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

Judgment pronounced on 12th April, 2017

+ LPA 664/2015 & CM No.21548/2015

ANITA DEVI

..... Appellant

Versus

INDIAN OIL CORPORATION LTD & ORS

..... Respondents

+ LPA 720/2015 & CM Nos.23839/2015, 23842/2015 & 23844/2015

ANJU KUMARI

..... Appellant

Versus

INDIAN OIL CORPORATION LTD & ORS

..... Respondents

+ LPA 841/2015 & CM No.27858/2015

ANITA DEVI

.....Appellant

Versus

INDIAN OIL CORPORATION LTD & ORS.

..... Respondents

Present : Mr. Atul Bandhu, Advocate for the appellant in LPA 664/2015 and in LPA 841/2015 and for the respondent (Anita Devi) in LPA 720/2015.

Ms. Mala Narayan, Advocate with Mr. Siddharth Menon, Advocate for IOCL.

Mr. G. S. Mani, Advocate with Mr. A. Arokiara, Advocate for the applicant in C.M. No. 27858/2015 in LPA 841/2015.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

SANGITA DHINGRA SEHGAL, J.

1. By way of this common judgment, we are disposing of the present three appeals, LPA664/2015 is preferred against the judgment dated 07.09.2015 passed in WP(C) 8032/2015, LPA720/2015 is preferred against the judgment dated 06.07.2015 passed in W.P(C) 6870/2012 and LPA841/2015 is preferred against the judgment dated 29.10.2015 passed in W.P (C) 10111/2015 respectively.

2. The facts of the present appeals are that on 10.09.2007 Indian Oil Corporation (hereinafter referred to as "IOCL") issued an advertisement inviting applications from Scheduled Caste (Women) candidates to award dealership in respect of its retail outlet located at Nand Nagri, Delhi. Eligible candidates were called for an interview on 26.08.2008, however, as per the circular dated 07.04.2005 the result was kept in abeyance and thereby fresh interview was conducted on 20.09.2008. The difference in the marks between Anju Kumari who secured the first rank and Anita Devi-I who secured the third rank was marginal and before any action could be taken four complaints were received against this selection process. As there were errors in this selection process fresh interviews were held between 22nd and 24th December, 2009 and this time Anita Devi-I secured the first rank and Anju kumari secured second rank. A complaint dated 26.12.2010 was filed by Anju kumari alleging that Anita Devi-I had violated the dealership norms since she already had a dealership awarded HPCL (Hindustan Petroleum Corporation Limited). An order dated 30.11.2010 dis-empanelled Anita Devi-I on the ground of violating the multiple dealership norms and an order dated 11.03.2011 sustained the decision of the dis-empanelment on a different ground that

she did not possess the necessary qualification.

3. W.P(C) 6870/2012 was disposed of by the learned Single Judge vide order dated 06.07.2015 setting aside the impugned orders dated 30.11.2010 and 11.03.2011 with further direction to IOCL to examine the material submitted by Anita Devi-I along with her representation dated 10.04.2011. IOCL was further directed to take a position relating to the validity of the post- graduate certificate placed on record by Anju Kumari in the light of the judgement of the Supreme Court in *Annamalai University vs Secretary to the Government & Ors.* case. IOCL had to declare the final result in compliance of the aforesaid directions and notify the same to the above candidates.

4. W.P(C) 8032/2015 was dismissed by the learned Single Judge vide order dated 07.09.2015 holding that the relief claimed by the petitioner therein should have been made at the time of decision of earlier petition and therefore dismissed the petition on the ground that the same was misconceived and not maintainable.

5. W.P(C) 10111/2015 was dismissed by the learned Single Judge vide order dated 29.10.2015 holding that merely by changing the form of language the outcome of a *lis* could not be different and therefore, the writ petition is covered by the order dated 07.09.2015 passed by this Court.

6. For the purpose of disposal of this order we would be referring to Anita Devi as the appellant and Indian Oil Corporation Ltd. and Anju Kumari as the respondents in this case.

7. It was contended by Mr. Atul Bandhu, the learned counsel for the appellant that the learned Single Judge failed to appreciate that the

22

appellant was a bonafide candidate to get the retail outlet dealership and therefore respondent/Anju Kumari could not be permitted to continue the business of retail outlet dealership during the pendency of the W.P.(C) No. 6870/2012. Learned counsel for the appellant further contended that the writ petition No.10111/2015 has been wrongly dismissed by the learned Single Judge as the same was filed on a fresh cause of action. Learned counsel for the appellant further contended that in W.P(C) No. 8032/2015 the learned Single Judge has wrongly relied on the case of *State of UP vs Nawab Hussain* and arrived at a conclusion that the appellant ought to have claimed the relief sought in W.P.(C) No. 8032/2015 in the earlier W.P(C) No. 6870/2012 and it is not open to the appellants to bifurcate the relief and file different petitions. Learned counsel contended that W.P.(C) No. 8032/2015 was filed in the consequential effect of order dated 06.07.2015 passed in W.P. (C) No. 6870/2012 which is a fresh cause of action and learned Single Judge erred in dismissing the petition without going into the merits of the petition.

8. It was further contended by the counsel appearing for the appellant that Anju Kumari did not possess the required qualification as the graduation degree obtained by her was a two year course which made her ineligible for the award of the dealership and therefore, Anita Devi infact was legally entitled to the candidature in question.

9. It was urged by Mr. G. S. Mani, learned counsel for the Anju Kumari in LPA 720/2015 that the order passed by the learned Single Judge in W. P. (C) 6870/2012 is based on conjecture and surmises and the learned Single Judge erred in setting aside the de-empanelment order dated 30.11.2010 and order dated 11.03.2011 whereby de-empanelment

of Anju Kumari was sustained. It was further contended by the counsel that the certificate of experience issued to Anju Kumari was false and if she is permitted to place some additional documents, then on parity, the other applicants were also required to be permitted to place additional documents.

10. Ms. Mala Narayan, the learned counsel for the respondents/IOCL while refuting the arguments of the appellants submitted that the process of the selection of the candidates for awarding the business of the retail dealership is purely administrative and not subject to judicial review. It was further submitted that principles of natural justice were not violated by the respondents nor the appellant/Anita Devi has any vested right to be awarded the dealership of the retail outlet.

11. We have heard the learned counsel for all the parties and examined the material record placed before us.

12. At this stage, we deem it appropriate to rummage through the orders impugned before the learned Single Judge i.e. 30.11.2010 and 11.03.2011. The revised result of retail outlet dealership of M/s. Indian Oil Corporation Limited, Nand nagri, Delhi wherein Anita Devi-I was dis-empanelled was communicated vide order dated 30.11.2010 is reproduced as under :

"This has reference to the re-interview conducted on 24.12.2009 for the subject location and results displayed on 24.12.2009. subsequently complaint was received against the above selection. One of the complaints against the first empanelled candidate was found substantiated for violation of multiple dealership norms. Also one more complaints for award of lesser marks on education for one of the

24

candidate was substantiated, hence competent authority had ordered cancellation of earlier panel and re-evaluation of marks awarded for document based portion for all eligible candidates i.e. who had appeared for interview for preparation of fresh merit panel."

13. On the basis of representation of Anita Devi dated 10.12.2010, the respondent/IOCL conducted investigation and found that the certificate of experience submitted by her was false. The relevant para of the communication dated 11.03.2011 is reproduced hereunder :

"1. It could not be established that Smt. Anita Devi w/o Shri Dilip kumar who has applied for Indian Oil retail outlet dealership at Nand Nagri, Delhi is the same Smt. Anita Devi w/o Shri Dilip Kumar, who is an existing dealer of M/s. Sidharth Filing station, Doraha.

2. You had submitted a certificate dated 05.10.2007 alongwith your application for the said location claiming experience of working at M/s. Sidharth Filing Station, Doraha for past three years. However, it has been established that the above retail outlet i.e. M/s Sidharth Filing Station, Doraha was commissioned by M/s. HPCL only on 10.10.2006. Thus the experience certificate is false as the said RO was in existence only for one year (approx) as on date of issuance of experience certificate."

14. The investigation carried out by the IOCL revealed that infact there were two applicants with identical names, name of the husband, date of birth, village address and studied in the same institution, but, copies of the certificates being Caste, High School, Graduation, Post-Graduation were different. The photograph on the application forms were also different.

15. Record also shows that the representation dated 10.04.2011 was made by Anita Devi when the second order dated 11.03.2011 was communicated to her as per which the committee of IOCL has sustained the de-empanelment order dated 30.11.2010 though on the ground that Anita Devi did not possess the requisite experience at the time of filing of application.

16. Learned counsel for the appellant/Anita Devi-I contended that no notice was served to her before the issuance of the aforesaid second order of the IOCL dated 11.03.2011. Anita Devi-I claimed that she obtained the experience certificate from M/s Sidharth Filing Station for a period of three years. However, the learned Counsel for the respondent/Anju Kumari claimed that Anita Devi did not possess the requisite experience as M/s Sidharth Filing Station was commissioned by M/s. HPCL only on 10.10.2006 and thus was in existence only for one year (approx) as on date of issuance of experience certificate.

17. At this juncture, we are of the opinion that the issue of genuineness of the certificate is a disputed fact and thus we are in affirmity with the order of the learned Single Judge that the said issue be examined and decided by the committee of IOCL. The competent authority should have only come to the conclusion that the experience certificate dated 05.10.2007 was false after giving Anita Devi-I a reasonable opportunity to be heard especially when she has also stated before the writ court that she has relevant material to explain her requisite experience for the candidature and further that the certificate is genuine. Having said so, now to determine whether Anju Kumari possessed a valid post-Graduate Degree or not is also question of fact and needs to be looked into by the

respondent/IOCL.

18. Feeling aggrieved by the orders impugned, the learned counsel for the appellant/Anita Devi-I submitted that during the pendency of the writ petition Anju Kumari should not have been permitted to run the retail outlet dealership, however, this contention cannot be accepted. During the pendency of the writ petition in question, the order of the Indian Oil Corporation Limited being an administrative order in force held that the experience certificate tendered by Anita Devi-I was false and the candidature of Anju Kumari was held to be successful. We are, therefore, in consonance with the view of the learned Single Judge in W.P(C). No. 6870/2012 permitting Anju Kumari to hold the said dealership until respondent/IOCL further investigates after hearing both the parties as to who amongst them deserve the candidature.

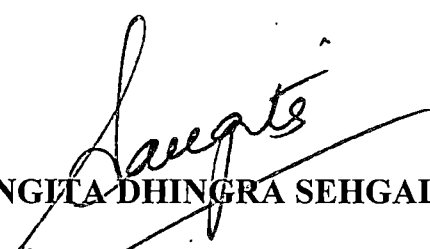
19. As far as the contention of the appellant that the other writ petitions were not barred by Section 10 and 11 of Code of Civil Procedure, 1908 is concerned, we find no force in this contention. We are of the considered view, that the prayer seeking restraining Anju Kumari from continuing the dealership during the pendency of the writ ought to have been raised earlier. The period by which the investigation had to be completed was submitted to be three months by the respondent/IOCL before the learned Single Judge and therefore is reiterated herein that this exercise shall be completed within three months from the date of receipt of a certified copy of this order.

20. Resultantly, we do not find any reasons to interfere with the orders under appeals and the said appeals are accordingly dismissed.

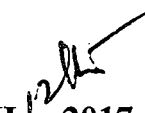
27

CM No.21548/2015 in LPA 664/2015,
CM Nos.23839/2015, 23842/2015, 23844/2015 in LPA 720/2015 &
CM No.27858/2015 in LPA 841/2015

In view of the order passed above, the applications are rendered infructuous.


SANGITA DHINGRA SEHGAL, J.


CHIEF JUSTICE


APRIL 12, 2017
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