
(2015) 06 PAT CK 0064

In the Patna High Court

Case No : Letters Patent Appeal No.1676 of 2010 in Civil Writ Jurisdiction Case
No. 15928 of 2009

Pushpendra Kumar Singh

APPELLANT

Vs

The Hindustan Petroleum Corporation Limited

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2017) 1 PLJR 342

Hon'ble Judges : Mr. V.N. Sinha and Smt. Nilu Agrawal, JJ.

Bench : Division Bench

Advocate : Mr. Rajendra Prasad Singh, Sr. Advocate, Mr. Navjot Yesu, and Mr. Rishi Raj, Advocates, for the Appellants; Mr. Laxmi Narayan Das, and Mr. R. Saran, Advocates, for the Oil Company; Mr. Bindhyachal Singh, Mr. Sushil Kumar Singh and Mr. Ram Binod Singh, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Mr. V.N. Sinha, J. (Oral) - Both these appeals arise out of Order No. 10 dated 23.09.2010 passed by learned Single Judge in C.W.J.C. No. 15928 of 2009 filed by Respondent No. 7 in L.P.A. No. 1676 of 2010 assailing the selection process for appointment of retail outlet for selling of petroleum products conducted by Respondent No. 1 pursuant to advertisement dated 19.01.2009 published in newspaper, Annexure-4 to the writ petition in the light of the Information Brochure dated 01.01.2009, Annexure-3 to L.P.A. No. 1676 of 2010.

2. It was submitted in the writ petition that the selection process was vitiated as the selecting authorities did not award the writ petitioner, who was a Post Graduate Diploma Holder in Rural Management from Institute of Rural Management, Anand, 15 marks in the light of parameters provided in the brochure for Level-I (i) Category. For ready reference Level-I Category is incorporated herein below :

Parameter

Level

Description

Max Marks

Evaluation

Educational Qualification (as on date of application) not applicable to non-individual entities

I

i. Post Graduation in Management or Diploma in Management from Indian Institute of Management ii. Graduation in Engineering/Law iii. Chartered Accountant.

15

Based on the information given in application

II

Post Graduation/Graduation/Professional qualification in any other field not covered in para 1 above

12

III

Matriculation

10

3. In this connection, learned Single Judge having appreciated the submission of the parties has held as follows :

"Hence the qualification of Post Graduation in Management has to be read as Post Graduate Degree or Diploma in Management which is recognised as equivalent to MBA by the Association of Indian Universities or any such other competent body."

and directed that writ petitioner being a Diploma holder in Rural Management from IRMA be awarded 15 marks as according to learned Single Judge any other interpretation of the qualification and requirements mentioned in Level-I would fall foul of Article 14 of the Constitution and would be unreasonable, arbitrary, discriminatory and whimsical. In this connection learned Single Judge observed that writ petitioner may not be a Diploma holder from Indian Institute of Management but he being Diploma holder from IRMA, his qualification is covered by 1st part of Level-I (i) Post Graduation in Management, as, Diploma in Rural Management is also granted by IRMA and is a Post Graduation qualification.

4. Counsel for the selected candidate i.e. Respondent No. 5 and the Oil Company

assailed the aforesaid finding, observation of the learned Single Judge and submitted that (i) of Level-I provide for Post Graduation in Management or Diploma in Management from Indian Institute of Management. It is submitted that Post Graduation in Management can be either a Degree or Diploma. Post Graduation Degree is covered by 1st part of Level-I (i), Diploma in Management from Indian Institute of Management is covered by the 2nd part of Level-I(i). It is submitted that writ petitioner being a Diploma holder from IRMA cannot be covered by either the first or the second part of Level-I(i), as according to learned counsel for the selected candidate and Oil Company first part of description covers Post Graduation Degree and the second part covers Diploma in Management from Indian Institute of Management. Writ petitioner being neither a Post Graduate Degree holder in Management nor Diploma in Management from Indian Institute of Management and being a Diploma holder in Rural Management from IRMA has been rightly allowed 12 marks as per Level-II. In this connection it is pointed out that learned Single Judge could not have equated Degree and Diploma within the same meaning to read Post Graduation in Management as Post Graduate Degree or Diploma in Management, as Diploma is covered by the second part of Level-I.

5. It is further submitted by the counsel for the selected candidate and the Oil Company that it was not open for the learned Single Judge to have added something to the first part of Level-I(i) as Post Graduation Diploma from Indian Institute of Management is covered by the subsequent part, the first part provides for Degree alone.

6. Learned counsel further submitted that writ petitioner with his eyes open having participated in the selection process as per the description of the parameters of evaluation, it was not open for him to assail the parameters as arbitrary and literal meaning is required to be given to the parameters as is appearing from a bare reading of the description. In this connection he placed reliance on the judgment of Supreme Court in the case of K.A. Nagamani v. Indian Airlines and others (2009) 5 SCC 515, Paragraph 54, Dhananjay Malik & Ors. v. State of Uttaranchal & Ors. 2008 (3) PLJR 271 (SC) Paragraphs 7, 8.

7. Learned counsel for the selected candidate and the Oil Company further submitted that retail outlet having been commissioned on 25.03.2010, much after filing of the counter affidavit by the Oil Company, the Oil Company having been restrained from giving the L.O.I. to the selected candidate until filing of the counter affidavit by the Oil Company, which was filed on 14.12.2009, as is evident from order dated 20.11.2009, the L.O.I. dated 28.01.2010 having been issued much after filing of the counter affidavit equity has been created in favour of the selected candidate, learned Single Judge should have been slow in quashing the allotment made in his favour. In this connection learned counsel for the selected candidate and the Oil Company also referred to the order dated 12.03.2010 and submitted that after filing of the counter affidavit and issue of L.O.I. dated 28.01.2010 writ petitioner filed I.A. No. 2208 of 2010 for stay of the

L.O.I. but this Court under order dated 12.03.2010 observed that no order is required to be passed on I.A. No. 2208 of 2010. High Court having refused to stay the L.O.I. the Oil Company issued letter to commission the outlet on 25.03.2010, where after I.A. No. 2208 of 2010 was again taken up by the learned Single Judge on 12.04.2010 and his Lordship observed that issue of Letter of Intent after filing of the counter affidavit by the Oil Company may not create any right in favour of the selected candidate and status quo be maintained.

8. It is submitted by the selected candidate as also the Oil Company that Letter of Intent having been issued after restraint to issue such letter having been withdrawn the rights of the parties is required to be considered in the light of the Letter of Intent and operation of the outlet after huge investment for more than five years. In this connection learned counsel has relied on the judgment of the Supreme Court in the case of *Moumita Poddar v. Indian Oil Corporation Limited* and another (2010) 9 SCC 291 Paragraphs 48, 49 and *Virender Chaudhary v. Bharat Petroleum Corporation and others* (2009) 1 SCC 297 Paragraph 21.

9. In rejoinder learned counsel for the writ petitioner submitted that having participated in the selection process petitioner can always assail the arbitrariness in the parameters of selection as estoppel will not come in his way to challenge the arbitrariness in the different clauses of parameters. In this connection he placed reliance on the judgment of the Supreme Court in the case of *Raj Kumar and others v. Shakti Raj and others* (1997) 9 SCC 527 Paragraph 16.

10. Learned counsel further pointed out that equivalence of Diploma in Rural Management from IRMA and Diploma in Business Management from Indian Institute of Management has been considered and found equivalent to each other by the Association of Universities, which is the competent nodal agency of the Government of India to consider equivalence of the two educational qualification(s). Diploma in Rural Management from IRMA has to be considered equivalent to Post Graduation in Management and he is entitled to 15 marks. In this regard learned counsel for the writ petitioner placed reliance on the judgment of the Supreme Court in the case of *Pandurangarao etc. v. The Andhra Pradesh Public Service Commission, Hyderabad* and another A.I.R. 1963 Supreme Court 268 Paragraphs 16, 17.

11. In view of the rival submissions, we have considered the submission of the parties. It appears from the parameter Level 1(i) that thereunder any candidate who wanted his application to be considered for grant of licence to establish outlet is required to be given 15 marks, provided he is Post Graduate in Management or Diploma in Management from Indian Institute of Management. Diploma in Management from Indian Institute of Management are entitled to be given 15 marks. The Oil Company having made its intention clear that Diploma from the Indian Institute of Management is entitled to 15 marks, the first part of the parameter which provides for Post Graduation in Management could not have included Diploma from any other Institution as Diploma from Indian Institute of Management is provided for in the second part of the parameter as the Oil

Company desired to allocate 15 marks to only those who had diploma from Indian Institute of Management. So far Post Graduation in Management is concerned, any Degree in Management could have been considered in the first part. The word Degree may not be there in the first part but Diploma being there in the second part so any other Diploma holder could not have been covered by the first part. Post Graduation may be a Diploma or Degree. Diploma from Indian Institute of Management having been considered in the second part, there was no ambiguity in the first part which only provides for the Degree. The Oil Company, other candidates who participated in the selection process, except the writ petitioner have understood the advertisement and the brochure in the manner in which we have interpreted, as such, after the writ petitioner participated in the selection process without questioning any ambiguity in the clauses of the parameter, it was not open for him to have questioned the same by filing the writ petition.

12. The finding of the learned Single Judge that Post Graduation in Management has to be read as Post Graduation Degree or Diploma in Management because it is recognised as equivalent to M.B.A. Degree by the Association of Indian Universities also does not appear to be correct as from the information bulletin 2009 issued by the Association of Indian Universities in connection with recognition of qualification and equivalence of degrees, it appears that Post Graduate Diploma in Management from different Indian Institutes of Management vide Item Nos. 20, 21, 23 and 24 is equivalent to M.B.A. Degree but P.G. Diploma issued from Institute of Rural Management, Anand vide Item No. 34 is only M.B.A. (Rural Management) and not a Degree in Management.

13. In view of our findings above, order of the learned Single Judge dated 23.09.2010 passed in C.W.J.C. No. 15928 of 2009 is required to be set aside, which is, accordingly, set aside. The appeals are allowed and writ petition is dismissed.