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IN THE HIGH COURT OF DELHI AT NEW DELHI

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LPA 877 OF 2010

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Judgment Delivered On: 19.9.2011**B.K. RAMAN & CO.****... APPELLANT**

Through: Mr. N.K. Kaul, Sr. Advocate with Mr. Arindam Mukherjee, Ms. Gargi Tulli, Mr. A. Verma and Mr. Karan, Advocates.

VERSUS**INDIAN OIL CORPORATION & ANR.****.. RESPONDENTS**

Through: Mr. Abhinav Vashisht, Sr. Advocate with Mr. Abhijay, Ms. Farena A. Khan, Advocates for R-2. Mr. MM Kalra, Advocate with Mr. Kunal Kalra, Advocate for R-1.

CORAM :-**HON'BLE MR. JUSTICE A.K. SIKRI****HON'BLE MR. JUSTICE SIDDHARTH MRIDUL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J (Oral)

1. Admit.
2. With the consent of learned counsel for the parties, we have heard the matter finally at this stage.

3. Following facts, which are necessary for deciding this appeal, gets uncovered from the pleadings of the parties in the writ petition. The respondent no.1 Indian Oil Corporation Ltd. had invited application for appointment of Del Credere Associate cum Consignment Stockiest (DCA for short). Various parties including the appellant and respondent no.2 submitted that applications. The respondent no.1 had evolved a particular criteria under which marks to the applicants under some specified heads were to be awarded on different parameters which included marks for working capital as well as taxable income as per Income Tax Return. The Selection Committee was also constituted for screening of the applications submitted by various applicants and to award the marks under specified heads. As per exercise done by the Selection Committee, the appellant secured highest marks because of which the DCA dealership was awarded to it.

4. The respondent no.2 challenged the selection and appointment of the appellant as DCA by filing writ petition before this Court which was registered as W.P. (C) 13995/2009. Notice to show cause was issued in this writ petition pursuant whereof both the appellant as well as the respondent no.1 (who were respondent no.2 and respondent no.1 in the said writ petition) appeared and filed their counter affidavits contesting this appeal. In the counter affidavit filed by the respondent no.1 (IOC), the IOC had disclosed the marks which were awarded to the various applicants/candidates in the stage-I as well as stage-II process in the following manner:-

Name of the applicant	Address	Total marks awarded
M/s B.K. Raman & Co.	Plot No. 185, Industrial Area Phase 2, Ram Darbar, Chandigarh-160002	77
M/s GLS Industries Pvt. Ltd.	309-310, JMD Pacific Swuare, Sector-15, Part-2, Gurgaon	77
M/s Sturdy Industries Ltd.	55-Industrial Area, Sector 1, Parwanoo, H.P.-173220	76
M/s Varahi Pvt. Ltd.	WZ-8/1, Industrial Area, Kirti Nagar, New Delhi	78

It was also informed that all the candidates short listed as mentioned above in stage-I have attended the interview and the marks awarded in Stage-II were as under:-

Name of the Applicant	Marks awarded in stage II process
B.K. Raman & Co.	8.7
GLS Industries Pvt. Ltd.	7.6
Sturdy Industries Ltd.	6.9
Varahi Pvt. Ltd.	7.5

5. On the basis of the aforesaid and also taking the plea that award of marks was very fair, transparent and the same was given by the Committee duly constituted by the competent authority. It was contended that the appellant was rightly appointed as DCA agent for its polymer business for Solan, Himachal Pradesh. Allegation that the selection process was arbitrary or whimsical was specifically denied. Respondent no.2 (petitioner in the said writ petition) filed its rejoinder controverting the aforesaid pleas taken by the IOC. After this rejoinder was filed, the IOC filed another affidavit dated 18th November,

2010 sworn by one Mr. SKP Singh, Chief Manager, (PCM), BD, Corporate Office, New Delhi. In this affidavit it was *inter alia* stated that the deponent had gone through the writ petition as well as the rejoinder filed by the respondent no.2 and after going through the same he had rechecked the documents to ascertain the exact position with regard to the marks awarded to the respondent no.2 under various heads. He stated that on this rechecking he detected a bona fide error, inasmuch as under the head "Financial Capabilities" the Committee did not consider the 'taxable income as per IT Return' of the respondent no.2 at the time of awarding the marks and awarded zero marks. Whereas, on the basis of the Income Tax Return filed by the respondent no 2, it should have been awarded seven marks. It was further stated that in case the respondent no.2 awarded seven marks, then he would ranked no.1 and he would be then above the appellant.

6. In para 3 of the affidavit it was stated as under:-

"3. It is submitted that since the mistake has been detected, it is left to this Hon'ble High Court to pass appropriate orders in rectifying the mistake and IOC shall abide by the order of this Hon'ble Court. Alternatively, the Respondent Corporation is even prepared and willing to re-invoke the application in accordance with the policy of the corporation."

7. The learned Single Judge after taking note of the aforesaid averments made in the affidavit dated 18th November, 2010 allowed the writ petition of the respondent no.2 holding that once the mistake is corrected, it is the respondent no.2 who would attain first position in the merit list.

8. Challenging the impugned order, Mr. Kaul, learned Senior Counsel for the appellant has argued that copy of the aforesaid affidavit dated 18th November, 2010 was never supplied to the appellant. Had it been supplied, the appellant would not only have been controverted the averments made therein, it could also point out that even the appellant was not awarded proper marks for the "working capital". He pointed out that as per the chart annexed by the respondent no.1 alongwith the said affidavit dated 18th November, 2010, the appellant has come to know that under the head "working capital" the appellant has been awarded zero marks which is a glaring mistake committed by the Selection Committee in its case as well. It was argued that the legal error was committed by the learned Single Judge in relying upon the said affidavit and the chart produced by the respondent no.1 without furnishing copy thereof to the appellant thereby depriving the appellant a chance to rebut the same in the manner narrated above. Mr. Kaul further argues that the appellant has also collected certain more information under Right to Information Act and that disclosed that respondent no.2 was not even eligible to be considered. The averments made in this behalf are made in the additional affidavit dated 1st March, 2011 filed in this appeal.

9. Mr. Vashisht, learned Senior Counsel appearing for respondent no.2 has sought to justify the order of the learned Single Judge on the ground that once mistake is detected by the respondent no.1/IOC itself and respondent no.1 has conceded thereto which is apparent on the basis of records, the order of the Learned Single Judge should not be

interfered with. He also argued that appellant was rightly awarded zero marks for the "working capital".

10. Mr. Kalra learned counsel appearing for the respondent no.1/IOC argued in the similar lines.

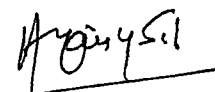
11. After considering the argument of counsel on either side and going through the records, we are of the opinion that the learned Single Judge should not have allowed the writ petition on the basis of additional affidavit filed by the IOC without giving an opportunity to the appellant to rebut the same as it was not disputed by the learned counsel for the respondent no.1 that copy of this additional affidavit dated 18th November, 2011 was not even supplied to the appellant or its counsel and non supply of the copy and giving a chance to the appellant to rebut the averments made therein has definitely prejudiced the appellant.

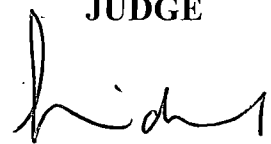
12. Even otherwise, the facts disclosed above would clearly demonstrate that the respondents had appointed an Expert Committee which had considered and evaluated the applications of various candidates on different parameters. If there was some mistake in the exercise done by the Committee, the deponent who is the Chief Manager could not have rectified those purported mistakes by himself and the proper course was to remit the case back to the Selection Committee for this purpose. In these circumstances, we are of the opinion that instead of allowing the writ petition, the learned Single should have

remitted the case back to the Selection committee for proper valuation of the marks and to see whether there was any mistake committed or not.

13. On this ground, we set aside the order passed by the learned Single Judge and remit the case back to the Selection Committee. It would be open to the IOC/respondent no.1 to point out the mistake to the Selection Committee. It will also be open to the Selection Committee to consider the representations of both the appellant as well as respondent no.2. On the basis of the recommendations of the Selection Committee, after doing necessary exercise, the competent authority shall take a decision as to who would be entitled for appoint as DCA for Sloan District, Himachal Pradesh. At that stage, the competent authority shall also decide as to whether the respondent no.2 was eligible for consideration or not. Needless to mention, the fresh exercise is to be undertaken on the basis of information supplied as on the date of considering the application only. The requisite exercise shall be completed within six weeks from the date of receipt of this order.

14. Copy of this order be supplied dasti to the learned counsel for the IOC on making an application.


(A.K. SIKRI)
JUDGE


(SIDDHARTH MRIDUL)
JUDGE

SEPTEMBER 19,2011/skb

fresh

- C.M.no. - 1221/12 - for directing Resp.no.1 to Commence the result of exercise ordered on 19-9-11.

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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA 877/2010

BK RAMAN & CO

..... Appellant

Through: Mr. Neeraj Kishan Kaul, Senior
Advocate with Mr. Arindam
Mukherjee, Advocate

Versus

INDIAN OIL CORPORATION LTD & ANR Respondent

Through: Mr. M. M. Kalra and Mr. Kunal Kalra,
Advocates for Respondent No. 1
Mr. Abhijat and Ms. Fareha Ahmad
Khan, Advocates for Respondent
No. 2**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW****ORDER**% **30.01.2012**CM 1848/2012 (by appellant for stay of decision dated 25.1.2012 of IOC)

This application in a disposed of appeal is not maintainable, more particularly, when Respondent No.1 has in terms of order disposing of the appeal taken a decision. If the applicant is aggrieved, the same constitutes a fresh cause of action and the applicant/appellant can take remedy thereagainst.

The application is dismissed with liberty as aforesaid. On request, it is clarified that it will be open to the respondent no.2 also to challenge the

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said decision of the Indian Oil Corporation.

CM 1221/2012 (by Respondent No.2)

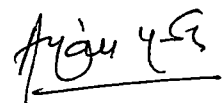
This application is listed for hearing on 10th February, 2012.

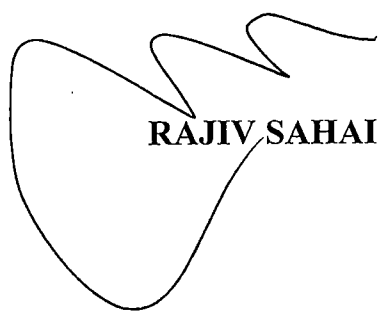
Since Indian Oil Corporation has already taken a decision, this application has become infructuous and learned counsel for the applicant seeks leave to withdraw this application.

Application is dismissed as withdrawn accordingly.

The date already fixed for 10th February, 2012 stands cancelled.

Order dasti under the signature of the Court Master.


ACTING CHIEF JUSTICE


RAJIV SAHAI ENDLAW, J

JANUARY 30, 2012

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