
(2010) 06 PAT CK 0051
In the Patna High Court
Case No : CWJC No. 846 of 2004

Raman Kumar Mishra

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 30-06-2010

Acts Referred:

Citation : (2010) 06 PAT CK 0051

Judgement

Ravi Ranjan, J.—The writ Petitioner, by filing this writ application, seeks cancellation of selection of the Respondent No. 5, Sushil Kumar, by the Hindustan Petroleum Corporation Limited as the first qualified candidate for retail dealership of L.P.G. at Ramnagar in the District of West Champaran. The selection list has been brought on record by the Respondent-Hindustan Petroleum Company as Annexure-"A/2" to its affidavit filed on 25.11.2009. During the pendency of this writ petition, the Respondent No. 5-Oil Company, issued a letter of intent in favour of the Petitioner which was challenged by the Respondent No. 5 by filing a fresh writ petition bearing C.W.J.C. No. 18555 of 2008*. Aforesaid writ petition was allowed on 3.3.2009 and the L.O.I, was held not legally valid. The aforesaid decision was challenged by both, the Petitioner, Raman Kumar Mishra as well as the Hindustan Petroleum Corporation Limited by filing L.P.A. Nos. 425 of 2009 and 465 of 2009.

2. A Division Bench of this Court vide its order dated 29.4.2009, a copy of which has been appended as Annexure-"4", had observed as under:

We feel it would not be proper for us to go into this aspect of the controversy involving basic issue between the parties at the present stage when C.W.J.C. No. 846 of 2004 is still pending. Hence, both the appeals are adjourned for being listed under the same heading after disposal of C.W.J.C. No. 846 of 2004. The parties concerned will be at liberty to take, steps for early disposal of the said writ petition.

3. That is how, the writ petition has come before this Court for its consideration.

4. The Hindustan Petroleum Corporation Limited, which is a Government of India Enterprises, a Company incorporated and registered under the Companies Act, 1956, and is engaged in marketing petroleum product through a network of dealers and distributors spread across the country, came up with an advertisement on 31.12.1997 for the selection of L.P.G. distributorship at fresh locations including Ramnagar in the District of West Champaran. The said advertisement has been brought on record by the Respondent No. 5 as Annexure-"R.5/C" to its reply dated 4.11.2009. Subsequent to it, there was re-advertisement for the same purpose on 28th of August, 2000, a copy of which has been brought on record as Annexure-T. to the writ petition. In the aforesaid advertisement, it had been clearly stipulated that the Applicants, who had already applied as per the earlier advertisement, will have to give a proof of such application so that they could again make an application, however, without any further payment of fee. However, it had been made clear that they have to make a fresh application. The Petitioner as well as the Respondent No. 5 had applied for the selection of the aforesaid distributorship. The Hindustan Petroleum Corporation Limited published a panel list on 20.11.2003, wherein the Respondent No. 5 was placed at serial No. 1 whereas the Petitioner was placed at serial No. 2, as would be manifest from the Annexure-"A/2". to the affidavit filed by the H.P.C.L. as aforesaid.

5. The Petitioner has challenged the aforesaid selection of the Respondent No. 5 at serial No. 1 of the panel list chiefly on two grounds.

(i) The Respondent No. 5, according to his own admission, is the adopted son of one Narendra Kumar Sharma, who is also holding a L.P.G. distributorship of I.O.C. and, thus, in view of the conditions incorporated in 2(chha) of the advertisement as contained in Annexure-T to the writ petition, he was disqualified to be selected as a distributor. However, it is alleged that this fact has been suppressed by the Respondent No. 5 in his application.

(ii) The Respondent No. 5 is having annual income of more than Rs. 2,00,000/- (two lacs), which again disqualifies him in terms of the eligibility criteria laid down in Annexure-T. at serial 2(anga).

6. I have heard the learned Counsel for the Petitioner, Respondent Nos. 2 to 4 (representing the Hindustan Petroleum Corporation Limited) as well as the Respondent No. 5.

7. Learned Counsel appearing on behalf of the Petitioner submitted that the Respondent No. 5, violating the norms of fair play had suppressed the fact while applying for the distributorship that he is actually the adopted son of one Narendra Kumar Sharma though his natural father is one Birendra Kumar Sharma. After adoption, his status has changed and for all the legal and practical purposes he would be considered to be son of his adoptive father, i.e., Narendra Kumar Sharma. It has been contended that the Respondent No. 5 has suppressed the aforesaid fact only for the reason that the aforesaid Narendra

Kumar is admittedly having a distributorship of L.P.G. in his name and due to that reason the Respondent No. 5 would not be eligible for selection as distributor in terms of Clause-2(chha) of the advertisement as contained in Annexure-1. to the writ petition. Thus, it has been submitted that the Respondent No. 5 has illegally shown himself as the son of his natural father, i.e., one Birendra Kumar Sharma. For the aforesaid purpose the Petitioner has placed reliance upon Annexure-"2" to the writ petition, which is a written statement filed on behalf of the Respondent No. 5 before the Munsif, Bettiah, West Champaran, in connection with Title Suit No. 63 of 2000. It is submitted that the said written statement had been filed prior to the advertisement dated 28th of August, 2000 and -it had categorically been stated by the Respondent No. 5 under his verification as well as on affidavit that he is the adopted son of Narendra Kumar Sharma and the Plaintiff of the aforesaid Title Suit, namely, Smt. Nutan Devi. It had further been submitted that a vakalatnama had also been filed in that suit by the Respondent No. 5, showing himself the son of his adoptive father. Learned Counsel submitted that the admission of the Respondent No. 5 made under verification and on affidavit before a court of law would be binding upon him and he was obliged to disclose this fact before the Oil Company while applying for the distributorship which he had clearly not done and suppressed this material fact for the purpose of gaining benefit and, thus, he should be declared disqualified for sufficiently suppressing the relevant fact and also for the reason that due to the aforesaid admitted fact he would be disqualified under Clause-2(chha) of the said advertisement.

8. Learned Counsel for the Petitioner in support of his submissions has placed reliance on several judicial pronouncements. The decision of the Apex Court in Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, has been cited to demonstrate that admissions, if true and clear, are by far the best proof of the facts admitted. The relevant passage of the aforesaid decision of the Apex Court is reproduced as under:

27. xxxxxxxxxxxx. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible u/s 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties.

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9. In another decision of the Supreme Court rendered in Epoch Enterrepots Vs. M.V. WON FU, the Supreme Court had referred the aforesaid decision in Nagindas Ramdas (supra).

10. The decision of the Supreme Court in Steel Authority of India Ltd. Vs. Union of India (UOI) and Others, had been placed to demonstrate that the judicial

admissions by themselves can be made the foundations of the rights of the parties and admissions in the pleadings are admissible proprio vigore against the maker thereof.

11. In yet another decision in National Insurance Co. Ltd. Vs. Rattani and Others, which has been brought to the notice of this Court, the Apex Court had observed that an admission made in the pleadings, as is well known, is admissible in evidence proprio vigore.

12. Learned Counsel also brought to the notice of this Court the various provisions under Sections 17, 18 and 58 of the Indian Evidence Act, 1872 to impress upon the Court that the admissions made by the Respondent No. 5 would be binding upon him. Apart from above, the learned Counsel also referred the various documents, which have been brought on record by him as Annexure-"5" (copy of the show cause filed by the natural father and mother of the Respondent No. 5 in Title Suit No. 63 of 2000), Annexures-"6 and 6/1" (copies of two sale deeds dated 19.3.1975), Annexure-"7" (Copies of the entire proceedings of Mutation Case No. 391/1995-96), Annexure-"8" (copy of the W.S. of Bank of Baroda in Title Suit No. 63 of 2000), Annexure-"9" (copy of the order rejecting the prayer of injunction passed by Munsif, Bettiah in Title Suit No. 63 of 2000).

13. That apart, learned Counsel for the Petitioner raised a point that since the income of the family of the Respondent No, 5 was more than two lacs for the year 1999-2000, he was not eligible to apply for appointment as the distributor in view of the provisions u/s 2 (anga) of the advertisement concerned. In support of his submission, learned Counsel for the Petitioner has brought on record the copy of the Income Tax Return submitted by Birendra Kumar Sharma, H.U.F.

14. Learned Counsel submitted that in view of the aforesaid lacuna, suppression and factual position, the Respondent No. 5 was disqualified to be selected as a distributor and apart from the above, his conduct was not fair as he had suppressed the material facts before the authorities concerned for reaping benefit.

15. Learned Counsel appearing on behalf of the Respondent Nos. 2 to 4 had also come in support of the stand taken by the Petitioner though initially a counter affidavit was filed defending the selection of Respondent No. 5 but in the supplementary counter affidavit the Corporation has taken a "U" turn by coming in support of the Petitioner. Learned Counsel had also placed reliance upon the various decisions including in one Thimmappa Rai Vs. Ramanna Rai and Others, wherein the Supreme Court had observed that an admission made by a party to the suit in an earlier proceeding is admissible as against him.

16. Learned Counsel appearing on behalf of the Respondent No. 5, on the other hand, had also placed reliance on several documents, copies of which have been brought on record by him like Certificate of School, C.B.S.E. as well as the copy of driving licence etc. to demonstrate that the Petitioner had been shown as the

son of his natural father, Birendra Kumar Sharma and not the adoptive father, Narendra Kumar Sharma. A copy of the order passed in Probate Case No. 11/82 has also been brought on record as Annexure-"2" to show that in the aforesaid order the Respondent No. 5 has been described as son of Birendra Kumar Sharma.

17. The learned Counsel for the Respondent No. 5 had tried to impress upon this Court that the admissions made by him would not be binding upon him in different subsequent proceedings. The learned Counsel for the Respondent No. 5 has also placed reliance on various provisions under Sections 17, 18, 58 and 115 of the Evidence Act for that purpose. Learned Counsel had placed reliance upon the various judicial pronouncements, which are as under:

- (i) Basant Singh Vs. Janki Singh and Others,
- (ii) Ramabai Shriniwas Nadgir Vs. The Government of Bombay,
- (iii) Bishnu Kala Karki Dholi Vs. Bishnu Maya Darjeeni, and
- (iv) Ramchandra Dagdu Sonavane (Dead) by L.Rs. and Others Vs. Vithu Hira Mahar (Dead) by LRs. and Others,

18. An attempt was made by the Respondent No. 5, by filing affidavits, to get rid of the admissions made by him as above. Various pleas were taken including that the admission was for explaining the facts in reply to the plaint as since after the Plaintiff was blessed with her own child, love and affection towards the Respondent No. 5 receded, as such, the Respondent No. 5 was never treated to be the son of Narendra Kumar Sharma, which according to the Respondent No. 5 was established from the documents as aforesaid. It was also urged that since there was no ceremony etc. and, thus, adoption was not valid and when the matter was taken up on 25.11.2009 and adjourned after the affidavit was filed by the Hindustan Petroleum Corporation Limited, as a last attempt a supplementary counter affidavit was filed appending therewith the copy of the petition filed by the Respondent No. 5 (Defendant No. 2 of the Title Suit No. 63 of 2000) before the court concerned for withdrawal of the aforesaid admission made by him by seeking amendment in the written statement which was filed on 11.12.2009. Learned Counsel submitted that now a proper petition for amendment of the written statement having been filed, it should be considered that the aforesaid admission stood withdrawn. It had further been urged that this Court under its jurisdiction cannot decide the disputed question of adoption of the Respondent No. 5 by Narendra Kumar Sharma or otherwise.

19. A Plaint of Title Suit No. 63 of 2000 has been brought by the Respondent No. 5 on record as Annexure-"R. 5/B". The Plaintiff has sought declaration of right, title and possession over Schedule-I. The Plaintiff has taken r.and that she was married with Narendra Kumar Sharma and out of the wedlock a son was born, who was named as Sushil Kumar by the grandfather, late Kapildeo Kunwar, however, the child had died subsequently and after four months of the death of

her child, a son was born to the brother of Narendra Kumar Sharma, namely, Birendra Kumar Sharma, who was also named as Sushil Kumar by the grandfather. The suit was instituted on 27.4.2000 and immediately the Defendant No. 2 (Respondent No. 5) filed the written statement (Annexure-2 to the writ petition) on 15.5.2000. It would be relevant to quote the certain paragraphs thereof.

2. That the Plaintiff has wrongly and intentionally mentioned the name of this Defendant's father Birendra Kumar Sharma whereas he is adopted son of Sri Narendra Kumar Sharma and the Plaintiff.

4. That the statement made in paragraph 2 of the plaint is totally wrong, false and motivated one. No such son was born during the period of 7 years of marriage of the Plaintiff and her husband Sri Narendra Kumar Sharma the adoptive father of this Defendant.

7. That the statement made in paragraph-6 of the plaint is totally wrong and blatantly lie. No such son in the name of Sushil Kumar even born from the womb of the Plaintiff, so the question of his death does not arise. It is totally concocted and imaginary story being created by the Plaintiff.

9. That the fact is that after the long gap of the Plaintiff's and her husband marriage no child was born and then both the couple requested the original father and mother of this Defendant, mentioned as Defendant Nos. 1 and 3 in the plaint) with the approval of the grandfather of this Defendant and principle karta of the family, late Kapildeo Kunwar to allow this Defendant to be adopted by the Plaintiff and her husband Narendra Kumar Sharma as son and the Defendant Nos. 1 and 3 the natural parents of this Defendant agreed to give this Defendant to them for adoption as their son.

10. That finally on 14.1.75 the celebration of formal adoption took place" in the family in the presence of family relations on the auspicious day of Makar Shankranti.

20. From the aforesaid, it would be manifest that the Respondent No. 5 (Defendant No. 2 in the aforesaid Title Suit) has claimed that on 14.1.1975 the celebration of adoption took place in the family in presence of the family and other relations on the auspicious day of Makar Shankranti for the reasons as mentioned in paragraph-9 of the written statement. Thus, from the aforesaid paragraphs of the written statement the admission of the Respondent No. 5 with regard to his adoption by Narendra Kumar Sharma is obvious.

21. It is true that the question would be decided in Title Suit concerned and this Court cannot decide the aforesaid question of adoption in its writ jurisdiction, however, the admission of the Respondent No. 5 regarding his adoption prima facie seems to be complete and that having been made without any coercion, is staring at his face. There is no doubt that this fact was well known and available to him on the date when the advertisement was made on 28th of August, 2000

and since according to the Respondent No. 5 adoption took place in the year 1975, the same fact was even available when the earlier advertisement in the year 1997 was made. Thus, there is no doubt that the Respondent No. 5 had suppressed the fact and while taking a decision with regard to the appointment of distributor for L.P.G. at Ramnagar, these matters were not placed or presented before the Selection Board.

22. It is true that at the belated stage an attempt had been made to withdraw the admission by filing amendment petition in the suit but the same, admittedly, is still pending as no decision had been taken by the concerned court. The aforesaid question, thus, still being pending before the court concerned cannot be decided by this Court in its writ jurisdiction and seems very much alive. However, from the aforesaid discussions, it is clear that the factum of aforesaid admission regarding adoption of Respondent No. 5 by Narendra Kumar Sharma, was not present on record while a decision was being taken by the Selection Board.

23. Thus, this Court is constrained to hold that in view of the aforementioned facts and the circumstances, the selection of the Respondent No. 5 as a first candidate in the panel cannot hold good. Since the aforesaid facts were not available before the Selection Board at the time of making the aforesaid decision, in the opinion of this Court, this is a fit case to remit back the matter to the Selection Board for taking a fresh decision in accordance with law after consideration of all the relevant and material facts.

24. So far as the other ground for disqualification of Respondent No. 5, i.e., with regard to the annual income of the Respondent No. 5, as claimed to be more than Rs. 2 lacs, is concerned, it has been submitted on behalf of the Respondent No. 5 that though the desirable candidates were required to make fresh application in view of the advertisement dated 28th of August, 2000, however, if they had already applied in the year 1997, their eligibility in view of the provisions under clause (ii) of the "Note" to the concerned advertisement, was to be decided in accordance with his previous application. In the previous application, which was made in lieu of the advertisement dated 31.12.1997, which had been brought on record as Annexure-"A/2" to the affidavit filed by the Respondent Nos. 2 to 4, the requirement was to the effect that in the year 1995-96 the income of the family of the Applicant should not have exceeded Rs. 2 lacs. Learned Counsel submitted that Income Tax Return and other documents were filed before the authorities and on being satisfied with the same, his application was entertained. Apart from the above, no document has been filed on behalf of the Petitioner to show that the income of the Respondent No. 5 or his family members was more than Rs. 2 lacs in the year 1995-96 or 1996-97. However, in view of the fact that the matter has already been found fit to be remitted back to the Selection Board as above, though on different grounds, and also as the I.T. Return brought on record by the Petitioner is of Birendra Kumar Sharma, H.U.F. whereas the claim of the Petitioner is that after adoption, the

Respondent No. 5 should be considered as son of his adoptive father, viz., Narendra Kumar Sharma, this issue is not required to be decided in the present proceeding. However, this would not preclude the Petitioner from raising this issue at an appropriate stage.

25. As it has already been held, as above, that the selection of the Respondent No. 5 as a first candidate in the panel cannot be upheld, the decision made by the Selection Board as communicated vide Annexure-"A/2" is hereby set aside and the matter is remitted back to the Selection Board for taking a fresh decision in accordance with law after consideration of all the relevant and material facts.

26. This writ petition, accordingly, stands disposed of.