

(2006) 11 PAT CK 0118
In the Patna High Court
Case No : CWJC No. 9112 of 2006

Usha Kumari

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 01-11-2006

Acts Referred:

Citation : (2007) 1 PLJR 150

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : D.K. Sinha and Jagarnath Singh, for the Appellant; K.D. Chatterjee and A.K. Verma, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the parties including Mr. K.D. Chatterjee appearing for the respondent-Indian Oil Corporation. He very fairly states that in view of the pleadings there is no need for counter affidavit and this Court with the consent of the parties as such proceeds to dispose of the writ application at the admission stage itself. The petitioner is a physical handicapped lady. An advertisement was issued by the respondent-Indian Oil Corporation for establishment of Kisan Seva Kendra, a retail outlet for high speed diesel, lubricant and other agricultural related commodities, which was reserved for physical handicapped.

2. The petitioner being physical handicapped made an application in this regard. While making an application she had filed an affidavit (part of Annexure 2 series) clearly stated that she had made an application for grant of physical handicapped certificate on 6.6.2005 to the Civil Surgeon, Darbhanga. She was informed that the next meeting of the Medical Board was scheduled only for the 5th of August, 2005, after which she would be given the certificate. She accordingly by that affidavit undertook to produce the original certificate of physical handicapped at the time of interview after it was granted by the Civil Surgeon, Darbhanga. The Corporation scrutinized her papers and did not reject it. I may mention here that

item No. 10, the condition of the advertisement stipulated that corporation would not be obliged to entertain any paper or document after submission of the application by the date as fixed. The date was fixed as 18.7.2005,

3. As stated above, the corporation was well within its right to reject the petitioner's application at that stage itself. It did not do so. It then proceeded to verify the land availability and other conditions, as disclosed in the application. Again it had right to reject the petitioner's candidature in absence of proper certificate of physical handicapped. It did not do so. The petitioner was then called for interview on 19.12.2005. Even at that stage petitioner's candidature could have been rejected but was not rejected. It is not in dispute that at the time of interview she produced physical handicapped certificate dated 5.12.2005 granted by Civil Surgeon-cum-Chief Medical Officer, Darbhanga and signed by the Board's members certifying her disability. On production of the same she was selected and informed on that day itself that she had been selected. These facts are not disputed.

4. As no letter of appointment or letter of intent was issued to her she approached this Court by a writ application being C.W.J.C. No. 4198 of 2006, which was disposed of by order dated 14.6.2006 directing the Corporation to consider and decide on merit the application of the petitioner within three months. The petitioner thereafter represented to the Corporation, who ultimately by their impugned order dated 7.7.2006 (Annexure 9) held that though after interview held, on 19.11.2005 she was declared selected, it was later found that she had submitted the certificate only at the time of interview and not before alongwith her original application, which was the requirement. On this ground alone her selection has been cancelled and the Corporation decided to re-advertise the site. This order dated 7.7.06 is under challenge and by an interim order of this Court dated 19.9.2006 the Corporation was restrained from readvertising till further orders of this Court.

5. Mr. D.K. Sinha, learned senior counsel in support of the writ application has stated that the petitioner did not conceal any fact. The petitioner did not mislead the corporation. The petitioner made an application for grant of certificate to the State authority, who was competent to grant. The State authorities delayed the matter for which the petitioner cannot be made responsible as those authorities are neither under control of the petitioner nor under the control of the corporation. The petitioner filed an affidavit it is not disputed disclosing the said fact alongwith her application. Her candidature was not rejected. Though the Corporation had right to reject the candidature of the petitioner at several subsequent stages they did not do so rather on production of original certificate at the time of interview itself she was admittedly selected.

6. It is submitted that selection having been made the action of the respondent now in cancelling the selection is bad, illegal and arbitrary. It is submitted that the action of the respondent in calling the petitioner for interview and then selecting her amounted to a waiver of right which was in favour of the

corporation and the corporation chose not to exercise that right. He further submitted that the corporation at this stage is stopped from changing its position and exercising right of rejection after selection.

7. I find substance in the argument of the learned counsel for the petitioner.

8. The Apex Court in the case of Shri Krishnan Vs. The Kurukshetra University, Kurukshetra, has under similar circumstances held that the authorities who were duty bound to verify the facts of eligibility having not taken any action at the appropriate time were stopped from taking any action at later stage. In that case a student who was ineligible for examination being short of attendance was permitted to take examination. Later on discovery that he was short of attendance his candidature as an examinee was sought to be cancelled. This was disapproved by the Apex Court.

9. I, therefore, hold that in view of the special facts and circumstances, as indicated above, the Corporation having not rejected the candidature of the petitioner at the appropriate stage rather having acted upon the affidavit filed and the original certificate filed at the time of interview and having selected the petitioner was stopped from now disqualifying the petitioner.

10. In this connection I may refer to the judgment of the Apex Court in the case of Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, wherein their Lordships have noticed what Lord Denning has said in one of the cases:

"Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality."

11. It is not in dispute that the petitioner is a physically handicapped person with hearing impairment. She did not mislead any person. The validity of the same was not questioned and as such cancellation of her selection would be on a ground, which was too technical in the facts aforesaid. In the result, I allow this application and quash Annexure 9 being the impugned order dated 7.7.2006 issued by the respondent-Corporation. Respondent-Corporation will now proceed in accordance with law.