(1995) 03 P&H CK 0146

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 2461 of 1994

Raj Rishi Gupta APPELLANT

Vs

Hindustan Petroleum Corporation Ltd. RESPONDENT

Date of Decision : 01-03-1995

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (1995) 111 PLR 256

Hon'ble Judges : V.K. Jhanji, J

Bench : Single Bench

Advocate : R.S. Surjewala, for the Appellant; Anil Malhotra and Ranjit Malhotra for Respondent Nos. 1 and 2, H.L. Sibal and Rita Kohli and G.S. Jaswal, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Jhanji, J.—In this petition under Article 226 of the Constitution of India, Raj Rishi Gupta, petitioner, has prayed for issuance of an appropriate writ, direction or order in the nature of certiorari, quashing order dated 21.10.1993 (Annexure No. 22) of Oil Selection Board Haryana (respondent No. 2) as well as letter dated 1.12.1993 (Annexure P-24) of Hindustan Petroleum Corporation Limited, respondent No. 1, cancelling the selection of petitioner and withdrawing the letter of intent issued to the petitioner for retail outlet/dealer ship of Hindustan Petroleum Corporation Limited at Batamor, District Faridabad, and for quashing letter of intent dated 6.12.1993 (Annexure P-25) issued in favour of respondent No. 3 namely Anita Singhal regarding retail outlet/dealership of Hindustan Petroleum Corporation Limited (respondent No. 2) at Batamor, district Faridabad, under the general category.

2. Vide advertisement dated 16.4.1990 issued in various newspapers, the Hindustan Petroleum Corporation Limited (in short, the Corporation) invited applications for allotment of retail outlet to be set up at batamor, Faridabad, under the general category. To become eligible for the same, following conditions

were laid down:-

"2. Eligibility: Applicant should be: a) Indian by Nationality.

b) Not less than 21 years of and not more than 50 years of age on the date of application.

c) Minimum Matriculate or recognised equivalent.

d) Resident of Faridabad District for a period not less than 5 years immediately preceding the date of application.

e) Having family (as defined in the application form) income of not more than Rs. 50,000/- annually (last financial year).

f) Not having any dealership/distributorship of any oil company.

g) Having no close relatives (as defined in the application form) as a dealer/ distributor of any oil company.

However, details of the eligibility criteria and conditions as mentioned in the application form will be applicable."

In response to the afore-mentioned advertisement petitioner submitted his application. Against the column of occupation, he mentioned Nil. In his affidavit dated 30.5.1990, in regard to his income he mentioned that the income viz., mine, that on my spouse, my dependent children and that of my parents put together does not exceed Rs. 50,000/- per annum (last financial year)." Again in para 10 of the affidavit, he mentioned "that I have unemployed during the period June, 1988, till now proceedings the date of my application for the subject dealership/distributorship." In para 11, he gave an undertaking that if any information as given by him in his application or in any document submitted by him in support of his application for the award of retail outlet dealership/ distributorship or in the affidavit is found to be untrue or incorrect or false, the Corporation would be within its rights to withdraw the letter of intent, terminate the dealership/distributorship (if already awarded) and that he would have no claim whatsoever, against the Corporation for such withdrawal/termination. He also verified the said affidavit by stating that whatever has been stated by him is true to the best of his knowledge and belief and nothing material has been concealed therefrom. In the second affidavit of even date, in regard to annual income for last financial year against the column of salary and property, he mentioned Nil and against the column of interest, he showed his income as Rs. 6,000/- and further showed the income of his father as Rs. 40,000/-, thereby showing the total as Rs. 46,000/-. Pursuant to the interview, the Oil Selection Board, North-II, (in short, the Board) in October/November, 1990, prepared the merit panel in which the petitioner was placed at No. 1, while Anita Singhal (respondent No. 3 herein) was placed at No. 2. In November, 1990, the Ministry of Petroleum and Natural Gas (hereinafter referred to as the Ministry) abolished all Oil Selection Boards and till December, 1992, there was no Oil Selection Board functioning. In January, 1993, the Ministry reconstituted Oil Selection Board separately for each State in the country. The present Board (Haryana) was also constituted for the State of Haryana. Vide letter dated 31.3.1993, the Ministry formulated a detailed policy regarding disposal of cases pending with the previous Oil Selection Board for selection of dealers/distributors for petroleum products. One of the decisions, under the policy, taken by the Ministry was that all cases where merit panels were finalised by the previous Oil Selection Boards for selection of dealers/distributors for petroleum products. One of the decisions, under the policy, taken by the Ministry was that all cases where merit panels were finalised by the previous Oil Selection Boards, but were not communicated to the Oil Companies, be released to the Oil Companies for further action. Following this policy, vide letter dated 12/21-5-1993, the Board released a merit panel with petitioner shown at No. 1 and respondent No. 3 dt No. 2 for the purposes of allotment of retail outlet/dealership at Batamor, Faridabad. On 27.5.1993, respondent No. 3 made complaint to the Board against the petitioner, stating that the petitioner has concealed his actual family income and wrongly stated that he was unemployed at the time of making of the application, whereas he was employed at Faridabad for the preceding five years from the date of application, while in fact during that period he was residing outside Faridabad district. Before the complaint could be investigated, the Board issued a letter of intent dated 3.6.1993 in favour of the petitioner, allotting him retail outlet/ dealership. Corporation too wrote a letter to Secretary, Local Government, Haryana, asking for allotment of a suitable site for retail outlet at Faridabad, to the petitioner. Complaint dated 27.5.1993 submitted by respondent No. 3 was sent by the Board to the General Manager of the Corporation regarding verification of allegations contained therein. Having received the complaint, Corporation wrote letter dated 24.6.1993 whereby the petitioner was directed to stop further progress for setting up of retail outlet. The Board to wrote letter dated 30.6.1993 to the petitioner asking him to give reply on various allegations as contained in complaint dated 27.5.1993. Meanwhile, respondent No. 3 filed another complaint dated 2.7.1993 with the Chairman of the Board. The Board vide its letter dated 15.7.1993 sent the complaint along with the annexure to the petitioner asking for his comments. Petitioner vide his affidavit dated 19.7.1993 in which she alleged that petitioner had an income of Rs. 18,240/- from salary and other allowances while working with M/s. Taylor Instrument Co. (India) Limited, which he had not disclosed in the application for retail outlet. Another complaint dated 17.8.1993 on the same very allegations was made to the Board. In order to investigate the complaint, petitioner as well as respondent No. 3 were summoned by the Board. After having heard petitioner and respondent No. 3, as also investigating the matter, vide majority of 2:1 passed order dated 21.10.1993 recommending cancellation of letter of intent issued in favour of the petitioner and recommending the name of respondent No. 3 for issuance of letter of intent. The Board found that the petitioner was not qualified to be an eligible candidate on account of his income in excess of limit of Rs. 50,000/- and that he has concealed the fact of his employment with M/s Taylor Instrument Co. in his application and, thus, was ineligible. In regard to respondent No. 3, it found that her total income including that of her husband comes to Rs. 40,160/- and as such, deserves to be given the letter of intent on the basis of her merit. Accordingly, a direction was issued by the Board to the Corporation to issue letter of intent in the name of respondent No. 3. Pursuant to this order, the Corporation vide letter dated 1.12.1993 (Annexure P-24) addressed to the petitioner, cancelled the letter of intent. Vide letter dated 6.12.1993 (Annexure P-25), respondent No. 3 was offered dealership of retail outlet. The order of the Board dated 21.10.1993, letter dated 1.12.1993 cancelling letter of intent in the name of petitioner and letter dated 6.12.1993 offering the retail outlet/dealership to respondent No. 3 are being impugned in this writ petition on the grounds that finding of the Board that total income of the petitioner exceeded the limit of Rs. 50,000/- is patently incorrect and not borne out from the record, and that being so the Board has acted with patent legal and personal mala fides in recommending cancellation of letter of intent; that order dated 21.10.1993 recommending cancellation of letter of intent issued to the petitioner is liable to be set aside on account of violation of principles of natural justice. No adequate opportunity was provided to the petitioner to plead his case and copies of complaints filed by respondent No. 3 against the petitioner and the documents attached thereto on the basis of which order dated 21.10.1993 (Annexure P-22) was passed, were never furnished to the petitioner in order to enable him to present his defence or adequately meet the same; and that the Board has patently erred in recommending the issuance of letter of intent to respondent, when gross income of respondent No. 3 and her husband, Ghanshyam Singhal, when taken together, is more than Rs. 50,000/- for the relevant financial year.

3. Written statement has been filed on behalf of respondents No. 1 and 2, and by respondent No. 3. Apart from taking the preliminary objection in regard to locus-standi the petitioner to file the writ petition, it has been stated that the Board gave due opportunity of hearing to the petitioner and the order passed by the Board is fair, just and judicious based upon conscious application of mind after hearing the petitioner as well as respondent No. 3. As regards the making of investigation by the Board, it has been mentioned that in accordance with the guidelines laid down by the Ministry of Petroleum, Govt. of India, complaints against selection of dealership/distributorship had been referred to the Board for enquiry and on receipt of complaints, the Board is entitled to seek more details/ investigation and final decision in this regard lies with the Board. Thus, it has been stated that it is the prerogative and right of the Board to independently enquire into any complaint irrespective of the fact that the Oil Company has also been asked to ascertain the facts in regard to the same. Respondents No. 1 and 2 in para 10 of the written statement have stated that petitioner was supplied with the alleged complaint and he was also afforded personal hearing to rebut the allegations, but the petitioner failed to disprove the same. With regard to grant of letter of intent to respondent No. 3, it has been stated that the Board was satisfied that her family income was below Rs. 50,000/-. This finding was

arrived at on the basis of income tax returns and other valid documents filed in support thereof. Respondent No. 3 in her written statement has stated that letter of intent issued in favour of the petitioner was cancelled by the Board on the basis of enquiry made and after affording due opportunity to explain. The Board, as a matter of fact, found that he misrepresented that he was unemployed and his family income was less than Rs. 50,000/-. With regard to her income, she has stated that the same is less than Rs. 50,000/- and the decision of the Board to this effect is correct and cannot be challenged under Article 226 of the Constitution of India.

4. In his application for allotment of retail out-let, while furnishing the particulars regarding his income, petitioner has stated that his father is earning Rs. 40,000/- and in addition he is having income of Rs. 60,000/- from interest. Petitioner did not disclose that he was employed with M/s Taylor Instruments, Faridabad, and drawing salary of Rs. 2455/- per month. This fact was brought to the notice of the Board only when complaint was made to the Board. Board in order to verify the allegations made in regard to employment of the petitioner with M/s Taylor Instruments, sent a letter to the Personnel Manager of M/s Taylor Instruments through courier and they were requested to verify if the petitioner was employed with them or not and if employed, the emoluments for the year 1989-90. No reply was sent by M/s Taylor Instruments. In the absence of reply, the Board was left to draw the conclusion that the petitioner was employed with M/s Taylor Instruments on the basis of entries made in the provident fund account for the year 1987-91 made by Regional Fund Commissioner, Faridabad, as well as copy of return filed by M/s. Taylor Instruments before Provident Fund Authorities, showing that petitioner was provident fund subscriber mentioned at Sr. No. 3. The account maintained with the Provident Fund Commissioner disclosed that the petitioner was an employee with M/s Taylor Instruments and had contributed towards provident fund for four years, i.e. 1987-88, 1988-89, 1989-90 and 1990-91. In the writ petition too, petitioner has not disputed the finding of the Board that he was employed with M/s. Taylor Instruments on emoluments of Rs. 2455/- per month and also contribution towards provident fund. As a matter of fact, he has not disclosed in the writ petition that he was employed with M/s. Taylor Instruments. What he says in the petition is "that income of the father of the present petitioner cannot be clubbed at all with the income of the petitioner, as he was not dependent upon his father nor was this fact stated by him either in his application or in any other document submitted at any stage." This stand on the face of it is incorrect and against the one he had taken in his application for allotment of retail outlet. In his application, not only he stated that he is unemployed, but had disclosed the income of his father at Rs. 40,000/- and his income from interest at Rs. 6,000/- Mr. Sibal has contended that though on merits the petitioner has no case, but without going into the merits, the petition deserves to be rejected in view of suppression of material facts. According to Mr. Sibal, the petitioner not only suppressed the fact of his employment with M/s Taylor Instruments before the Board, but here too in this petition he has not

disclosed this fact. The contention of Mr. Sibal is well-merited. It now stands settled that suppression of material facts is by itself a sufficient ground to decline relief by the High Court to the writ petition in exercise of Us jurisdiction under Article 226 of the Constitution of India. A party seeking discretionary relief has to approach the Court with clean hands and is required to disclose all material facts which may one way or the other affect the decision. In this regard, decision of Full Bench of Allahabad High Court in Asiatic Engineering Co. Vs. Achhru Ram and Others, may be noticed wherein the Allahabad High Court after having referred to decision in The King v. The General Commissioners for the Purposes of the Income, Tax Act for the District of Kensington 1917(1) KBD 486, held that" a person obtaining an ex-parte order or a rule nisi by means of petition for exercise of the extraordinary powers under Article 226 of the Constitution must come with clean hands, must not suppress any relevant facts from the Court, must retrain from making misleading statements and from giving incorrect information to the Court. Courts, for their own protection, should insist that persons invoking these extraordinary power should not attempt, in any manner, to misuse this valueable right by obtaining ex-parte orders by suppression, misrepresentation or mis-statement of facts. If the facts are stated in such a way as to mislead and deceive the Court, in order to protect itself and to prevent an abuse of its process, to discharge the interim order and to refuse to proceed further with the examination of the merits of the application." A reference may also be made to a decision of Full Bench of this Court in Chiranji Lal and Ors. v. Financial Commissioner, Haryana, Chandigarh and Ors. (1978) 80 P.L.R. 582 (F.B.) and of Supreme Court in Udai Chand Vs. Shankar Lal and Others, , All India State Bank Officers Federation and Others Vs. Union of India (UOI) and Others, and G. Narayanaswamy Reddy (dead) by L.Rs. and another Vs. Government of Karnataka and another,

5. Petitioner, in his affidavit dated 30.5.1990 had given an undertaking that if any information as given by him in his application or any document submitted by him in support of his application, is found to be untrue or incorrect or false, the Corporation would by within its rights to withdraw the letter of intent or terminate the dealership, if already awarded. The Board on the basis of documents brought on record, fund that "a perusal of the documents pertaining to the Provident Fund Account on the record is duly attested by the Judicial Magistrate, Faridabad and thus is an authenticated copy besides it does pertain to the relevant period. We tried our best to verify the facts of employment through M/s. Taylor Instruments Limited who however, choose to remain silent and did not reply to our communication. However, in view of the documentary evidence, we are of the considered opinion that Sh. Raj Rishi Gupta had concealed the fact of his employment in his application and the total income including his own income and his father exceeded the limit of Rs. 50,000/- and thus was ineligible. Sh. Raj Rishi Gupta was heard today. However, he has not been able to bring anything on record to enable us to change of our opinion." As already observed, petitioner in the petitioner has not disclosed that he was

employed with M/s Taylor Instruments. In view of this suppression, this Court would be fully justified in refusing to exercise discretion in favour of a person who has concealed material facts. The Court cannot and should not be made a party to extend its helping hand to a person who has not come to Court with clean hands and failed to disclose material facts.

6. Faced with this situation, learned counsel for the petitioner contended that petitioner was not given an adequate opportunity to plead his case and copies of complaints and documents, filed by respondent No. 3 were not furnished to him.

7. Vide letter dated 15.7.1993 (which the petitioner has himself attached with the writ petition as Annexure P-12), the petitioner was asked by the Board to appear before the Board in connection with compliant of respondent No. 3. With this very letter, copy of complaint dated 2.7.1993 was enclosed and petitioner was advised to submit his consolidated reply of each point raised in both the complaints before the Board on 23.7.1993 at 12.00 hours at Hotel Magpie (HTC), Sector 16-A, Faridabad. The complaint enclosed by the petitioner with letter (Annexure P-12) reveals that respondent No. 3 had specifically alleged in her complaint that petitioner was employed as Supervisor with M/s. Taylor Instruments, Faridabad, w.e.f. 29.9.1989 to 16.10.1992 and drawing monthly salary of Rs. 2455/-. In the complaint, respondent No. 3 has also given the details of salary received by the petitioner. It thus, stands, established on record that petitioner was not only supplied with copy of the complaint, but also given an opportunity of hearing. Therefore, counsel for the petitioner is not right in contending that adequate opportunity of hearing was not given to the petitioner. It was then urged by learned counsel for the petitioner that family income of respondent No. 3 was in excess of the limit prescribed in the advertisement. He referred to computation-sheets pertaining to G.L. Singhal, husband of respondent No. 3, filed along with Income Tax returns and contended that deduction of Rs. 6775/- in regard to rent paid is not admissible and has to be counted towards income. He made reference to certain provisions of the Income Tax Act for pointing out the difference between the gross income and the net income. The contention of learned counsel for the petitioner is devoid of any merit. Respondent No. 3 has placed on record her Income Tax returns as well as that of her husband, a reading of which shows that total income of both husband and wife does not exceed Rs. 50,000/-. The Board in its order dated 1.10.1993 after having dealt with this matter exhaustively found that total income of respondent No. 3 and her husband comes to Rs. 40,160/-. The Board has considered the case of the petitioner as well as of respondent No. 3 and then decided that respondent No. 3 deserves to be allotted retail outlet. Otherwise too, this Court is not sitting in appeal over the decision of the Board. The Apex Court in Dalpat Abasaheb Solunke and Others Vs. Dr. B.S. Mahajan and Others, , has held that it is not the function of the Court to hear appeal over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. The Court has no such expertise. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or

patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc. The mere bald allegation of the petitioner that Board has acted arbitrarily or unfairly is not sufficient to hold that recommendations of the Board are vitiated due to malice or arbitrariness. Petitioner has not chosen to allege malice against the members, order dated 21.10.1993 (Annexure P-22) passed by the Board whereby the Board decided to cancel the letter of intent in favour of petitioner and to issue a letter of intent in favour of respondent No. 3, called for no interference by this court.

8. Consequently, this writ petition shall stand dismissed with costs. Costs quantified at Rs. 5000/- to be paid to respondent No. 3.

