

(2018) 08 RAJ CK 0115
In the Rajasthan High Court
Case No : Civil Writ No. 4878 of 2014

Yuvraj Singh Sandu @APPELLANT@Hash Union Of India And Ors

Date of Decision : 21-08-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 294, 323, 341, 506B
Constitution of India, 1950 — Article 226

Citation : (2018) 08 RAJ CK 0115

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : S.P. Sharma, Kaushal Sharma, O.P. Mehta, Sajjan Singh

Final Decision : Dismissed

Judgement

Through this writ petition under Article 226 of the Constitution of India, the petitioner Yuvraj Singh has approached this court for assailing the order

Annex.6 dated 06.05.2014 passed by the respondent Indian Oil Corporation Limited (for short, "IOCL"), whereby the petitioner was disqualified

from award of LPG distributorship at the location Rani, District Pali in the open category as published vide the advertisement dated 13.03.2010 and so

also the consequent order Annex.11 dated 13.08.2016, whereby the said dealership was awarded to the respondent Nirbhay Singh Solanki.

Mr. S.P. Sharma, learned counsel representing the petitioner, vehemently and fervently urged that the petitioner was ranked topmost in the list of

entitled empanelled candidates pursuant to the selection exercise undertaken by the respondent IOCL. The land details provided by the petitioner

were found compliant with the requirement of the advertisement and the selection guidelines. The educational certificates of the petitioner were duly

verified. The respondents acted in a totally highhanded fashion and entertained a frivolous complaint regarding the land offered by the petitioner and

the MBA degree held by him. He urged that the petitioner acquired the MBA degree in a bonafide manner through a Distance Learning Course

offered by a University in Uttar Pradesh. As soon as he came to know that he himself had been cheated by the institution, he immediately filed a

criminal complaint, wherein prosecution of the person responsible for cheating the petitioner is underway. He, thus, urged that the impugned order

Annex.6 dated 06.05.2014, whereby, the petitioner's application for grant of LPG Dealership was dismissed on the purported ground that the land

offered for the distributorship having been demarcated after the last date provided in the advertisement for submission of the application form and on

the ground of the MBA degree submitted by the petitioner being fake, is absolutely highhanded, arbitrary and illegal and the consequential order

Annex.11 dated 13.08.2016, whereby the distributorship in question was awarded to the respondent Nirbhay Singh Solanki is also grossly illegal and

perverse and hence, both the orders deserve to be struck down and the petitioner should be declared entitled for the LPG distributorship in question.

In support of his contentions, Mr. Sharma relied upon the Supreme Court judgments in the cases of :

(1) Abhishek Kumar Vs. The Hindustan Petroleum Corporation Ltd. & Ors. [(2016) 4 SCALE 27],

(2) Krishna Devi Vs. Indian Oil Corporation Ltd. & Anr.[AIR 2016 SC 2392],

(3) Sunita Kumar Vs. Rajesh Kumar Tiwary [AIR 2015 SC254]

and this court's judgments in the cases of :

(4) Smt. Rachna Dinesh Vs. The State of Rajasthan & Ors.[S.B. Civil Writ Petition No.11569/2010 decided on 19.04.2012],

(5) Narendra Vs. Indian Oil Corporation & Ors. [2012 (3) CDR 1249 (Raj.)].

Per contra, Mr. Om Mehta, learned counsel representing the respondent IOCL, and Mr. Sajjan Singh, learned counsel representing the private

respondent, have vehemently and fervently opposed the submissions advanced by Mr. Sharma. They urged that the MBA degree submitted by the

petitioner alongwith the application was fake as the petitioner admittedly never appeared for the MBA examination. They drew the court's

attention to the criminal complaint submitted by the petitioner in the court of Metropolitan Magistrate No.7 and urged that it is clearly borne out from a

bare perusal of the complaint, that the petitioner acquired the MBA degree

fraudulently without ever appearing in any examination.Â They, thus, urged that as the degree submitted by the petitioner was fake, his candidature for the questioned dealership was rightly rejected in reference to the declaration clause No.16 of the advertisement dated 13.03.2010, which reads as below :-

â??16.Â Declaration by the applicant :

I am aware that inter se suitability of candidates will be decided by evaluation of candidates on the document based information and interaction

(interview).Â Evaluation on document based information will be done based on the information given by me/us in this application.Â On verification

by the Oil Company if it is found that the information given by me/us is incorrect/false/misrepresented then my/our candidature will stand cancelled

and I/We will be declared ineligible for LPG Distributorship.Â I also confirm that I am in possession of the supporting documents in original for the

information given by me in this application and if selected failure to present these documents in original will result in cancellation of selection due to

submission of false/unsupported information in this application.

I am fully aware that if I am unable to provide duly approved LPG Godown by the Office of Chief Controller of Explosives (PESO) on the

land/godown indicated in the application and or showroom as per the Oil Company's standard layout on the land/shop indicated in the application

herein above after selection, then the allotment of distributorship made to me will automatically stand cancelled.

I am fully aware that I will not be appointed as LPG distributor if I am employed, I shall have to resign from the service and produce proof of

acceptance of my resignation from my employer before issuance of Letter of Appointment.

That, if selected, I undertake that will be depositing an interest free Security deposit as per the policy of the Corporation (Not applicable for

distributorship reserved for SC/ST category)

I have read the conditions applicable for the LPG distributorship mentioned in the advertisement and confirm that I fulfil the eligibility criteria for the

LPG distributorship I have applied for in this application.â? They vehemently urged that since the petitioner concealed/suppressed material facts

regarding the fake MBA degree while applying for the distributorship, manifestly,

the respondents were absolutely justified in rejecting his candidature and awarding the distributorship to the next empanelled candidate, viz. Mr. Nirbhay Singh Solanki.Â In support of his contentions, Mr. Om Mehta relied upon the judgments of Honâ??ble Supreme Court in the cases of :

- (1) Kendriya Vidyalaya Sangathan Vs. Ram Ratan Yadav[AIR 2003 SC 1709]
- (2) B.R. Choudhary Vs. Indian Oil Corporation Ltd. & Ors.[AIR 2004 SC 2770] and
- (3) Shiv Kant Yadav Vs. Indian Oil Corporation & Ors.[(2007) 4 SCC 410]

The counsel for the respondents craved dismissal of the writ petition on these grounds.

I have given my thoughtful consideration to the arguments advanced at bar and have gone through the material available on record.Â The principal

reason for which the petitionerâ??s candidature was rejected was that he supplied false information regarding his educational qualification and

submitted a fake MBA degree while applying for the LPG distributorship.Â As per the declaration clause referred to supra, every aspiring candidate,

while applying for the distributorship in question was under an obligation to provide correct and accurate information about all the mandatory details

required to be submitted alongwith the application form.Â Manifestly, education qualification of the candidate is an integral part of the evaluation

process and if false statement is made by the candidate in this behalf, apparently, the entire evaluation process would become tainted and the odds

would be unduly weighed in favour of such candidate, who otherwise might not be in a position to secure the requisite marks for the educational

qualification criterion.Â It is the categorical case of the respondents that the MBA degree filed by the petitioner alongwith the application form was

fake. Verification was made from the concerned institution before undertaking the impugned action. Admittedly, the petitioner was given full marks

for the fake MBA degree during the evaluation process.Â The declaration clause No.16 of the advertisement reproduced hereinabove clearly

mandates that if it is found that the information given by the applicant is incorrect/false/misrepresented, then the candidature would be cancelled and

the applicant would be declared ineligible for the distributorship.Â Though Mr. Sharma vehemently and fervently tried to portray that the MBA

degree held by the petitioner was genuine, this court is least convinced by this submission of Mr. Sharma.Â Firstly, from a perusal of the investigation

report dated 26.04.2014 placed on record by the respondents as Annex.R/1, it is manifest that when information was sought from the institution concerned, it forwarded a letter dated 18.04.2014 affirming that the MBA degree held by the petitioner was forged.Â The petitioner himself, filed a criminal complaint Annex.7 against one Jitendra Acharya alleging that he induced him to undertake the disputed MBA course allegedly offered by the Uttar Pradesh Technical University by way of distance education programme.Â The petitioner clearly alleged in the complaint that Jitendra Acharya took a sum of Rs.50,000/from him and promised that a degree with high grades would be managed because he was having good connections in the institution.Â Thus, this court is not convinced to the minimal by theory of ignorance put forth by Mr. Sharma because the language of the criminal complaint submitted by the petitioner, bespeaks that he himself conspired with the alleged accused Jitendra Acharya in acquiring the MBA degree without ever appearing in any examination. Â In the entire set of allegations as set out by the petitioner in the complaint, he has all along narrated a story of having been duped by the said Jitendra Acharya, but he never claimed that he actually gave any examination to secure the MBA degree.Â As the petitioner is guilty of procuring a fake MBA degree by using fraudulent means, manifestly, he cannot be permitted to raise a bogey of having been duped into the trap allegedly laid by the accused Jitendra Acharya.Â The petitioner is unquestionably liable to face consequence of his fraudulent actions.Â Otherwise also, the degree being fake, could not have been considered in the evaluation process irrespective of the background facts.

The alternate submission made by Mr. Sharma that even if the MBA degree of the petitioner is eschewed from consideration, he would still qualify for the distributorship on the strength of his graduation degree acquired from the JNVU, also does not carry any merit whatsoever for the simple reason that the issue involved in the case at hand is not simply limited to the aspect whether the petitioner was otherwise qualified for the distributorship in question, but rather the crux of the controversy is that the petitioner tried to fraudulently influence the selection process in his favour by submitting a fake MBA degree supported by a false declaration.Â Since the document (MBA degree) submitted by the petitioner was fake and as the same was

supported by a false declaration, manifestly, the petitioner fell foul of the mandatory declaration clause of the advertisement, which in the event of

being found false resulted into the inevitable consequence of disqualification from the zone of consideration for the distributorship. In none of the

judgments cited by Mr. Sharma was the issue of false declaration elaborated or adjudicated. Thus, all the judgments cited by Mr. Sharma are

distinguishable on facts and do not come to aid of the petitioner.

On the contrary, factual gamut of the Supreme Court decision in the cases relied upon by Mr. Om Mehta, learned counsel representing the

respondent IOCL, directly involving the issue regarding suppression of material facts in the application by the aspiring candidate. In almost identical

facts, the Supreme Court in the case of Kendriya Vidyalaya Sangathan (supra), held as under :-

Para 9 of the same memorandum is to the following effect:

Suppression of any information will be considered a major offence for which the punishment may extend to dismissal from the service".

8. The attestation form dated 26.6.1998 duly filled in by the respondent and attestation show that the respondent has taken B.A. degree from St.

Alyusius College, JBP and B.Ed and M.Ed. degrees from R.Durgavati Vishwavidyalaya, JBP. Column nos. 12 and 13 as filled up read thus:-

12. Have you ever been prosecuted/ kept under detention or bound down/fined convicted by a Court of Law of any offence?

NO

13. Is any case pending against you in any Court of Law at the time of filing up this attestation form NO

9. The respondent has also certified the information given in the said attestation form as under:-

I certify that the foregoing information is correct and complete to the best of my knowledge and belief. I am not aware of any circumstances which

might impair my fitness for employment under Government.

11. It is not in dispute that a criminal case registered under Sections 323, 341, 294, 506-B read with Section 34 IPC was pending on the date when the

respondent filled the attestation form. Hence, the information given by the respondent as against column nos. 12 and 13 as "No" is plainly suppression

of material information and it is also a false statement. Admittedly, the

respondent is holder of B.A., B.Ed. and M.Ed. degrees. Assuming even his medium of instruction was Hindi throughout, no prudent man can accept that he did not study English language at all at any stage of his education. It is also not the case of the respondent that he did not study English at all. If he could understand column nos. 1-11 correctly in the same attestation form, it is difficult to accept his version that he could not correctly understand the contents of column nos. 12 and 13. Even otherwise, if he could not correctly understand certain English words, in the ordinary course he could have certainly taken help of somebody. This being the position, the Tribunal was right in rejecting the contention of the respondent and the High Court committed a manifest error in accepting the contention that because the medium of instruction of respondent was Hindi, he could not understand the contents of column nos. 12 and 13. It is not the case that column nos. 12 and 13 are left blank. The respondent could not have said ""no"" as against column nos. 12 and 13 without understanding the contents.

Subsequent withdrawal of criminal case registered against the respondent or the nature of offences, in our opinion, were not material. The requirement of filling column nos. 12 and 13 of the attestation form was for the purpose of verification of character and antecedents of the respondent as on the date of filling and attestation of the form. Suppression of material information and making a false statement has a clear bearing on the character and antecedents of the respondent in relation to his continuance in service.â??

Similar view was taken by the Supreme Court in the cases of B.R. Choudhary (supra) and Shiv Kant Yadav (supra) relied upon by Mr. Mehta.

In view of the discussion made hereinabove, this court is of the firm opinion that candidature of the petitioner was rightly cancelled on the ground of concealment of material facts and for making false declaration while submitting the application form for award of the distributorship in question.Â

The impugned orders Annex.6 dated 06.05.2014 and the consequential order Annex.11 dated 13.08.2016 do not suffer from any infirmity, illegality or perversity whatsoever warranting interference therein in exercise of the extraordinary writ jurisdiction of this court.Â Hence, the writ petition as well as the stay petition are dismissed as such.