
(2012) 03 PAT CK 0123
In the Patna High Court
Case No : CWJC No. 15804 of 2011

Rajeev Kumar Thakur

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 02-03-2012

Acts Referred:

Citation : (2012) 2 PLJR 247

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Ashok Kumar Singh and Shitanshu Shekhar Mishra, for the Appellant; Sanjay Singh for the Respondent Corporation and M/s Tej Bahadur Singh, Chitranjan Sinha, Jitendra Kumar Verma and Manish Kumar for the Private Respondent No. 5, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This writ petition has been filed by the petitioner for the following reliefs:- (i) For issuance of direction to the respondent nos. 1 to 4 to revise the result announced on 4.2.2011 for selection of dealership for Retail Outlet at Benipur-Darbhanga Road which was published without taking into consideration of the claim of the petitioner based on terms and conditions prescribed for the selection of the same.

(ii) For issuance of direction to respondent nos. 1 to 4 for canceling the candidature of respondent no. 5 for award of Retail Outlet Dealership of Bharat Petroleum Corporation Limited at Benipur-Darbhanga Road, District-Darbhanga which was made in his favour on erroneous consideration.

(iii) For issuance of direction to respondent nos. 1 to 4 to consider the candidature of the petitioner for award of Retail Outlet Dealership of Benipur-Darbhanga Road taking into account the eligibility criteria, verification of original documents and personal interview of the petitioner.

(iv) For issuance of an appropriate writ, order or direction for any other relief/

reliefs as your Lordship may deem fit and proper in the facts and circumstances of the case.

Learned counsel for the petitioner claimed that an advertisement was published in Hindi Daily Newspaper "Hindustan" on 30.5.2010 inviting applications for award of dealership of retail outlet of Bharat Petroleum Corporation Limited (hereinafter referred to as "the Corporation" for the sake of brevity) for different places in the State of Bihar under different categories, including location Benipur-Darbhangha Road (within 1 K.M. from Dharhara Chowk towards Darbhanga at S.H. 56) within the District of Darbhanga under "open" category, in response to which the petitioner submitted his application on 2.7.2010, whereafter the authorities of the Corporation sent interview letter dated 13.1.2011 asking the petitioner to appear before the Selection Committee on 4.2.2011. 2. Learned counsel for the petitioner also claimed that the petitioner appeared for interview before the Selection Committee on 4.2.2011 alongwith all the relevant documents and the result of the interview was published on the same date by the Selection Committee, but the petitioner was surprised to know that he was shown to have obtained only 88.92 out of 100 marks and was placed at 2nd position, whereas another candidate Sanjeev Kumar Choudhary (respondent no. 5) was shown to have obtained 91.32 marks and was placed at the top position and accordingly respondent no. 5 was the first empanelled candidate and the petitioner was the second. The main grievance of the petitioner is that his marks were less than respondent no. 5 only because petitioner was given "0" marks out of 4 marks in column no. 2 of "capacity to arrange finance" on the frivolous ground of non-filing of valuer's report.

3. Learned counsel for the petitioner claimed that requirements for application, detailed in Clause 10 of the application form attached with the Brochure of the Corporation to the respondents' counter affidavit as Annexure-A, clearly provided that application form must be filed alongwith relevant enclosures complete in all respects, original of the affidavit and self-attested copies of the other supporting documents and no addition, deletion or alterations or additional documents whatsoever will be permitted after the cut-off date of submission of applications and the applications received without accompanying valid documents or incomplete in any respect will not be considered. Thus, he submitted that had the petitioner not filed the aforesaid required documents, his application would have been rejected without calling him for interview. He also averred that calling of petitioner for interview clearly showed that his application was complete with all the requisite information and documents and only after the interview such plea was taken merely with a view to favour respondent no. 5.

4. The second point raised on behalf of the petitioner was that the land for which lease deeds were produced by respondent no. 5 was the joint family property of all the members of the family of the lessor as is apparent from the khatian, but no consent on affidavit was obtained from the co-sharers. Hence, learned counsel for the petitioner claimed that the said lease deed submitted by the

petitioner was not legal, proper and reliable and on the said ground the application of respondent no. 5 should have been rejected, but in spite of that he was given 34.30 out of 35 marks under the concerned head. Learned counsel for the petitioner claimed that on this score also the petitioner, who had obtained 34.30 marks in the said head on the basis of his legal, valid document, should have been given the top position.

5. Learned counsel for the petitioner also averred that respondent no. 5 is an advocate and under the provisions of Bihar Bar Council Rules he cannot be legally awarded such work unless permission is obtained from the Bar Council, but no such permission has been produced by respondent no. 5 at any stage either before the authority concerned or before this Court. In this connection, he relied upon a decision of the Apex Court in case of B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. and Others, and also on a decision of this Court in case of Brajesh Chandra Mishra Vs. The Union of India (UOI) and Others, .

6. Learned counsel for the petitioner further argued that in the aforesaid situation he filed a detailed complaint before the authorities of the Corporation on 21.2.2011, but his claim was dismissed by the authorities of the Corporation vide letter dated 7.3.2011 without answering the specific questions raised by the petitioner. It is also claimed by learned counsel for the petitioner that thereafter a representation dated 18.3.2011 was filed by the petitioner before the Area Marketing Manager of the Corporation and when no heed was paid by the authorities, he also sent a reminder on 22.6.2011, but it remained unreplied and hence the petitioner had no alternative remedy left but to file this writ petition.

7. On the other hand, learned counsel for the respondent-Corporation stated that no mala fide has been alleged in the writ petition against the Corporation or its authorities. It was further stated that no document has been produced by the petitioner supporting his alleged valuer's report and hence there was no question of debarring the petitioner and not sending any interview letter to him on that account as marks were provided to be given to the candidates under the said head and even if one got "0" mark in the said head he might succeed if total marks obtained by him was higher than others. He also stated that in the instant matter no document was produced by the petitioner in support of his valuer's report and hence the authorities had rightly given "0" marks to the petitioner under the said head.

8. It was also argued that the extract of the Brochure produced by the respondents clearly showed that there were various parameters for selection of a candidate and finance was an important aspect thereof. He further averred that the petitioner was given highest marks under the head "personality", whereas respondent no. 5 was given lowest marks under the said head, hence there was no question of bias.

9. Learned counsel for the respondent-Corporation submitted that question of title is not to be considered by the Corporation nor it has any authority to decide

such issue and as such if a duly registered lease is produced and the lessor and the lessee are found in possession without any dispute and further if no objection certificate is granted by the Collector, the Corporation has to accept the said registered lease deed to be valid for the purposes. It is also averred that Technical Committee of the Corporation had verified the matter and did not find any dispute on the land in question and after complaint of the petitioner, the Corporation sent its lawyer, who after detailed inquiry submitted his report dated 21.6.2011 which fully supported the aforesaid points and hence after all the aforesaid steps there was no reason for the Corporation to take a different view.

10. Learned counsel for the respondents-Corporation also averred that certificate of M/s Choudhary Fuel Centre (Annexure-10) clearly showed that respondent no. 5 was working as supervisor in the said centre since 2.1.2005 and hence there was no occasion for the Corporation to take a different view. He also stated that respondent no. 5 was enrolled in the Bar Council in the year 2009 and if he violated any Rule of the Bar Council he may be barred from practicing before any court of law or any other action can be taken by the Bar Council against the petitioner, but in any view of the matter, it cannot be a ground for rejection of the candidature of respondent no. 5 by the Corporation. In this connection, he relied upon a decision of this Court in case of Brajesh Chandra Mishra (supra).

11. Learned counsel for private respondent no. 5 contested the claim of the petitioner and stated that valuation report of the petitioner apart from not being supported by original papers of assets was also based on falsehood and fake details of properties which on relevant date did not belong to the petitioner. He cited an example in the penultimate entry at page-2 of the valuation report relating to ownership of the property detailed in the report by virtue of sale deed dated 6.3.2006 which is clearly a false statement in view of registered deed of cancellation dated 16.12.2006 cancelling sale deed dated 6.12.2006 within a fortnight and the said cancellation deed had been signed by the petitioner and his co-sharers as witness and the said deed of cancellation categorically mentioned about defect of title of vendor and return of entire sale consideration money.

12. He thus claimed that the aforesaid aspect clearly established deliberate fraud and misrepresentation on the part of the petitioner and hence he has not come to this Court with clean hands and thus is not entitled to any relief. Furthermore with respect to the registered deed dated 15.11.2006 produced by the petitioner it was also stated by learned counsel for respondent no. 5 that the petitioner nowhere figured in the said deed as purchaser and even the details of land mentioned in the report were false and incorrect and did not find mention in the said sale deed.

13. Learned counsel for respondent no. 5 argued that clause 13 of the application form annexed to the Brochure of the Corporation clearly required evaluation of applications and accordingly lease deed produced by respondent no. 5 was considered and since it was a registered document it created prima

facie presumption of correctness. So far the instant matter is concerned, he averred that only the land of new plot no. 6291 was relevant for the purposes of this case and for establishment of petrol pump as it is not in dispute that new plot no. 6291 was carved out of plot no. 2980/4477 and both the said old plots belonged to the lessor who had got those lands in mutual partition in family arrangement which is valid mode of partition and when the co-sharers of the lessor have no objection about the execution of the lease deed, the petitioner has no locus to challenge the same, especially when no objection certificate had already been given by the Collector.

14. Learned counsel for respondent no. 5 also claimed that he had filed an application before the Bar Council on 2.2.2011 informing the Bihar State Bar Council that he had applied for a dealership of the Corporation and if he was selected for the said dealership his licence for practicing in Court be kept in temporary suspension. This fact was also supported by the Secretary of the Bar Association, Benipur in his certificate dated 28.4.2011. In the said circumstances, it was stated that there was no illegality committed by respondent no. 5 as by that date dealership was not allotted to respondent no. 5. In this connection, learned counsel for respondent no. 5 also relied on the aforesaid decision of this Court in case of Brajesh Chandra Mishra (supra).

15. Thus, from the averments made by learned counsel for the parties and the materials on record it is quite apparent that the petitioner has failed to produce any material to show that he had filed documents supporting his valuer's report alongwith his application. Mere statement that had his application been without accompanying any relevant document it would have been rejected outright before issuance of interview letter will not be sufficient to prove his aforesaid claim especially when the respondents have been clearly and specifically denying the same.

16. Furthermore, there was no occasion for the Corporation for debarring the petitioner on that score from appearing in the interview and hence he was rightly called for interview, but the petitioner had to produce the aforesaid relevant documents to support the said report for which marks were provided under different heads, including the head "capacity to arrange finance" and even if one got "0" in it, he might be able to succeed if the total marks in various heads obtained by him were higher than the other applicants. In the said circumstances, when the petitioner failed to produce any document supporting valuer's report alongwith his application, the authorities were quite justified in granting "0" marks to him under the said head.

18. So far the allegation of supporting respondent no. 5 is concerned, it is quite apparent from the result slip (sic- slip ?) that there was a head "personality" in which no document was required, rather it was as per the sweet will of the authorities of the Corporation, but under the said head respondent no. 5 got lowest marks, whereas the petitioner was given highest marks. Furthermore, the other reasoning given by the petitioner in that regard is not sustainable in view

of the specific materials produced by the respondents. Accordingly, this Court does not find any bias in the impugned action of the authorities of the Corporation nor does it find that they were trying to favour respondent no. 5.

19. So far the question of title of lessor of respondent no. 5 is concerned, the Corporation cannot go into the question of title of any party. All it had to do was to see that the deed of lease produced before him was a registered and a proper document and the lessor and the lessee were in possession and also that no objection certificate has been granted by the Collector of the District in favour of lessee. All these were present in case of respondent no. 5 and in addition to that technical committee was sent for verification and a lawyer was also sent by the Corporation to make inquiries on the face of the complaint filed by the petitioner and after thorough inquiry both the technical committee and the concerned lawyer submitted their respective reports which showed that respondent no. 5 was in peaceful possession of the leasehold without any objection from any quarter. In the said circumstances, after all the aforesaid steps, there was no reason for the Corporation to take a different view.

19. So far the question of violation of the Bar Council Rules by respondent no. 5 is concerned, it is not in dispute that he had enrolled as lawyer in the Bihar Bar Council in the year 2009 and after applying for the dealership in question he filed an application in the Bar Council on 2.2.2011 clearly stating that he had applied for the said dealership and if the said dealership is granted to him, his licence should be kept in suspension. The certificate of the Bar Association of the concerned court dated 28.4.2011 also showed that he was not practicing in the court. In the said circumstances, the steps taken by respondent no. 5, prima facie, appears to be proper and if he had violated any rule of the Bihar Bar Council it is for the Bar Council to take action against respondent no. 5 in accordance with the provisions of law, but the Corporation had no authority to interfere in such matter.

20. In the aforesaid facts and circumstances, the case laws relied upon by learned counsel for the petitioner in case of B. S. N. Joshi & Sons Ltd. (supra) is not at all attracted to the facts and circumstances of this case. Learned counsel for the petitioner has also relied upon a decision of the Division Bench of this Court in case of Brajesh Chandra Mishra (supra), but paragraph 15 thereof clearly stated that an advocate so long as he holds a sanad to practice is not entitled to embark upon any other profession, business or occupation, but it does not mean that so long as he holds a sanad he cannot explore the opportunities elsewhere and unless he was awarded the L.P.G. distributorship, he did not need to surrender the sanad merely because he intended to accept L.P.G. distributorship. In the aforesaid facts and materials on record as well as specific provisions in that regard, this Court does not find any merit in the claims of the petitioner nor does it find any reason to interfere in the matter. Accordingly, this writ petition is dismissed.