
(1999) 12 PAT CK 0065
In the Patna High Court
Case No : C.W.J.C. No. 1516 of 1996

Smt. Phuljhari Devi	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 15-12-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 2000 Patna 157 : (2000) 48 BLJR 689 : (2000) 1 PLJR 972

Hon'ble Judges : Sudhir Kumar Katrari, J

Bench : Single Bench

Advocate : L.N. Das, S. Dey and Amitabh Sahay, for the Appellant; Kali Das Chatterji and Amlesh Kumar Verma, S.S. Dwivedi and S.B.K. Mangalam, for the Respondent

Final Decision : Dismissed

Judgement

Sudhir Kumar Katrari, J.—This writ petition under Articles 226 and 227 of the Constitution of India has been preferred with a prayer to declare the petitioner as number one candidate for awarding retail outlet dealership of the Indian Oil Corporation at By Pass Road, Chapra town on the basis of performance and 1 he marks given by the members and to appoint her as such after setting aside the dealership granted in favour of respondent No. 4.

2. The Indian Oil Corporation (hereinafter referred to as "the Corporation") published an advertisement on 23-2-93 for the physically handicapped candidates for appointment of retail dealership at Chapra By Pass Road. Residents of the five districts including the district of Chapra could apply for the same. The petitioner as well as respondent No. 4 submitted their applications for the same among others. Both of them were called for interview which took place on 30-8-95. The interview was conducted by a body constituted by respondent No. 4 which consists of the Chairman and two members. The Chairman and the two members jointly interviewed other candidates and each one of them allotted marks to the various candidates on separate mark sheets which are totalled up

and the total marks is treated to be the marks allotted to each candidate. Respondent No. 3 (Shamim Hashmi), was one of the members. Results were published in which the petitioner figured at serial No. 2, and respondent No. 4 figured at serial No. 1, and was, therefore, awarded the dealership in question.

3. While assailing the validity of the impugned selection, learned counsel for the petitioner submitted that respondent No. 3 (Shamim Hashmi), is guilty of interpolations in the marks allotted to respondent No. 4. On account of the accretions made to the marks allotted to respondent No. 4 much after the date of interview and much after the results had been finally published, which really gave a fillip to his case, and consequently went over the head of the petitioner. He has annexed to the writ petition photo copies of some of the mark sheets which are summarised herebelow. According to him, the interview took place on 30-8-95, and following were the marks allotted to him by respondent No. 3 on the various dates which reflect the position before and after the interpolation :

Marks allotted on 30-8-95, before the Interpolation
Personality, Business Ability, Salesmanship (Max, 30) Capacity to arrange Fin. & capability to prove facilities (Max. 20) Full time working dealer (Max. 30) General assessment & extra curricular activities. (Max. 20) Total marks(Max, 100)

25 15 25 15 80

Resp. No. 4 Accretions caused to his marks by over-writings by Shamim Hashmi on the interview sheet dt. 30-8-95 itself. Personality Business Ability, Salesmanship Capacity to arrange Fin. & capability to prove facilities Full time working dealer General assessment & extra curricular activities. Total marks

25 18 28 15 86

3.1. Learned counsel submitted that on account of such accretions made by respondent No. 3 to the marks of respondent No. 4, he got higher marks than the petitioner and was, therefore, adjudged the best candidate. In other words, in his submission, the accretions made by respondent No. 3 to the marks allotted to respondent No. 4 was wholly mala fide and, if ignored, would promote the petitioner to the first, position in the select list.

4. Learned counsel for respondent No. 2 (the Oil Selection Board), through its Chairman, submitted that the petitioner has presented a half-baked picture in the writ petition. The correct position is that both Dr. Fagni Ram and Shamim Hashmi (respondent No. 3), the two members of the Board, had made accretions by over-writings to the marks allotted by them to the petitioner as well as respondent No. 4. He has produced before me the original records of the Selection Board, which is summarised in the counter affidavit supported by photo copies of the original records. In his submission, the following position emerges from a close perusal of the marks-sheets maintained in the routine course of business, with respect to the marks allotted to the petitioner and respondent No. 4 after the accretions made by Fagni Ram and Shamim Hashmi to the marks

allotted to the petitioner and respondent No. 4 after the date of interview :

Total marks allotted by Chairman Total marks allotted by Faguni Ram Total marks allotted by S. Hashmi G. Total

Petitioner - 80 84 80 244

Resp. No. 4 - 75 84 86 245

4.1. Learned counsel further submitted that following are the marks originally allotted to the petitioner and respondent No. 4 i.e. completely overlooking the accretions made by Fagni Ram and Mr. Hashmi :

Total marks allotted by chairman Total marks allotted by Faguni Ram Total marks allotted by S. Hashmi G. Total

Petitioner 80 80 62 199

Resp. No. 4 - 75 74 80 229

4.2. Learned counsel, therefore, submitted that respondent No. 4 was at No. 1 in the select list in any case, i.e. before or after the accretions.

4.3. Learned counsel next submitted on the strength of the original, contemporaneous records that the Chairman of the Board had recorded his minutes dated 29-12-95, acceding to the request of respondent No. 3 to the effect that the latter wants to peruse the marks awarded by him to different candidates relating to the dealership in question and had accordingly ordered that records be sent to respondent No. 3 in Delhi per special messenger in a sealed cover. The minutes dated 2-1-96 of the Chairman records that he has received the original records from respondent No. 3, and has noticed overwritings in the marks awarded to respondent No. 4. It records that he had earlier given a total of 80 marks to him, whereas after overwriting the same seems to have been converted to 86 marks. He also records that he has not interfered with the marks allotted by him to other candidates, and the overwritings have not been initialled by him. He further records that the final tabulation sheet had been prepared and the total marks allotted to respondent No. 4 caused by the accretions made by respondent No. 3 has also been changed by him accordingly. The Co-ordinator of the Board submitted a note dated 3-1-96 to the Chairman, seeking his orders as to how the accretions caused by respondent No. 3 to the marks of respondent No. 4 has to be treated. The minutes dated 17-1-96 of the Chairman records that the accretions made in the marks of respondent No. 4 shall be treated to be the marks allotted to him by respondent No. 3, and ordered for correction of the tabulation sheet accordingly.

5. Learned counsel for respondent No. 4 submitted that the petitioner has not come with clean hands. He has annexed photo copies of the marks causing accretions to the marks allotted by respondent Nos. 3 and 4 only, and has suppressed the accretions caused by Fagni Ram, the other member, to the marks of the petitioner.

6. Having considered the rival submissions, I am of the view that the petitioner's contention has to be rejected for various reasons. Learned counsel for respondent No. 2 is right in his submission that the accretions were made by both the members much after the interview had taken place on 30-8-95 and after the final tabulation sheet had been prepared on 21-10-95. Such accretions really tantamount to interpolations, and are wholly unauthorised and mala fide. I record my strong displeasure against respondent No. 3 as well as Faguni Ram for such interference with the selection process. Respondent No. 3 is a wholly untrustworthy person and is not fit for any responsible post. Shamim Hashmi was impleaded personally as respondent No. 3 and has refused to appear in this case and to defend his position in spite of repeated notices. As stated above, the interview had taken place on 30-8-95, the final tabulation sheet had been prepared and signed by all on 21-10-95, and he has made the overwritings and interpolations much after 21-10-95. It is manifest that the records were sent to Shamim Hashmi in Delhi pursuant to the minutes of the Chairman recorded on 29-12-95. Learned counsel for respondent No. 2 is further right in his submission that respondent No. 4 ranked higher to the petitioner before as well as after the interpolations in the marks given to the petitioner as well as respondent No. 4. He is equally right in his submission that the Board did not do anything surreptitiously. In fact, I must record my feeling of commendation for the Chairman who dealt with the matter with full transparency and maturity. It is manifest from the minutes recorded by him that the interpolations sought to be made by respondent No. 3 were recorded by the Chairman in the concerned file frankly and with full transparency, although the same was done by respondent No. 3 with ulterior motives, in such circumstances, the first contention of the petitioner fails and is hereby rejected.

7. Learned counsel for the petitioner next submitted that the dealership in question is for a place which is situated on the outskirts of the township of Chapra, i.e. within the district of Chapra. According to the advertisement, in his submission, only the residents of the district of Chapra were entitled to apply whereas the applications from other districts were also entertained. Learned counsel for respondent No. 2 as well as respondent No. 4 has countered the submissions, I observe from the records that the advertisement stated that the residents of 5 adjoining districts including the district of Chapra were entitled to apply. The contention is, therefore, rejected.

8. Learned counsel for respondent No. 4 has next submitted that the dealership has become functional with effect from 31-3-97, and he has already made heavy investments. He further submits that he should not be made to suffer for various reasons. He ranked higher than the petitioner before as well as after the interpolation. Secondly, the blame for interpolations would go to both the petitioner and respondent No. 4. Learned counsel for the petitioner has not countered the submission at all. In any case, this Court agrees, with the contention of the learned counsel for respondent No. 4, that they have made investments, the dealership has become functional since 31-3-97, and also in

view of my finding hereinabove that respondent No. 4 ranked higher in the select list before as well as after the interpolation.

9. Learned counsel for respondent No. 4 has further submitted that the petitioner was also a beneficiary of such interpolations. He, therefore, submits that the Court in exercise of its writ jurisdiction shall not interfere if it results in greater injustice. In view of my findings above with regard to the first contention of the parties, there is no need to decide this issue and perhaps does not arise also.

10. In the result, the writ petition is dismissed.