
(1999) 11 PAT CK 0096
In the Patna High Court
Case No : C.W.J.C. No. 3289 of 1999

Tej Pratap Singh	Vs	APPELLANT
The Union of India and Others		RESPONDENT

Date of Decision : 29-11-1999

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 227

Citation : (2000) 1 PLJR 935

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Bhupendra Singh and D.K. Singh, for the Appellant; Shabbir Ahmad for Respondent Nos. 1 and 2, M/s K.D. Chatterjee and A.K. Verma for Respondent Nos. 3, 4 and 9, M/s. Ram Balak Mahto, Rama Kant Sharma and Subodh Prasad Singh for Respondent No. 10 and Mr. P.K. Shahi for Respondent Nos. 12 and 13, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—This writ petition has been preferred by the sole petitioner for issuance of an appropriate writ or order or direction to respondent nos. 3, 4 and 9 (hereinafter compendiously referred to as the Corporation), to appoint the petitioner as a dealer of LPG for Indane, and for further direction to the respondent Corporation to do field inspection of all the three candidates who were short-listed by the Dealers' Selection Board after setting aside the allotment made in favour of respondent no. 10. The Corporation issued an advertisement which had appeared in the local dailies on 7.6.98, inter alia, for selection and appointment of LPG distributor for Indane at village Makhdumpur, district Jehanabad, in the State of Bihar. We need not recapitulate the important factors stated in the advertisement because the same are undisputed and no argument was advanced on that. A copy of the advertisement is marked Annexure B to the counter affidavit of the Corporation. After the said advertisement (Annexure B) had seen the light of the day, the respondent Corporation had made certain insertions in their Manual for selection of dealers/

distributors, effective from 14.10.98. In so far as the same is relevant in the present context, it provided for verification of the bio-data of the person figuring at sl. no. 1 of the select list, and is known as field investigation. A copy of the insertion is marked Annexure A to the respondent Corporation. It appears that 23 persons or may be more, submitted their applications to the respondent Corporation in response to the advertisement. Surely 23 persons were interviewed by the Oil Selection Board and a select list of three persons was prepared wherein respondent no. 10 figured at serial no. 10. After the field inspection of respondent no. 10 alone, he has been finally selected for appointment as LPG distributor of Indane at village Makdumpur, District Jehanabad. The petitioner also figured therein apart from one more person. The last person in the select list is satisfied with the result and has chosen not to contest it at any stage.

2. While assailing the validity of the entire selection process, Mr. Bhupendra Singh, learned counsel for the petitioner, submitted that the respondent Corporation has exercised its discretion in favour of respondent no. 10 improperly. He admits that the petitioner as well as all respondents are equal in so far the qualifications as stipulated in the advertisement are concerned, but, in his submission, he is superior to respondent no. 10 on account of various other non-advertisement factors. He was appointed by the State Government for public distribution of grains in a certain area in Bihar which he operated from 1966 to 1983, vide Annexure 1. He owns a house which shall be utilised for purposes of the dealership office opposite to the police station at Makhdumpur which shall go a long way in ensuring the safety and security of the business in question. He next submitted that he is the owner of 10 acres of land situate on Patna-Gaya Road which is outside village Makhdumpur, is fairly close to the railway station, and can be used for godown purposes. He also submitted that he is a solvent person and had produced before the Oil Selection Board Vikash Patra of the face value of Rs. 4.35 lacs, which can be utilised for running the business in question successfully, vide Annexure 2.

2.1. Learned counsel next contended that the aforesaid insertion made by the Corporation in the Manual cannot be made retrospectively applicable, and is also violative of Article 14 of the Constitution of India. The field verification has been done only with respect to the person figuring in sl. no. 1 at the select list which has operated very harshly against him. Had the field inspection been done with respect to the petitioner also, the aforesaid aspects of the matter would have been highlighted, and received proper attention of the respondent Corporation, saving them from the improper exercise of discretion, as has occurred in the present case. He next submitted that he is ahead of respondent no. 10 in more respect, inasmuch as the petitioner belongs to Makhdumpur village itself, whereas respondent no. 10 does not belong to the same village, although he belongs to the same district. He, however, candidly submitted that respondent no. 10 is also a freedom fighter and meets the requirements of the advertisement.

3. Mr. Kalidas Chatterjee, Advocate, appearing for the Corporation, has submitted in opposition that once it is found that tenders equally satisfy all the conditions mentioned in the advertisement, then all further claims or qualifications of the disgruntled candidate become wholly irrelevant. In his submission, the aforesaid four aspects raised by the petitioner allegedly making him a superior candidate in relation to respondent no. 10 are wholly irrelevant considerations. He further submits that admittedly both the petitioner and respondent no. 10 are equally qualified for consideration. He relies on a Division Bench judgments of this Court reported in Maheshwar Prasad Singh Vs. The Hindustan Petroleum Corporation Ltd. and Others, as also of the Calcutta High Court reported in Chinmoy Sarkar and etc. Vs. Md. Shaniat Hossain and etc., Mr. Chatterjee next submitted that the provisions made for field inspection retrospectively does not impinge on its legality of validity because the same is a procedural matte, does not affect the substantive rights, and is only meant to doubly verify the facts claimed by the person who figures at sl. no. 1. He further submits that in case the facts regarding the claims of the first candidate are found to be untrue, or declines to accept the offer, then Clause (f) of Annexure A provides for field verification of the candidate at sl. no. 2. He next submitted that there is no question of discretion in such a verification, because the same is ministerial act and will not have any bearing on the exercise of discretion that has already been taken by the Selection Board.

4. Mr. R.B. Mahto, learned Sr. Counsel appearing for respondent no. 10, the selected candidate, submitted that the scope of judicial review is very limited and well settled. Such a selection process, in his submission, can be held only to find out whether or not the selection process is the result of any arbitrariness, or mala fides, or the like. He further submits that such a scrutiny has got to be done only in relation to the aspects of the matter mentioned in the advertisement. He lastly submitted that the petitioner and respondent no. 10 are admittedly qualified for consideration and, therefore, nothing survives for consideration.

5. Mr. P.K. Shahi, learned counsel for respondent nos. 12 and 13, submits that in view of the stand taken by the contesting parties, he has nothing to submit. In his submission, no argument has been advanced by the contesting parties on the question of mala fides attributable to respondent nos. 12 and 13 and, therefore, he has nothing to submit.

6. Mr. Shabbir Ahmad, Addl. SCCG, submits that in view of the nature of the dispute and the limits within which the parties have kept their contentions he has nothing to submit.

7. Having considered the rival submissions, I am of the view that this writ petition has to be dismissed. Mr. K.D. Chatterjee, learned counsel for the Corporation, has rightly submitted that scope of interference in writ jurisdiction with such selection process is very limited. This aspect of the matter has, with great respect, rightly been emphasised by the Calcutta High Court in its aforesaid

judgment in the case of Chinmay Sarkar (supra), paragraphs 4 and 8 of which are set out hereinbelow for the facility of quick reference :?

4. Now, it must be pointed out at the outset that this Court in Writ Jurisdiction cannot sit in appeal over the selection of a Dealer for a Retail Outlet made by the Board, True, the Corporation and Board are amenable to the Writ Jurisdiction since they are "State" within the meaning of Article 12 and also "authority" or "person" within the meaning of Article 226, and what is involved is the selection for Retail Dealership of Petroleum Products which are items or articles of monopoly business carried on by a wholly-owned Government Company. However, the exercise of such jurisdiction and the judicial reviewability of such selection are subject to the well-known limitations. If the selection is vitiated by arbitrary or irrational exercise of power or by malafides or is based on no materials or made on the basis of irrelevant materials or by ignoring relevant factors including eligibility, the Writ Court would and should, on proof of the relevant facts, grant an appropriate relief. However, it is not for the Writ Court to delve deep into the records of the Board or the Corporation and to examine the validity of the rival claims upon appreciation afresh of the materials on such record and, on the basis of such reappraisal, to decide whether the selection was properly made and to give effect to such decision by the issue of a Writ. It cannot be overlooked in this connection that the Board, which is vested with the function of selection, is an independent entity. It is a high level body consisting of a retired High Court Judge and a retired Civil Servant. Ordinarily, there would be minimal scope for alleging malafides against such a body although it can conceivably be alleged and proved in a given case that the selection made by it is otherwise vitiated.

... ..

8. The queries raised and the information sought from the candidates as per these columns would indicate that the availability or procurement of a suitable site in the area advertised within a reasonable time and the wherewithal to meet the cost of construction of the Retail Outlet are amongst the several factors to be kept in view while making the selection. An eligible candidate may have readily available site or the potentiality to arrange for one and the resultant ability to start the Retail Outlet within a reasonable time. The construction of the Retail Outlet and the running of the business would require liquid funds or capacity to raise loans. The candidates may also have the loan-raising capability or capital base required for the same. However, it cannot be overlooked that these are relevant but not the sole factors to be taken into consideration; though important, they are not the terminative factors. In the process of selection, many other factors such as educational/professional qualifications, selling and supervisory experience, business acumen, etc., have a play. The information required to be furnished in the other columns have a bearing on these aspects. These various things will require to be weighed and the selection has to be made ultimately by balancing those various factors and making a comparative

assessment of the merits of the competing candidates. This process of appreciating the rival merits is the function of the Board which is expected to have the necessary expertise and experience. There cannot be any re-appreciation or reappraisal of these materials and factors or their relative weighing or evaluation of the comparative merits of the competing candidates by the Court in Writ Jurisdiction.

It is thus manifest that no such case has been made by the petitioner justifying this Court's interference with the selection process in question under Articles 226 and 227 of the Constitution.

8. Mr. Chatterjee is further right in his submission that once the petitioner as well as respondent no. 10 have been found to be equally eligible in terms of the advertisement (Annexure B), then all further claims, as have been made by the petitioner in the present case, do not enure to his benefit. None of the four factors mentioned by the petitioner during the course of submission from part of the advertisement and, therefore, would be wholly irrelevant consideration in the present case. He is further right in his submission that the petitioner has not faulted the selection process itself, nor has he found any procedural irregularity, nor he attributed any mala fides, nor any arbitrariness is discernible in the selection process. In fact, the petitioner has submitted that but for the field selection, the entire procedure was carried out punctiliously. Mr. Chatterjee illustrated his submission by the giving example of public competitive tests for filling up employment vacancies, say, for example, where graduation is the minimum educational qualification, then the selection process cannot be questioned on the ground that no preference was given to some of the candidates who had superior educational qualification. The reliance placed by Mr. Chatterjee on the aforesaid judgment reported in Maheshwar Prasad Singh Vs. The Hindustan Petroleum Corporation Ltd. and Others, is apposite.

9. This takes me on to the second contention of the petitioner. He has faulted the insertion in the Manual for Selection. Clauses (c) and (f) of the insertion, which are parts of paragraph 4.10 (Annexure A), are set out hereinbelow for the facility of quick reference :?

4.10. Verification of empanelled candidates :

... ..

(c) The objection of the FIR is to verify the accuracy of the factual data given by the candidate in the application form.

... ..

(d) If No. 1 candidate is found ineligible as a result of the FIR, the matter will be referred by ED/GM of the concerned Oil Company to the Chairman of the DSB, who will take a decision regarding issuance of LOI to the second empanelled candidate. In such cases, the FIR will be conducted for the second empanelled candidate and if he is found eligible, LOI will be issued to him, if he is also found

ineligible, the same process will be repeated.

I am unable to accede to this contention for the reason that retrospective insertion in the Field Manual does not touch any substantive rights, or basic qualifications, of the empanelled candidates. If I can use this expression, it is less than a procedural matter and takes place after the entire selection process has completed and the decision-making process is over. Therefore, there is no question of exercise of discretion at a stage of Field Verification. It is manifest from a plain reading of the insertion (Annexure A), that it is a ministerial act verifying the factual statements made in the bio-data of the candidate at Serial No. 1, perhaps as a matter of precaution. This does not operate to the prejudice of the person who figures at serial no. 2 or 3 of the select list, and any claim to superiority beyond the advertisement is wholly irrelevant and cannot be taken into account for purposes of selection as well as field verification. All such claims to superiority cannot be taken into account during the course of selection, let alone at the stage of field verification. Therefore, I have no manner of doubt that this procedure does not operate to the prejudice of the candidate at serial no. 2 or 3 of the panel. Furthermore, Clause (f) takes care of candidates at sl. nos. 2 and 3 in the event the selected candidate is found guilty of falsehood, or does not ultimately respond.

10. In so far as the last contention of the petitioner is concerned, the fact that the petitioner belongs to the same village, whereas respondent no. 10 does not though he belongs to the same district, cannot go to the benefit of the petitioner, because of the clause occurring in the advertisement (Annexure B), which reads as follows :? 2. Eligibility : Applicant should be

(a) Indian by Nationality

(b) Resident of any district in the State. However, preference will be given to the residents of the District in which distributorship is advertised.

... ..

The contention of the petitioner militates against the relevant condition in the advertisement and acceding to the same would amount to re-writing the terms and conditions, which is beyond the jurisdiction of this Court.

In the result, this writ petition is dismissed.