(2014) 11 AHC CK 0170

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 61404 of 2014

Tungnath Chaubey APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2014) 11 ADJ 178 : (2015) 109 ALR 111

Hon'ble Judges : Yashwant Varma, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : V.M. Zaidi and Shriprakash Srivastava, Advocates for the Appellant; Jyotsna Srivastava and Vikas Budhwar, Advocates for the Respondent

Judgement

Yashwant Varma, J.—Aggrieved by an order dated 20th September, 2014 passed by the Bharat Petroleum Corporation Limited (hereinafter referred to as ''the Corporation'') as also the consequential orders of communication thereof, this petition has been preferred seeking quashing of the aforesaid orders and further seeking an appropriate writ commanding the Corporation to issue ''Letter of Intent'' in favour of the petitioner. The order dated 20th September, 2014 rejects the candidature of the petitioner on the ground that while he had mentioned in his ''application form'' that his Savings Bank Account carried total fund of Rs. 10 lakhs on the date of application, upon verification it was found that the fund available with him on that date was only a sum of Rs. 1,005/-. We have heard Sri V.M. Zaidi, learned Senior Advocate assisted by Sri Prakash Srivastava on behalf of the Petitioner and Sri Vikas Budhwar who has appeared for the contesting respondents 2 and 3 and have also perused the writ petition as also the material produced before us by Sri Budhwar on instructions of the Corporation.

2. The writ petition as framed asserts that a sum of more than Rs. 10 lakhs stood to the credit of the unmarried son of the petitioner, who is covered in the definition of ''family unit'', and, therefore the said account ought to have been taken into consideration for the purposes of meeting with the requirements of

the Corporation.

3. Upon preliminary submissions being advanced by counsel for parties, Sri Budhwar produced before us the complete extract of the ''Statement of Account'' of the petitioner as also the ''application form'' submitted by him. It was pointed out by Sri Budhwar that the petitioner had misled the Corporation by filing an incomplete extract of the ''Statement of Account'' pertaining to his individual Savings Bank Account. It was pointed out by Sri Budhwar that a withdrawal of Rs. 10 lakhs made by the petitioner on the date of application itself from his Savings Bank Account was deliberately concealed and withheld from the Corporation. Upon the submissions so being made, the learned Senior Counsel appearing in support of the petition took time to seek instructions, whereafter the matter was finally heard.

4. Sri Zaidi contended that the amount of Rs. 10 lakhs withdrawn from the Savings Bank Account of the petitioner had been deposited in the Account of his minor son. According to him, this amount stood to the credit of the Account of his minor son and same ought to have been considered by the Corporation in light of the language of Clause 6(vi) of the Brochure. Sri Zaidi then contended that the impugned order was passed without affording the petitioner any opportunity of hearing and without him being put to notice. He further submitted that the Corporation could have sought clarification from the petitioner in this regard and if such an opportunity had been given, the petitioner would have been able to explain the entire position.

5. Sri Budhwar refuted the aforesaid contentions and submitted that a perusal of the ''application form'' submitted by the petitioner clearly showed that the only account mentioned therein was that of the petitioner, even though Clause 11 of the ''application form'' clearly recited that the disclosure may be made in respect of amounts standing in the Savings Bank Account of the Applicant himself as well as members of the ''family unit''. Sri Budhwar further submitted that in the absence of mention of particulars of the account of the minor son of the petitioner, the Corporation had no other material to proceed on. He submitted that the contents of the ''application form'' cannot be supplemented subsequently and that the Corporation has to proceed only on the basis of material appended thereto. In support of the aforesaid contention, Sri Budhwar relied upon the decision rendered by a Coordinate Bench of this Court in the matter of Tauleshwar Prasad Vs. Indian Oil Corporation Limited, . Sri Budhwar then submitted that the petitioner did not have the requisite funds in his account on the date of application nor did he have the aforesaid sum at the time of draw of lots. He submitted that even otherwise, considering the conduct of the petitioner in filing incomplete Statement of Account designed only to mislead the Corporation, he is not entitled for any relief.

6. The dispute raised in the present petition centers around the following provisions of the Brochure setting out the minimum eligibility requirements and defining the term ''family unit''. It would be apposite to extract the same

hereinbelow:

"Clause 6(vi) Have minimum total amount of ''15 lakhs for Urban Markets and ''10 lakhs for Urban-Rural & Rural Markets respectively as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any). This amount is to be arrived at by adding amount adding amount in Savings Bank Accounts in Scheduled Bank/Post Office, free and unencumbered Fixed Deposits in Scheduled Banks, Post Office, Listed Companies/ Government Organisation/Public Sector Undertaking of State and Central Government, Kisan Vikas Patra, Nsc, Bonds, Shares of Listed Companies, Listed Mutual Funds, ULIP, PPF, Surrender Value of Life Insurance policies in the name of Applicant or family members of the ''Family Unit'' of the Applicant as defined above. In case of locations reserved under ''SC/ST'' category, minimum total amount of Rs. 5 lakhs for Urban Markets'' and Rs. 2.5 lakhs for Urban-Rural & Rural Markets respectively should be available as the closing balance on the last date for submission of application as specified in the advertisement or corrigendum (if any).

''Family Unit'' in case of married person/applicant, shall consist of individual concerned, his/her Spouse and their unmarried son(s)/daughter(s). In case of unmarried person/applicant, ''Family Unit'' shall consist of individual concerned, his/her parents and his/her unmarried brother(s) and unmarried sister(s). In case of divorcee, ''Family Unit'' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s) whose custody is given to him/her. In case of widow/widower, ''Family Unit'' shall consist of individual concerned, unmarried son(s)/unmarried daughter(s)."

7. Having heard the learned counsel for the contesting parties, it is apparent that the petitioner did not disclose the facts relating to the deposit of Rs. 10 lakhs in his Savings Bank Account, withdrawal therefrom and subsequent deposit of the aforesaid sum in the account of his minor son either before the Corporation or before this Court in the present writ petition. The petition as framed desired us to proceed on the basis that the aforesaid sum standing in the account of his minor son was a fact which was overlooked by the Corporation. This was, of course, contrary to the record produced by Sri Budhwar before us. In our opinion, since the application of the petitioner did not disclose and include the account of the minor son of the petitioner in Clause 11 of the ''application form'', the Corporation was justified in proceeding on the basis of the disclosure alone. The Division Bench of this Court in Tauleshwar Prasad (supra), considering a similar issue has categorically held that material which is neither disclosed nor tendered with the ''application form'', is not to be countenanced and a rejection of such an ''application form'' by the Corporation would be clearly justified.

8. In our opinion, the dictum of this Court in Tauleshwar Prasad (supra) clearly applies to the facts of the present. Since the Petitioner did not have Rs. 10 lakhs in his own account on the date of application and never clubbed the account of his minor son in the application form, the Corporation was clearly justified in

proceeding on the basis of the facts as disclosed in the application form. The Petitioner cannot now be permitted to supplement the contents of the said form.

9. The learned Senior Counsel appearing for the petitioner during the course of submissions could not explain as to why incomplete and misleading details were provided/furnished to the Corporation. It was not disputed that the extract of the Savings Bank Account, which was furnished before the Corporation did not carry or disclose the withdrawal of the sum of Rs. 10 lakhs on the date of application. The application, on the other hand, unambiguously declared that a sum of Rs. 10 lakhs stood in the account of the petitioner. This, even though, the petitioner was fully aware that on the date of application, the aforesaid sum had already been withdrawn leaving a sum of Rs. 1,005/- to the credit of his account. In our view, the petitioner is, therefore, clearly dis-entitled to any relief in the equitable jurisdiction of this Court under Article 226 of the Constitution of India.

10. Lastly, dealing with the contention of infractions of the principles of natural justice and the petitioner not being put to notice of the proposed action of the Corporation, we may without hesitation state that in the given fact situation, affording of an opportunity of hearing to the petitioner would have only been an empty formality and an exercise in futility. On the admitted and undisputed facts only one conclusion could be arrived at and it is that the petitioner did not have Rs. 10 lakhs or more in his Savings Bank Account on the date of application. Sri Zaidi, learned Senior Counsel appearing for the petitioner has not been able to invite our attention to any material or evidence which could refute the unambiguous declaration made in the ''application form'' nor could he dispute the correctness of the material/record produced before us.

11. We, therefore, are of the opinion that no prejudice has been caused to the petitioner and applying the ratio of the judgment of the Supreme Court in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , it is apparent that the theory of ''useless'' or ''empty formality'' clearly stands attracted in the facts of the present case. In view of the aforesaid discussion, we find no merit in the present writ petition and it is accordingly dismissed.

