to indicate that the Selection Committee did not comply with the requirement of procedural fairness and thus he submitted that this Court should refrain from interfering with the selection of respondent No. 3 in preference to the petitioner.

11. I find no substance in the submission of the learned counsel for the respondents. There cannot be any dispute that the High Court sitting in writ jurisdiction. Under Article 226 of the Constitution of India should be slow to interfere with the opinion of the selection committee except where the requirement of procedural fairness is not complied. Mr. Sinha, learned counsel appearing for the respondent-Company is fully justified in contending that if there is requirement to furnish the particulars of land in the application, it is mandatory in view of the decision of the Apex Court in the case of K. Vinod Kumary. P. Palanisamy, (supra) but, according to the Supreme Court, satisfying the requirement at the stage of making the application is only directory and the particulars of such land can be made available even subsequent to the filing of the application and may even be subsequent to the selection. The Apex Court has directed that the consequence of failure to make the suitable land available within the stipulated period is that the selection of such candidate would be liable to be cancelled, but, in my opinion, a candidate can satisfy the requirement by furnishing particulars even subsequent to filing of application and may even be subsequent to selection as held by the Apex Court.

12. In the instant case, Mr. Sinha, has produced photo copies of the application of the petitioner as well as of respondent No. 3, from perusal whereof it appears that the application form of the petitioner was received in the Company on 9.11.2001 and of respondent No. 3 on 16.11.2001 obviously pursuant to the advertisement dated 6.10.2001 (Annexure 1) i.e., much before the subsequent advertisement dated 12.7.2002 (Annexure 2). Photo copies of the said application have been kept on the record and will form part of the record.

13. The notice, contained in Annexure 1, only requires to express willingness to transfer the ownership/execute long term lease to the Company to make the candidate entitled for preference. In the said advertisement there was no requirement to furnish the details of the lands. This requirement is contained in

subsequent advertisement dated 12.7.2002 (Annexure 2), which does not show that the same is in addition/clarification of the earlier advertisement. It is true that in the subsequent advertisement, Goh is also included but as against it, it is mentioned that the retail outlet is to be established on Daudnagar Gaya Road, N.H. 7 besides some other new places such as Dumrighat Chowk in the district of Khagaria, Parsauni Chowk in the district of Sitamarhi, Surajgarh in the district of Lakhisarai etc. and as such, learned counsel for the respondents are thus not justified in relying upon Annexure 2 justify the selection of respondent No. 3 in preference to petitioner simply because she did not mention about the details of the land available with her for the proposed dealership in her application form; more so in the absence of any rejoinder to the statement made in the reply affidavit that after the advertisement dated 12.7.2002 the petitioner submitted the details along with the agreement of the land-holder and in pursuance to that the Technical Standing Committee visited the site who were shown the agreement and they agreed with the offer of the petitioner and recommended in her favour which is available in the record and in pursuance of the said recommendation, the Company got non-encumbrance certificate for the last 13 years. The certificate (Annexure 3) issued from the respective registration office shows that it was issued at the behest of the respondent-Company. The respondents have also not disputed the allegations made in paragraph 19 of the reply affidavit that so far as giving the detail of the land in the application form by respondent No. 3 is concerned, it does not arise and if it now entered in the application form, it is a clear manipulation in connivance with the company after filing of the writ application as respondent No.3 has made the agreement with somebody at the time of the filing of the writ application i.e., till date the land in question has not been leased to the Company which shows the false statement made in paragraph 13. The said allegation made against respondent No. 3 is also substantiated from the facts that even though there was no requirement pursuant of the first advertisement (Annexure 1), yet respondent No. 3 in his application stated the details of the land by mentioning that "Yes, a suitable site for retail outlet is readily available in Village Dadhpi in roadside on Goh Daudnagar Road nearly 2 km. away from Goh (Khata No. 65/313,310 Plot No. 1652 (New) Area 0.72-D)". In fact, the details, of the land as per the subsequent advertisement was required to be furnished with respect to Daudnagar-Gaya Road. NH 7 and as per the first advertisement it was to be established at Goh itself and not on NH 7. It is not one of those cases where the decision of the selection committee based on the facts aforementioned can be held to be fair.

14. In the result, the writ application is, thus, allowed. The impugned selection list, contained in Annexure-8, is quashed. The respondents No. 1 and 2 are directed to refer the matter to the Selection Committee for fresh consideration, whereupon the Selection Committee shall consider the case of the petitioner along with others accordingly afresh. In the facts and circumstances, there shall be no order as to costs.